

review, of course, but it shouldn't be restricted - even in general - without compelling reasons or explicit constitutional directive.

CASE 2011-14
COMPLAINT OF RE DUDLEY REESE AND TE NIEL BECH
VS.
PHILADELPHIA PRESBYTERY

I. SUMMARY OF THE FACTS

04/16/09 The SJC ruled in Cases 2008-1 and 2008-10 that Philadelphia Presbytery did not err when it licensed and later ordained TE Jason Hsu who, during the course of his examinations, stated that he believes the office of Deacon can also be held by women. TE Hsu also affirmed, among other things, that he would not ordain women to the office of Deacon; that he would feel more comfortable with a "Mercy Team" comprised of men and women who are not ordained; but that if the Session of the Church that calls him desires to ordain men as Deacons, he would submit to that. (M37GA176, 178)

In denying these Complaints the SJC stated the following: "We are required to give great deference to the judgment of Presbytery on matters of discretion and judgment best addressed by the court with familiar acquaintance with the events and parties (*BCO* 39-3.3). In the absence of clear evidence that the candidate intends to ordain women to the office of deacon, or that he does not intend to encourage his congregation to nominate qualified men to the office, or that he will refuse to ordain qualified men to the office of deacon when women may not also be ordained, we are required to defer to Presbytery's judgment on this area of inquiry." (M37GA185)

Earlier in its opinion the SJC stated: "[I]f a member of a Presbytery, who during his examination for ordination promised to follow the *BCO* in spite of a personal reservation, subsequently acts in contradiction to the

APPENDIX T

requirement of the *BCO* in this or related provisions, the Presbytery is required to act to bring the member's practices into conformity with our Constitution. A promise to act in accordance with the Constitution is obviously undermined by subsequent activity that violates the Constitution. Similarly, where a candidate asserts a view that differs with the *Book of Church Order*, the Presbytery is free to challenge that candidate as to whether the candidate's view of Scripture is in accord with our system of doctrine." (*M37GA184-185*)

- 03/31/09 An overture was offered calling on Philadelphia Presbytery to uphold the teachings of the *BCO* regarding the Diaconate. An alternative was offered from City Church (the mission church at which TE Hsu served as Assistant Pastor) calling on Presbytery to recognize the validity of six different views of the Diaconate including one that stated "Both men and women serve as equal partners in diaconal ministry and are often described as 'deacon' and 'deaconess' though no one is ordained to this ministry."

A supporting paper was offered that stated the following:

Given the biblical data we find that the *BCO*'s conception of the ordinary office of deacon to be narrower than scripture, and as such a real danger to the church. However, we are grateful that the *BCO* itself does not require the formation of formal diaconates as part of their organization and the language of the *BCO* conceives of situations in which such a formation may not be engaged.

We believe the language of "for any reason" as presently stated [*BCO* 9-2 impossible for any reason] gives us needed freedom to exercise our conscience regarding the teaching of scripture that included women within the office of deacon.

- 04/10 City Church responded to a survey by Presbytery regarding Diaconal practices:

- a) As allowed in *BCO* 5-10 and 9-2 we do not plan to establish a formal diaconate at the time of particularization.

MINUTES OF THE GENERAL ASSEMBLY

- b) Given that the office of deacon is ordinary and perpetual we will seek to establish a formal diaconate at such time as we are “able.” However, for the indefinite future, City Church is a church “in which it is impossible for any reason to secure deacons” (9-2). The main reason is an issue of conscience. Scripture is the only infallible rule of faith and practice, and we believe the *BCO* is more restrictive than Scripture on the issue of women deacons. When the *BCO* has been reconciled with Scripture we will be “able” to form a Board of Deacons. In the meantime, we understand that the *BCO* allows us to function as an organized church without a formal diaconate, and permits us to address diaconal needs under the oversight of the Session.

Complainants and Respondents disagree on the extent to which TE Hsu was involved in the preparation of these documents from City Church.

11/13/10 A Special Committee of Presbytery reported. The Committee was established at the January meeting of Presbytery to consider a Complaint from RE Mark Grasso against Presbytery’s actions at the November 14, 2009, Stated Meeting wherein it refused to allow a Dissent by RE Reese and TE Bech to be recorded. The Committee recommended a series of procedures for better handling Dissents, Protests, Complaints, and Objections. They also recommended that a series of Dissents, Protests, Complaints, and Objections from 2009 and 2010 be recorded in Presbytery’s Minutes. These documents had not been previously recorded because they were ruled out of order for various reasons at the time they were offered.

05/14/11 A motion was made that Presbytery “appoint the Coordinating team [*sic*] to act as a commission of presbytery, and approve the transition of a TE within our Presbytery to a new call at CityLine [*sic*] Church.” Presbytery’s minutes report that the candidate would be preaching his candidating sermon the following day, that he had the unanimous support of the CityLine [*sic*] Pulpit

APPENDIX T

Committee and Session, and that his name was not being publicized because he was currently serving a church within the Presbytery.

Apparently this motion was opposed by some on the grounds that they were not willing to vote to establish a Commission to approve a call for an unnamed individual. Presbytery then adopted a motion to recess until the evening of May 26 “when his candidacy and call will be voted upon by Presbytery.”

- 05/22/11 The Stated Clerk informed Presbytery by e-mail that City Line Church had voted unanimously to call TE Jason Hsu (the unnamed TE above) as their next Pastor.
- 05/23/11 RE Reese notified the Stated Clerk of his understanding that it would be improper for Presbytery to act on TE Hsu’s call at the reconvened meeting on May 26 since the call was not before Presbytery at the May 14 Stated Meeting.
- 05/24/11 The Stated Clerk announced the cancellation of the meeting scheduled to reconvene on May 26 and announced a properly Called Meeting to be held on June 3, 2011. The meeting was called for the purposes of adjourning the May 14 Stated Meeting; approving the call to TE Hsu; approving his resignation as Assistant Pastor of City Church; and establishing a Commission to install him at City Line Church. The call ends with the following sentence. “As with others [*sic*] members in good standing who transfer within our Presbytery, there will be no examination or questioning of the candidate.”
- 06/03/11 Presbytery took up the call from City Line Church to TE Hsu. The Minutes state “TE Hsu was not reexamined according to his views and exceptions as they have not changed since his reception as a member of the court.” TE Bech and RE Reese sought to ask questions concerning the practices of City Church and City Line Church regarding the Diaconate; whether the City Line Pulpit Committee had knowledge of TE Hsu’s views on the Diaconate; and on TE Hsu’s views on the Diaconate. The Moderator declared each of these questions to be out of order. In each case the ruling

MINUTES OF THE GENERAL ASSEMBLY

was challenged and sustained. The call to TE Hsu was approved, and TE Hsu was later installed as Pastor of City Line Church.

07/02/11 RE Reese e-mailed the Stated Clerk to take issue with the statement in the draft minutes of the June 3 Meeting that asserted that TE Hsu's views had not changed. RE Reese argued that nothing that happened in the meeting demonstrated this.

07/02/11 RE Reese and TE Bech complained against Presbytery's actions at its Meeting of June 3. In particular they contended that Presbytery's unwillingness to allow any questions of TE Hsu or City Line Church made it impossible to determine if TE Hsu's views have changed or if he intends to follow the directives of the SJC in Cases 2008-1 and 2008-10. They further asserted that it appears that TE Hsu's views on the Diaconate have changed and that he does not intend to ordain men as Deacons until the *BCO* is changed. They noted that if these assertions are true, qualified men will be denied the right to serve as Deacons; the Members of the Congregation will be denied their right to vote on qualified Deacons; and the Presbytery would be failing to follow the directives in Cases 2008-1 and 2008-10. Complainants then asked for a series of amends that entailed a) removing TE Hsu from office until he confirms that he will conform his practices to the Constitution of the PCA and the directives of Cases 2008-1 and 2008-10; and b) that Philadelphia Presbytery confirm its commitment to conforming the practices of its member churches and Teaching Elders to the *BCO*.

09/21/11 Presbytery took up, in Executive Session, the Complaint of RE Reese and TE Bech. TE Chris O'Brien, representing the Coordinating Team of Presbytery, asked the Moderator to rule the Complaint out of order on the grounds that "*Motions that are in conflict with the corporate charter, constitution, or bylaws of a society*' are out of order. (**Robert's Rules of Order**, Tenth Edition, pg. 332)." [Italics and bolding are from the original document.]

In support of this motion the Coordinating Team asserted that while it may be proper to complain under *BCO* 13-6 that

a TE transferring between churches within a Presbytery was not examined, this Complaint violates the Constitution of the PCA in that accusations are made against TE Hsu in violation of *BCO* 34, and the proposed amends include the removal of TE Hsu without process in violation of *BCO* 31-38. They further argued that the charges are “baseless” in that TE Hsu has not practiced anything contrary to his vows because, as an Assistant Pastor, he was not a voting member of the Session of City Church.

The Moderator did not rule on the point of order. Rather, he put it directly to the body. After debate the motion to declare the Complaint out of order was sustained.

10/21/11 RE Reese and TE Bech filed their Complaint with the General Assembly.

II. STATEMENT OF THE ISSUE

Did Philadelphia Presbytery err at its September 21, 2011, Meeting when it declared the Complaint of RE Reese and TE Bech to be out of order?

III. JUDGMENT

Yes.

IV. REASONING AND OPINION

Philadelphia Presbytery erred in ruling the Complaint out of order on the basis of a misapplication of Robert’s Rules of Order (see Summary of Facts at 09/21/2011).

Presbytery declared the Complaint to be out of order based on the rationale that the Complaint violated the Constitution because, in the opinion of Presbytery, the Complaint included accusations made against a Teaching Elder contrary to *BCO* 34, as well as requested amends that would be contrary to *BCO* 31-38. When Philadelphia Presbytery refused to take up the merits of the Complaint (or allow opportunity for the Complaint to be amended), the other issues of error raised in the Complaint were not addressed. Those remaining issues of error pertained to the actions of Presbytery at its June 3, 2011, Meeting where

it sustained all of the Chair's rulings on questions pertaining to the pastoral call from City Line Church to TE Hsu as being out of order.

While there is no Constitutional obligation to re-examine a Minister who is receiving a call to another church within his own Presbytery, there is certainly no constitutional prohibition against asking him or the Session of the particular church issuing the call pertinent questions that may aid the Presbytery in determining if such a call is to be deemed "for the good of the Church" (*BCO* 21-1). In fact, that is a determination that must be made by Presbytery prior to placing the call in the hands of the person to whom it is addressed. Moreover, in cases involving transfer, *BCO* 20-10 explicitly asserts the right of Presbytery to hear all the parties involved in the prosecution of a call, together with its obligation to dispose of the call "as it shall appear most beneficial for the peace and edification of the Church at large." Such rights and obligations would certainly seem to encourage that questions be asked and answered rather than prohibited. This is particularly true in light of the rationale in SJC Cases 2008-1 and 2008-10, and the views that were expressed to Philadelphia Presbytery by the Session of City Church, where TE Hsu had been serving as Assistant Pastor.

BCO 43-2 requires that a Complaint against an action or decision of a Court also include "supporting reasons" for the Complaint. In this case, many of the supporting reasons and at least some of the requested amends found in the Complaint were deemed by Presbytery to be objectionable. Consequently, they chose to rule the entire Complaint out of order. Deeming parts of a Complaint objectionable is not sufficient grounds for declaring the whole to be out of order. It should be noted that when any Complaint is taken up by a Court, it is not bound by the Complainant's requested amends and may consider them as advisory only. Moreover, even if supporting reasons offered by a Complainant are deemed insufficient or inapplicable, the Complaint must still be processed if it meets the requirements of *BCO* 43 as noted above.

By their own admission, Presbytery has in the past too readily ruled out of order proper Dissents, Protests, Complaints, and Objections. (See Minutes of the November 13, 2010, Meeting of Presbytery, pp. 2-15) In making this admission Presbytery properly recognized that Dissents, Protests, Complaints, and Objections are important parts of Presbyterian polity and are crucial to maintaining the rights of the minority on any

given action. Thus, for example, the Special Committee charged with reviewing how Presbytery should deal with Dissents, etc. concluded,

We believe presbytery should take seriously Mr. Grasso's admonition at the end of his complaint:

Dissents are about the minority recording their disagreements about something important to them. It is neither fair-minded nor Godly to rule whatever the minority does as out of order merely because the majority has the votes to do so. This is not right, and does not please God. The minority has a constitutional right to express its views through dissent . . .

These words express what is at the heart of the various forms of complaints, which is allowing the voice of the minority to be heard.

(Minutes of Philadelphia Presbytery, November 13, 2010, page 4)

Unfortunately, when Presbytery acted to rule out of order the Complaint of RE Reese and TE Bech because Presbytery decided that some of the supporting reasons and the proposed amends were not appropriate, it undercut the very principles of minority rights it had previously recognized. If upheld, that action would prevent either Presbytery or the General Assembly from dealing with the legitimate issues that were raised in the Complaint. It is for this reason that the Complaint is sustained.

We do, however, concur with Presbytery's conclusion that the amends sought by the Complainants are not appropriate. If anyone believes that a Teaching Elder or Session is not acting in accordance with the Constitution of the PCA (and in the absence of evidence to the contrary we must assume that they are), he must deal with such error through the procedures found in *BCO* 31, 32, and 34. In particular, the complaint process cannot be used to remove a properly ordained and installed Teaching Elder from an approved call.

Given that RE Reese and TE Bech (and perhaps other presbyters) were prohibited from asking questions they deemed necessary to determine whether the call was "for the good of the church," and given that Philadelphia Presbytery cannot now rescind TE Hsu's installation, there are at least four constitutional means for redress should anyone find it necessary:

MINUTES OF THE GENERAL ASSEMBLY

- 1) If anyone believes that a minister is violating the *BCO* and thereby violating his vow to submit to his brethren, he should bring it to the attention of some minister of the presbytery (*BCO* 34-3), or the presbytery committee responsible for oversight of ministers (like a shepherding committee), or he should draft and file charges with presbytery on the matter.
- 2) If anyone believes a session is violating the *BCO* or is guilty of an “important delinquency” or a “grossly unconstitutional proceeding” he should take advantage of the avenue provided in *BCO* 40-5 and report it to the presbytery.
- 3) When Philadelphia Presbytery annually reviews session records, presbyters may-insist that it give particular attention to how the City Line session is complying with the *BCO* with respect to the polity questions raised in the complaint.
- 4) Based upon the "reports" set forth in the Complaint, a presbyter may seek a *BCO* 31-2 investigation of TE Hsu.

The summary of the facts was written by RE Frederick Neikirk. The Statement of the Issues and Reasoning and Opinion were written by TE Danny Shuffield with input from the members of the Panel. The whole was adopted as amended by the Panel 3-0-0. The Panel members were TE Paul Fowler (chairman), TE Danny Shuffield, and RE Frederick Neikirk, with alternates TE Steve Meyerhoff and RE Dan Carrell.

The Decision in Case 2011-14 was adopted by a vote of 18 Concurring, 1 Dissenting, 5 Absent.

Barker Absent	Donahoe <i>Concur</i>	McGowan Absent
Bise <i>Concur</i>	Duncan <i>Concur</i>	Meyerhoff <i>Concur</i>
Burkhalter <i>Concur</i>	Fowler <i>Dissent</i>	Neikirk <i>Concur</i>
Burnett <i>Concur</i>	Greco <i>Concur</i>	Nusbaum <i>Concur</i>
Cannata <i>Concur</i>	Gunn <i>Concur</i>	Pickering <i>Concur</i>
Carrell <i>Concur</i>	Haigler Absent	Terrell <i>Concur</i>
Chapell <i>Concur</i>	Kooistra <i>Concur</i>	White <i>Concur</i>
Coffin <i>Concur</i>	Lyle Absent	Wilson Absent

Concurring Opinion
Case 2011-14 - Complaint of RE Dudley Reese and TE Niel Bech
vs. Philadelphia Presbytery
RE Frederick Neikirk

I wholeheartedly concur with the judgment in this Case. I believe, however, that the Standing Judicial Commission did not go far enough in the amends it required. This concurring opinion is filed to set forth what I believe would have been a more just amends.

The Record, and the Reasoning and Opinion adopted by the SJC, make it clear that individual Presbyters, who were clearly a minority within the Presbytery, “were prohibited from asking questions they deemed necessary to determine whether the call [to a teaching elder] was ‘for the good of the church.’” The SJC, after properly noting that Philadelphia Presbytery cannot now rescind the call and installation, then laid out four “constitutional means of redress.” I agree that these four constitute possible means by which this matter could be redressed. The problem, however, is that all of them put the responsibility on individual presbyters who might continue to have concerns or questions about the underlying issues in the case. Presumably, the presbyters most likely to have such ongoing concerns are the very members of the minority who were wronged originally. In other words, the practical effect of the amends set forth by the SJC is to require that corrective action be driven by the individuals who were wronged, rather than by the offending party, in this case the Presbytery.

I believe Scripture is clear that when one party has wronged another the onus is on the offending party to take the lead in rectifying the matter. We see this principle set forth in Matthew 5:21-24. Further, specific applications of this principle are provided by the various “restitution requirements” that run through Exodus 21:12-23:9.¹ Finally, it is important to note that this requirement is particularly stressed when the party that has been wronged is “weak,” which I would take to be an apt description of a consistent minority in a Presbytery. (See, for example, Psalm 82:1-4 and Exodus 22:21-27.)

¹ Note that this analysis does not turn on the question of whether the specific applications embodied in this passage continue. My point is simply that the applications that are provided here are consistent with the principle that the responsibility to making amends rests on the offending party, not the party that was wronged.

Therefore, while not disagreeing that any of the “remedies” specified by the SJC are allowable, I believe the Court should have gone further and also included the amends proposed by the Panel, that being that Presbytery be instructed to ascertain and record (with supporting evidence), at its next review of Sessional Records, whether the Teaching Elder is complying with the Constitution of the PCA and the rulings in Cases 2008-1 and 2008-10. In my view, this directive would be more in keeping with Biblical standards of justice. It would also have the effect of providing answers to the questions the Complainants originally sought to propose. In so doing Presbytery would also take a big step toward ending any lingering questions as to whether the SJC’s rulings in the aforementioned cases were being followed. I believe this would be healthy both for the Teaching Elder and the Church.

I offer this concurring opinion in the hope that Presbytery would consider whether its Biblical responsibility to promote justice requires it to go further than the amends set forth by the SJC require. Above all, it is my prayer that such a consideration will promote the peace and purity of the Church, and that Christ would be exalted in whatever actions are taken.

Dissenting Opinion
Case 2011-14 - Complaint of RE Dudley Reese and TE Niel Bech
vs. Philadelphia Presbytery
TE Paul B. Fowler

As one who recorded his negative vote to The Reasoning and Opinion of Case 2011-14, I wish to have this Dissenting Opinion recorded as well. My rationale is well expressed in the Concurring Opinion written by RE Frederick Neikirk, with this caveat. Those parties who brought their concerns to the court are, in my understanding, no longer in Philadelphia Presbytery, and they are therefore unable to respond to the amends. Moreover, the amends should be directed toward the offending party, Philadelphia Presbytery.