

IMPARTIAL COMPLAINT

Heather Roe, UMPNC-MNA Member

Complainant,

-and-

Katie Oppenheim, UMPNC-MNA Member

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 November 1, 2020, the Complainant, Heather Roe submitted a complaint to the Impartial Committee against the Accused, Katie Oppenheim. The complaint alleged a wide variety of conduct which the Impartial Committee summarized as seven different allegations. After an investigation, on November 12, 2020, the Impartial Committee issued a report and recommendation that four of the seven allegations be dismissed and that three charges be issued against Oppenheim on the remaining allegations. Pursuant to the recommendation of the Impartial Committee charges were issued against Oppenheim for: 1.) Dual Unionism – Any activity intended to assist a competing labor organization 2.) Conduct that interferes with MNA’s or an LBU’s performance of its legal or contractual obligations 3.) Misappropriation or unauthorized use of MNA or LBU funds.

A hearing date was set and later rescheduled to December 17, 2020, due to COVID-19 exposures which interfered with the conduct of a hearing. Oppenheim then submitted a motion for

adjournment asking that the hearing be postponed to January 21st or 27th due to a personal conflict. The hearing was then rescheduled, with the consent of Roe, to January 21, 2021. Prior to the hearing, on January 15, 2021, Oppenheim resigned her membership in MNA via email and stated she would not participate in its internal proceedings. Despite notice and opportunity neither Oppenheim nor her member representative attended or participated in the hearing on January 21, 2021¹. Roe attended and properly submitted evidence and testimony in support of her complaint. A transcript of the proceeding was received on March 18, 2021.

FACTUAL BACKGROUND

We will not recount the lengthy 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, defines Dual Unionism as, “...participating in or assistance to one or more labor organizations which are in direct competition 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 Oppenheim.

The facts presented to the Hearing Officers show a clear trail of uncontradicted activity by Oppenheim dating back to December of 2019 to assist the American Federation of Teachers (“AFT”) in seeking become the representative of the bargaining unit of nurses employed by the

¹ The *Rules of Procedure Governing MNA Disciplinary Hearings* provided to both Oppenheim and Roe prior to the hearing stated that, “[t]he failure of a party to attend the hearing may result in an adverse action.” Oppenheim’s willing refusal to participate in the hearing deprived the record of any and all defenses and evidence she may have presented to these charges. This decision therefore reflects our findings and opinion based off of that record.

University of Michigan and currently represented by MNA and its local bargaining unit the University of Michigan Professional Nurses Council (“UMPNC”).

A legal services invoice which Oppenheim eventually approved and paid shows that on December 24, 2019, she discussed with attorneys from the firm Cummings & Cummings issues relating to seeking an election against the certified bargaining representative of her bargaining unit. (Roe Ex. X). The same invoices show she started that research on December 18, 2019, and she was sent a copy of MNA’s certification and then participated in a call with attorneys from Cummings & Cummings about MNA’s representation history. (Id). These dates coincide with the termination of MNA’s former Executive Director, John Karebian, which Roe alleges was the motivation for Oppenheim’s dual unionism. While we do not feel it is necessary to make any findings as to Oppenheim’s motives, the evidence does correlate with Roe’s suggestion.

A publicly available LM2 shows that Karebian accepted employment with the American Federation Teachers almost immediately after his departure from MNA. (Roe Ex. P). Karebian’s employment with AFT appears to have begun no later than February 11, 2020, when an internal email from AFT’s organizing department was inadvertently sent to him at his prior MNA email address. (Roe Ex. D). The email discussed running certain items related to the bargaining of a contract on behalf a small group of physician assistants by Oppenheim, which also suggests that she was aware of Karebian’s employment with AFT by this date and was in communication with AFT staff.²

² Roe also submits as evidence an email from Karebian on March 7, 2019, months before his termination from MNA, which appears to have been sent to AFT-Michigan President, David Hecker. In the email Karebian proposes to Hecker that, “I would ask you to consider a more formal alliance between our great organizations and make a commitment to support our efforts in a more formal arrangement.... I would like to pursue those discussions with MNA leadership and if AFT is on board, we could sit down and discuss more thoroughly.” (Roe Ex. B). Roe suggested during the hearing that Karebian had not in fact raised this proposal with member leadership at MNA after making it and the email provided a necessary backdrop to understanding his close relationship with AFT once he was later terminated.

On March 3, 2020, Oppenheim sent an email to all of her fellow officers at UMPNC which urged them to click on a link to AFT's website stating, "[p]lease see link below for Coronavirus information being distributed to health care locals affiliated with AFT. This is good stuff and I will share it with the employer at tomorrow's meeting." (Roe Ex. I). Oppenheim also stated she had received permission from AFT to use it and would be posting it on the UMPNC website.

In April of 2020, Oppenheim began what appears to have been an intentional effort to advertise and promote AFT to MNA-UMPNC's membership. On April 4, 2020, she sent an email to the entire bargaining unit that she was working with AFT to procure personal protective equipment ("PPE") for bargaining unit nurses and urged them to directly email Dr. Marshall Runge to support this effort. (Roe Ex. I). On April 7, 2020, a media piece appeared in MLive in which Oppenheim again advertised efforts by AFT to procure PPE for the bargaining unit nurses represented by MNA-UMPNC. (Roe Ex. F). On April 13, 2020, an email chain between Karebian and Oppenheim, accidentally emailed to an MNA staffer, showed the two appeared to be coordinating in the push to have the Hospital accept PPE from AFT on behalf of the bargaining unit represented by MNA-UMPNC and also coordinating the accompanying MLive media piece advertising that effort. (Roe Ex. G). The substantial record before us also shows an absence of any documents from Oppenheim demonstrating that she made any attempts to seek any PPE from her own union before approaching AFT. There is also no evidence that any PPE from AFT was ever actually received and distributed to bargaining unit members. Roe's complaint asserted that Oppenheim had in fact obstructed the distribution of PPE to her bargaining unit from MNA, although that issue is not placed before us. Based on the record, however, it seems that Oppenheim's efforts during this time were more focused on publicizing efforts of AFT to procure PPE than meaningfully improving the lack of PPE for her members.

In June of 2020 there is clear evidence that Oppenheim invited Karebian to participate in advising on MNA-UMPNC business as a consultant and that when directly confronted by fellow representatives would not explain in what capacity he was involved. (Roe Ex. J). Another invoice from Cummings & Cummings also suggests that Karebian was consulted on June 3, 2020, by Oppenheim's fellow officer, Becky Mammel, on attempted and rejected alterations to the UMPNC bylaws to remove multiple references to MNA. (Roe Ex. X). Those same revisions to the bylaws successfully removed term limits for local MNA-UMPNC officers, allowing Oppenheim to run for an additional term. (Imprtl. Cmt. Report p.10-11).

On October 8, 2020, within a day of Oppenheim's re-election, an email was again accidentally sent to Karebian's MNA email address from staff within the national organizing department of AFT. The email was entitled, "Pushing back call on UMPNC." (Roe Ex. C). The email appears to show that a scheduled meeting involving Karebian regarding MNA-UMPNC was being re-scheduled.

On October 21, 2020, Oppenheim, less than two weeks after her re-election as a local officer, emailed the entire bargaining unit attacking MNA on a variety of issues and suggesting certain local officers, including herself, were evaluating some future decision relating to MNA. (Roe Ex. L). It is noteworthy that Oppenheim began her critiques of MNA in the email by suggesting she was responding to the many concerns from members she had recently heard. Based on the vast record established in the processing of this complaint, no such evidence of any wide spread member complaints regarding MNA preceding the date of that email have been found.

On October 31, 2020, screenshots submitted by Roe show that Oppenheim, in the context of defending the abruptness of her October 21st email, was referencing a member to contact what appears to be an AFT staff organizer. (Roe Ex. Y) (Imprtl. Cmt. Report p.7).

While we can only evaluate the appropriateness of Oppenheim's actions based on what had occurred prior to the filing of the complaint against her on November 1, 2020, the email which emerged during the Impartial Committee's investigation is noteworthy in adding context. In its supplement to its report, the Impartial Committee submitted to us an email from Oppenheim dated November 12, 2020. The email shows Oppenheim attempting to coordinate with Karebian, three AFT staff, and attorney Robert Fetter, to stop nurses she describes as, "[r]ank and file members" from being encouraged to fill out their bargaining survey and attend a meeting to discuss upcoming contract negotiations. The language of the email was informal, contained no introductions, and clearly showed that Oppenheim, by early November of 2020, was in clear and regular communication with AFT staff to discuss efforts to stop MNA-UMPNC from effectively representing nurses in their own bargaining unit.

Based on the evidence submitted to us, we find that Oppenheim engaged in a lengthy and pre-meditated pattern of dual unionism in support of the American Federation of Teachers from December of 2019 to the date upon which the underlying charges were filed. We find that Oppenheim through these actions is guilty of violating Article II, Section 8, of the MNA Constitutional Bylaws.

II. Interference with MNA's or an LBU's Performance of its Legal or Contractual Obligations.

Roe alleges that Oppenheim interfered with the obligations of MNA and the LBU by utilizing Karebian, a paid staff person of AFT, to advise on the internal functions of her own local union. During the hearing Roe called Vincent Schraub, the MNA Labor Representative assigned to assist members at the University of Michigan, as a witness. Schraub testified that no one at MNA had agreed to Karebian's role as a "consultant" with local officers. Schraub also testified that in a June 4, 2020, meeting between he, Karebian, Oppenheim, and certain members of the

bargaining team, Schraub and others urged the local officers to publicly oppose planned layoffs at the Hospital and to do so publicly based on the significant financial resources of the University available to weather the economic downturn caused by the pandemic. Karebian, however, spoke out against opposing the layoffs. Schraub testified that in the meeting Karebian advised that the bargaining team should give the appearance of opposition to the layoffs to other members in the bargaining unit, but take no actual steps to go to the press or publicly oppose them. Schraub testified that Karebian advised that the team essentially let the layoffs be processed without creating any real resistance. Schraub testified further that after Karebian made that recommendation, Oppenheim supported it, which in turn convinced the other officers in attendance to do the same. (Tr. at 62-63). We found Schraub's testimony on this matter to be highly credible.

Roe's evidence infers Oppenheim included Karebian in the meeting to deter Schraub from performing his duties. The evidence also suggests, without contradiction, that Oppenheim was aware that Karebian was terminated from MNA amidst allegations of mistreatment of staff and invited him to the June 4th meeting with Schraub to deter him in representing the bargaining unit. Roe includes as evidence an internal email from Schraub which shows he was surprised at Karebian's attendance at the June meeting, had received no warning of his attendance, and objected to Karebian's inclusion based on what he believed to be inappropriate past actions by Karebian towards staff. (Roe Ex. J).

Following the meeting, on June 14, 2020, a district rep of UMPNC confronted Oppenheim after she included Karebian on an email to local officers. In the email Oppenheim was asked, "Why is John Karebian CC'd on this email? I removed him from my reply because it is my understanding that his contract with MNA ended after abuse allegations and he now has a position at AFT." (Roe Ex. K). Oppenheim did not reply.

During the Impartial Committee’s investigation, despite evidence that Karebian was presented as a consultant by Oppenheim, she could not produce copies of any payments to Karebian and suggested Karebian had “volunteered” his services to UMPNC. She also never directly denied that Karebian was working for AFT while providing those services, but stated only that Roe had not established that he was.³

Based on the evidence before us, we conclude that Oppenheim’s inclusion of Karebian in the June 4, 2020, meeting, and related activities, interfered in the performance of Schraub’s duties. As Schraub is assigned to work with local leaders to represent MNA and UMPNC in their legal and contractual obligations, we therefore conclude that Oppenheim, through this conduct, interfered with MNA’s and UMPNC’s performance of legal and contractual obligations.

III. Misappropriation or Unauthorized Use of MNA or LBU funds.

The Impartial Committee found credible evidence of the misappropriation of local union funds for the following itemized legal fees:

12/18/19 - Call to MERC re certification, meeting With S Cummings & H Cummings re UMPNC and matters discussed w/Scott, Oppenheim, et al, discussion Re separation of MNA and UMPNC - \$157.50

12/19/19 - Receive MERC certification & send to Oppenheim, call w/her re representation History, emails re meeting on 1/2/2020. Confr agenda re meeting - \$157.50

12/24/19 - Review NLRB case law summary re filing for election in unit where there is certified representative - \$67.50

³ Oppenheim told the Impartial Committee in their investigation:

Ms. Roe does not make any apparent connection regarding the requested assistance of Mr. Karebian and the allegations or any actions of Ms. Oppenheim in this regard. At the time of the allegations, Mr. Karebian did perform work for the American Federation of Teachers in the State of Oregon and later for a recently organized bargaining unit at the University of Michigan.

....

UMPNC did not pay Karebian for his services. Based on knowledge and belief, Mr. Karebian volunteered his advice to UMPNC.

(Imprtl. Cmt. Report p.7).

(Roe Ex. X).

6/3/2020 - Calls w/John Karebian and Becky Mammel re MNA authority re bylaws, draft email for Mammel to send to MNA, call re same - \$405.00

(Roe Ex. M).

Based on the record it appears that the December 2019 charges were inappropriately incurred by Oppenheim, and others, before they were approved by a vote of the full UMPNC Executive Committee as required by the UMPNC Bylaws. The use of the funds also violated multiple provisions of the member established UMPNC Bylaws which required UMPNC members and officers, as a pre-condition of membership in UMPNC, to be members of MNA. In regards to the 12/24/19 charge for researching an election, there is no such thing as filing for an election to disaffiliate. Therefore there can be no dispute that Oppenheim utilized local union funds of UMPNC for the purpose of preparing for an election to create a competing labor organization to UMPNC and MNA.

The evidence also suggests that the 6/3/20 charge, in which an attorney was paid to consult with a staff person of AFT regarding MNA's authority over local bylaws, is in clear violation of Article II, Section 8 ("Dual Unionism"), of MNA's Constitutional Bylaws.

Oppenheim's asserted defenses to the Impartial Committee that expenses were incurred to combat employer sought concessions and to research COVID issues are in glaringly contradiction to the description of the charges on the invoices and highlight her own discomfort with the expenses. (Imprtl. Cmt. Report p.11). The expenses, while not solely incurred by Oppenheim, were in violation of UMPNC and MNA Bylaws or unauthorized at the time in which they were incurred. We therefore conclude that Oppenheim engaged in the misappropriation or unauthorized use of LBU funds.

CONCLUSION

In finding Oppenheim guilty on all three charges issued against her, we must now set an appropriate remedy. Prior to the hearing Oppenheim willingly resigned her membership in MNA and with it her membership in UMPNC and position as officer. It may have been her intent to avoid this decision in doing so. Her misconduct, however, occurred while she was a member of MNA and we retain jurisdiction over her 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.” Oppenheim engaged in a pattern of misconduct, including dual unionism, dating from December 18, 2019 through October 31, 2020. Her actions appear deliberate and calculating. When the pandemic hit in March of 2020 she had the opportunity to re-evaluate her course, set aside her individual grievances, and put the needs of her members first. Instead, she chose to double down and draw in thousands of members into what appears to be nothing more than a personal dispute. These actions were irresponsible and violated the very bylaws Oppenheim was entrusted with enforcing as a local officer of MNA. We therefore find that, if at any time in the future, Oppenheim reapplies or is otherwise reinstated to membership with MNA, she will serve a full suspension of her membership, and all rights and privileges thereof, for a period of three (3) years from that date. At that same date, Oppenheim must also pay restitution to UMPNC amounting to her appropriate share of the misappropriated or unauthorized expenditures identified above.

Decision Issued By:

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

Dated: April 6, 2021