

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY,)	
)	
Employer.)	
-----)	
ERIC SHIREY,)	CASE 21779-U-08-5558
)	
Complainant,)	DECISION 10389 - PECB
)	
vs.)	
)	
WASHINGTON STATE NURSES)	FINDINGS OF FACT,
ASSOCIATION,)	CONCLUSION OF LAW,
)	AND ORDER
Respondent.)	
_____)	

Eric Shirey appeared pro se.

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

On June 16, 2008, Eric Shirey filed an unfair labor practice complaint with the Public Employment Relations Commission alleging that the Washington State Nurses Association (union) committed an unfair labor practice of interference in violation of RCW 41.56.150(1) when it disciplined him for exercising his collective bargaining rights. Examiner Terry Wilson held a hearing on the matter on October 17, 2009. Both parties filed post-hearing briefs.

ISSUES

1. Did the union unlawfully interfere with Shirey's rights when it censured him for his participation in the filing of a petition seeking to change unions?

2. Did the union unlawfully interfere with Shirey's rights when it excluded him from participating on the scheduling committee?

3. Did the union unlawfully interfere with Shirey's rights when it suspended him from the union for two years for his participation in the filing of a petition seeking to change unions?

4. Did the union unlawfully interfere with Shirey's rights when it mailed a letter that detailed his union-imposed discipline to bargaining unit members?

Based on the record as a whole, I find that the union violated RCW 41.56.150(1). It and unlawfully interfered with Eric Shirey's rights when it retaliated against him by suspending him, censuring him, and mailing a letter detailing his discipline to bargaining unit members.

APPLICABLE LEGAL STANDARDS

The Public Employees Collective Bargaining Act, Chapter 41.56 RCW, specifically references the right of persons to organize and designate representatives of their own choosing. The statute reads:

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.

The statute also prohibits any interference with the rights it guarantees. It reads:

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 where a bargaining representative disciplines an employee for engaging in a protected activity. *Washington State Patrol*, Decision 4757-A (PECB, 1995).

ANALYSIS

Shirey, a public health nurse, is employed by King County (employer) and is a member of a bargaining unit where he sat on various committees and served as an officer. The bargaining unit, which is composed of 310 members, is represented by the union for collective bargaining purposes.

Shirey co-founded the Public Health Union of Nurses (PHUN) along with Claire Brown and Jim Gleckler, two other public health nurses in his bargaining unit. On March 16, 2007, as interim chair of PHUN and with the assistance of Brown, Shirey filed a petition for investigation of a question concerning representation (QCR) with the Commission. Following the filing of the petition, the union, the employer, and PHUN (represented by Shirey and Brown) participated in an investigation conference call conducted by the Commission. It was determined an election would occur between PHUN and the union.

In the ensuing months, the union held joint debates and meetings with PHUN, mailed multiple notices urging bargaining unit members to vote, and sent union officers to worksite meetings held by PHUN.

The union did not raise any objections to the actions taken by PHUN supporters or founders during this period.

The election was held on June 27, 2007, and the union won by four votes. Immediately after the election results were known, Brown told the staff of union that it had PHUN's support. She also expressed hope that union would include some PHUN supporters when it resumed contract negotiations with the employer. Shirey sent an e-mail to everyone on PHUN's e-mail list to further acknowledge PHUN's defeat and to express its commitment to support the union. The content of the e-mail was displayed on the PHUN website, and the officers of PHUN deleted content on the website that indicated it was challenging union's representation. Soon, Shirey began having discussions with Brown, Gleckler, and supporters of PHUN about re-forming PHUN into a public advocacy group that would promote public health.

The election results were made official on June 29, 2007. Contract negotiations between the employer and the union, which had been suspended during the QCR process, were scheduled to resume on September 18, 2007. In July 2007, the union held public meetings to discuss strategy and to provide updates about returning to contract negotiations. Brown and Shirey attended two different sessions on July 19, 2007. Marie Peacock-Albers and William Johnston, nurses in the bargaining unit and officers of the union, were in attendance at both meetings.

Shortly after the July meetings, Peacock-Albers and Johnston sent a letter to Kim Armstrong, president of union, stating that Shirey had violated the union policy against dual unionism. In their letter, Peacock-Albers and Johnston stated:

In accordance with Article II, Section 4 of the By-Laws of the Washington State Nurses Association, we, hereby,

file with the WSNA Board of Directors this charge of disciplinary action against Eric Shirey, for violation of the WSNA policy on a charge of dual unionism.

According to the letter authored by Peacock-Albers and Johnston, Shirey was a founding member and co-chair of PHUN, "an organization in direct competition with the Washington State Nurses Association, which sought by a petition for change of representative to eliminate the union as the collective bargaining representative of nurses employed by Seattle-King County Public Health."

Judy Huntington, Executive Director of the union and the Chief Administrative Officer for the association, then sent a letter to Shirey by certified mail. In the letter, she stated that a disciplinary hearing panel had met on August 9, 2007, and determined that sufficient evidence exists to proceed with a hearing on the charge initiated by two bargaining unit members.

On October 4, 2007, Shirey, Brown, Gleckler, and Jacqueline Justus, a PHUN supporter, were brought before a union hearing panel composed of three nurses from other bargaining units. On December 17, 2007, Huntington sent Shirey a certified letter which included a nine-page disciplinary report from the disciplinary hearing panel. The panel concluded that Shirey was guilty of dual unionism which it defined as "a fundamental breach of the union member's responsibility not to destroy the union or weaken its effectiveness."

The panel stated in its report:

The evidence clearly proves that Eric Shirey was chair of the PHUN group and knowingly participated in PHUN activities seeking to eliminate union 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.

In accordance with Article II , Section 4(B)(4) of the union by-laws, the disciplinary hearing panel censured Shirey and banned him from union membership for two years. Shirey asserts that he was also excluded from representing the union on the scheduling committee. In a similar action, Brown was censured and prohibited from holding office within the union for six months while Gleckler was censured and suspended from holding office or serving on a committee for one year. Justus was exonerated. In deciding upon the appropriate penalty for Shirey, the panel noted:

In deciding upon the appropriate penalty, the panel recognizes that in attempting to eliminate the Washington State Nurses Association as the bargaining representative, Mr. Shirey was pursuing his own personal vendetta against the union at the expense of his co-workers. . . Mr. Shirey's misconduct was deeply divisive and destructive, especially at a critical juncture in difficult contract negotiations.

The report issued by the panel also stated that the union's ability to win the best contract for nurses was severely compromised by Shirey's actions and weakened the union's ability to present a unified front. The panel asserted that every nurse in the bargaining unit was adversely impacted by Shirey's actions. They claim he stalled contract negotiations and the union had to divert resources from contract negotiations to defeat PHUN's attempt to eliminate them. On December 18, 2007, Huntington mailed the disciplinary hearing panel's report to all bargaining unit members. It included the disciplinary actions taken by the panel against Shirey, Brown, and Gleckler.

Authority to Discipline

As the union argued in its brief, the Commission has limited authority regarding the internal affairs of unions. The Commission has generally held that it has no jurisdiction over complaints where the union has disciplined one of its members in order to enforce a properly-adopted rule that reflects a legitimate union interest and impairs no policy that the State Legislature has imbedded in the labor laws, provided it is reasonably enforced against union members who are free to leave the union and escape the rule. *Seattle School District*, Decision 9135-A (PECB, 2007). Ruling that the union had legitimate interests in protecting its existence and presenting a unified front to management, the Commission, in *Seattle School District*, found that the union lawfully imposed discipline. The Commission noted that the employee was trying to bypass the union to achieve her own agenda and interfere with the union's collective bargaining, activities not protected by statute.

Censure

According to Webster's Dictionary, a censure is a harsh expression of disapproval. Its effects on the individual's reputation could be widespread. See *Brown v. Washington State Nurses Association*, Decision 10172-A (PECB, 2008), which found that censure goes beyond the acts like expulsion as there is no way to escape the effect of a censure. The Examiner in that decision found that censure sends the strong message that a person should not exercise statutory rights, and resigning from the union will not lift the criticism that censure invokes.

In the present case, the union has characterized its discipline of Shirey as a purely internal union matter. The report of the union disciplinary hearing panel, however, directly links Shirey's

censure to his filing of the QCR petition with the Commission. The union censured Shirey for activities that are protected by state statute. At its core, a QCR petition brought before a state regulatory agency is not an internal union issue. Filing a QCR petition is a protected activity by a public employee under RCW 41.56.040, which also prohibits a union from interfering with an employee who takes such action.

The union clearly brought disciplinary charges against and censured Eric Shirey in retaliation for his exercise of a protected statutory right. As reflected in the statute, public policy prohibits a union or employer from penalizing a public employee because he has sought to invoke the Commission's election process. Censuring Shirey and bringing disciplinary charges against bargaining unit members for the filing of a decertification petition is interference with their protected rights and is an unfair labor practice.

Mass Mailing

The union mailed its panel report that included the disciplinary actions to all bargaining unit members. The union informed the bargaining unit that Shirey, by participating in a state sanctioned process to change union representation, had committed, in its words, "dual unionism" against the union.

I find that mailing the report to every nurse in the bargaining unit adds to union's unlawful retaliation against Shirey. It sends a strong message that a union member should not exercise his or her statutory rights. This clearly impairs effectiveness of the statute that affords employees the right to organize.

It is noted that in *Seattle School District*, the Commission did not find a union's conduct objectionable when it included in two

newsletters sent to its membership that a union member was urging the school board to cut positions and that union discipline was possible. In that case however, the union's discipline did not interfere with protected rights as is true in the present case.

Scheduling Committee

According to Shirey, the scheduling committee is a group that works to solicit input from bargaining unit members about scheduling issues and has no role in negotiations. In June 2007, the union informed the employer that Shirey did not represent their interests and that he would not negotiate on the bargaining unit's behalf. The union then removed Shirey from scheduling committee duties. Gleckler testified that the scheduling committee has not met since that time. I find that these actions were lawful. Elected union officials have the right to appoint whomever they choose to represent and assist them in day to day affairs. *Finnegan v. Leu* 456 US 43 (1982).

The Suspension from the Union

As a result of filing a QCR petition and seeking to change union representation, Eric Shirey was suspended from union membership for two years. Shirey contends that this discipline was also unlawful and that he has been negatively impacted. He was not able to participate on labor management committees, including the Scheduling Committee. He could not vote on important matters, such as the prospect of having a significant amount of money deducted from his paycheck, and he suffered a bout of depression.

The National Labor Relations Board (NLRB) reasons that an employee who files a QCR petition has access to union strategy in fighting the petition, and, as a result, cannot expect to retain membership in his union. See *Tawas Tube Products, Inc.*, 151 NLRB 46 (1965), where the Board recognized that a union may discipline and impair

the membership rights of a union member who attempts to decertify the union or supports a rival organization, provided such disciplinary action does not affect the member's employment status.

Despite the fact that the NLRB sanctions punishment for the filing of a QCR petition, in *Office Employees Local 251* (Sandia National Laboratories), 331 NLRB No. 193 (2000), the NLRB ruled that the proscriptions of Section 8(b)(1)(A) of the National Labor Relations Act apply when intra-union discipline clash directly with statutory policy interests and prohibitions incorporated in the Act. Similarly, the Supreme Court ruled that the discipline imposed by a union is not appropriate when a complaint or grievance does not truly concern an internal matter, but touches a part of the public domain covered by the Section 7 or 8(b)(1)(A) of the National Labor Relations Act. *NLRB v. Shipbuilders*, 391 U.S. 418 (1968). Sections 7 and Section 8(b)(1)(A) of the NLRB correspond closely to the sections of Washington State Public Employees Collective Bargaining Act, Chapter 41.56 RCW.

The Commission has not ruled specifically on whether a union could lawfully discipline an employee who attempts to decertify the union or supports a rival organization. And although the Commission uses decisions rendered by the NLRB as a guide in areas where there is no specific Commission precedent, the Commission is not bound to strictly follow Board rulings.

Washington State law and precedent dictate that a union can discipline one of its members in order to enforce a properly adopted rule that reflects a legitimate union interest, impairs no policy that the State Legislature has imbedded in the labor laws, and is reasonably enforced. Key to the Public Employment Collective Bargaining Act is promoting harmonious labor relations by providing a uniform basis by which employees can join a labor

organization of their own choosing. The right to unionize and to choose union representation is core to labor rights. So much so, this right was codified, as were the procedures by which public employees choose their representation.

In the present case, I find that the suspension of Shirey from the union clashes directly with the State's labor policy and policy interest. Suspending an employee because they exercised a State protected right impedes others from exercising that right. Such actions interfere with the proscriptions of the statute. Thus, I find that the union committed an unfair labor practice when it suspended Shirey from continuing union membership.

FINDINGS OF FACT

1. King County (employer) is a public employer within the meaning of RCW 41.56.030(1).
2. Washington State Nurses Association (union), 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 employed by the employer.
3. Eric Shirey is employed by King County as a public health nurse in the bargaining unit represented by the union.
4. On March 16, 2007, Shirey filed 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). Shirey was identified as the interim chair, and Claire Brown was identified as the interim co-chair of the PHUN.

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 union, sent notice to Shirey that a union panel had met on charges brought against him. The panel determined that sufficient evidence existed to proceed with a disciplinary hearing on the charges. The panel considered as evidence the petition for a question concerning representation Shirey filed with the Public Employment Relations Commission.
7. On December 17, 2007, Huntington sent Shirey a certified letter that included a copy of the report of the disciplinary hearing panel. The panel concluded that Shirey was guilty of the charge of dual unionism based on Shirey's filing of the representation petition.
8. The panel disciplined Shirey by censuring him and by suspending him from union membership for two years.
9. The union sent copies of the report and the notice of censure to every member of the bargaining unit.
10. The union relieved Shirey of his duties on the scheduling committee.

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 8 through 9, the union retaliated against Shirey in violation of RCW 41.56.150(3), interfered with his rights, and acted in a manner that impaired the policies imbedded in the labor laws of the State of Washington.
3. 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 Eric Shirey for attempting to use the processes administered by the Public Employment Relations Commission to have the PHUN certified as his bargaining representative.
 - b. Suspending Eric Shirey from membership in the bargaining unit for attempting to use the processes administered by the Public Employment Relations Commission to have the PHUN certified as his bargaining representative.
 - c. 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 and suspension of membership imposed on Shirey when he 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 Shirey. In that letter) acknowledge that Shirey's activities to change unions were part of a process established and protected by state law. The letter must state that the union acted illegally when it censured Shirey. 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 union, and shall remain posted for 60 consecutive days from the date of initial posting. The union 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 8th day of May, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



TERRY N. WILSON, 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 THE WASHINGTON STATE NURSES ASSOCIATION COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS:

WE UNLAWFULLY retaliated against Eric Shirey because he filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, a state agency.

WE UNLAWFULLY censured Eric Shirey because he filed 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 Eric Shirey.

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 censure imposed on Eric Shirey because he filed a petition for investigation of a question concerning representation.

WE WILL mail a letter of apology to Eric Shirey for retaliating against him when he pursued his statutory rights.

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

DO NOT POST OR PUBLICLY READ THIS NOTICE.

**AN OFFICIAL NOTICE FOR POSTING AND READING
WILL BE PROVIDED BY THE COMPLIANCE OFFICER.**

The full decision is published on PERC's website, www.perc.wa.gov.