

American Nurses Association

**In the Matter of Disciplinary
Charges Against the
New York State Nurses Association**

Hearing Panel Decision

December 14, 2011

Introduction

Based upon the bold invitation to a rival union to manage the affairs of the New York State Nurses Association (NYSNA), charges of dual unionism were filed against NYSNA by a number of its members seeking to protect the bargaining status and integrity of the organization. Pursuant to the ANA Bylaws and the applicable disciplinary policy, this Hearing Panel convened a hearing to review the information and evidence presented by the parties. It is with great regret that we have determined, for the reasons stated below, that a number of members of the board of directors of NYSNA have engaged and are engaging in dual unionism to the detriment of NYSNA, its members, and the ANA. Accordingly, NYSNA will be suspended from constituent member status for a period of one year, beginning on December 15, 2011. This suspension may be lifted earlier, as more fully described below.

NYSNA is free to direct and manage its union affairs without interference, and this decision does not criticize or address any of the collective bargaining activities that have been or will be undertaken by NYSNA. This decision *does* address handing the management of the entire New York State Nurses Association to an employee of another union that has repeatedly sought to undermine ANA, whose national affiliates have raided another ANA state nurses association's bargaining unit, and attempted a similar takeover of a state nurses association office. By virtue of its obligations under the ANA Bylaws, the American Nurses Association cannot stand idly by while the membership and assets of NYSNA are handed to a rival union organization.

Procedural History

The ANA Bylaws permit disciplinary action against a constituent organizational member (state nurses association or the Individual Member Division) on the basis of five enumerated actions, including “engaging in dual unionism.” ANA Bylaws, Article II, Section 7.a. (ANA Ex. 15)¹ The ANA Bylaws provide that the discipline shall be taken against the constituent organizational member of ANA, and do not state that discipline may be taken against individual members. This approach results from the federation model adopted by ANA in the early 1980s, which sought to identify the members of ANA as only the constituent state or territorial associations and other identified incorporated entities. This approach leads to the unfortunate need to take action against NYSNA as an entity, even if the violation of ANA bylaws and principles is accomplished by several people on the NYSNA board of directors.

Charges were filed pursuant to ANA’s disciplinary policy. (ANA Ex. 1) Charges were filed by ten members of NYSNA. (ANA Ex. 2, 3 &4) An additional charge letter was received from an eleventh NYSNA member (ANA Ex. 5), but was not formally served as a charge against NYSNA because of the timelines that were already running with respect to the other charges. The charges were properly delivered to NYSNA to provide notice of the charges and the right to respond.

A notice of hearing was issued to provide NYSNA with at least 15 days notice of the hearing date, time, and place.

NYSNA exercised its right to file a response to the charges by letter dated November 29, 2011. Prior to the due date for responding, NYSNA’s attorney, Susan Davis, sent ANA’s

¹ At hearing on this matter, the Hearing Panel accepted exhibits from ANA as background, and these are referred to as “ANA Ex.” In addition, the Panel accepted exhibits from the Charging Parties, referred to as “CP Ex” and from a witness, whose exhibits are referred to as (“Photo #”).

general counsel a notice stating that she would be unable to comply with the timelines. Because this disciplinary procedure is for the purpose of providing a charged party with due process and is designed to develop a fair and complete record, we accepted the response for consideration even though it was submitted several days beyond the due date.

The hearing was convened on December 5, 2011 at 10:00 a.m., as stated in the Notice of Hearing. The Hearing Panel accepted evidence by way of documentation and live testimony. Charging Party Donna Florkiewicz presented testimony. Winifred Kennedy made it clear that she was not appearing on behalf of NYSNA as its president because the majority of the NYSNA board of directors voted that she could not do so. In an effort to establish a full record for the Hearing Panel's consideration, Ms. Kennedy was asked to present non-confidential information within her knowledge regarding the charges, and she did so. NYSNA did not attend the hearing through counsel or witnesses and thereby waived its right to be present.

Nature of the Charges

The charges were consolidated because they involved the same set of facts and claims. The charges noted that NYSNA board members Patricia Dililo, Patricia Kane, Judy Sheridan Gonzalez, Anne Bove, Shirley Hunter, Grace Otto, Veronica Richardson, Verginia Stewart ,and Anthony Ciampa voted as a group to bring in Julie Pinkham, Executive Director of the Massachusetts Nurses Association (MNA), to run NYSNA. Ms. Pinkham identified herself in correspondence to the NYSNA membership as the "Transitional Executive Officer." (ANA Ex.7) The charges contend that because MNA is a rival union and is affiliated with a rival national organization known as the National Nurses Union (NNU), the placement of its Executive Director into a position with full access to all NYNSA records jeopardizes the integrity of NYSNA as a labor union.

Nature of the Response

NYSNA contends that dual unionism is consistently viewed as an activity that helps a rival union become the collective bargaining representative of employees. The response states that the named board members and their supporters are not “engage[ing] in any effort to have the Massachusetts Nurses Association (MNA) or any other labor organization displace NYSNA as the collective bargaining representative of nurses in New York or New Jersey.” (ANA Ex 6) NYSNA contends that the named board members have stated that they want to “strengthen and re-vitalize NYSNA.” Based upon this, NYSNA contends that the charges are baseless. In addition, the response states that pursuit of the charges violates the free speech and associational rights of NYSNA members. Further, NYSNA stated that it would not send its leadership to “defend patently frivolous charges.” (ANA Ex. 6)

The Legal Description of Dual Unionism

The Parties agree that dual unionism is present when activities help a rival union become the collective bargaining representative of employees. NYSNA notes that an essential element of dual unionism is the attempt to substitute another union as a bargaining representative and that union members have the right to free speech. As stated by attorney Justin Keating, retained to assist in presenting information from the Charging Parties for our review, members’ free speech rights do not trump a union’s right to adopt and enforce reasonable rules regarding dual unionism. The Supreme Court has held that labor laws do not require unions to allow free speech to the same extent that the U.S. Constitution requires the government to allow free speech. Further, there is nothing that limits the concept of “dual unionism” to the filing of decertification petitions. Dual unionism involves support for a rival union that undermines the

integrity of the labor organization, diminishes its status, and undermines its ability to carry out its obligations.

In 2004, ANA was granted leave to participate as *amicus curiae* in a case involving similar circumstances for its then-constituent member, the Hawaii Nurses Association (HNA). In that case, certain collective bargaining organization (CBO) leaders hired a staff person of the California Nurses Association (CNA) to come into the CBO office to manage everything. ANA's *amicus* brief noted that dual unionism was a basis for discipline in its bylaws and that the CBO action was improper.

The United States District Court for the District of Hawaii stated that HNA had submitted evidence that "suggests that the CNA is actively seeking to displace the ANA and similar state nurses associations in various other states." *Benjamin et al. v. Lorenzo et al.* and *HNA v. CBO*, U.S. Dist. Ct. D. Haw., Case Nos. 03-00481 HG-LEK, 03-00493 HG-LEK, Order Granting Defendants-Petitioners Motion for Temporary Restraining Order and Denial of Defendant-Petitioners Motion for Appointment of Custodian, Filed June 9, 2004, at 14 -15 ("Order"). In response to free speech claims by the supporters of CNA, the court quoted the 9th Circuit by stating, "unions may reasonably regulate speech which is part of a pattern of conduct designed to destroy the union and to interfere with the performance of its legal obligations." (Citing *Ferguson v. Int'l Ass'n of Bridge, Structural & Ornamental Iron Workers*, 854 F2d 1169, 1174 (9th Cir. 1988)).

The Court issued a preliminary injunction that ordered the California Nurses Association staff out of the HNA office, noting that:

The HNA has produced evidence that CNA employees currently have access to virtually all of HNA's business records, financial information, membership files, legal documents, computer and electronic data and other proprietary information.... The HNA claims that it creates significant, imminent risk that CNA employees will use the HNA's confidential and/or proprietary information for the CNA's benefit.

Order at 18.

There is nothing in the law that requires ANA to wait for the NYSNA board members to move NYSNA bargaining units and membership from a national affiliation with ANA to a national affiliation with NNU, and then to declare "dual unionism" when it is far too late to protect the organization.

Analysis of the Evidence

The record shows that the MNA and the CNA have formed National Nurses United (NNU) under the staff leadership of the CNA Executive Director, Rose Ann DeMoro. CNA disaffiliated from ANA in 1995, and MNA disaffiliated from ANA in 2001. These state associations and others that followed have an antipathy toward ANA and have stated that they have "rid themselves" of ANA. (ANA Ex. 11) Julie Pinkham has continued to rail against ANA, using wording that demeans ANA and affiliations with the ANA, e.g., the NNU groups were "finally free from the ANA" (ANA Ex. 8) and MNA "courageously [threw] off the shackles" associated with belonging to the ANA. (ANA Ex. 11). These statements were written by Ms. Pinkham as recently as March and August, 2009.

Disaffiliation from ANA is referred to in an article by Ms. Pinkham as she describes the development of the National Nurses United. (ANA Ex. 9) Ms. Pinkham was recognized and introduced by CNA Executive Director DeMoro at the 2009 founding convention of NNU (ANA Ex 12), thereby revealing the close relationship of Ms. Pinkham to the chief staff leader of CNA

and NNU. Ms. Pinkham's own description was that "MNA is taking a lead role in the creation of" NNU. ANA Ex. 10. NNU is the organization that raided a bargaining unit of ANA's member, the Illinois Nurses Association (INA), in 2010. (ANA Ex. 13) It is a matter of public record that the California Nurses Association raided another INA unit in 2005, prior to the formation of the NNU. Based upon this information, we conclude that MNA, a founding member and affiliate of NNU, is a rival labor organization.

The evidence also establishes a relationship between the board members who invited MNA/NNU's Ms. Pinkham to take over the NYSNA offices and the NNU. First, the NNU dubbed itself the "super union" and used a "superman" logo on a flyer that quoted Ms. Pinkham. (CP Ex. 5). A nearly identical "superman" logo was used on the flyer that urged election of Patricia DiLillo, Patricia Kane, Anthony Clampa, Grace Otto, Veronica Richardson, and Virginia Stewart for the NYSNA Board of Directors. (CP Ex. 2) This slate called themselves the "S³" or the "Superman Slate." The electronic properties of the slate's "superman" election flyer shows that it was developed by Steve Toff, who was an employee at NNU, as stated on the NNU LM-2 filed for the year ending June 2011. The exact dates of Mr. Toff's employment with NNU were not established. Second, on July 26, 2011, Mr. Toff was photographed at a New York picket line talking with Grace Otto, one of the board members responsible for bringing Julie Pinkham into the NYSNA office. Grace Otto was carrying flyers that stated "take back our union." The photographs also showed Pat Kane at the same picket line. (CP Ex. 3 & 4) We conclude from this information that the current NYSNA board members who were on the Superman flyer and who brought in the Executive Director of MNA/NNU to take over the NYSNA offices are supporters of the NNU, which is a rival union led by the California Nurses Association. It is well known that CNA has spoken openly of wanting to destroy the ANA.

CNA attempted to take over the HNA, and has raided INA bargaining units, both before and after its official affiliation with MNA.

The documents, photographs and testimony make it clear that the named NYSNA Board members brought in Ms. Pinkham in a manner that provided her with immediate and total control of NYSNA. MNA staff members accompanied Ms. Pinkham to the Latham, NY office of NYSNA on October 28, 2011. Other MNA staff went to the New York City office of NYSNA. They arrived with clip boards and went through the building, ordering the NYSNA CEO and approximately 10 other NYSNA staff members to leave the building. Some of the MNA staff members wore MNA jackets and had security-type ear pieces. One MNA staff member stood in the doorway of the NYSNA president's office with his arms crossed as if he were blocking her from exiting or watching over her in a threatening manner.

Upon entering into the NYSNA offices, Ms. Pinkham and her MNA subordinates gained immediate access to all NYSNA files, including financial records, membership lists, legal files, board minutes and collective bargaining files. (See, generally, Photos #1 – 15.) We conclude that giving Ms. Pinkham and her MNA staff members full and complete access to all of NYSNA's confidential and proprietary information constituted support for a rival union in the most immediate and basic sense: MNA/NNU has been given the information needed to raid NYSNA bargaining units if NYSNA does not willingly change its national affiliation from ANA to NNU, and it has given MNA/NNU the ability to claim that it has assisted the NYSNA bargaining units, whether true or not.²

² We note that in the HNA case that we described above and under similar circumstances of having the rival union CNA's staff brought in to run the office, the CBO sent a CNA-paid newsletter to its members, touting the abilities of CNA. The court stated that: "In order to distribute the newsletter, the CNA must have had access to the HNA's

The record also establishes that the persons named in the charges who are engaging in the activity that has concerned the Charging Parties have blocked the President of NYSNA from performing the full range of her duties, as established by the NYSNA bylaws. The named Board members constitute a majority of the board and they prohibited President Winfred Kennedy from attending the disciplinary hearing and speaking on behalf of NYSNA in a letter from Ms. Pinkham to President Kennedy. Ms. Kennedy's appearance at the hearing was in her individual NYSNA and ANA capacity. The testimony revealed that Ms. Pinkham has used her MNA email address to conduct NYSNA business. Interestingly, the persons named in the charges convened a "board meeting" on October 25, 2011, before they were installed into office. While the open minutes reflect only motions that recite campaign pledges, testimony was provided that Ms. Pinkham was hired on the 25th prior to the "new Board of Directors" taking office. MNA's attorney represented Ms. Pinkham's and MNA's interests in negotiating with NYSNA for her placement in the NYSNA office.

We conclude that through these actions, the named NYSNA Board members have minimized the proper role of the elected NYSNA president and have permitted the face of NYSNA to become that of Julie Pinkham, through the use of titles such as "Transitional Executive Officer" and "Interim Executive Officer" for NYSNA while using an MNA email address. Despite the fact that Ms. Pinkham professes in a letter to all of NYSNA's members that "This is in no way a takeover by Massachusetts, California or any other state, [because] I am here at the request of the new Board of Directors," (CP Ex. #2) the facts suggest otherwise. Mr. Toff's support for the "Superman Slate" and the immediate handing over of NYSNA affairs to

proprietary and confidential mailing list. Granting the CNA access to such sensitive information is, in itself, an irreparable injury to HNA." Order at 19. While not precedential, the view of the court in that case is instructive.

Ms. Pinkham certainly do suggest a “takeover” by Massachusetts, California and the NNU. These actions form the essence of dual unionism.

Conclusion and Discipline

Based upon the foregoing, we determine that the charges have merit, and that Patricia DeLillo, Patricia Kane, Judy Sheridan Gonzalez, Ann Bove, Shirley Hunter, Grace Otto, Veronica Richardson, Verginia Stewart, and Anthony Ciampa have led NYSNA to have engaged in dual unionism. They have done so by handing over the NYSNA office and management to Julie Pinkham, the Executive Director of the Massachusetts Nurses Association, a founding member and current affiliate of the National Nurses United (NNU). ANA has evidence of NNU’s prior dual unionism effort within constituent member organizations. NNU has previously raided bargaining units of the Illinois Nurses Association, a constituent member of ANA. Ms. Pinkham has described the cooperative relationship that she fostered with the California Nurses Association, which attempted a similar takeover of the office and management of the Hawaii Nurses Association when it was a member association of the ANA. These activities of dual unionism endanger the ongoing organizational integrity of NYSNA as an ANA-affiliated exclusive bargaining representative of the NYSNA membership.

Because of our federated model and the wording in the ANA Bylaws, we regretfully cannot take disciplinary action against the responsible individuals and must take action against NYSNA as an entity. Accordingly, pursuant to the authority granted to this Hearing Panel by the ANA Bylaws and ANA’s disciplinary policy –

- NYSNA shall be and hereby is suspended from constituent member status for the period of one year, beginning December 15, 2011.

- NYSNA will lose access to all ANA listservs and members-only materials, and it will not attend Constituent Assembly meeting, open ANA Board of Directors meetings, the House of Delegates, and other ANA related meetings during the period of suspension.
- In accordance with the policies of the American Nurses Credentialing Center, NYSNA will no longer be eligible to be an accredited approver of continuing nursing education, and individual NYSNA members will not be eligible for the ANCC certification discounts. As a result of the suspension, individual NYSNA members will lose member benefits, including receipt of ANA publications, access to the members-only content of NursingWorld.org, and the right to participate in any activity or on any committee or body for which ANA membership is a requirement, unless such individual members retain membership in ANA through the Individual Member Division (IMD) or another constituent or state nurses association.
- In light of the suspension, ANA will not expect the payment of dues from NYSNA for that period, but does expect that NYSNA will reduce or refund to each of its members that amount of dues collected that represents the national dues payable to ANA, i.e., \$138 per member, per year. This money will be available to the members to obtain on-going membership in ANA as individual affiliates or full members as described on ANA's website.
- If NYSNA does not return ANA dues to NYSNA members during the period of suspension, the ANA dues should be held in escrow and in trust by NYSNA for the individual NYSNA members who paid dues for ANA membership and should be payable to them in a lump sum.

- In the event dual unionism is effectively ended during the period of suspension, NYSNA may provide evidence of that fact and may petition the ANA Board of Directors to have the suspension lifted prior to the conclusion of one year.

Dated: December 14, 2011

/s/
Teresa Haller, Hearing Panel Chair

/s/
Linda Gural, Hearing Panel Member

/s/
Patricia Quigley, Hearing Panel Member