

MNA IMPARTIAL COMPLAINT

Ted McTaggart, Kelly McLaughlin, Irrish Sowers, Anne Pluff, Cally Brooks, Anthony Kreyger, Kristin Hinchman, Angela Tatti, Juan Sanchez, Rebecca Lanfear, Sarah Mikkelson, Briana Hicks, Jeremie Rene, Megan Wallace, Laurie Coppock, Kathy Bruce, Carolyn Jordan, Baljit (Nevi) Dhillon, Lisa Borchanian, Monica Bova, Douglas Morningstar, Allison Carroll, Beth Christensen, Renee Curtis, Jennifer Haddad, Laura Jirasek, RaeDeane Hawthorne, Bethany Moore, Robert McCormick. ,

Complainants,

-and-

Katie Scott, Donna Carnahan, Desiree Conyers, Lynn Detloff, Sandy Dorsey, Becky Mammel, Katie Oppenheim, Thea Picklesimer, Deborah Totzkay, Barbara Van Kainen.

Accused.

DECISION OF THE HEARING OFFICERS

Having heard the complaint against the Accused, the following decision is issued by the Hearing Officers of the Michigan Nurses Association (“MNA”) in the above captioned matter.

PROCEDURAL HISTORY

On December 30, 2020, the Complainants submitted a complaint to the Impartial Committee against the above identified Accused. The complaint alleged that the authorization of a disaffiliation resolution and the calling of a special membership meeting to approve it violated multiple provisions of the bylaws of the University of Michigan Professional Nurse Council (“UMPNC”) and those of MNA.

On January of 2021, after the complaint was filed, in response to inquiries from the Impartial Committee to investigate the complaint, the majority of the Accused submitted explicit written resignations of their membership in MNA and, in accordance with the bylaws of UMPNC, also resigned their UMPNC memberships and officer positions. On January 21, 2021, the MNA

Board of Directors found that the remaining Accused had also voluntarily resigned their memberships and officer positions.

After an investigation, the MNA Impartial Committee issued a report and recommendation on February 13, 2021 that three charges be issued. Pursuant to the recommendation of the Impartial Committee, charges were issued against the identified Accused for: 1.) Dual Unionism – Any activity intended to assist a competing labor organization, 2.) Violation of MNA or LBU Governance Documents, Rules or Policies and 3.) Conduct Detrimental to UMPNC and MNA.

On March 5, 2021, the Accused were given proper notice of a hearing to be conducted on March 29, 2021. The Accused did not respond, designate their representatives, or submit any exhibits or witness lists prior to the hearing as required. On March 29, 2021, a hearing was held.¹ The Complainants properly offered statements and evidence in support of their allegations. The Accused did not attend or submit statements or evidence at the hearing.²

FACTUAL BACKGROUND

We will not recount the factual background of these charges, but incorporate herein, and adopt the factual background and summary of the complaint as set forth in the Report and Recommendation of the MNA Impartial Committee.

ANALYSIS

I. Dual Unionism

The MNA Constitutional Bylaws in Article II, Section 8, define Dual Unionism as, “...participating in or assistance to one or more labor organizations which are in direct competition

¹ Note Hearing Officer Stephanie DePetro abstained from this decision as she was unable to attend the hearing due to a staffing need at her hospital.

² The *Rules of Procedure Governing MNA Disciplinary Hearings* provided to all parties prior to the hearing state that, “[t]he failure of a party to attend the hearing may result in an adverse action.” The willing refusal to participate in the hearing by the Accused deprived the record of any and all defenses and evidence that may have been presented on their behalf. This decision therefore reflects our findings and opinion based off of the record before us.

with the MNA as they act for and represent the collective bargaining interest of members.” Based upon the recommendation of the Impartial Committee a charge of dual unionism was issued against the Accused.

The evidence submitted by the Complainants at the hearing in support of this charge was the disaffiliation resolution which the Accused emailed to the entire bargaining unit purporting to be a resolution they had written and approved as the Executive Committee of UMPNC. When members opened the word document of the resolution to read it and clicked on the properties tab to identify the author, it stated that the author was “Roxanna McCloud-Lewis, National Representative.” (Complainant Ex. 1-3). McCloud-Lewis was also listed as the author of an FAQ on the disaffiliation that was included in the same email. (Complainant Ex. 4-5).

The Complainants also submitted evidence showing that McCloud-Lewis is identified online as a staff member of the American Federation of Teachers national union in the position of National Representative. (Complainant Ex. 6). The Complainants also submitted into evidence a prior email from Oppenheim from November 12, 2020, in which she emailed AFT staff asking for assistance in preventing UMPNC members from being contacted about bargaining by MNA staff. McCloud-Lewis was a recipient of that email and in her AFT email address line is identified with the title of national representative. (Complainant Ex. 7). These two pieces of evidence were sufficient in establishing McCloud-Lewis’s status as an agent and employee of AFT.

In prior decisions which we have issued, we have often been tasked with examining nuanced evidence to reach a conclusion. This is not the case here. The mass distribution of the resolution and FAQ by the Accused in which McCloud-Lewis is listed in plain sight as the author is akin to the Accused announcing their intent to commit dual unionism with a megaphone. It is transparent evidence that the Accused, in their actions of distributing the resolution and FAQ on

Christmas Day, were acting at the direction of, or in concert with, the American Federation of Teachers in the hopes of creating a new union which would promptly affiliate the American Federation of Teachers after it had disaffiliated. We do not need to look any further to conclude that this was a patent violation of Article II, Section 8 of the MNA Constitutional Bylaws and clear dual unionism.

II. Violation of MNA or LBU Governance Documents, Rules or Policies

The Complainants alleged multiple violations of the UMPNC bylaws in both the way in which the disaffiliation resolution and special membership meeting were authorized and the ways in which the disaffiliation content conflicted with the UMPNC bylaws.

i. Alleged Improper Disaffiliation Resolution

The Complainants allege that the disaffiliation resolution violated multiple provisions of the UMPNC and MNA Bylaws.³ The resolution calls for UMPNC to become an independent union and for members, as a result, to no longer be members of MNA. The Complainants assert that UMPNC's own bylaws, however, clearly do not allow for such a resolution to be passed. Article II, section C, of UMPNC's bylaws states that an objective of the organization is, "[t]o promote professional growth and encourage active participation in activities at the local (UMPNC), state (Michigan Nurses Association, MNA), and national levels." Article III, *Membership and Dues*, Section B states that, "[e]very nurse in good standing with UMPNC and MNA shall be entitled to

³ We feel we must note that UMPNC is not, and never has been, legally an affiliate of MNA. In 1975, MNA was solely elected by nurses at the University of Michigan as the certified exclusive bargaining representative in a proper election administered by the Michigan Employment Relations Commission. UMPNC was subsequently created as a local bargaining unit of MNA, as defined in its bylaws, to provide local governance structure for MNA's members at the University of Michigan. UMPNC, however, has status as a union or representative *only* in its capacity as a part of MNA, since MNA alone is the democratically elected union of the nurses at Michigan Medicine. We do not have jurisdiction to penalize the Accused, however, for pursuing actions that are woefully ignorant of the law. We are limited in this venue to assessing whether their conduct violated the governing documents of UMPNC and MNA.

the rights, benefits, and privileges set forth in these bylaws.” Article III, Section E states, “[t]he members of UMPNC shall adhere to the policies, bylaws, and philosophy of the UMPNC and MNA.”⁴ Article VIII, *Elections/Appointments/Terms of Office*, Section L states, “[a]ll elected and appointed officials shall be current members of UMPNC and MNA.” In summation, UMPNC’s own bylaws require that every member be a member in good standing with MNA, that every officer be a member of MNA, that every member adhere to the policies and bylaws of MNA and that an objective of UMPNC is to promote participation in MNA.

Based on the above we find that the disaffiliation resolution clearly violated the express terms of UMPNC’s own bylaws.

ii. Alleged Improper Authorization of the Disaffiliation Resolution

Putting aside its improper content, the Complainants allege that the disaffiliation resolution was not properly authorized by the Executive Committee at the time in which notice was provided to the membership. On Christmas Day, shortly after noon, Oppenheim emailed the entire bargaining unit with a message signed by all of the Accused which began, “[w]e are writing to you today to notify you that your Executive Committee just met in a special session and passed a resolution for UMPNC to disaffiliate from the Michigan Nurses Association and become an independent union.” The Complainants allege, however, that no such special session of the Executive Committee approving that resolution had actually taken place. The Complainants submit as evidence of this a text chain between the then Dispute Chair, Becky Mammel, and the then Secretary-Treasurer, Ted McTaggart. (Complainant Ex. 8). The text chain shows that at 1pm, a full forty-five minutes after the email was sent, Mammel texted McTaggart giving him only

⁴ Article III of MNA’s own bylaws require that all local bargaining units be local bargaining units of MNA and that all members of the local bargaining units be members in good standing of MNA.

fifteen minutes notice of a meeting on Christmas Day stating, “Hello Ted. Sorry for the short notice. We are having an emergency executive committee meeting at 1:15. Katie o is sending a zoom link to your NON UM email.” McTaggart immediately replied stating, “I see in my email that the executive committee already met without informing me.” Mammel then replied, “We have not met. It is a technology error.”

McTaggart testified that at 1:15pm, an hour after the resolution had been declared, the parties met and a vote was taken in which the resolution was passed. (Tr. 8, Ln. 7-10). The notice to the membership sent an hour earlier, however, was not rescinded and the membership does not appear to have ever been informed that the original resolution was actually never authorized.

Article IX section B of the UMPNC bylaws requires that a meeting of the Executive Committee with a quorum be present for the Executive Committee conduct its business. No such meeting happened in advance of Oppenheim’s email on Christmas Day. When the Accused unilaterally took action on behalf of the Executive Committee by sending out an email announcing it had approved a disaffiliation resolution, when it had not, and then stated a special meeting had been called by the Executive Committee, when it had not, they violated their governing bylaws. Even if it had been a “technology error,” the lack of originating authorization could not be cured and swept under the rug by an after-the-fact vote. The Accused needed to inform the membership of the error and re-issue its resolution once it had been actually authorized.

iii. Alleged Improper Authorization of the Special Meeting.

To compound the many procedural issues, the Complainants also allege that once the Executive Committee actually did convene to vote on the disaffiliation resolution, it failed to properly authorize the special meeting of the membership which it had already announced. Article IX, Section D of the UMPNC bylaws states:

Special meetings may be called by the President and must be called by the Executive Committee upon written request of 100 members. Notification of this meeting and the agenda shall be made seven (7) days prior to the meeting. No business shall be transacted other than the business identified in the notification.

During the hearing, McTaggart testified that when he attended the Christmas Day Executive Committee meeting that Oppenheim did not vote when the rest of the Executive Committee approved the resolution which authorized the calling of a special meeting. (Tr. 8, Ln. 7-10). McTaggart also testified that no written request for a special meeting by members was presented at the meeting and that he has not been made aware of any such request since. (Tr. 24, Ln. 3).

On their face, UMPNC's bylaws seem to vest only the President with the authority to call a Special Meeting unprompted by the membership. The Executive Committee, however, is empowered and obligated to call such a meeting only when it receives a written request of 100 members. Based on McTaggart's testimony, it seems the Accused did the exact opposite of what their bylaws authorized them to do. Oppenheim as President abstained and did not authorize the special meeting. The Executive Committee then did so, but without the needed written request of 100 members. We therefore find that the Special Meeting was called by the Accused in violation of Article IX, Section D of the UMPNC bylaws.

III. Conduct Detrimental to UMPNC and MNA

The Complainants also allege that the actions of the Accused in sending notice of a special meeting at approximately noon on Christmas Day was detrimental to the membership. The Complainants allege that the timing indicated that they were seeking to have their email go unnoticed by members otherwise focused on the holidays in order to limit member engagement. In reviewing this claim, we must acknowledge that some of the submitted evidence indicates that Mammel at least attempted to explain the timing as a "technology error." We are not aware, however, of a technology error that results in the accidental drafting of such complex documents

and then emails them out to thousands of nurses. While we could speculate that it may have been a user error which resulted in the email being sent a few hours, or a day, before it was intended, it is plain to see that the Accused had a premeditated plan to release the disaffiliation resolution calling for a special meeting over the holidays. The only justification for this is that they intended to call a snap meeting at that time in order to suppress opportunity for democratic opposition and debate from their membership prior to the special meeting. We believe this heavy handed tactic was clearly conduct detrimental to UMPNC.

CONCLUSION

In finding the named Accused guilty on all three charges issued against them, we must now set an appropriate remedy. While the Accused resigned their membership prior to the hearing, they were indisputably members during the underlying events giving rise to the charges. We retain jurisdiction over their future membership in MNA. The MNA Constitutional Bylaws Article II, Section 8 require that, “[a]ny member who engages in dual unionism as defined by this bylaw shall be subject to suspension or expulsion from the MNA.” We are struck in this case by the brazen disregard by the Accused for the bylaws that they, as local officers, were entrusted with not only complying with, but safeguarding on behalf of their membership. The evidence in support of the violations is clear and overwhelming. We therefore find that, if at any time in the future, any of the individual Accused reapply, or are otherwise reinstated to membership with MNA, they will serve a full suspension of their membership, and all rights and privileges thereof, for a period of three (3) years from that date.⁵

⁵ This suspension will run concurrently with any other suspensions that the individual Accused may have been previously assessed.

Decision Issued By:

MNA Hearing Officers
s/Jamie Brown, RN
Kathy Lehman, RN
Tammy Parsons, RN

Dated: April 18, 2021