American Nurses Association

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

Board of Directors Decision on NYSNA Appeal

March 19, 2012
Overview and Procedural History

The American Nurses Association (“ANA”) Bylaws permit disciplinary action against a constituent organizational member (state nurses association (“SNA”) or the Individual Member Division) on the basis of five enumerated actions, including “engaging in dual unionism.”

ANA received a series of charges filed by members against the New York State Nurses Association (“NYSNA”) alleging dual unionism, and processed the charges pursuant to ANA’s disciplinary policy. Copies of the charges were properly delivered to NYSNA in order to provide notice to NYSNA and afford it an opportunity to respond. A Hearing Panel was appointed by the ANA President, and comprised of two members of the ANA Board of Directors and a member from the Florida Nurses Association.

A Notice of Hearing was delivered to NYSNA, providing it with at least 15 days notice of the hearing date, time, and place. NYSNA’s attorney sent ANA an email stating that she would be unable to comply with the deadline for responding to the charges. Although NYSNA’s response was received by the Hearing Panel beyond the deadline, it was nonetheless accepted and considered. In its response, NYSNA denied the charges and notified ANA that it had elected not to attend or send representatives to the hearing.

The hearing was convened on December 5, 2011 at 10:00 a.m., as stated in the Notice of Hearing. At the hearing, the Hearing Panel accepted evidence by way of documentation as well as live testimony. Consistent with its response to the charges, NYSNA did not attend the hearing through either its counsel or witnesses, and thereby knowingly waived its right to be heard and to present evidence in opposition to the charges. The Hearing Panel issued a decision
on December 14, 2011, sustaining the charges of dual unionism, and suspending NYSNA from constituent member status for one year, effective December 15, 2011.

On December 29, 2011, counsel for NYSNA requested a stay of the suspension imposed by the Hearing Panel. That application was denied. In addition, NYSNA requested, despite having elected to not attend the hearing or to present evidence, to be provided with the hearing transcript as well as an extension of time after receipt to file an appeal. In addition, NYSNA subsequently requested to be provided with a copy of the hearing exhibits and a further extension of its time to file an appeal. NYSNA’s requests for a copy of the transcript and the hearing exhibits, as well as an extension of time to file an appeal were granted by ANA.

An appeal was filed by NYSNA on January 17, 2012. NYSNA granted the ANA Board of Directors’ request for an extension of time to consider the appeal and to render a decision. ANA’s Board of Directors met on March 7, 2012 to consider the Hearing Panel’s decision, the evidentiary record and the issues raised by the appeal. The Board members who were actual members of the Hearing Panel as well as two Board members who are longtime members of NYSNA did not participate in the appeal meeting or participate in the issuance of this decision. All other members of ANA’s Board of Directors participated in the appeal meeting, as no issues were raised that would have barred participation by any other Board members. In issuing this decision, the Board of Directors considered the hearing transcript, the hearing exhibits (which included the NYSNA response to the charges), the Hearing Panel’s Decision as well as the written appeal submitted on behalf of NYSNA through its counsel.

As an initial matter, the Board of Directors specifically notes what the disciplinary action does not relate to. The disciplinary action imposed by the Hearing Panel and reviewed on this appeal does not have anything to do with NYSNA’s collective bargaining decisions regarding its
representation in contract administration, organizing activities and the like. The ANA Board notes and adopts the Hearing Panel’s statement that:

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.

Further, the disciplinary action which has been reviewed on this appeal does not relate to matters associated with NYSNA’s election, even though NYSNA’s appeal elected to set forth a detailed procedural history of the election issues that have recently come to the forefront and have been or are presently the subject of litigation. The Hearing Panel properly did not consider nor address any of the election disputes, and indeed, the Hearing Panel Chair responded to a witness’ comment about the election issue by stating, “I just want to make sure the audience is clear. The hearing panel really doesn’t have any jurisdiction, so to speak, over the election processes and that kind of thing.” See Hearing Transcript, pp. 27 – 28.

Conclusions

NYSNA has raised several procedural issues that are claimed to have constituted a deprivation of due process. The ANA Board of Directors concludes that NYSNA received more than adequate due process. NYSNA was provided with copies of the written charges, which specified the actions at issue and claims in a manner that gave NYSNA detailed notice as well as the ability to present evidence in its defense. NYSNA was given an opportunity to respond to the charges, which it did. In addition, NYSNA was also provided with a full and fair hearing. The Board of Directors finds the claim of inadequate due process to be disingenuous considering
that NYSNA made an independent decision not to attend the hearing to present its own evidence or argument.

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. The Board of Directors concludes that there was substantial evidence in the record to support the Hearing Panel’s determination that NYSNA leaders were engaging in dual unionism. By way of example, NYSNA has retained the Executive Director of a rival labor organization as its Interim Executive Director, and that person maintains both positions simultaneously. While NYSNA states that the Massachusetts Nurses Association (“MNA”) and NYSNA are not rivals, but instead are friendly and cooperative labor organizations, the disciplinary action involves dual unionism under ANA’s bylaws. The record is replete with negative comments that have been made by the NYSNA’s Interim Executive Director about ANA over a long course of time. In addition, NYSNA’s Interim Executive Director has also pledged her support to the California Nurses Association and National Nurses United (“NNU”), which have engaged in raiding of bargaining units of another ANA-affiliated state nurses association.

The Board of Directors notes that NYSNA has taken the position on appeal that the existence of dual unionism would be eliminated if it were to have its Interim Executive Director resign from her position with the rival labor organization while serving as NYSNA’s top staff person. That position misses the point — such an offer would not resolve the existence of dual

\[1\] The MNA Executive Director’s comments were made over a course of years, and not as an ANA member raising concerns about her union. In addition, “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.” *(Ferguson v. Int’l Ass’n of Bridge, Structural & Ornamental Iron Workers*, 854 F2d 1169, 1174 (9th Cir. 1988)).
unionism. NYSNA’s Interim Executive Director has positioned herself as the so-called champion of NYSNA members while simultaneously using her MNA email address and enlisting MNA staff members to control the NYSNA offices to facilitate the “transition.” This has created the false impression that the NNU affiliate is better able to serve the interests of NYSNA members, or within the context of MNA/NNU history, that a NYSNA affiliated with NNU would be better able to serve the interests of a NYSNA that is affiliated with ANA, thereby undermining the foundation of the NYSNA/ANA affiliate relationship. Moreover, the resignation by the Interim Executive Director from her MNA position for a temporary time period does not cure the acts of dual unionism that were exhibited by her and her MNA staff after nine members of the Board of Directors gave them free access to all of the records and assets of NYSNA.²

In summary, the Board of Directors has concluded that the hearing record amply supports the Hearing Panel’s decision that there was dual unionism. In addition, the Board of Directors has concluded that the suspension of NYSNA’s constituent member status for one year is a reasonable disciplinary action based on the record. NYSNA requested that ANA exercise its discretion not to harm the 37,000 individual members by also suspending their rights and benefits vis-à-vis ANA. While the Board of Directors finds the effect on NYSNA’s members as a whole to be unfortunate when the conduct forming the basis for the suspension is limited to a select group of persons, the ANA federated model forecloses the Board of Directors from relieving the members of the effects by disciplining only those who were responsible. The

² NYSNA’s appeal suggests that the only basis supporting the charges of dual unionism was its retention of the Interim Executive Director. That position is far from an accurate reflection of the testimony and other documentary evidence. Although the retention of the Interim Executive Director was a key aspect of the charge, the evidence presented at the hearing demonstrated a coordinated pattern of conduct involving NYSNA officers, the Interim Executive Director as well as other staff members of the MNA to take control of NYSNA’s affairs and operations.
individuals’ rights in ANA are connected to the constituent membership status of NYSNA in the ANA federated model, and as a result, the loss of individual benefits flows from the state association suspension. In tacit acknowledgment of the material loss of ANA benefits, ANA has suspended NYSNA’s dues obligation to ANA during the suspension period.

Finally, the Board of Directors would reiterate that 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. The Board of Directors would suggest that NYSNA give serious consideration to taking effective and immediate remedial action so as to have the benefits restored to its individual members that have been lost as a result of these unfortunate events.