

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PATRICIA LEO HOLLOMAN
27-40 Ericcson St.
E. Elmhurst, New York 11369

and

LORNA SAMUELS
512 Bradford St.
Brooklyn, New York 11207

and

JUDY SHERIDAN-GONZALEZ
3977 Sedgwick Ave., Apt. 18C
Bronx, New York 10463

Plaintiffs,

v.

NEW YORK STATE NURSES ASSOCIATION
c/o Registered Agent Richard Silber
11 Cornell Rd.
Latham, New York 12110-1499

Defendant.

____ Civ. ____

**COMPLAINT WITH
JURY TRIAL DEMAND**

CIVIL ACTION - COMPLAINT WITH JURY DEMAND

Introduction

1. Defendant New York State Nurses Association (NYSNA) unlawfully retaliated against its union members, plaintiffs Holloman, Samuels and Sheridan-Gonzalez, by disciplining them for exercising their right to speak out and oppose NYSNA's efforts to disaffiliate from its national union, United American Nurses. NYSNA is a union which is also a professional

association for nurses, and is governed by a Board of Directors which includes non-union members and former supervisors. In unlawfully disciplining its members, NYSNA violated the provisions of the Labor Management Reporting and Disclosure Act, (LMRDA), 29 U.S.C. §411(a)(2) which prohibits retaliation against union members based on their exercise of their right to free speech, and 29 U.S.C. §411(a)(5) which prohibits the imposition of discipline without due process. NYSNA also engaged in an unlawful scheme to suppress dissent by plaintiffs, who are current or former members of its Board of Directors. In addition, NYSNA violated its own bylaws and rules in disciplining plaintiffs and by acting unlawfully to disaffiliate from its national union. NYSNA's bylaws and rules prohibit the Board of Directors from voting on matters such as disaffiliation, which affect collective bargaining.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to Sections 102 and 609 of the LMRDA, (29 U.S.C. §§412 and 529), and 28 U.S.C. §1331. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over claims arising under New York state law concerning plaintiffs' claims for breach of contract involving NYSNA's bylaws and violation of New York statutes governing not for profit corporations.

3. Venue is appropriate in this district pursuant to 29 U.S.C. §412 and 28 U.S.C. §1391 as the violations alleged herein took place in this district and the defendant maintains a place of business in the Southern District of New York at 120 Wall Street, 23rd Floor, New York 10005 and represents members employed in this district.

PARTIES

4. Plaintiffs Patricia Leo Holloman ("Holloman"), Lorna Samuels ("Samuels"), and

Judy Sheridan-Gonzalez (“Sheridan-Gonzales”), have been at all times relevant to this action, members of the New York State Nurses Association (NYSNA), a New York not-for-profit corporation and a "labor organization" within the meaning of Sections 3(i) and (j)(5) of the LMRDA, 29 U .S.C. §402(i) and (j)(5).

5. Plaintiffs Holloman and Sheridan-Gonzalez were elected members of NYSNA’s Board of Directors until October 2007. Plaintiff Samuels is and has been a member of NYSNA’s elected Board of Directors since 2004. She is currently the Secretary of the NYSNA Board of Directors.

6. Defendant New York State Nurses Association (NYSNA) is a statewide professional association for registered nurses. It is also New York's largest union representing registered nurses, with more than 34,000 members. The association is affiliated on the national level with the American Nurses Association (ANA) and was a founding affiliate of the United American Nurses AFL-CIO (UAN), a national union representing nurses. NYSNA has an office in Latham, New York and maintains a place of business in New York City, where many of its members are employed.

FACTS

Background

7. Plaintiffs are nursing employees of hospitals who are represented for purposes of collective bargaining by their union, defendant NYSNA. They are also members of the UAN and the ANA. Their memberships in these organizations, and their status as collective bargaining unit members, are relevant to the claims asserted here.

8. Plaintiff Holloman is a registered nurse employed at Mt. Sinai Medical Center in

New York City in Nursing Quality Improvement and the Magnet Recognition Program. She has been a leader in the nursing profession for most of her career. She has been a member of NYSNA for 31 years, and has held elected office in NYSNA at various times over the years. Most recently, Ms. Holloman was elected to the position of At-Large Director on NYSNA's Board of Directors from 2005 to 2007 and was also its Second Vice President. Ms. Holloman was a party to the formation of the United American Nurses (UAN) and its affiliation with the AFL-CIO, and has been a UAN member since 1999. She is an elected delegate to UAN's National Labor Assembly and secretary of her local bargaining unit at Mt. Sinai Medical Center. Ms. Holloman has also been a member of the American Nurses Association (ANA) for 31 years, and a member of the ANA Board of Directors for eight years, from 1998 to 2006. She is currently a member of the American Nurses Credentialing Committee (ANCC) Board and a delegate to the ANA's House of Delegates. Ms. Holloman received her bachelor of science in nursing degree from St. John University, New York. Over the years, she has served as a president of NYSNA's Delegate Assembly, and on other NYSNA councils, task forces and committees, most recently as co-chair of its strategic planning committee.

9. Plaintiff Samuels is a registered nurse employed at Morrisania Diagnostic & Treatment Center, New York, New York as Head Nurse in its Ambulatory Care Offsite Center. She has been a leader in the nursing profession for most of her career. She has been a member of NYSNA for more than 23 years, and has held elected office in NYSNA at various times over the years. Most recently, Ms. Samuels was elected to the position of Secretary of NYSNA's Board of Directors from 2004 to the present. Ms. Samuels has been a member of the United American Nurses (UAN) since 1999. She has been an elected delegate to UAN's National Labor Assembly

since 2001, and is also the head nurse delegate of her local bargaining unit at Morrisania Diagnostic & Treatment Center. Ms. Samuels has also been a member of the American Nurses Association (ANA) for 23 years, and a delegate to the ANA's House of Delegates since 1999. Ms. Samuels received her bachelor of science in nursing degree with honors from Edgar Evers College, Brooklyn, New York, and a master of science in nursing degree from Columbia University School of Nursing. Over the years, she has served on many NYSNA committees, councils and task forces.

10. Plaintiff Sheridan-Gonzalez resides in this judicial district and is a registered nurse employed at Montefiore Medical Center, New York, as a staff nurse in the emergency department. She has been a leader in the nursing profession for most of her career. She has been a member of NYSNA for 27 years, and has held elected office in NYSNA at various times over the years. Most recently, Ms. Sheridan-Gonzalez was a member of NYSNA's Board of Directors from 2005 to 2007, and was also elected to its Delegate Assembly in several capacities (including president and vice president) from 1989 until she was "term limited" in 2007. Ms. Sheridan-Gonzalez has been a member of the United American Nurses (UAN) since 1999. She has been an elected delegate to UAN's National Labor Assembly and is also the president of her local bargaining unit at Montefiore Medical Center. Ms. Sheridan-Gonzalez has also been a member of the American Nurses Association (ANA) for 25 years, and a delegate to the ANA's House of Delegates since 1996. Ms. Sheridan-Gonzalez received her bachelor of science degree from SUNY Empire State, and a master of science in nursing degree from the College of Mt. St Vincent. Over the years, she has served on many NYSNA committees, councils and task forces.

11. The right to serve on committees, councils, and task forces for NYSNA, ANA and

the UAN are important union membership rights and benefits flowing from plaintiffs' membership in NYSNA.

12. NYSNA is an organization that serves multiple purposes. It is both a professional association for all registered nurses (including supervisors and managers), and a union which represents nurses in collective bargaining. The Board of Directors is elected by all members of NYSNA, including supervisors and managers, and Board members themselves can include supervisors or managers. The fact that NYSNA, a union, can be governed by persons who are not union members or who are the managers and supervisors of its union members, gives rise to the issues raised in this complaint.

13. Because of its multiple purposes, NYSNA has enacted bylaws, rules and policies to insulate its collective bargaining functions from its associational functions as required by federal labor law developed by the National Labor Relations Board. The insulation doctrine is pivotal to the union governance issues raised in this complaint and operates to insure that union collective bargaining related matters are addressed only by collective bargaining representatives.

14. Consistent with its insulation policies, NYSNA's collective bargaining-related functions fall within its Economic and General Welfare Program. Collective bargaining policy matters are deemed to be under the purview of NYSNA's Delegate Assembly, which is comprised of delegates elected from collective bargaining units within designated geographic zones within the state of New York. . The Delegate Assembly was established in 1988 in to assist the collective bargaining program in remaining insulated from the Board of Directors. In addition, NYSNA's Board of Directors enacted specific policies, including Policy 2-6, described below, to enforce the insulation doctrine.

15. NYSNA is a state affiliate of the American Nurses Association (ANA), a national multi-purpose professional association for registered nurses. ANA similarly has dual purposes, with collective bargaining functions and associational functions.

16. In 1999, members of NYSNA and several other state nurses associations joined together and formed the United American Nurses, AFL-CIO (UAN) to act as their national independent and unified voice for union nurses.

17. In 1999, before NYSNA determined to affiliate with the UAN, the Delegate Assembly, (elected collective bargaining representatives from across the state), engaged in a full debate, voted to undertake the affiliation and thereupon recommended it to the NYSNA Board of Directors. Subsequently, the NYSNA Board of Directors implemented the will of the Delegate Assembly and effectuated the affiliation with the UAN.

18. The UAN is an autonomous national labor organization which is an affiliate of the AFL-CIO. The UAN and the ANA entered into an affiliation agreement, whereby UAN exclusively assumed ANA's collective bargaining functions as its only Associate Organizational Member of ANA for collective bargaining.

19. UAN provides financial, technical, educational, and logistical support for NYSNA's collective bargaining and union organizing efforts, including strikes, organizing campaigns, negotiations and access to the AFL-CIO.

Bylaws and Policies Concerning Insulation

20. NYSNA enacted Policy 2-6, titled "Policy: Legal and Fiduciary Obligations," which encompasses "statements of legal and fiduciary responsibility and the guidelines for insulation of the association's collective bargaining program." Section II of the Policy describes

NYSNA’s compliance with the federal labor law doctrine known as “insulation,” and provides in pertinent part that:

As a multi-purpose professional organization, NYSNA is in part a labor organization. That part of the affairs of the association that involves the collective bargaining activities requires strict adherence to principles set out by applicable labor laws and court decisions. Among the most important of these principles is that the rank and file employees whom the association represents must have full and complete freedom to determine their own goals in collective bargaining. Accordingly, **the board of directors cannot participate in or influence the conduct of the collective bargaining program – including (but not limited to) such matters as elections, grievances, arbitrations, or contract negotiations.** [Emphasis added].

21. Section II.(c) of NYSNA Policy 2-6 requires that:

The board must scrupulously avoid any discussion of collective bargaining matters, including any that may be erroneously brought to its attention by members or others outside the association.

22. There are no collective bargaining membership limitations on the persons who can vote for or be elected members of the NYSNA Board of Directors, which can potentially include managers, supervisors, and former supervisors. In fact, six of the thirteen members of the current Board of Directors were not union members represented by NYSNA upon their election to the Board. Two members of the NYSNA Board, including the president and president-elect, were managers in their previous employment.

23. Because statutory supervisors and managers can vote for, and be elected to serve on, the NYSNA Board of Directors, the Board is not an “insulated body” for purposes of federal labor law.

NYSNA Considers Disaffiliation From UAN; Plaintiffs Dissent

24. Around mid-2007, some members of the NYSNA leadership became unhappy

with NYSNA's relationship with the UAN. At a Board meeting on August 8, 2007, a majority (consisting of only six) of the ten Board members present and voting decided to poll the NYSNA membership concerning the question of staying in the UAN or disaffiliating from the UAN. (The full complement of the Board is thirteen members). Plaintiff Samuels was not present for this vote, but would have voted no, had she been present. This vote took place in an executive session of the Board.

25. On August 10, NYSNA announced the decision to poll the members on disaffiliation, including selected details of the Board's executive session discussion. These details were also discussed at a membership meeting on August 15, 2007.

26. Four members of the Board (including two of the three plaintiffs, Holloman and Sheridan-Gonzales), and two other Board members, Joan Cumberbatch and Veronica Richardson, opposed the decision to take the poll and voted "no" on the question on August 8th. The three plaintiffs and Ms. Richardson later issued a written "Minority Report" as permitted by the NYSNA Policies and Procedures, detailing the reasons for their opposition.

27. NYSNA Policy 2-6, Section I provides in pertinent part:

With limited exceptions (e.g., when a potential or actual conflict has been identified), a director has a duty to vote on matters before the board. A director should express fully any opposition he/she has to an action of the board before a vote is taken. **Once a vote is taken, a director incurs an obligation to interpret and defend the majority decision, UNLESS: ... (b) you choose to file a minority report.** This recourse should occur very infrequently, if at all, since your obligation is to avoid creating confusion and divisiveness among the members. Members have a right to expect cohesive, coordinated leadership. [Emphasis added].

28. Pursuant to Section I of Board Policy 2-6, quoted above, plaintiffs and Ms. Richardson submitted their Minority Report on September 26, 2007. Defendant subsequently

improperly designated this Minority Report as “confidential.”

29. Among other reasons detailed in their Minority Report, plaintiffs opposed the Board’s decision to undertake the poll because they believed that it violated the insulation policies in Policy 2-6. Disaffiliation from the UAN involved matters directly impacting the collective bargaining program, since UAN provided national support for NYSNA’s collective bargaining related obligations.

30. At a Board meeting on September 30, 2007, the Board retroactively decided that the plaintiffs’ Minority Report would be deemed to be an amendment to the minutes of the executive session held on August 8th, and therefore the Minority Report could not be made public. This was inconsistent with the Board’s own conduct, as details of the Board’s executive session deliberations were shared by NYSNA’s CEO, Tina Gerardi at the August 15th membership meeting.

31. The Board majority had no legal or procedural basis to retroactively classify the plaintiffs’ Minority Report as confidential. By the Board’s action, plaintiffs were denied a lawful avenue within the organization within which to disseminate their opposing viewpoint.

32. The poll concerning disaffiliation was conducted from August 28, 2007, to September 11, 2007.

33. Plaintiffs and about twenty other nurses formed a group called “NYSNA Nurses for Unity” and actively campaigned against disaffiliation from the UAN. The Nurses for Unity conducted a vigorous campaign, sponsored a website, and issued flyers making the case against disaffiliation.

34. Several NYSNA Board members, including Barbara Crane and Winifred

Kennedy, and NYSNA staff, including its CEO, Tina Gerardi, and Lorraine Seidel, program director of the Economic and General Welfare Program, campaigned strongly in favor of disaffiliation from the UAN.

35. Upon information and belief, NYSNA used its institutional resources to distribute literature, link to its website, and campaign in favor of disaffiliation.

36. The NYSNA leadership complained about the Nurses for Unity's campaign, spuriously asserting that their campaign literature "highlighted" the NYSNA acronym and logo in a misleading way (while at the same time, NYSNA officers were using its institutional resources to campaign in favor of disaffiliation). In addition, NYSNA expended institutional resources to campaign against and discredit the position of the Nurses for Unity.

37. The poll votes were counted on September 18, 2007 and the vote was 2,312 to 1,533 against disaffiliation, with 60% of the members polled voting against disaffiliation.

38. Notwithstanding the 60% majority vote against disaffiliation, the NYSNA leadership continued to plan to disaffiliate from the UAN and took steps to silence the dissent of plaintiffs.

Discipline of Plaintiffs and Scheme to Suppress Dissent

39. In September and October 2007, internal union complaints were filed by various persons against the 23 Nurses for Unity. The complaints stated that the Nurses for Unity engaged in "conduct detrimental" to NYSNA because, in essence, they opposed disaffiliation from UAN and "misused" the name and logo of NYSNA in calling their caucus the "NYSNA Nurses for Unity."

40. Upon information and belief, NYSNA officials encouraged or solicited at least

some of the complaints against the plaintiffs, which contained identical language. And on October 5, 2007, Tina Gerardi, Chief Executive Officer of NYSNA, sent a letter to all NYSNA members suggesting that the Nurses for Unity had tricked members into voting against disaffiliation and implicitly solicited further complaints to be filed against them on the ground that they had acted to the detriment of NYSNA.

41. The complaints were scheduled to be investigated by a NYSNA committee and a determination as to whether formal union charges would be filed was supposed to have been made at the NYSNA Board meeting on November 15, 2007.

42. In October, 2007, the UAN passed a resolution authorizing its payment for the attorney fees for the NYSNA Nurses for Unity in asserting their federally protected free speech rights. Consequently, counsel was retained to represent the Nurses for Unity and wrote several letters to NYSNA advising them that the complaints were illegally premised on protected speech.

43. On November 15, 2007, the NYSNA Board dismissed the complaints against the Nurses for Unity, conceding that the Nurses for Unity would not be disciplined because the wrongful actions alleged (“conduct detrimental” based on the alleged misuse of the NYSNA name and logo) were “protected under the freedom of speech provisions of applicable federal labor law.” Dismissal letters were issued on November 30. However, the dismissal letters went on to state NYSNA’s “outrage” over the behavior of the Nurses for Unity. Plaintiffs and many other Nurses for Unity construed the letters as reprimands, despite the dismissal of the complaints.

44. On the same date as the dismissal letters were issued, NYSNA sent a mailing to each member of the union, explaining that the complaints had been dismissed but that the Board

