

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
JEAN ISAKSON)	CASE NO. 3786-D-81-29
For determination of a dispute)	
concerning union security arising)	DECISION NO. 2075 - EDUC
under a collective bargaining)	
agreement between:)	
TACOMA ASSOCIATION OF CLASSROOM)	FINDINGS OF FACT,
TEACHERS/WEA/NEA)	CONCLUSIONS OF LAW
)	AND ORDER
and)	
TACOMA SCHOOL DISTRICT)	

Jean Isakson appeared pro se at hearing. Williams and Terry, by John David Terry, II, Attorney at Law, submitted a post-hearing brief for the petitioner.

Durning, Webster and Lonnquist, by Mark E. Brennan, Attorney at Law, appeared on behalf of the union.

Neil Hanson, Director of Employee Relations, appeared on behalf of the employer.

On October 26, 1981, Jean Isakson filed a petition with the Public Employment Relations Commission (PERC), seeking determination pursuant to the provisions of Chapter 391-95 WAC of a dispute concerning her obligations under a union security provision contained in a collective bargaining agreement between the Tacoma Association of Classroom Teachers (TACT or association) and the Tacoma School District (district). The petitioner was subsequently requested to submit an amended petition using PERC forms, which she did on March 26, 1982. A pre-hearing conference was held in the matter on April 27, 1982. On May 3, 1982, the decision of the Washington Supreme Court in Grant v. Spellman, 91 Wn.2d 954 (1981) (GRANT I) was remanded by the United States Supreme Court for reconsideration. Thereupon, PERC held in abeyance this and all other cases pending before it on religious objections issues. The parties to this proceeding were notified by letter dated June 14, 1982 that the processing of the case would be delayed. Following the issuance of Grant v. Spellman, 99 Wn.2d 815 (1983) (GRANT II), PERC resumed the processing of this and similar cases.^{1/}

^{1/} For a more complete history of the actions of the courts, see: Central Valley School District, Decision 925-B (EDUC, 1984) and Edmonds School District, Decision 1239-A (EDUC, 1983).

On July 12, 1983, the association was invited to submit its current position on Isakson's claim, in light of the decision in Grant II. On July 27, 1983, the association responded to the Commission^{2/} and requested that a hearing be held in the matter. Hearing was held on April 26, 1984, before Martha M. Nicoloff, Hearing Officer. The parties filed post-hearing briefs.

BACKGROUND

Since 1969, Jean Isakson has been a non-supervisory certificated employee of the district, employed as a teacher at Hunt Junior High School. Her position is within the bargaining unit for which TACT is the exclusive bargaining representative.

While TACT and the district have a long-standing bargaining relationship, it was not until 1981 that those parties agreed on an agency shop provision. Their collective bargaining agreement for the term of September 1, 1981 through August 31, 1984 provided that a vote of the teachers would determine whether they wished to authorize an agency shop provision. A referendum was conducted in which the teachers did authorize such a provision, and the following language went into effect:

Article IV, D.

Representation Fee

No employee will be required to join the Association; however, those employees who are not Association members but are members of the bargaining unit will have deducted from their salaries a representation fee. The District is authorized to deduct the required amount from each monthly paycheck. The amount of the representation fee will be determined by the Association and communicated to the Business Office in writing. The representation fee shall be an amount less than the regular dues for the Association membership in that non-members shall be neither required nor allowed to make a political (PULSE or NEA-PAC) deduction. The representation fee shall be regarded as fair compensation and reimbursement to the Association for fulfilling its legal obligation to represent all members of the bargaining unit. (Reference 41.59.090).

In the event that the representation fee is regarded by an employee as a violation of their right to non-association, such bonafide (sic) objections will be resolved according to the provisions of RCW 41.59.100, and Chapter 391-95 WAC.

On September 28, 1981, Isakson requested the TACT to exempt her from the union security obligation of the contract. On October 15, 1981,

^{2/} Isakson testified, without contradiction, that she was never served with the association's response.

the association denied her request. She thereupon filed the petition in this case with the Commission, by letter with the previous correspondence attached.

At the time Isakson requested exemption, she designated the Pierce County Association of the Blind as the charity to which she would be willing to have her alternative contribution paid. At hearing, the parties stipulated to that charity in the event Isakson's exemption is granted.

POSITIONS OF THE PARTIES

The petitioner claims that she has developed a record which shows that she meets the standards enunciated by the Commission in Edmonds School District, Decision 1239-A (EDUC, 1983) for granting religious exemptions from union security obligations. She claims her beliefs are religious-based, genuine and in good faith. She requests that her petition be granted, and that she be awarded reasonable attorney's fees. In the event that her exemption is not granted based upon this record, she moves that the Commission reopen the hearing in order to clarify the record, in view of the fact that she appeared at hearing without benefit of counsel.

The association claims that Isakson has not met her burden of proof, and that her exemption should not be granted. Citing Mukilteo School District, Decision 1323-B (EDUC, 1984), the association asserts that the petitioner must set forth the specific religious convictions upon which she relies, and that her statement that her claim is based upon religious conviction does not, of itself, suffice. It claims that Isakson's exemption request is based upon her perception that the association is militant, rather than on the fact that it is a labor organization, and cites Abood v. Detroit Board of Education, 431 U.S. 209, 52 L. Ed. 2d 261, 97 S. Ct. 1782 (1977) in support of its claim that her objection does not meet the statutory criteria.

The district was represented at hearing, but took no position in the matter.

DISCUSSION

The Motion to Reopen Hearing

The petitioner appeared pro se at the hearing. She thereafter retained her present legal counsel to submit a post-hearing brief on her behalf. We now have a motion by counsel that the hearing be reopened to allow the record to be augmented. Citing Isakson's pro se appearance at the hearing, counsel questions whether an effective waiver of her constitutional right to counsel

has been made and whether her constitutional right to due process may have been infringed. The claim of a denial of due process of law is taken seriously, and so the entire case file has been carefully examined.

In her amended petition filed on March 26, 1982, Isakson listed a Kevin Washburn, an attorney located in Oakland, California, in the space provided for her "agent or attorney." The April 13, 1982 letter setting the pre-hearing conference was directed to Washburn, with a copy to Ms. Isakson. The petitioner appeared without counsel at the pre-hearing conference held on April 27, 1982, although she was accompanied by the minister of the church to which she then belonged. Isakson signed a letter dated April 29, 1982 and, filed on May 4, 1982, wherein she complained of the handling of the pre-hearing conference. On review of that correspondence, it is noted that there is no reference or copy to Washburn. PERC continued, however, absent instructions to the contrary, to carry Mr. Washburn as counsel of record for the petitioner. The June 14, 1982 letter advising of the delay of proceedings was directed to him, as was the February 27, 1984 notice setting hearing on the matter. The petitioner signed letters dated February 29 and March 2, 1984 which were filed with PERC on March 7, 1984. On March 15, 1984, Isakson advised the hearing officer that Washburn was no longer her attorney. At the outset of the hearing, the petitioner's husband made a statement on her behalf for the record, including reference to counsel for TACT and then continuing:

We are obviously not professionally trained to compete in this arena and we feel that it's -- we're a little bit outmanned, but we will do our best to present our side.

Transcript, page 10.

The hearing officer thereupon recited for the record her previous offer of an opportunity to request a continuance. Mr. Isakson confirmed the petitioner's choice to proceed at that time.

The petitioner is permitted, but not required, to be represented by legal counsel in proceedings before PERC. The claimed constitutional right to counsel applies in criminal proceedings, which this is not. The record in this case shows that Isakson was given the opportunity to request a continuance in order to retain counsel, and that she chose to proceed pro se. Individuals choosing to proceed without counsel do so at their own peril. Mukilteo School District, Decision 1323-B (EDUC, 1984).

The amended petition filed on March 26, 1982 was submitted on a form promulgated by the Commission. The reverse side of the form sets forth instructions, the first of which encourages parties to familiarize themselves with Chapter 391-95 WAC. WAC 391-08-120, which requires service of all documents on opposing parties, is also set forth (with emphasis) on the reverse side of the petition form.

The April 13, 1982 letter setting the pre-hearing conference stated, in relevant part:

The purpose of the conference is to determine the respective positions of the parties regarding this matter, to obtain stipulations of agreed to facts, and to identify the issues, if any, on which a formal hearing may be necessary.

In name, in the rules, and in fact, this exercise was only a preliminary step in the processing of the case. It was clear that the dispute was not resolved at the pre-hearing conference. In quick succession thereafter, the petitioner objected to the entire pre-hearing procedure, the applicable legal standard was thrown into question by the decision of the U. S. Supreme Court, and the Commission put the case on hold.

A year went by before the Grant II decision came down from the state Supreme Court. The July 12, 1983 letter to TACT indicated a process of "re-evaluation" of all pending union security cases and solicited a position from the association in light of the Grant II decision. There was nothing in that letter which indicated that the case had been or would be decided by the Commission without further proceedings. TACT was specifically directed to serve a copy of its response on the other parties, and would have been obliged in any event to do so by WAC 391-08-120. Responding to similar letters sent on two similar cases, counsel for the Washington Education Association volunteered responses on the several Tacoma School District cases then pending, requesting hearings on all cases. Copies of that response were indicated to ten (10) named individuals but, on close examination, not to the petitioner. TACT never responded directly.

The hearing officer issued a "NOTICE OF HEARING" on February 27, 1984, setting a "public hearing" for April 19, 1984. That notice contained the following.

At the time and place specified above, the parties have the right to appear in person or otherwise and give testimony. The parties are requested to have available for examination at the hearing any documents which may be pertinent.

Prior to receiving the notice of hearing, the petitioner had authored the first three (3) pages of a letter to the Commission wherein she made reference to the July 12, 1983 request for a position from TACT, made reference to the notices of hearing issued in certain other Tacoma School District union security cases, and reiterated her complaints about the pre-hearing conference held in 1982. She asked, "Am I vindicated in my position as stated in my petition...", but also asked for immediate notice if she was

to be given a "determination hearing." A fourth page appended to the February 29, 1984 letter and a separate March 2, 1984 letter (all received by PERC on March 7, 1984) acknowledged receipt of the notice of hearing and complained that the date set was in conflict with her plans for spring vacation. The response issued on March 13, 1984 invited the petitioner to contact the hearing officer for a continuance, after indicating that "individualized analysis of the claims ... will be required" under the changed legal standard of Grant II. Responding to the repeated objections concerning the pre-hearing conference, it was noted that the legal standard had changed and that the case had been reassigned within the agency staff. The petitioner sought and was granted a change of hearing date. The amended notice of hearing issued on March 20, 1984 reiterated the right to "give testimony" at the hearing.

The omission on the part of TACT, by failing to serve a copy of its response on the petitioner in July, 1983, was clearly in violation of WAC 391-08-120.^{3/} This omission was called to the attention of the hearing officer in the statement made on behalf of the petitioner at the outset of the hearing. Enforcement of the rules of the Commission and considerations of due process of law would have justified a continuance at the request of the petitioner, even over the objection of TACT. The record reflects that the petitioner was offered such a continuance and that she chose to proceed. In the context of a proceeding conducted pursuant to rules set forth in the Washington Administrative Code (WAC), reiteration of the reference to those rules in the form used to file the amended petition, pre-hearing procedures which clearly looked ahead to a hearing prior to a determination, the petitioner's own objections to the pre-hearing conference, a notice of hearing setting forth the right to give testimony and present documentary evidence, a letter in which the petitioner appeared to clearly differentiate between a "vindication" of her position on the one hand and a "determination hearing" on the other hand, and in light of the petitioner's indicated readiness to proceed, the hearing officer was hardly in a position to preclude the petitioner from going ahead with her case.

A party is not entitled to reopening of a hearing absent showing of newly-discovered evidence or other good cause. There has been no such claim or showing in this case. The motion to reopen the hearing is denied. There is no bar which prevents Isakson from filing a subsequent case seeking exemption

^{3/} Current review of the case file discloses that the petitioner may also have ignored WAC 391-08-120, as neither the document filed with the Commission in April, 1982 nor the documents filed on March 7, 1984 indicate, on their face, that a copy was served on TACT or its counsel. The trading of insults is not to be encouraged. Neither omission excuses the other.

from the date of filing forward, but it is concluded that she has waived her rights in the present case beyond the point of return, such that reopening would prejudice the other parties in this case.

The Merits of the Case

In Edmonds School District, Decision 1239-A (EDUC, 1983), the Commission developed alternative tests for determining whether church-supported or personally held beliefs meet the test for exemption. Isakson does not claim to be pursuing her case on the basis of direct church teachings, and her claim must therefore be examined under the two-part test for personally held religious beliefs, to wit:

If the claim is personally held, and not supported by church teachings, the claimant should demonstrate:

1. his or her religious objection to union membership,
and
2. that the religious nature of the objection is genuine
and in good faith.

The petitioner stated at the outset of the hearing that she would not discuss her actual religious beliefs and values, that they were a private matter between herself and God. She testified that she had discussed her objections to TACT with her clergyman. Isakson claimed that a letter from the minister of Mt. Cross Lutheran Church, which accompanied her petition and was offered in evidence (stating that he believed her objections to be religious), should suffice. The clergyman was not called as a witness at the hearing. TACT stipulated to the authenticity of the document and its admission in evidence, but objected to acceptance of the hearsay statements contained therein to prove the truth of the matters asserted.

The petitioner's initial refusal to divulge any specifics of her religious beliefs placed her squarely within the rule of Mukilteo, supra. Had she continued in that vein, her exemption would necessarily have been denied. However, under cross-examination by the union and examination by the hearing officer, Isakson did offer some explanation of the basis of her claim.

Isakson testified that she was brought up by a professional educator in the "small town America" atmosphere of Aberdeen, Washington, where God, country and family were the important values stressed. She testified that she was taught to follow the law of the land and to be a good citizen. She was awarded, and was deeply impressed by, a good citizenship award. She was raised with the belief that teachers ought not strike. Her family attended the Presbyterian church when she was a child. She attended church regularly.

As an adult, Isakson first worked as a medical technologist at Good Samaritan Hospital where, she testified, she represented herself in any salary discussions with her employer. At the time she became a teacher with the Tacoma School District, she was affiliated with Bethel Lutheran Church, a congregation of the Lutheran Church in America. At the outset of her employment, Isakson joined the TACT, although she was not required to do so, because she "believed they were a professional organization".

Although she was not able to recall specifically for what period of time she continued to be a member of TACT, Isakson indicated at one point in her testimony that she believed it to be approximately one and one-half to two years. At another point in her testimony, she indicated that she dropped her membership in TACT just prior to the first teacher strike at the district.^{4/} At that time, she became upset by the "militance" of the organization, in that its members were discussing the possibility of a strike and she perceived that its presentations to the teachers were like "brainwashing". She became disturbed by the "tremendous swaying power" of TACT. Isakson joined the National Association of Professional Educators, which she found to be a "more professional" organization. She crossed the picket line and worked during the 1974 strike and did so again in 1978, when the Tacoma teachers again struck. In 1981, Isakson was offended at the tactics used by TACT in the union security referendum which activated the agency shop provision, believing that TACT and its supporters would say or do anything to sway people to their position. She was "nauseated" that she might be forced against her will to pay fees to TACT.

At the time of the union security referendum, Isakson was a member of Mt. Cross Lutheran Church, also affiliated with the Lutheran Church in America. By the time of the hearing, Isakson had resumed her affiliation with Bethel Lutheran Church. Isakson has been an active church member at both Mt. Cross and Bethel. She attends church regularly, and has performed a variety of functions to assist in church programs and administration. At Mt. Cross, she was in charge of the vacation Bible school program and assisted at Sunday school. She had helped with Christmas programs and at the time of hearing was attending a class at Bethel regarding the meaning of Communion.

It is clear from the petitioner's statement under oath at the hearing that she believes that she cannot support a "militant" organization or one which engages in strikes. She also strongly objects to being required to pay to an organization when she does not choose to do so. She claims no basic objection to unions in general, but would have to evaluate whether she could

^{4/} Doug Suhm, a representative of TACT, testified that the first teacher strike in Tacoma occurred in 1974.

belong to a different organization, since she is so perturbed by TACT. At one point in her testimony, she questioned whether TACT was really a labor organization. She offered that she might be able to support TACT if it were to support binding (interest) arbitration rather than strikes as a means of resolving contract disputes.

Isakson testified that, as a Lutheran, she is taught that she is created in God's image, that she is given a mind and a conscience with which to think and make decisions, and that the church will support her decisions. The trouble with this is that it merely invokes the permission of the church to think and does not indicate that she has any guidance whatever from her church or its tenets^{5/} or teachings that contributes to her conclusion about TACT. When questioned regarding any specific religious readings or religious teachings which led her to her beliefs, she continually cited the way she was brought up --to be a good citizen, follow the letter of the law. Frequently, she claimed difficulty in separating "the way she was brought up" into any specific religious versus secular components. Typical is the following exchange found at page 82 of the transcript:

(Isakson, on examination by the hearing officer)

- Q. I understand that -- your testimony to be that the Lutheran Church does not have a specific tenet that speaks to membership in a labor organization.
- A. On anything. They don't have tenets. Tenets are for cults.
- Q. Specifically, though, can you amplify upon what it was in the church or in your religious study or examination which led you to the conclusions that you have reached?
- A. Itself probably -- How can you separate the way you were brought up, going to church all the time, what your parents have taught you, who were professional educators at the time --My father taught for 42 years -- From --How can you pinpoint that? It's all part of the one person. I cannot just say this, this, this and this. It's just part of me.
- Q. You're specifically against the militancy and strikes. Can you -- Is it possible for you to cite what in your religious background brought you to that belief?

^{5/} The Random House Dictionary of the English Language (Unabridged) defines tenet as: "Any opinion, principle, doctrine, dogma, etc., held as true."

- A. Totally the way I was brought up. My father was teacher for 42 years. At that time I was a member of the Presbyterian Church, which is again a Christian type church. And, of course, I had heard all my life that teachers don't strike.... I will say that I more or less probably am similar to, if you want to go along with someone in the Bible, Apostle Paul, who was a Roman citizen. He did not go against any of the laws at the time and he did his teaching of Jesus Christ within the law of the land. And I consider myself similar to him because he was educated, he was versed in many things and that he was a citizen of that -- He was a Roman citizen. And I feel, as a citizen of this country, that I did not go against the laws of the land and so I cannot, in good conscience or belief, belong to an organization that at a moment's call, if it suits their purpose, go against what is called the law of the land or a court ruling.
- Q. Is it correct to characterize your saying that it was the entirety of the way that you were brought up including --
- A. (Interposing) Always at church and Sunday school.
- Q. (Continuing) Including that your family went to church and you were raised in a family which attended a Christian church, is it fair to characterize your testimony that that is the basis for your decisions rather than any reading, Biblical or otherwise, that you would characterize as religious, which have led you to that?
- A. I think it is both. Right now I can't think of any because I am basically a nervous wreck. But it's both. Jesus did not break any laws. He followed the -- He did what was legal at that time. He did not break any laws. I feel that that is an example and there are all kinds of things in the New Testament that he said that -- again, I don't have my doctrine (sic) in theology, but these different things that are part of my being a member of the Lutheran Church.

In Grant II the supreme court put the burden on an employee seeking exemption from obligations under a union security agreement to come forward with evidence to demonstrate the religious basis for their objection to union membership. The petitioner clearly has had long-standing religious affiliations and activities. Her sincerity is not in question. The petitioner was unable or unwilling, however, to come forward with evidence of study which she has made or teachings which she had heard in support of her claim. Isakson was taught by her parents that strikes by teachers were wrong. Clearly, she was taught to be a "good citizen". While commendable, secular teachings arriving at the same conclusion would not qualify her under the statutory "religious" standard. The petitioner has failed to demonstrate, despite extensive questioning by the hearing officer, the necessary nexus between her objection to union membership and her religious beliefs.

FINDINGS OF FACT

1. Tacoma School District No. 10 is a school district of the State of Washington created pursuant to Title 28A RCW, and is an employer within the meaning of RCW 41.59.020(5).
2. The Tacoma Association of Classroom Teachers, an employee organization within the meaning of RCW 41.59.020(1), has been recognized by Tacoma School District No. 10 as exclusive bargaining representative of non-supervisory certificated employees of the district.
3. Since 1969, Jean Isakson has been a non-supervisory certificated employee of Tacoma School District No. 10, employed within the bargaining unit represented by the Tacoma Association of Classroom Teachers.
4. In 1981, Tacoma School District No. 10 and the Tacoma Association of Classroom Teachers entered into a collective bargaining agreement which contained an agency shop provision requiring employees within the bargaining unit who do not become and remain members of the association to pay an agency shop fee in lieu of membership dues. The provision safeguards the right of non-association of employees based upon bona fide religious tenets or teachings of a church or religious body.
5. Isakson is an active member of the Bethel Lutheran Church, affiliated with the Lutheran Church in America. The church does not prohibit its members from associating with unions.
6. Isakson was a member of the Tacoma Association of Classroom Teachers for some period of time early in her employment with the Tacoma School District. She dropped her membership when she came to perceive the association as "militant," advocating strikes and attempting to sway teachers to its point of view. As a result of her background and training, she believed militance to be abhorrent and objects to association with the Tacoma Association of Classroom Teachers.
7. Isakson made a written request to the association that she be permitted to make alternative payments based upon her asserted right of non-association under the provisions of RCW 41.59.100 and the collective bargaining agreement. The association denied her request.
8. Isakson has not demonstrated a nexus between her religious beliefs and her objection to the association.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.59 RCW.
2. Jean Isakson has failed to sustain her burden of demonstrating a nexus between her religious beliefs and her objection to association with the Tacoma Association of Classroom Teachers.

ORDER

1. If no petition for review of this order is filed with the Public Employment Relations Commission within twenty (20) days following the date of this order, Tacoma School District No. 10 shall thereafter remit, in accordance with WAC 391-95-310, to the Tacoma Association of Classroom Teachers any and all funds withheld and retained pursuant to WAC 391-95-130 from the pay of Jean Isakson.
2. If a petition for review of this order is filed with the Public Employment Relations Commission, such filing shall automatically stay the effect of this order pending a ruling by the Commission.

DATED at Olympia, Washington, this 29th day of November, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-95-270.