

*In re:*

Oregon Federation of Nurses and Health Professionals, Local 5017, AFT, AFL-CIO  
Trusteeship Hearing

**POST-HEARING SUBMISSION of KATHY GEROUX**

This controversy arose in response to letter notice of May 28, 2009, to the AFT that the OFNHP executive board had unanimously decided to disaffiliate from the AFT and sought to do so on amicable terms. The OFNHP later sent a notice to its full membership of a special meeting to be held on July 7, 2009, to discuss whether to disaffiliate. Exhibit H. The meeting was to be followed by a secret mail ballot vote, with ballots to be counted on July 31, 2009. *Id.*

There is no dispute about the OFNHP's right to disaffiliate. The OFNHP's right to disaffiliate is a matter of record:

[O]f course, your local is entitled to leave the AFT, you are entitled to disaffiliate – you just have to do it in a way that is – that the members have a right to know and have informed consent and you have to do it not only based upon real facts, but you have to do it based upon what your local constitution says is the way to do it.

Tr. 22 (Weingarten); to the same effect, see Tr. 29.

The AFT nevertheless imposed a trusteeship by letter of July 5, 2009, “[e]ffective immediately,” without a prior hearing, on the ground that circumstances warranted emergency proceedings. By that notice, all OFNHP officers were immediately removed from office.

The AFT constitution limits its authority to impose a trusteeship to “exceptional and unusual circumstances where an AFT state or local affiliate is incapable of taking adequate remedial measures on its own initiative.” AFT const., art. VI, § 15(a). The AFT constitution expressly limits the purposes for which it may impose a trusteeship to these:

- (i) restoring the rights of members in situations where there has been a significant failure either in election procedures or representation required under the AFT or affiliate constitution(s); or
- (ii) correcting financial malpractice or misappropriation or loss of funds.

*Id.*

The AFT constitution expressly limits imposition of an *emergency* trusteeship to situations requiring immediate action for the purpose of securing and safeguarding an affiliate's assets and vital records from immediate threat, provided that the executive council by a two-thirds vote approves such emergency action within five business days of its having been invoked.

*Id.* § 15(c). The same provision also required a two-thirds vote of the AFT executive board to approve the emergency action within five business days, and within 24 hours thereafter the AFT president was required to appoint a hearing panel. The AFT failed to make its own constitution a part of the trusteeship hearing record.

AFT administrator Mark Richard took over the affairs of the OFNHP and immediately cancelled the scheduled July 7<sup>th</sup> membership meeting. He also immediately instituted an intensive review of the OFNHP's financial records, and ultimately concluded that the deposed leadership had done a commendable job of streamlining the budget, limiting expenses, and generally restoring the Union to financial good health. The AFT did not call him as a witness at the trusteeship hearing. Neither financial malpractice nor misappropriation of funds are charged. It was reiterated on the trusteeship record that "no one, no one is accusing or insinuating or intimating or in any way saying that your local leaders did anything wrong with the books of your local." Tr. 23 (Weingarten).

The charges actually made were:

1. "[T]he OFNHP leadership initiated a process to disaffiliate by planning

to introduce an amendment to the local constitution at a non-regular membership meeting that was scheduled for July” 7<sup>th</sup>;

2. “[L]ocal funds were expended in support of the unconstitutional process to amend the local constitution and bylaws.

3. “[F]unds that were not budgeted were expended in support of the unconstitutional process without the approval of the Executive Board.

4. “The OFNHP membership’s democratic rights were denied when local leadership made a series of false material misrepresentations.

5. “The members of OFNHP were denied the opportunity to hear from the leadership of the AFT regarding the material misrepresentations outlined above, the benefits of affiliation and the consequences of disaffiliation.

6. “Leaving the AFT would put at risk the local’s membership and bargaining strength as part of the coalition of labor unions which bargains with Kaiser Permanente.”

Notice of Hearing, at 1-2.

The OFNHP was notified of these charges and a hearing on them by letter of July 21, 2009. So-called “ground rules” enumerated in this letter included admonitions that the hearing would be “fact-finding and not an adversarial proceeding” (emphasis in original); cross-examination would be “limited” and come “primarily” from the Committee; the role of any legal counsel would be “limited”; and that the rules of evidence would not apply. None of these “limitations” were explained in that letter or at the hearing itself.

The trusteeship hearing record contains no evidence of the required two-thirds approval of the trusteeship by the AFT’s executive board, or of the date of such approval. The notice of hearing, which is not part of the trusteeship hearing record, asserts that such approval occurred on July 11, 2009, a Saturday. However, there is no evidence, such as minutes, of such approval. Nor is there any evidence that the hearing panel was appointed within the ensuing 24 hours. The

OFNHP did not receive notice of the hearing until it received the letter of July 21, 2009 – 11 business days after the emergency trusteeship was imposed.

In its haste to invoke its powerful emergency trusteeship authority, the AFT violated its own constitutional procedures for invoking that authority. It violated its own constitutional deadlines and utterly failed to produce the sort of record of imminent financial catastrophe that its constitution requires to justify emergency proceedings. It failed to produce evidence of any financial catastrophe at all, imminent or otherwise. Had it called its administrator as a witness, and allowed him to be cross-examined, he would have been compelled to disclose that the removed leadership had carefully husbanded the Union's financial resources and managed to improve the Union's bottom line even through the recent deeply challenging economic times.

Before the hearing got underway, OFNHP president Kathy Geroux requested a postponement, to permit sufficient time to obtain the assistance of counsel at the hearing. Her request was denied. After denying that request, and despite the presence and assistance of two attorneys of its own, the trial board failed to provide any guidance about how the hearing would be conducted or any explanation of the mysterious and unexplained "limits" on cross-examination, the rules of evidence, and participation of counsel. The "ground rules" remained undefined.

When Ms. Geroux was given an opportunity to participate in the hearing, she immediately asked to cross-examine the AFT witnesses. But she was denied the opportunity to recall AFT witnesses to the stand, and the trial board instructed her to put her questions to the board itself. The board then acknowledged that it could not answer questions that she wanted to put to Ms. Weingarten. Tr. 125, 127-128. But Ms. Weingarten – the AFT's president and its

principal witness – was not present at the hearing, either in-person or by live video hook-up. Instead, her “testimony” took the form of a pre-recorded video presentation. She was not subject to or available for cross-examination. Ms. Geroux was afforded no right to cross-examine the AFT’s principal witness, a basic violation of her due process rights.

If it was not already clear, it became clear at the hearing that the alleged grounds for the precipitous emergency trusteeship, imposed on the brink of the July 7<sup>th</sup> membership meeting, were a transparent pretext to end the risk of imminent disaffiliation – a purpose that the AFT has acknowledged, as it must, to be unlawful:

A. The AFT cancelled the July 7<sup>th</sup> membership meeting, on the ground that it was “prohibited by the express language of the local Constitution and Bylaws.” Order Establishing Emergency Administratorship, at 3. The accusation is groundless, however. Article 2, § 1 of the local bylaws, referenced by the AFT in its letter, refers only to *regular* membership meetings, requiring five such meetings each year, in March, May, September, and November, and bars such meetings during the month of July. Article 2, § 5 expressly permits the OFNHP president to call a *special* meeting with prior notice. The AFT also failed to make the OFNHP bylaws a part of the trusteeship hearing record.

The notion that a special call informational meeting for a local union’s membership constitutes “exceptional and unusual circumstances” warranting the establishment of a trusteeship, no less an emergency trusteeship without a prior hearing, is certainly novel. This creative interpretation by a parent union of a local affiliate’s bylaws would compel trusteeing a local for scheduling a special call meeting for membership discussion of unscheduled but commonplace emergencies that crop up in unions all of the time, such as needing a quick

decision about how the union should respond to employer bargaining demands. The AFT has no particular expertise or authority to interpret the OFNHP's bylaws, and no precedent for this particular interpretation, reflecting either creatively self-serving and result-oriented bias or shocking unfamiliarity with life in the trenches.

B. The first three charges accuse the OFNHP leadership of several technical violations of its own constitution and bylaws in proceeding toward a *substantive* purpose that the AFT admits to be entirely lawful: introducing a proposed amendment at a “non-regular” membership meeting; spending union funds “in support of the unconstitutional process to amend” – a seemingly significant transgression, but in fact merely an obtuse reference to the expenditure of about \$3,000 required to hold that “non-regular” meeting; and failing to have budgeted those expenditures or to get executive board approval “of the unconstitutional process” – an accusation that was factually erroneous, since the funds to conduct membership meetings – whether regular or special – had been budgeted, and that budget had been approved by the executive board.

If the AFT is genuinely committed to the notion that technical violations that cause no *actual* injuries warrant the drastic and deeply undemocratic exercise of the power of trusteeship, then it should be prepared to live by the same rule, itself. The AFT has committed far more serious procedural violations in imposing this emergency trusteeship than the OFNHP arguably committed in attempting to ensure its members' rights to participate in the disaffiliation decision-making process without causing any actual injury to their economic and bargaining rights in looming major contract negotiations. After all, there is no evidence whatever in the record of the sort of financial wrongdoing required by the AFT constitution for the AFT's resort to

emergency procedures that were used to remove the lawfully elected Union leadership and put an immediate halt to the democratic process in considering disaffiliation. Nor is there any excuse for the AFT's violations of its own clear and unambiguous constitutionally imposed deadlines for the implementation of emergency trusteeships or for its failure to produce evidence of the required two-thirds approval by its executive council.

C. The fourth and fifth charges accuse the OFNHP leadership of "false misrepresentations" to members for the purpose of "stampeding" them into a decision about disaffiliation without the facts, and of denying the AFT any opportunity to correct the record. In fact, however, it is the AFT itself that is guilty of distortion made in its grab for whatever monkey wrenches might be at hand to derail the OFNHP leadership's admittedly lawful and protected substantive purpose. Ms. Weingarten admitted on the trusteeship record that the AFT had engaged in discussions with the UAN about some sort of "dual affiliation" for the OFNHP. These negotiations were in fact held behind the backs of OFNHP leaders. Moreover, the OFNHP was in fact scrupulously accurate in referring to what it knew about a feared deal between the AFT and the SEIU that would involve swapping the OFNHP to the SEIU in exchange for protection from SEIU raiding. The *actual* statement by the OFNHP leadership about the AFT/SEIU discussions, that was made to its leaders as a "talking point," was:

"We do not want to be traded to SEIU or any other union. AFT admitted to an attempt to trade us off to the United American Nurses. This would carve out our nurses from our Pro and Tech bargaining units. They were attempting to set us up with joint membership with AFT and UAN. UAN is a union of RN that separated from the old American Nurses Association. *We also heard from a reliable source that AFT was attempting to trade us to SEIU in exchange for a neutrality agreement with the classified employees in Oregon.*"

Exhibit 4A (emphasis added). The AFT never acknowledges the scrupulously accurate language

of this “talking point.” Instead, it chose to subject the Local and its members to the catastrophic process of trusteeship, supposedly because it took umbrage with the condensed version of this talking point that appears in a Powerpoint presentation prepared for the July 7<sup>th</sup> meeting – and therefore never shown to members<sup>1</sup>

The AFT’s argument that a small local union prevented its large parent union from communicating with the local union members should be embarrassing to the AFT. If Ms. Weingarten wanted to communicate with the OFNHP executive board or its entire membership, *she easily could have done so at any time.* As Ms. Geroux asked the trial board, why didn’t Ms. Weingarten attend the Local’s executive board meeting on June 23, 2009? Tr. 126-128. Had she done so, she could have corrected immediately, on the spot, the leadership’s good faith perception that the AFT was about to pull the rug out from under the OFNHP, by trading it to the SEIU or arranging some sort of dual affiliation. Ms. Geroux of course got no answer to that question, because the hearing panel did not know the answer, and the AFT had carefully constructed Ms. Weingarten’s testimony so that she could not be cross-examined. In fact, as she admitted in her scripted video presentation, it was *true* that the AFT had engaged in discussion with the UAN about dual or joint affiliation, or perhaps was still in the midst of such negotiations.

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<sup>1</sup> AFT is openly seeking a dual affiliation with a healthcare union so as to not have responsibility for a healthcare program (*and has considered trading OFNHP to SEIU*). The organizing project that we used to have (that allowed the Home Health RNs, Professionals, Lab Professionals, PMH RNs, etc. to join our Union) was only achieved under the threat of an OFNHP disaffiliation and has been completely dismantled.

Exhibit J (emphasis added to show challenged language).

If she was unable to make the modest personal investment of time needed to mend the AFT's relationship with the OFNHP leadership, Ms. Weingarten could have sent letters to everyone she sought to reach, by first-class mail. She could have accomplished her purpose by sending out a CD of her carefully scripted "testimony" to the entire OFNHP membership – *before* the July 7<sup>th</sup> meeting. Or, better yet, she could have attended the July 7<sup>th</sup> membership meeting herself, in person. She could have leveled all of her accusations against the elected leadership to their faces, and let the truth come out, in dramatic fashion, before the assembled membership. Apparently, though, she was afraid to make such an appearance, just as she was afraid to submit to cross-examination at the trusteeship hearing – perhaps *because* live confrontation actually would have caused the truth to come out. What the trusteeship record actually shows, when stripped of the histrionics of Mr. Nayman's presentation, is that Ms. Weingarten carefully constructed events to avoid and crush the very sort of free debate and informed choice that she claims to have imposed the trusteeship to protect and nurture.

The final argument for trusteeship is that disaffiliation would adversely affect upcoming important contract negotiations. This argument is perhaps the most offensive of all of them. If the AFT were genuinely committed to protecting the Local's bargaining strength, it would have accepted Ms. Geroux's request for an amicable disaffiliation. It would not attempt to block the OFNHP's continuing participation in the coalition as an independent union – as other previously affiliated locals continued to do after disaffiliating. It would agree to mutually acceptable terms for the OFNHP's reaffiliation with the CNA. Instead, it has trusteeshiped the Local and removed from office the very individuals who are best qualified to handle upcoming contract negotiations. The AFT itself has not handled these negotiations in the past. It is "in over its head" in these local

negotiations. The trusteeship itself is what will cause immense damage to the members' economic welfare.

The evidence of pretext is overwhelming. It is clear that the AFT seized control of the Local on whatever hypertechnical accusations were at hand, for the purpose of scuttling the disaffiliation campaign – a campaign that was lawful, protected activity, that did not in any way violate the AFT constitution. If the purpose of the trusteeship was really to ensure an informed choice by OFNHP members in a disaffiliation vote, then the trusteeship would have been dissolved already and the officers reinstated, since there has been ample opportunity to ensure informed voting. Since the AFT has had the opportunity to accomplish the *stated* purpose of the trusteeship, its constitution *compels* its immediate termination: “The executive council *shall* terminate an administratorship as soon as the cause for its establishment has been remedied.” AFT const., art VI, § 15(e) (emphasis added).

Ms. Geroux respectfully requests the AFT Executive Council to order the immediate termination of the unjustified trusteeship and reinstatement of the elected OFNHP leadership. A trusteeship may be imposed *only* in accordance with the parent union's constitution, and only after a real hearing, having the essential attributes of due process, including the right to cross-examine the parent union's principal witness. Most basically, a trusteeship must have a lawful purpose. Here, the purpose was actually to interfere with and deny the membership's right to informed debate and voting on disaffiliation, a purpose that is unlawful by the AFT's own repeated admissions.

Respectfully submitted,

/s/

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