

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

*Claire Brown*, appeared on her own behalf.

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

*Gretchen Herbisen*, Labor Negotiator, for King County.

On December 3, 2007, Claire Brown, a nurse employed by King County (employer) filed a complaint charging unfair labor practices against the Washington State Nurses Association (union). The union is the certified bargaining representative of a bargaining unit of registered nurses and public health nurses employed by the employer in its public health department and Brown is a member of that bargaining unit. Brown's complaint alleged that the union interfered with her rights as an employee in violation of RCW 41.56.150(1), and discriminated against her in violation of RCW 41.56.150(3), when the union invoked internal union processes and disciplined her for filing a decertification representation petition. On January 2, 2008, Brown filed an amended complaint and withdrew the discrimination claim. Based upon that amended complaint, the Commission found a cause of action to exist on the charge of union interference.

On April 25, 2008, Examiner Katrina Boedecker held a hearing on the matter. The parties filed post-hearing briefs and a decision was issued on August 29, 2008. On September 19, 2008, the union appealed the Examiner's decision. On September 8, 2010, after examining the record in detail, the Commission remanded the case to the agency's Executive Director for hearing by a different examiner. Subsequently, the undersigned was assigned as Examiner.

### ISSUES

1. Does the Commission have jurisdiction and/or authority to determine that an internal union policy may violate employees' collective bargaining rights?
2. If so, did the union interfere with Claire Brown's protected rights when it disciplined her for filing and promoting a petition to decertify the union as the collective bargaining representative for her bargaining unit?

I find that the Commission does have the jurisdiction and the authority to determine whether the enforcement of certain union policies might violate the statute. I further find that the union violated Claire Brown's protected rights when it disciplined her for filing and promoting a decertification petition against the union.

ISSUE 1: Does the Commission have jurisdiction and/or authority to determine that an internal union policy may violate employees' collective bargaining rights?

The employer and union had been parties to a collective bargaining agreement until its expiration on December 31, 2006. In January of 2007, the members of the union's bargaining unit voted not to ratify a new proposed collective bargaining agreement that had been negotiated by the parties. Before the union and employer could reach an agreement, the Public Health Union of Nurses, a newly created organization, filed a timely petition for the Investigation of a Question Concerning Representation with the Commission on March 16, 2007, seeking to replace the incumbent union. Claire Brown, a bargaining unit member of the incumbent union, was one of three officers representing the new organization and seeking certification as the exclusive

bargaining representative. The representation petition initiated the Commission's election procedures which resulted in the incumbent union eventually winning the election and being certified as the exclusive bargaining representative for the unit.

After the election, the union found that there was sufficient evidence to bring internal union charges against Brown for "dual unionism." The union defines this in its internal policy as:

Dual unionism, which is prohibited by this policy, is defined as participation in and assistance to one or more labor organizations which are in direct competition with WSNA or ANA constituents such as WSNA or ANA constituents acting for and representing the collective bargaining interests of the profession and members.

Any WSNA member who participates in and gives assistance to one or more directly competing labor organizations is subject to discipline for advocating or engaging in any activities which would eliminate or interfere with the WSNA or/and ANA constituent association which is the collective bargaining representative or is attempting to become the collective bargaining representative of employees.

On August 13, 2007, the union sent a certified letter to Brown notifying her that a hearing was to be held on September 5, 2007, where charges of dual unionism would be considered. The letter included an additional letter dated July 20, 2007, from two members of the bargaining unit that had initiated the process and filed charges against Brown for "violation of the WSNA policy on dual unionism by participating in and giving assistance to a labor organization directly competing with WSNA and advocating and engaging in activities which would eliminate or interfere with WSNA as the collective bargaining representative of nurses employed by Seattle-King County Public Health." Brown later learned that similar charges had been brought against the other officers of the Public Health Union of Nurses.

Although scheduled for September 5, 2007, Brown's hearing was actually held on October 4, 2007. The representation petition filed with the Commission was presented as part of the evidence that Brown violated the union policy. Subsequently, on December 17, 2007, the union censured Brown and suspended her right to hold union office for six months for violating the union's policy on dual unionism. In addition to notifying Brown of her discipline, the union also sent a copy of Brown's hearing report to all members of the bargaining unit.

RULE

The statute governing the parties to this case, Chapter 41.56 RCW, references the protected status of employees in several places:

RCW 41.56.010 DECLARATION OF PURPOSE. The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers.

And:

RCW 41.56.040 RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE. No public employer, or other person, shall directly or indirectly interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate a representative of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.

And:

RCW 41.56.150 UNFAIR LABOR PRACTICES FOR 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; . . . .

The latter statute has been interpreted in many Commission decisions as prohibiting union interference with employee rights, and that union interference through threats of reprisal or force or promises of benefits associated with union activity of employees is unlawful. An interference violation exists when an employee could reasonably perceive statements or actions as a threat of reprisal or force or promise of benefit associated with the union activity of that employee or of other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996). A finding of intent is not necessary. *City of Port Townsend*, Decision 6433-B (PECB, 2000).

ANALYSIS

The union argues that the Commission should take a position on this issue parallel to that of the National Labor Relations Board (NLRB). It asserts that the NLRB, does not cross into internal union affairs, unless the actions of a union effect an employee's job. The Commission often uses NLRB precedent to either support Commission precedent or to guide it when a case is one of first impression. However, the Commission is not bound to strictly follow NLRB rulings and in this case it would be inappropriate to do so.

The text of the NLRA dealing with union interference and employee rights are different from the Commission statutes. The National Labor Relations Act states:

Sec. 8. (b) [Unfair labor practices by labor organization] It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 [section 157 of this title]: Provided, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . . .

(emphasis added). It is the last proviso in this section of the NLRA that makes the significant difference between the NLRB and the Commission concerning internal union affairs. As shown in underline above, the NLRB is explicitly not to intrude into internal union affairs concerning membership. However, RCW 41.56.150 does not contain such a statement and therefore the Commission is not inhibited, as the NLRB is, from ensuring that unions do not intrude into the statutorily protected rights of organized employees, even involving membership. This interpretation is further reinforced by the statutory language of both RCW 41.56.010 and 41.56.040, quoted above, which strongly asserts the protected rights of public employees in this state to organize, select a bargaining agent of their choice and bargain with their employers.

The Commission has not ruled specifically on whether it would assert jurisdiction over discipline from an internal union policy. However, in *Seattle School District*, Decision 9359-A (EDUC, 2007) the Commission began to draw the line between what is permissible union action under Chapter 41.56 RCW and what is intrusion into statutorily protected rights of organized employees. In *Seattle School District*, the Commission first discusses when it would not

interfere with internal union affairs and then identifies cases where it would assert jurisdiction over internal union affairs.

In an early decision, the Commission dismissed an employer-filed unfair labor practice complaint alleging that a union unlawfully prevented non-member employees from voting on the formulation of the union's proposals for collective bargaining. *Lewis County*, Decision 464 (PECB, 1978), aff'd, Decision 464-A (PECB, 1978). In that case, the Executive Director noted that participation in union affairs is a political right incident to union membership but that right is not a civil or property right. Since the complaint there concerned internal union policies and did not directly affect the employment relationship covered by RCW 41.56, it was dismissed for failure to state a claim.

In *Lake Washington School District*, Decision 6891 (PECB, 1999), the Executive Director dismissed a complaint concerning a union's actions during a ratification process. The complained-of action was found to be entirely within the internal workings of the union which failed to state a cause of action over which the Commission could exercise jurisdiction. The Executive Director also noted that the courts, not the Commission, have jurisdiction over violations of union constitutions and by-laws.

A different conclusion was reached in a trilogy of recent cases where the Commission ruled that it had jurisdiction over the question of whether a union wrongfully denied non-union members a meaningful and informed vote in the ratification process of the collective bargaining agreement. *Community College District 7 (Shoreline)*, Decision 9094-A (PSRA, 2006); *Western Washington University*, Decision 8849-B (PSRA, 2006); and *Community College District 19 (Columbia Basin)*, Decision 9210-A (PSRA, 2006). In each of these cases, the non-member employees were given the right to vote pursuant to an explicit agreement between the employer and the union. Therefore, the Commission was merely enforcing a right the parties had given the non-members rather than a right that might grow out of the union's constitution or by-laws.

Also, compare *Port of Seattle*, Decision 2549-C (PECB, 1987), where the Executive Director noted that a complaint alleging that a union had aligned itself in interest against one or more bargaining unit employees during a contract ratification process could state a cause of action for violation of the union's duty to fairly represent all bargaining unit employees.

### CONCLUSION ON JURISDICTION

In this case, the union disciplined Brown for filing a Question Concerning Representation petition with the Public Employment Relations Commission. This is not a matter concerning just

an internal union policy, but rather a union policy, which, as applied, affects the statutory rights of Brown as an employee. As cited above, RCW 41.56.010 clearly protects the right of employees to make a decision concerning their representation for purposes of collective bargaining. Just as the right to select a bargaining agent is protected, so is the right to change that bargaining agent. Therefore, the Commission has the jurisdiction and the authority to decide whether or not the union violated RCW 41.56.150(1) when it disciplined Brown for filing a decertification petition.

ISSUE 2: Did the union interfere with Claire Brown's protected rights when it disciplined her for filing and promoting a petition to decertify the union as the collective bargaining representative for her bargaining unit?

### ANALYSIS

The union argues, following the standard set by the NLRB, that because Brown's employment status was not affected by its internal discipline, it did not interfere with her protected rights and did not commit an unfair labor practice. However, the union did not just censure and deprive Brown of the right to hold a union office for six months, it also notified the bargaining unit members of Brown's internal discipline. Whatever personal impact such discipline may have had on Brown; having an internal board investigate and call her before it for questioning and then issue a disciplinary notice and circulate that notice to all the members of her bargaining unit, has a chilling effect on the other members of the bargaining unit to exercise their statutory rights. Her experience and the experience of the other organizers of the decertification petition was a clear message to the members of the bargaining unit that they invoke the Commission's statutory procedures at their peril. In *Clark County*, Decision 9127-A (PECB, 2007), the Commission said "This Commission closely scrutinizes claims of discrimination or reprisal against employees who invoke the Commission's processes."

In this case the union sent its bargaining unit members an unmistakable message that disciplinary procedures will be invoked and discipline will result, if you file a Question Concerning Representation with the Commission. The union's actions in this case are contrary to and violate

the statutory protections surrounding the statutory certification process that the Commission is charged to administer. RCW 41.56.010 and 41.56.040.

### CONCLUSION ON UNION DISCIPLINE

In censoring and removing membership privileges of Brown, the union interfered with her right to select and change the certified bargaining agent for her bargaining unit. Therefore, the union committed an unfair labor practice in violation of state law.

### FINDINGS OF FACT

1. King County is a public employer within the meaning of RCW 41.56.030(13).
2. The Washington State Nurses Association, a bargaining representative within the meaning of RCW 41.56.030(2), is the certified bargaining representative of a bargaining union of Public Health Nurses and Registered Nurses employed by King County. Claire Brown is a member of that bargaining unit.
3. The collective bargaining agreement between King County and the Washington State Nurses Association expired on December 31, 2006. The union did not ratify a successor agreement.
4. On March 16, 2007, the Public Health Union of Nurses filed a petition for the Investigation of a Question Concerning Representation with the Commission. Brown was identified as one of the interim co-chairs of the organization.
5. The Public Employment Relations Commission conducted an election where a majority of votes cast certified the Washington State Nurses Association as the bargaining agent of the King County Health Department Registered Nurse and Public Health Nurse bargaining unit.



6. On July 20, 2007, two members of Brown's bargaining unit filed charges against her with the union for "violation of the WSNA policy on Dual Unionism by participating in and giving assistance to a labor organization directly competing with WSNA as the collective bargaining representative of nurses employed by Seattle-King County Public Health."
7. The union found sufficient evidence to bring internal union charges against Brown for violating an internal union policy of dual unionism.
8. A hearing concerning Brown's decertification activities was held on October 4, 2007.
9. On December 17, 2007, the union notified Brown that the hearing panel had determined she violated the union's policy on dual unionism. She was censored and her right to hold union office was suspended for six months. The union distributed copies of the disciplinary hearing report to all the members of the health department bargaining union.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.
2. The Public Employment Relations Commission has jurisdiction in the matter of determining whether internal union policies violate the right of employees to freely select and join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment under RCW 41.56.010 and 41.56.040.
3. By its actions in Findings of Fact 6 through 9, the union retaliated against Brown and interfered with her right as a public employee when she attempted to change the certified bargaining representative of her bargaining unit; a right protected by RCW 41.56.010 and 41.56.040, and in violation of RCW 41.56.050(3).

4. By its actions in Findings of Fact 6 through 9, the union based its actions upon internal policies which are in violation of the rights of public employees to choose their bargaining agent for purposes of collective bargaining as protected by RCW 41.56.010 and 41.56.040.
5. By its action in censoring Brown, depriving her of her right to hold union office, and notifying all the members of her bargaining unit of their decision, the union violated RCW 41.56.150(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. Censoring and/or inhibiting Claire Brown from holding union office in retaliation for her using the processes of the Public Employment Relations Commission to have another labor organization as her certified bargaining representative.
  - b. In any other manner interfering with, restraining or coercing its bargaining unit 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. Mail to each current member of the King County Health Department Bargaining union and to any previous employees of the employer that had received the union's December 17, 2007 notice of the disciplinary action taken against Brown, a letter that:

- i. Acknowledges the union acted in violation of state law when it disciplined Brown for attempting to change the certified bargaining agent for her bargaining unit.
  - ii. Rescinds the censure imposed on Brown because she filed a petition with the Public Employment Relations Commission to change the certified bargaining agent of her bargaining unit.
  - iii. Rescinds the inhibition imposed on Brown from holding office in the union because she filed a petition with the Public Employment Relations Commission to change the certified bargaining agent of her bargaining unit.
  - iv. Apologizes to Brown for retaliating against her when she was acting in compliance with her statutory rights when she filed a petition for investigation concerning representation with the Public Employment Relations Commission seeking to decertify the Washington State Nurses Association.
  - v. Includes a copy of the notice provided by the Compliance Officer of the Public Employment Relations Commission.
- b. Post copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

- c. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the Board of Directors 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.
  
- d. 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 provided by the Compliance Officer.
  
- e. Notify the Compliance Officer, 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 him with a signed copy of the notice he provides.

ISSUED at Olympia, Washington, this 5th day of January, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CHRISTY L. YOSHITOMI, 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**

**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, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:**

WE UNLAWFULLY retaliated against Claire Brown and violated her statutorily protected rights when we censored her, inhibited her, and notified all the members of her bargaining unit of her union discipline in response to her petitioning the Public Employment Relations Commission, a state agency, for an investigation of a question concerning representation.

**TO REMEDY OUR UNFAIR LABOR PRACTICES:**

WE WILL rescind, in writing, with copies to the present members of the union's King County Health Department bargaining unit and to any previous members of that bargaining unit as of December 17, 2007, the letter censoring her for invoking the procedures of the Public Employment Relations Commission.

WE WILL apologize, in writing, with copies to present members of the union's Health Department bargaining unit, and to any previous members of that bargaining unit as of December 17, 2007, to Claire Brown for retaliating against her when she was acting in compliance with her statutory rights by filing a petition for investigation concerning representation with the Public Employment Relations Commission seeking to decertify the Washington State Nurses Association.

WE WILL NOT issue any censorship, inhibitions from holding union office, or any other form of internal union discipline 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 the employees represented by us for purposes of collective bargaining, 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.**

The full decision is published on PERC's website, [www.perc.wa.gov](http://www.perc.wa.gov).



**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

112 HENRY STREET NE SUITE 300  
PO BOX 40919  
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON  
PAMELA G. BRADBURN, COMMISSIONER  
THOMAS W. McLANE, COMMISSIONER  
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

**RECORD OF SERVICE - ISSUED 01/06/2011**

The attached document identified as: DECISION 10172-B - PECB has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:  / ROBBIE DUFFIELD

CASE NUMBER: 21395-U-07-05456 FILED: 12/03/2007 FILED BY: PARTY 2  
DISPUTE: UN MULTIPLE ULP  
BAR UNIT: NURSE  
DETAILS: -  
COMMENTS:

EMPLOYER: KING COUNTY  
ATTN: JAMES JOHNSON  
500 4TH AVE STE 450  
SEATTLE, WA 98104-2372  
Ph1: 206-205-5321 Ph2: 206-296-8556

REP BY: ANITA WHITFIELD  
KING COUNTY  
500 4TH AVE RM 450  
SEATTLE, WA 98104-2337  
Ph1: 206-296-8576

REP BY: GRETCHEN HERBISON  
KING COUNTY  
MS ADM-ES-0450  
500 4TH AVE RM 450  
SEATTLE, WA 98104  
Ph1: 206-214-5288

PARTY 2:  
ATTN: CLAIRE BROWN  
1350 PO BOX 257  
OLYMPIA, WA 98507  
Ph1: 206-762-9025

PARTY 3:  
ATTN: WA STATE NURSES ASSN  
JUDY HUNTINGTON  
575 ANDOVER PARK W STE 101  
SEATTLE, WA 98188  
Ph1: 206-575-7979

REP BY: TIMOTHY SEARS  
WA STATE NURSES ASSN

575 ANDOVER PARK W SUITE 101  
SEATTLE, WA 98188-3321  
Ph1: 206-575-7979

REP BY:

BARBARA FRYE  
WA STATE NURSES ASSN  
575 ANDOVER PARK W SUITE 101  
SEATTLE, WA 98188  
Ph1: 206-575-7979