

OPEIU LOCAL 459 UDP HEARING DECISION

Michael Bodinsky, Hearing Officer
2-2-2024

On December 13th & 14th, 2023 an Administrative Trial (Hearing) was held to hear testimony related to charges filed against officers of OPEIU Local 459 for allegedly violating various provisions of the OPEIU Local 459 Constitution and By-Laws. These charges were filed under the provisions of the OPEIU Uniform Disciplinary Procedure (hereafter “UDP”) and the hearing was conducted subject to the UDP protocol.

I OPEIU UNIFORM DISCIPLINARY PROCEDURE

On July 1, 2019, the OPEIU International Executive Board adopted the Uniform Disciplinary Procedure, it states in part; “The UDP ... shall be the sole procedure for processing charges by members of local unions against other members and/or local union officers of their own local unions... regardless of the provisions of any local union Constitution or Bylaws”. (Hearing Officer’s Exhibit #4)

The UDP is limited in scope to address egregious and/or serious violations of a local’s Constitution and By-Laws. It is not a forum to air political differences nor can it be used to challenge alleged election violations.

II. PROCEDURAL HISTORY

The OPEIU UDP is the protocol used when a union member files charges against other members of the union for alleged violations of the either/or the Local Union’s Constitution and By-Laws or the OPEIU International Constitution and By-Laws. The intended and primary responsibility for adjudicating such charges is for the appointment of a Trial Board comprised of a local’s Executive Board.

On 08/23/2023, the Local 459 Recording Secretary Austin Brown filed a set of charges under the UDP against officers of Local 459. Mr. Brown filed the charges in a such a manner (in naming the charged parties and witnesses) that impeded Local 459 from appointing the Local Trial Board. This set of charges consisted of seven allegations against Sharon Taylor and Betsy Lehner. Mr. Brown then forwarded the first set of charges (7 allegations) to Sec-Treas Mahoney for processing. The charged parties, Sharon Taylor and Betsy Lehner subsequently filed their responses to the charges with Sec-Trea Mahoney.

As a result of this action, I was appointed the arbitrator (Hearing Officer) to preside over the “trial” in place of the Local 459 Trial Board. A Pre-Hearing Conference call was held on October 23, 2023 to discuss hearing protocol and related issues.

One open issue that remained after the conference call ended. What version of the Local 459 Constitution and By-Laws was the governing document? The International provided all the parties a copy of the 2017 Local 459 Constitution as the governing document whereas both the charging and charged parties were referencing a “2021 Version” of the Local 459 Constitution and By-Laws.

As these charges were moving toward a hearing, Mr. Brown filed a second set of charges (consisting of 5 additional allegations of misconduct) and used the same filing procedure to once again impede Local 459 from appointing a Local Union Trial Board.

I was once again appointed the arbitrator (Hearing Officer) to preside over this second set of UDP charges. In reviewing this set of charges, I dismissed charges #1, #2, #4 as they had already been decided through a Local 459 Election Committee Appeal. The two remaining charges pertaining to Neal Wilensky and Joe Marutiak were permitted to move forward.

Since all of the remaining parties were the same in both the first and second set of charges, I consolidated the two sets of charges and a hearing was scheduled for December 13th and 14th.

III. UDP HEARING

The Hearing (Trial) was called to order at 9:59 a.m. on December 13, 2023.

As a way of introduction, the Hearing Officer provided guidelines on how the hearing would proceed. He first set forth, his responsibilities under the UDP.

First, the Hearing Officer must determine whether the Charging Party (Austin Brown) has presented sufficient evidence that a provision of the local constitution has been breached.

Second, if there was a violation established, the Hearing Officer must then determine whether the violation rises to the level of warranting some form of discipline. The hearing officer provided clarification, that a mere error in interpreting or following a constitutional provision would not necessarily result in discipline.

Lastly, if the Hearing Officer determines that an action does require some form of discipline, it is the sole discretion of the Hearing Officer to impose the discipline. The UDP prescribes the types of discipline can be imposed. (Transcript p. 8-9)

After setting forth his duties under the UDP, the Hearing Officer then reviewed again, the hearing protocol that had previously been discussed during the Pre-Hearing Conference Call of October 23, 2023.

The Charging Party (Austin Brown) has the burden of proof in this matter and will present his case first.

The Charging Party can provide sworn testimony; call sworn witnesses who have direct knowledge of the charges currently being presented, and present relevant exhibits in support of his case.

After the Charging party completes his questioning of his witness, the Charged parties (Sharon Taylor & Betsy Lehner), will have the opportunity to cross examine each witness.

As the Hearing Officer, I reserved my right to also ask questions of the witnesses.

After the Charging Party has completed his total case presentation, the Charged Parties can then present their case in response to the alleged charges.

The same rules apply to their presentation as did the Charging Party's case.

The Hearing Officer again reminded the parties that this was a closed hearing, Since this was a disciplinary hearing, no observers nor audience would be permitted in the hearing. All witnesses will be sequestered until they are called to testify. Upon being called in, they will be sworn in and subject to both direct and cross-examination. Once the witness's testimony is completed, they will be asked to leave the hearing room. (Transcript p.9-10)

During the Pre-Hearing Conference Call, an issue was raised as to what version of the Local 459 Constitution and By-Laws should be utilized in the hearing of these charges. When the charges were filed

with the International, the International Secretary-Treasurer sent a copy of the Local 459 Constitution and By-Laws version 2017 as the approved version on file with the International. All the Local 459 parties involved in the case stated that there was newer revised 2021 Local 459 Constitution and By-Laws.

I indicated on the Pre-Hearing Conference call, that this “2021 Constitution and By-Laws” needs to be submitted at the hearing to even be considered.

Subsequently, I asked the International about the 2021 Version and the reply I received was the 2017 Constitution and By-Laws was the currently OPEIU approved Local 459 Constitution and By-Laws on file.

In order to advance the hearing, I agreed to allow the 2021 Constitution and By-Laws to be entered as a Hearing Exhibit but I reserved my judgment to its applicability in the matter before me.

There were (9) Hearing Officer Exhibits entered into the record prior to the charges being presented. Hearing Exhibit #1 - The Charging Party’s 1st Set of Charges; Hearing Exhibit #2- The October 4, 2023 Hearing Officer Appointment Letter; Hearing Exhibit #3- Charged Parties’ Response Information Packet; Hearing Exhibit #4 -The Uniform Disciplinary Procedure; Hearing #5 – OPEIU Local 459 Constitution and By-Laws, 2017 version; Hearing #6 - OPEIU Constitution; Hearing Exhibit #7 – Charging Party’s 2nd set of charges; Hearing Exhibit #8 – Charged Parties’ Response Documentation; Hearing Exhibit #9 (provisional) OPEIU Local 459 2021 Constitution and By-Laws. (Transcript p. 14-15)

This Hearing then proceeded to hear the consolidated sets of charges. The charges were heard in seriatim.

1. Local 459 Constitution and By-Laws Article 9 Section 4

The Charging Party alleges that Sharon Taylor failed to send notification of the nominations meeting to all Active Members email address.

The language of this section in the 2017 Local 459 Constitution and By-Laws reads:

“Notice of such meeting shall be given to all members in good standing at their last known address not less than fifteen (15) calendar days prior to the date of such meetings” (Hearing Exhibit #5)

The language of this section in the 2021 Local 459 Constitution and By-Laws reads:

“Notice of such meeting shall be given to all members in good standing at their last known **physical address and email address** not less than fifteen (15) calendar days prior to the date of such meetings” (Hearing Exhibit #9)

The Charging Party as well as the Charged Parties provided testimony with respect to the charges filed in the alleged breach of the 2021 Constitution and By-Laws.

While the Hearing Officer allowed testimony to be presented under this Version, he reserved judgment on the applicability of the 2021 Local 459 Constitution and By-Laws.

The seminal question before the Hearing Officer was “what version of the Local 459 Constitution and By-Laws was in effect at the filing of these charges?”

The OPEIU Constitution under Article X, section 7 states:

“The President’s approval shall be required on all Constitutions and By-Laws adopted by Local Unions in accordance with this Constitution, and all Local Unions shall submit their Constitutions and Bylaws governing the Local Union membership to the President of the International Union for approval. Such approval shall be obtained prior to their being put into effect by the Local Union. (Hearing Exhibit #6)

After the hearing was completed, the Hearing Officer sought a final determination from the International as to what version of the Local 459 Constitution and By-Laws was in effect at the time the charges were filed. I received a definitive response from President Lanigan that at the time these charges were filed, the 2017 Constitution and By-laws was in effect. The 2021 Version was not approved until December 2023.

Determination on Charge #1.

Based upon the information provided by the International subsequent to the hearing, and under the provisions of the 2017 Local 459 Constitution and By-laws, there was no requirement to send emails under Article 9 Section 4.

Therefore, the Hearing Officer finds Charge #1 unsubstantiated and the charge is DISMISSED.

2. Local 459 Constitution and By-Laws Article 19 Section 1

Sharon Taylor failed to follow Roberts Rules of Order for Membership Meeting that was held on August 8th. There was never a motion/second taken to open nominations and never a motion to adjourn the meeting.

Determination on Charge #2

The Charging Party withdrew this charge at the Hearing (Transcript p. 21)

3 Local 459 Constitution and By-Laws Article 20 Section 2(b)

Sharon Taylor and Betsy Lehner abused their current powers of their office by illegally passing out endorsement papers for their selection of Election Committee at the August 8th Membership Meeting.

The Charging Party (Austin Brown) contends that an endorsement paper (Charged Party Exhibit 6) handed out at the August 8th Membership Meeting was an illegal act.

Mr. Brown called Jami Slater who was also listed on the Endorsement Slip. Her testimony did not bolster the Charging Party’s allegation of abuse of office.

In response to this Charge #3, the charged parties called Joe Marutiak to testify. His testimony confirmed “that handing out endorsement slips” has occurred in the past and has never been questioned. Mr. Marutiak stated that there 37 bargaining units in 459 and it would be unlikely

that the membership would know all the nominees for the Election Committee so endorsement slips are beneficial. (Transcript p. 222-224).

As pointed out in the Charged Parties' response to the charges (Hearing Exhibit #3) this endorsement list was distributed prior to the membership meeting. It was further stated, nothing in the Local 459 Constitution and By-Laws prohibits members, including officers, from recommending other members before or during this meeting. Furthermore, when Mr. Brown expressed objections, the distribution of the recommendation slips were halted and the slips were regathered to the extent possible.

The Charging Party, in his written closing statement, tried to couch this charge as election question. As the Hearing Officer previously stated, the UDP is only to be used to address disciplinary issues arising from constitutional violations.

Determination on Charge #3.

The Charging Party failed to meet the burden of proof that the Charged Parties abused their current powers of their office by distributing endorsement slips on the night of the August 8th Membership Meeting. No evidence nor testimony was submitted at the hearing to establish that the Charged Parties actions were illegal.

Therefore, the Hearing Officer finds Charge #3 unsubstantiated and the charge is DENIED.

4 Local 459 Constitution and By-Laws Article 20 Section 2 (b)

Sharon Taylor abused her current powers of her office by having any post of Austin Brown removed from the Local 459 Facebook and the Local 459 Website.

The Charging Party entered into the record, exhibit #7, a screen shot of Austin Brown's picture announcing his election as Vice President of the South-Central Michigan AFL-CIO Labor Council. Additionally, the Charging Party entered into the record Exhibit #8 (an email from Jason Harlow, the administrator of the Local 459 Facebook and Website account). This email contained instructions from Sharon Taylor for Mr. Harlow to remove the entire "Members in Action" Section that included Exhibit #7, the Austin Brown screen shot (Transcript p. 72-74)

The Charging Party proceeded to present Exhibit #10 that included a series of pictures of other candidates that were previously posted on either the 459 Website or Facebook Accounts. None of these posts were removed. The implication of presenting these exhibits is that Ms. Taylor abused her powers by singling out Mr. Brown's posting for removal.

Mr. Brown called Rhonda Ackerson, the Local 459 Office Coordinator, to testify as to the protocol followed in posting and removing information on the local's media sites. Ms. Ackerson testified that "I usually am the person that will send things to Jason Harlow to put things on or remove things from the the website." Her further testimony included the statement that Sharon Taylor either directs the posting or removal on the local's media's sites. (Transcript p. 86-87).

On cross-examination, Ms. Ackerson was asked if she was aware that Sharon Taylor at times contacts the website administrator directly and she acknowledged that she was (Transcript p. 88). The Hearing Officer asked Ms. Ackerson "Are you the one – who can authorize something to be

posted and withdrawn taken off? Her response, "I guess the president normally does..." (Transcript p. 89)

In response to this specific charge, Sharon Taylor (the Charged Party) testified that she oversaw the 459 media sites. Ms. Taylor further testified that while she does utilize Ms. Ackerson to convey changes to the 459 media sites, it is not uncommon for Ms. Taylor to also contact the media administrator directly to make changes to the sites. (Transcript p.226-227).

The Hearing Officer asked Ms. Taylor if she consulted with anybody, executive board members, other officers, about her decision to remove Mr. Brown's posting and she stated that she made that decision solely on her own, late one evening. (Transcript p.246).

Ms. Taylor also testified that the basis for her decision to not only remove Mr. Brown's posting but the entire section of the website was her interpretation of DOL regulations, that indicated that during elections local resources cannot be used to favor one candidate or another. (Transcript p.229).

On cross examination, Mr. Brown questioned Ms. Taylor on the timing of the removal. He pointed out that the removal occurred on August 3rd, five days before actual August 8th nominations. Ms. Taylor's reply was that Mr. Brown had told her of his intention to run for office before the actual nomination meeting. (Transcript p. 233-234)

During the hearing of this charge there a constant barrage of testimony back and forth about the reasoning for Ms. Taylor's decision to not only remove Mr. Brown's post but the entire section on the media site. (Transcript p. 84) This competing testimony encroached into the territory of election issues and the UDP is not the proper forum nor does the Hearing Officer, under the UDP, have the authority to adjudicate those type of issues.

The Charging Party's written closing statement further confirms that this charge was a masked attempt to present election issues in the guise of constitutional violations.

Determination on Charge #4

The Charging Party failed to meet the burden of proof that the Charged Party, Sharon Taylor, abused her current powers of her office to remove Austin Brown's posting from the Local 459 Media Sites. All parties presented testimony that wasn't relevant to the charge at hand. The issues to be determined "did Mr. Taylor have the authority to remove a media posting unilaterally and was her decision a violation of the Local 459 Constitution and By-Laws?" The Hearing Officer finds that Ms. Taylor had the authority to unilaterally make that decision and no abuse of power occurred.

To be clear, the UDP is not a protocol to address election issues nor is the Hearing Officer rendering any decision on those matters.

Therefore, the Hearing Officer finds Charge #4 unsubstantiated and the charge is DENIED.

5 Executive Board Policy #21 Section 12

Sharon Taylor and Betsy Lehner used member's dues money and other funds from Local 459 to create, reproduce, and distribute campaign literature at the August 8th Membership Meeting.

Determination on Charge #5

The Charging Party withdrew this charge at the Hearing (Transcript p. 21)

6 Labor-Management Reporting and Disclosure Act of 1959 SEC. 202

Sharon Taylor and Betsy Lehner allowed Joseph Marutiak to have access to the personal information of the union and its members and do not report him on the reports submitted to the DOL as outlined in LMRDA Sec. 202

Determination on Charge #6

The Charging Party withdrew this charge at the Hearing (Transcript p. 22)

7 Local 459 Constitution and By-Laws Article 9 Section 5

Sharon Taylor has been involved in the day-to-day operations of Election Committee, Sharon Taylor was never nominated or elected to be on the Election Committee. She is using her powers as current President to overstep her boundaries and get election information to help other candidates.

In presenting this charge, the Charging Party (Austin Brown) recalled Rhonda Ackerson, the Local 459 Office Coordinator, to provide testimony about her involvement in prior election committee requests and her role in the 2023 elections. She testified that she was removed from working with the 2023 Election Committee (Transcript p. 105-106)

During cross examination, Ms. Ackerson admitted that she never met with the election committee and that work that she previously performed during prior elections was now performed by a "volunteer" to the Election Committee. (Transcript p. 116-117)

There was testimony provided by both Ms. Ackerson and Mr. Brown about membership lists that were created at the behest of Sharon Taylor, but no direct evidence was presented that supported this allegation.

During cross examination, Mr. Brown acknowledged that other than the first Election Committee Meeting, he had no direct knowledge of Ms. Taylor's contact with the committee. (Transcript p. 127-128)

In response to the charge, the Charged party called Nikki Johnson, a member of the Election Committee. At that time, a list of Election Committee Meeting Dates was entered into the record and marked "Charged Parties Exhibit #1). She testified as to the protocol the committee would employ in overseeing the election. She also testified to Joe Marutiak's involvement with the committee as well.

Ms. Johnson testified that at the first meeting Ms. Taylor distributed the committee job description and the relative election time line. Furthermore, Ms. Taylor told the committee that they could hire somebody to be an advisor to the committee since none of the committee members had experience in this forum. "We chose to use Joe Marutiak, because he previously helped with the elections and could advise us." (Transcript p. 172-174)

Ms. Johnson stated that Ms. Taylor was only present at the first committee meeting. She was not given access to the communal election email. Ms. Johnson was also asked if Ms. Taylor had any influence about the agenda or anything that was talked about in the election committee and she said "No." (Transcript p. 177-178)

The Charged Party also recalled Joe Marutiak to testify about his involvement with the Election Committee. During his testimony, he stated that Ms. Taylor initially asked him if he would assist the Election Committee prior to his introduction to the committee and he agreed to volunteer his services if requested. (Transcript p. 192)

Mr. Marutiak was asked in the role of an Election Committee Advisor, did he ever supply information to Sharon Taylor and he answered. "No." (Transcript p. 198)

There was a continuing line of questioning on both sides about what Mr. Marutiak did with the committee; what lists were created; what information was on the lists, emails that were sent, etc. The Hearing Officer deemed this to be irrelevant to the charge being heard. The Hearing Officer then reminded all the parties as to the charge being heard; not once but twice. (Transcript p. 210-211)

Determination on Charge #7

The Charging Party failed to meet the burden of proof that the Charged Party, Sharon Taylor was involved in the day-to-day operations of the Election Committee. The allegation that Ms. Taylor overstepped her boundaries and received election information is unfounded.

There was no credible evidence nor direct testimony presented to support the allegations. The Charged Party's witnesses directly contradicted the allegations. Again, in his closing statement, Mr. Brown raised election arguments that were not and could not be the subject matter of this UDP Disciplinary Hearing.

Therefore, the Hearing Officer finds Charge #7 unsubstantiated and the charge is DENIED.

8 Local 459 Constitution and By-Laws Article 7 Section 4(a) and OPEIU International Constitution Article XIX Section 12

Betsy Lehner allowed Neal Wilensky to sit on the Local 459 Executive Board for over 18 months without paying his membership dues.

The Charging Party alleged that the Charged Party (Betsy Lehner) was "grossly negligent" (a term Mr. Brown used in his closing statement) in her conduct as the Secretary-Treasurer of Local 459 by not suspending Neal Wilensky when he fell into arrears with his dues payments.

In support of this charge, Rhonda Ackerson, the Local 459 Office Coordinator, was recalled again to testify. The Charging Party showed Ms. Ackerson Exhibit #19. The Exhibit was a chart of dues payments made by Mr. Walensky for delinquent dues for a period of 16 months. During this delinquent period Mr. Walensky was an officer of Local 459 (Transcript p.135-136)

Ms. Ackerson further testified as to the procedure she followed in the recording the members' dues payments. She also believed that it was not in her job duties to notify members who were delinquent in their dues payments. (Transcript p. 140)

On cross examination, Ms. Ackerson acknowledged that her job duties included the posting of the membership dues to the database and that she has done so for over 26 years. Ms. Ackerson was also asked who had access to the database where the dues records were stored. She testified that only she, Mr. Marutiak and Sharon Taylor had access. The Secretary-Treasurer did not have the log-in code. (Transcript p. 143-144)

Ms. Ackerson's testimony also included a statement that the dues database was not always current and up-to-date. She also said "I've never chased people down for dues... We've never chased people down for dues." However, Ms. Ackerson did create a monthly report to the Secretary-Treasurer of the dues received. This report did not include a list of members that did not pay their dues. (Transcript p. 146, 150)

In the Charged Party's response to this specific charge, Joe Marutiak was recalled to testify. He described the process of Local 459 dues collection and recordation. After the most recent election, he was hired as a temporary employee in October, 2023 and tasked with overseeing the Local 459 staff and the update and cleanup up of the membership database. This temporary assignment was in direct response to the systemic breakdown in the dues recording system that allowed Mr. Walensky's failure to pay his dues which is the basis of this charge. (Transcript p.254-261)

Furthermore, in response to a question about the duties of the Secretary Treasurer, Mr. Marutiak testified that the Secretary-Treasurer is a part-time position "has almost always been held by a working member and as a result the local has always had staff instead who performed those duties on his or her behalf. And I feel like that's what I'm doing now in this job." (Transcript p. 267).

After Mr. Marutiak completed his testimony, Secretary-Treasurer Betsy Lehner, the Charged Party in this allegation, then testified. The first question she was asked, "Did you allow Neal Walensky to remain on the executive board knowing that he had not been paying dues?" She answered in the negative. Ms. Lehner reiterated that the Secretary-Treasurer is a part-time position and that she was not involved in any part of receiving dues. (Transcript p. 279-282)

There were a series of exhibits submitted that illustrated how membership dues were submitted, recorded, and processed. There was also testimony as to what Office Coordinator Rhonda Ackerson's role was in this process and what her reporting relationship was with Ms. Lehner. (Transcript p. 286-292) Ms. Lehner testified that she received limited secretary-treasurer training after her election to the office in November, 2020.

On cross examination, Mr. Brown questioned Ms. Lehner's about her responsibility and obligation as Local 459's Secretary-Treasurer. He pointed out the section of the Local 459 Constitution and By-Laws that describes these duties. She was also questioned as Secretary-Treasurer, was she provided a list of active members to the International as one of her duties. Ms. Lehner answered in the negative stating "I do not because we have a database that hasn't been up-

to-date. So, we have members listed active in the database that were not active..." (Transcript p. 297)

Ms. Lehner also testified that the database was in shambles and she did not deliberately allow Mr. Walensky to remain on the board knowing that he had not paid dues. She further asserted that once she was made aware of the dues error, she took every action necessary to correct the situation (Transcript p. 301-302)

Determination on Charge #8

The Charging Party failed to meet the burden of proof that the Charged Party, Betsy Lehner, intentionally allowed Neal Wilensky to sit on the Local 459 Executive Board for over 18 months without paying his membership dues. The Charging Party, in his closing statement, stated that Ms. Lehner was "guilty of gross negligence." Nothing in the Charging Party's case even tangentially supports such an allegation.

However, the testimony and evidence in this charge does show a systematic breakdown in Local 459's dues tracking process. This deficiency began before Ms. Lehner took office which led to the Walensky dues processing error. Testimony from Mr. Marutiak demonstrates that Local 459 has recognized this problem and Local 459 is now working to remedy the problem.

Therefore, the Hearing Officer finds Charge #8 unsubstantiated and the charge is DENIED.

9. Executive Board Policy #21

Joe Marutiak created and saved a file into Sharon Taylor's files containing a list of all Members that requested an Absentee Voter Ballot. This list contained personal contact information in it.

Determination on Charge #9

The Charging Party withdrew this charge at the Hearing (Transcript p. 156)

IV. HEARING SUMMATION

This hearing was conducted and it followed the provisions set forth in the OPEIU Uniform Disciplinary Procedure (UDP). As previously stated, the UDP is an "Internal Union" procedure adopted by the OPEIU Executive Board.

The UDP is limited in scope to address egregious and/or serious violations of a local's Constitution and By-Laws. It is not a forum to air political differences nor can it be used to challenge alleged election violations.

Utilizing the provisions of the UDP, the Charging Party (Austin Brown) filed a series of charges against OPEIU Local 459 Officers, Sharon Taylor, Local 459 President and Betsy Lehner, Local 459 Secretary-Treasurer (Charged Parties). The allegations were based upon claims that both Charged Parties violated sections of the Local 459 Constitution and By-Laws and they “abused their current powers of their offices”.

Black’s Law Dictionary defines *abuse of power* as “Use of one who possess it in a manner contrary to law.”; “To make an extravagant or excessive use, as to abuse one’s authority.”

Under the UDP, the Charging Party has the burden of proof to substantiate the charges filed. Contrary to his erroneous presumption in his closing statement that he only had to present a *prima facie* case to prove his allegations, the burden is much higher. The testimony and evidence that he offered was not demonstrative nor convincing that the Charged Parties abused their current powers of office.

While the Charging Party might have disagreed with the actions taken by the Charged Parties in their official capacity, such a disagreement doesn’t support a charge of “abuse of power.” It is not the Charging Party’s nor the Hearing Officer’s prerogative to substitute their opinions in place of the Charged Parties’. The Hearing Officer’s sole purpose under the UDP is to decide if the Charged Parties possessed the authority for the actions taken and were the actions taken an excessive use.-of power

The Hearing Officer’s conclusion: “The Charged Parties properly conducted themselves and carried out their duties as Local 459 Officers. The Charged Parties did not abuse the power of their office.”

I would be remiss in my duties as Hearing Officer, if I didn’t point out what I perceive as an improper use of the UDP, whereby the Charging Party attempted to prosecute “election claims” in an internal disciplinary proceeding.

This perception was further validated by a post-hearing email sent by Austin Brown on December 20th to the International Secretary-Treasurer. Its contents:

“I was hoping to get some clarification, would it be under the Hearing Officer’s scope of ruling to rule that there was election violations and rule for a new election? I was under that understanding but the charging [sic] party has stated that it is not a ruling that the Hearing Officer can make. In the charges that we had during the December 13th & 14th trial there were allegations of election violations.”

The Secretary-Treasurer forwarded the email to the Hearing Officer. The Secretary-Treasurer forwarded his email response to Mr. Brown:

“...the charges that were heard on December 13th and 14th were filed under the the OPEIU Uniform Disciplinary Procedure. The UDP is the protocol used to address alleged violations of a Local’s Constitution and By-Laws.

The UDP is a disciplinary procedure and it defines what penalties, if any, that can be imposed if allegations filed are substantiated and serious in nature to warrant discipline.

The UDP is not the proper forum to hear election challenges. The Hearing Officer or a Local Trial Board impaneled under the UDP cannot order a new election in a UDP disciplinary hearing. The Election Appeal Process is set forth in the OPEIU Administrative Policies and Procedures Manual; Article III (A). The process for an Election Appeal is governed under that criteria.”

I find Mr. Brown’s query quite troubling. He filed his charges under the UDP and presumably seeking a disciplinary action against Local 459 Officers for abuse of power. Post Hearing, he then asks about the possibility of the Hearing Officer granting a new election. This begs the question, “Was this UDP filing an attempt to inappropriately use the UDP to litigate election challenges?” This is not an issue before the Hearing Officer.

To be absolutely clear and to remove any remaining confusion, this hearing was conducted under the provisions of the OPEIU Uniform Disciplinary Procedure. This hearing was never intended to address election issues.

The Hearing Officer did not address any substantive election issues nor did he render a decision on their merits. He had no authority to do so under the UDP. The Hearing Officer’s determinations were based solely on the criteria set forth in the UDP.

V. DECISION

BASED UPON ALL THE EVIDENCE AND TESTIMONY PROVIDED IN THE ABOVE REFERENCED UDP, THE HEARING OFFICER FINDS THAT THE CHARGING PARTY HAS FAILED TO MEET HIS BURDEN OF PROOF.

THEREFORE, THE CHARGES FILED AGAINST SHARON TAYLOR AND BETSY LEHNER ARE **DENIED.**

Michael O. Bodinsky

Hearing Officer

February 2, 2024