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-C - PECB DECISION OF COMMISSION

Claire Brown appeared *pro se*.

Timothy Sears, General Counsel, for the union.

On December 3, 2007, Claire Brown (Brown) filed an unfair labor practice complaint alleging that the Washington State Nurses Association (WSNA) interfered with her protected employee rights in violation of RCW 41.56.150(1) when the WSNA charged her and found her guilty of violating certain internal union policies. Specifically, Brown's allegations concern enforcement of the WSNA's policy against "dual-unionism" and whether she can be punished under that rule for forming a rival bargaining organization and filing a petition with this agency to replace WSNA as the exclusive bargaining representative of Brown's bargaining unit. Examiner Christy Yoshitomi found that WSNA interfered with Brown's protected rights by imposing internal union discipline against her for filing a change of representation petition with this agency.[1] The WSNA filed a timely notice of appeal asking this Commission to reverse the Examiner's

[1] *King County (Washington State Nurses Association)*, Decision 10172-B (PECB, 2011).

findings and conclusions that the union committed any unfair labor practice on the basis that the imposed discipline was purely an internal union matter that did not impact Brown's employment.

ISSUES PRESENTED

Did the Examiner correctly conclude that WSNA interfered with Brown's protected rights when it imposed certain internal union discipline against her for dual-unionism and for filing a change of representation petition?

For the reasons set forth below, we reverse the Examiner's decision finding the WSNA interfered with Brown's protected rights by imposing internal union discipline against her for engaging in dual-unionism and attempting to change representation.[2] Examining relevant precedent on this subject, we find that WSNA, as a private organization, has the right to enforce reasonably adopted disciplinary rules against union members to protect vital union interests. Enforcement of those rules must not impact the employer-employee relationship because they are reasonably enforced against a member who was free to resign union membership. When these conditions are met, this Commission will not find a violation. In this case, WSNA enforced a reasonably adopted rule against Brown in a manner that did not impact her employment relationship and Brown always had the option of resigning her membership with the WSNA to avoid being subject to that discipline. Accordingly, Brown's complaint is dismissed.

BACKGROUND

The facts of this case are not disputed. Brown was employed by King County in a bargaining unit of registered nurses, licensed practical nurses, public health nurses, advanced registered

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[2] This Commission reviews conclusions and applications of law, as well as interpretations of statutes, *de novo*. We review findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the Examiner's conclusions of law. *C-TRAN*, Decision 7088-B (PECB, 2002). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Renton Technical College*, Decision 7441-A (CCOL, 2002).

The WSNA filed a 32 page appeal brief. WSNA is reminded that WAC 391-25-350(9) limits appeal briefs to 25 pages unless it receives prior permission from the Commission to submit an over-length brief.

nurse practitioners, and advanced practice nurse specialists represented by WSNA.[3] Brown was an active member in WSNA. Since at least 1993, WSNA's by-laws have contained a statement prohibiting WSNA members from engaging in dual-unionism.[4]

WSNA and King County were parties to a collective bargaining agreement that expired on December 31, 2006. In January 2007, bargaining unit employees voted down a tentative agreement negotiated between WSNA and the employer. Brown and other unit employees formed the Public Health Union of Nurses (PHUN) as a rival labor organization to replace WSNA as the exclusive bargaining representative of the employees. Brown did not resign her membership with the WSNA prior to forming PHUN or working towards gathering a showing of interest to file the petition to change representation.

On March 16, 2007, PHUN filed a Petition for Investigation of Question Concerning Representation with this agency seeking to have PHUN replace WSNA as the exclusive bargaining representative. Case 20976-E-07-3237. Following the filing of the petition, supporters of PHUN and WSNA campaigned on behalf of their respective labor organizations and held a series of debates. During the pendency of the representation petition, King County ceased negotiations with WSNA as required by WAC 391-25-140.

The agency's staff processed PHUN's petition, and on June 21, 2007, a tally of ballots issued. The vote demonstrated that the employees selected WSNA to continue as their exclusive bargaining representative. Neither PHUN nor WSNA filed election objections with respect to the parties' conduct during the campaign. A final certification was issued on June 29, 2007. *King County*, Decision 9788 (PECB, 2007).

Maria Peacock-Albers (Peacock-Albers) and William Johnston (Johnston), two bargaining unit employees and WSNA members, co-authored a letter to WSNA president Kim Armstrong (Armstrong) informing her that they believed Brown violated the WSNA's policy against dual-

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[3] King County is not a party to these proceedings.

[4] Dual-unionism is defined "as a charge (usually a punishable offense) leveled at a union officer or member who seeks or accepts membership or position in a rival union, or otherwise attempts to undermine a union by helping its rival." ROBERTS' DICTIONARY OF INDUSTRIAL RELATIONS 110 (Revised Edition 1971).

unionism. In that letter, the authors informed Armstrong of Brown's PHUN activities. Shortly thereafter, Judy Huntington, Executive Director of WSNA, sent Brown a letter informing her that a WSNA disciplinary panel met on August 9, 2007 regarding the charges raised by Peacock-Albers and Johnston's letter. The letter also informed Brown that sufficient evidence existed for a hearing to be held to determine the merits of those allegations.

On October 4, 2007, Brown and other PHUN supporters were brought before a WSNA disciplinary panel. At the hearing, Brown admitted that she actively supported PHUN and PHUN's attempt to replace WSNA as the exclusive bargaining representative.

On December 17, 2007, the WSNA disciplinary panel issued its findings and conclusions about the charges brought against Brown. The report found Brown guilty of dual-unionism in violation of the WSNA by-laws and explained at length why dual-unionism was destructive to the WSNA. The disciplinary panel issued a letter of censure against Brown, suspended her from holding office within the WSNA for a period of six months, and distributed a letter to all bargaining unit employees explaining the charges brought against Brown and the discipline that WSNA imposed on her. At no time during its disciplinary proceedings did WSNA threaten Brown's employment with King County.

DISCUSSION

Applicable Legal Standard

In *Seattle School District (International Union of Operating Engineers, Local 609)*, Decision 9135-B (PECB, 2007), this Commission tackled the question of whether an exclusive bargaining representative interferes with protected employee rights in violation of Chapter 41.56 RCW by imposing internal union discipline against a bargaining unit employee for engaging in certain actions that may be detrimental to the union. Examining existing agency and National Labor Relations Board (NLRB) precedents, the Commission found that this agency 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, impairs no policy that our state Legislature has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule." *Seattle School District (International*

Union of Operating Engineers, Local 609), Decision 9135-B, *citing Scofield v. NLRB*, 394 U.S. 423 (1969)(*Scofield*).[5] Thus, if enforcement of the union rule satisfies all parts of the *Seattle School District* test, an interference violation cannot be found.

The Examiner's analysis framed the issue as whether the WSNA can discipline an employee for filing and promoting a change of representation petition. However, Brown was not disciplined for filing a change of representation petition; rather, she was disciplined for violating WSNA's constitution and rules against dual-unionism, and the act of supporting and filing the change of representation petition with this agency was an act that constituted evidence of dual-unionism. While this distinction may seem insignificant, it is actually extremely important for the analysis. Thus, the question that this Commission must answer is whether WSNA's rule was reasonably adopted, whether enforcement of WSNA's rule against dual-unionism effectively encumbers employees from exercising their right to file a change of representation petition under Chapter 41.56.070, and whether the rule was reasonably enforced.

Was WSNA's Rule Reasonably Adopted?

In *Scofield*, the Supreme Court of the United States held that a "properly adopted rule" is a rule that is "duly adopted and not the arbitrary fiat of a union officer." *Scofield*, 394 U.S. 423, 429. This part of the analysis does not question the legitimacy of the rule; rather, the question is whether the respondent has provided its membership sufficient notice of the rule or any changes to the rule prior to its enforcement. *See Millwright and Machinery Erectors*, 276 NLRB 59 (1985) vacated on other grounds, *Millwright and Machinery Erectors*, 287 NLRB 545 (1987).

WSNA's by-laws were last amended by its membership in 2005. Exhibit 16. Article II, Section 4, subsection 5, of the by-laws states that an employee may be disciplined for dual-unionism. Appended to the by-laws is a policy statement written by WSNA explaining the prohibition of dual-unionism. That policy statement was drafted by the WSNA General Assembly in 1993. It is apparent from the record that the WSNA by-laws were already adopted and published at the time Brown formed a competing labor organization, PHUN. As a WSNA member, Brown should have been aware that those rules existed. At the time of the imposed discipline, the

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[5] Under longstanding precedent, decisions construing the NLRA are persuasive in interpreting similar provisions of Chapter 41.56 RCW. *Nucleonics Alliance v. WPPSS*, 101 Wn.2d 24 (1981).

WSNA's policy statement against dual-unionism had been adopted, published, and accessible for WSNA members, and it cannot be said that the rule was the arbitrary fiat of any WSNA officer. The facts of this case demonstrate that the WSNA's rule was reasonably adopted.

Turning to the question of whether the WSNA's policy also protects a legitimate union interest, we find that this part of the test is easily met. WSNA's policy prevents members from providing assistance to rival labor organizations which are in direct competition with the WSNA. The Supreme Court of the United States has recognized that a labor organization has the right to promulgate rules to protect against the erosion of its status as the exclusive bargaining representative. *See NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967).

Does WSNA's Rule Impair a Policy Imbedded in Washington's Labor Laws?

The next step in the *Seattle School District* test is to determine whether the union's rule or policy impinges upon a policy imbedded within Washington's labor laws. In reaching her conclusion that the WSNA interfered with Brown's protected rights by imposing union discipline on her, the Examiner concluded that Chapter 41.56 RCW protects an employee's right to select a labor organization of her or his own choosing. The Examiner found that suspending an employee from union membership because they exercised a state protected right impedes others from exercising that right. Although it is understandable why the Examiner reached her conclusion based upon the premise that a union rule cannot interfere with policy embedded in this state's labor laws, we cannot concur with her analysis or conclusion that enforcement of WSNA's rule against dual-unionism and the imposition of discipline for violating that rule interfered with an employee right protected by statute.

Both Chapter 41.56 RCW and the National Labor Relations Act (NLRA) recognize that a union cannot regulate access to the administrative bodies that govern the collective bargaining laws. RCW 41.56.150(3) makes it an unfair labor practice for an exclusive bargaining representative "to discriminate against an employee who has filed an unfair labor practice charge." Similarly, the NLRB has held that an exclusive bargaining representative may not discipline a union member for filing an unfair labor practice charge under Section 8 of the NLRA. *See Seafarers (Van Camp Sea Food Co.)*, 159 NLRB 843 (1966). The reason behind such provision is that an employee or union member should not be punished for bringing to light the unlawful acts of her

or his exclusive bargaining representative no matter how much harm such a complaint causes the organization.

Section 7 of the NLRA guarantees employees "the right to self-organization, to form, join, or assist labor organizations" of the employees' own choosing. Unlike cases interpreting union rules that limit an employee's access to the NLRB under Section 8, a different conclusion is reached when examining enforcement of internal union rules limiting the rights of employees to select exclusive bargaining representatives of their own choosing under section 7.

NLRA precedent holds that an exclusive bargaining representative may impose internal union discipline against a member and expel that member from union membership for filing a decertification petition under Section 7. In *NLRB v. International Modelers and Allied Workers Union, Local No. 125 AFL-CIO*, 442 F.2d 92 (7th Cir. 1971)(*International Modelers*), the United States Court of Appeals, Seventh Circuit, explained the reasons for such a distinction. The *International Modelers* Court first recognized that although Section 8(b)(1)(A) prohibits unions from interfering with protected rights, section 8(b)(1)(A) also recognizes that the unfair labor practice provisions are not meant to "impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein[.]" Therefore, in order to determine whether the union's rule interferes with protected employee rights, the rights of the union must be balanced against the rights of the employees on a case-by-case basis. *International Modelers*, 442 F.2d at 94.

In applying that balancing test, the *International Modelers* Court found that the union had the right to impose discipline against a member who files a decertification petition under Section 9 of the Act to remove the union as the exclusive bargaining representative of the employee. The Court explained that:

> [T]he filing of a petition for decertification, unlike the filing of an unfair labor practice charge under § 8, attacks the very existence of the union as the exclusive bargaining agent. In light of this threat, the proviso to § 8(b)(1)(A) justifies a defensive reaction by the union such as expulsion of a member who has filed a petition for decertification with the Board. Otherwise, . . . a retained member would be privy to the union's tactics and other information during the pre-election

> campaign. Expulsion eliminates the presence of an antagonistic member whose disloyalty would pose such problems to the union.

International Modelers, 442 F.2d at 94. The courts apply the same analysis in cases where a union member attempts to replace the exclusive bargaining with a different one. *Andraszek v. Rochester Telephone Workers*, 246 F.Supp.2d 174 (W.D.N.Y. 2003).

Thus, the federal precedents distinguish between enforcing rules and imposing discipline upon an employee for filing an unfair labor practice complaint against the union, and enforcing rules and disciplining an employee for filing a decertification petition, with the former being a violation of Section 8 of the Act and the latter being a permissible act. The question that this Commission must answer is whether the federal precedents are applicable to cases decided under Chapter 41.56 RCW.

This Commission recognizes and may apply federal precedent where the state and federal statutes are similar. *See* Footnote 4, *supra*. Similar to Section 7, RCW 41.56.040 guarantees the "right to organize and designate representatives of their own choosing." However, Chapter 41.56 RCW lacks a provision similar to the language in Section 8(b)(1)(A) that recognizes a labor organization's right to adopt its own rules. As explained below, we nevertheless find that the federal policy announced in cases interpreting the NLRA, including the *International Modelers* decision, are sound statements of labor policy and applicable to cases decided under Chapter 41.56 RCW.

The exclusive bargaining representatives that are subject to this Commission's jurisdiction are, like their private-sector counterparts, private organizations who have a legitimate interest in securing their very existence. It is also reasonable for a public-sector union to adopt rules, including rules preventing members from engaging in dual unionism, to further that goal of self-preservation for the organization. No compelling reason has been presented as to why the standard announced in *International Modelers* should not be applied to cases decided under Chapter 41.56 RCW. We find that enforcement of union rules against dual-unionism, including enforcement of those rules in response to a member filing a decertification or change of

representation petition under RCW 41.56.070, do not impinge upon a policy embedded in this state's labor laws.[6]

Was the Rule Reasonably Enforced?

In *Seattle School District*, the Commission found that its ability to pass judgment upon the reasonableness of the application of a union rule is limited to ensuring the imposed discipline does not impair the member's status as an employee. *Seattle School District*, Decision 9135-B, *citing Boeing v. NLRB*, 412 U.S. 67, 74-5 (1973). To do otherwise would exceed the scope of this Commission's statutory jurisdiction. The critical issue in these types of cases is whether union discipline has some nexus with the employer-employee relationship. *International Brotherhood of Electrical Workers Local 2321 (Verizon)*, 350 NLRB 258 (2007).

For example, in *Office Employees Local 251 (Sandia Corp.)*, 165 LRRM 1089 (2000), the NLRB held that the bargaining representative did not impact the employer-employee relationship by imposing internal discipline when it expelled members from the union for opposing certain internal union policies. Of critical importance to the Board was the fact that the sanctions were internal union sanctions, such as removal from union office or expulsion from union membership, and the relationship between the employer and the employee was not affected. *Office Employees Local 251 (Sandia Corp.)*, 165 LRRM 1089, 1091-2.

A different outcome occurred in *Healthcare Employees Local 399 (City of Hope Medical Center)*, 333 NLRB 1399 (2001), where a union was found to have interfered with protected rights when union members threatened employees circulating a decertification petition that their work would be outsourced. Therein, the Board clearly stated that while a union "may discipline employees for circulating or supporting a decertification petition, it may not threaten to take any action to affect their employment except in cases of valid enforcement of a union-security provision." *Healthcare Employees Local 399 (City of Hope Medical Center)*, 333 NLRB 1399, 1401.

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[6] Conclusion of Law 5 of the Examiner's decision inadvertently concluded that WSNA's acts violated RCW 41.56.150(3). The plain language of RCW 41.56.150(3), as well as the analysis made within this decision, make that statute inapplicable to cases where a bargaining representative disciplines a member for filing a change of representation petition.

With these limitations in mind, it is clear that at no time did WSNA threaten Brown's employment when it censured her and suspended her from holding union office. There is no evidence that Brown suffered a loss of wages or benefit. In fact, the evidence demonstrates that the WSNA went out of its way to ensure that Brown was aware that her employment would not be affected by the union's action. Consistent with *Seattle School District*, this Commission will not inject itself into what is otherwise an internal union matter.

Brown argues that the rule and imposed discipline did in fact negatively impact her employment. Although Brown admits that the imposed discipline did not impact her wages and hours of work, she argues that other work-related factors, such as job satisfaction and the effect of trust and teambuilding with co-workers should be considered. Brown urges this Commission to adopt a standard that would not require the affects of discipline to impact wages, hours and working conditions, but would examine the affects the discipline has on the entirety of the employees' working environment.

We decline to extend our purview into internal union discipline matters beyond allegations that the union has directly threatened or challenged employees' employment status as in the *Healthcare Employees Local 399 (City of Hope Medical Center)* case. While this Commission respects the fact that Brown may have lost a certain level of status among her peers that she previously enjoyed and that WSNA's actions may have caused her consternation, those losses do not equate to a direct challenge to her employment.

With respect to WSNA's censure against Brown and the notice of Brown's discipline that was sent to bargaining unit employees, we do not concur with the Examiner's conclusion that these actions interfered with protected employee rights under Chapter 41.56 RCW. This Commission recognizes that although the specter of a union trial and being mentioned in a union publication may make an employee uncomfortable, those acts are nevertheless legitimate actions provided the discipline does not impact the employee's employment. *Seattle School District*, Decision 9135-A. The evidence demonstrates the union sent a copy of the disciplinary panel report to union members with a cover letter written by Huntington. Although Brown obviously disagrees with the content of the disciplinary panel's report, nothing in that report can reasonably be viewed as an attempt to impact Brown's employment status.

Furthermore, we reject Brown's argument that the imposed discipline is punitive in nature. Brown cites *Tawas Tube Products, Inc.*, 151 NLRB 46 (1965), as standing for the proposition that a union may only expel a member for filing a decertification petition as a defensive measure during a time of crisis. Brown argues that by waiting until after the question concerning representation had been resolved, WSNA's action was clearly retaliatory and not a defensive reaction as contemplated under *Tawas Tube Products*.

Although *Tawas Tube Products* suggests that a union may only expel a member as a "defensive reaction" to a decertification petition, NLRB precedents strongly suggest that a union may impose discipline for dual-unionism even when the threat of the decertification petition ceases to exist. In *Tool & Die Makers Lodge No. 113*, 207 NLRB 795 (1973), a bargaining unit employee and union member filed a petition with the NLRB to de-authorize the collective bargaining agreement's union-security provision.[7] An election was held and the employees voted to retain the union-security provision. Two weeks after the NLRB issued its final certification, the union brought charges against the petitioner for attempting to undermine the union, and ultimately suspended the petitioner from the union and stripped him of the union office that he had held. The NLRB, relying upon *Tawas Tube Products,* held that expelling the petitioner from the union was not a punitive act, and therefore dismissed the charge that the internal union discipline violated Section 8. *But Cf. International Modelers*, 442 F. 2d at 94-5 (the imposition of a fine does not serve a defensive purpose, and its only effect is to punish).

Based upon these precedents, we decline to find that WSNA's internal discipline was punitive and not in furtherance of a legitimate union interest.

Was the Employee Free to Leave WSNA to Avoid Discipline?

Finally, Brown was free at all times leading up to WSNA's disciplinary hearing to resign her membership from WSNA, thus going beyond the reach of the organization's internal disciplinary procedures. While this Commission recognizes that resigning membership in a labor

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[7] Under section 9(e) of the NLRA, employees may petition the NLRB to hold a vote to rescind the union security provision of the collective bargaining agreement. Although Chapter 41.56 RCW does not contain a similar provision, the *Tool & Die Makers* decision states that both "de-authorization and decertification petitions represent serious threats to a union" and each should be analyzed in a similar fashion. *Tool & Die Makers Lodge No. 113*, 207 NLRB 795, 797.

organization may limit an employee's ability to participate in certain union activities, such as labor-management committees or a negotiating team, this Commission must also recognize that labor organizations are private entities that have the right to select their bargaining agents and participants on labor-management committees. An employee or group of employees who are members of a labor organization and decide that they no longer wish to be represented by that particular labor organization must reasonably expect that there may be certain negative consequences if they retain their membership in that organization. The fact that WSNA may not have informed Brown that she could resign her WSNA membership in order to avoid discipline is not a violation of the statute, as unions are under no legal obligation to inform employees of their right to resign to avoid discipline. *See Seattle School District*, Decision 9135-B.

CONCLUSION

In sum, WSNA's rules against dual-unionism were reasonably adopted, did not impact Brown's employment, and were reasonably enforced against Brown at times when she was free to leave the union and could have avoided punishment. Accordingly, the Examiner's conclusion that WSNA interfered with Brown's protected rights by suspending her from holding union office for engaging in dual-unionism is reversed, and the complaint is dismissed.

NOW, THEREFORE, it is

ORDERED

I. The Findings of Fact issued by Examiner Christy Yoshitomi are AFFIRMED and adopted as the Findings of Fact of the Commission.

II. The Conclusions of Law issued by Examiner Christy Yoshitomi are VACATED and replaced with the following Conclusion 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 7, 8 and 9, the WSNA did not interfere with Brown's rights in violation of RCW 41.56.150(1) by disciplining her for engaging in dual-unionism as prohibited by the WSNA's constitution.

III. The Order issued by Examiner Christy Yoshitomi is VACATED and replaced with the following Order:

1. The complaint charging unfair labor practices in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 12th day of April, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

THOMAS W. McLANE, Commissioner