

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of a dispute	)	
concerning the obligations of:	)	
	)	
BYRON HANER	)	CASE 15345-N-00-0021
	)	
Under union security provisions	)	
of a collective bargaining	)	DECISION 7467 - PECB
agreement between:	)	
	)	
MT. BAKER SCHOOL DISTRICT	)	
	)	FINDINGS OF FACT,
and	)	CONCLUSIONS OF LAW
	)	AND ORDER
PUBLIC SCHOOL EMPLOYEES OF	)	
WASHINGTON OF MT. BAKER	)	
	)	
	)	

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*Byron Haner* appeared *pro se*.

*David G. Fleming*, Attorney at Law, Public School Employees of Washington, for the union.

On August 15, 2000, Public School Employees of Washington (union) filed a petition with the Public Employment Relations Commission under Chapter 391-95 WAC, seeking a ruling concerning the obligations of Byron Haner under the union security provisions of a collective bargaining agreement between the union and the Mt. Baker School District (employer). A hearing was held on April 4, 2001, before Examiner Katrina Boedecker. The parties were invited to submit written arguments. The union submitted a brief on May 29, 2001; nothing was received from the petitioner.

The Examiner concludes that Haner has failed to sustain his claim of a right of nonassociation under RCW 41.56.122.

BACKGROUND

Byron Haner has been employed by the Mt. Baker School District since June 2000. Haner's job as a computer technician is within a bargaining unit of classified employees represented by the union.

The employer and union are parties to a collective bargaining agreement. Article XV of that agreement contains a union security provision that includes:

Section 15.6. Nothing contained in this Agreement shall require Association membership of employees who object to such membership based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount equivalent to normal dues to a nonreligious charity or other charitable organization agreed upon by the employee and the Association. The employee shall furnish written proof that such payment has been made. If the employee and the Association cannot agree on such matter, it shall be resolved by the Public Employment Relations Committee [sic] pursuant to RCW 41.56.122.

Haner sent the union a request for religious exemption stating that he had decided "within my thirty day time period, due to personal religious beliefs, not to become a PSE union member." The union then filed the petition to initiate this proceeding.

POSITIONS OF THE PARTIES

Haner claims a right of nonassociation based upon personal religious beliefs. He is not a member of any organized religion, and does not attend a church or have a pastor. His primary

objection to union membership is that he believes unions protect employees who may not do the best they can, and that a person should only be allowed to work because of their skills, not because they are a member of a union.

The union contends that Haner failed to present the necessary specifics of his religious beliefs, and that he did not articulate the nexus between his beliefs and any sort of religion-based prohibition of union membership.

## DISCUSSION

### The Legal Standard

In WAC 391-95-230, the Commission codified the holding in *Grant v. Spellman*, 99 Wn.2d (1983) (*Grant II*), establishing the burden of proof in nonassociation proceedings. That rule reads in part:

The employee has the burden to make a factual showing, through testimony of witnesses and/or documentary evidence, of the legitimacy of his or her beliefs, as follows:

. . . .  
(2) In cases where the claim or a right of nonassociation is based on personally held religious beliefs, the claimant employee shall demonstrate:

(a) his or her bona fide religious objection to union membership; and

(b) that the religious nature of the objection is genuine and in good faith. . . .

Thus, the mere assertion of a religious belief is not sufficient to sustain the employee's burden of proof when exercising the right of nonassociation secured by RCW 41.56.122.

A clear-cut case was made in *Brewster School District*, Decision 2888 (EDUC, 1988), where the record contained evidence that the employee's religious beliefs were so deeply held that they permeated her social and political life. Her beliefs were based on a study of the Bible, and she adequately demonstrated a consistent faith-based belief system.

On the other hand, opposition to unions that is secular, personal, social, political, or mistaken does not meet the requirements of WAC 391-95-230. The distinction between philosophical and religious beliefs was explained by the Commission in *Mukilteo School District*, Decision 1323-B (EDUC, 1984), quoting from *United States v. Seeger*, 380 U.S. 163 (1965), as follows:

Congress had defined "religious training and belief" as: "An individual's belief in a relation to a supreme being involving duties superior to those arising from any human relation, but not including essentially political, sociological, or philosophical views or a merely personal moral code."

The right of nonassociation was denied in *Tacoma School District*, Decision 2075 (EDUC, 1988), where an employee objected to union membership based upon her moral precepts, but there was no evidence of any specific religious basis for her objection.<sup>1</sup> See also *Snohomish County*, Decision 7047 (PECB, 2000). The employee involved in *North Thurston School District*, Decision 2433 (PECB, 1986), objected to union membership because she believed the union backed abortions and illegal strikes, but the union controverted those erroneous assumptions.

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<sup>1</sup> The Examiner found that mere acceptance of an ethical belief gained from religious parents was not enough.

Application of Rule and Precedent

In this case, Haner clearly only asserts personal religious beliefs. At the hearing, he testified:

I don't talk about it with many people, mostly just the family members, over the dinner table . . . just talking back and forth over things, about unions. It could be about political stuff, it could be about things other family members have done. We'll talk about why it would be right, why it would be wrong . . . Things like that, just family talk.

Accepting that as true, it still does not suffice to establish the specifics of a religious belief system mandating nonassociation with the union. Haner's situation appears to be comparable to that of the employee in *Bremerton School District*, Decision 7026 (PECB, 2000), where an Examiner determined that the complainant was ". . . objecting less to union functions relating to her representation than to the political stands taken by politicians who may be supported financially by unions in general."

Haner has failed to establish a nexus between his objection to union membership and his religious beliefs. That necessary relationship was explained in *Puyallup School District*, Decision 2711 (EDUC, 1987), as follows:

Based on the record as a whole, there is no doubt that [the employee] sincerely holds religious beliefs . . . . It is also clear that [he] holds strong convictions with respect to agency shop agreements . . . . What is problematic is the lack of connection, or "nexus", between the two . . . . There is no record as to the origin of that opposition other than that the positions "crossed his religious grain."

One could easily substitute Haner's name for the name of the employee involved in the Puyallup case. "Even though beliefs may be seriously held, if they are more of a political or social policy nature than of a religious nature, then the exemption will not be granted." *City of Seattle*, Decision 2086 (PECB, 1985).

#### FINDINGS OF FACT

1. The Mt. Baker School District is organized and operated under Title 28A RCW, and is an employer within the meaning of RCW 41.55.030(1).
2. Public School Employees of Washington, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of classified employees of the Mt. Baker School District.
3. Byron Haner is employed by the Mt. Baker School District, as a classified employee within the bargaining unit represented by the Public School Employees of Washington.
4. The employer and union are parties to a collective bargaining agreement that contains a union security provision protecting a right of nonassociation based upon religious beliefs. Haner is among the employees obligated by that union security provision.
5. Haner notified the union of his desire to assert a right of nonassociation. The parties were unable to agree on the matter, and the union filed a petition with the Commission under Chapter 391-95 WAC.

6. Haner is not a member of any organized religion and does not attend a church. There is no evidence that he has an ongoing relationship with a pastor or similar clergy person.
7. Haner has asserted a right of nonassociation based upon personal religious beliefs, but he has not described having belief in or concerning any supreme being. His main objection to union membership is based on his belief that unions protect undeserving employees.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in the matter under Chapter 41.56 RCW and Chapter 391-95 WAC.
2. Byron Haner has failed to sustain his burden of proof to establish that he is eligible to assert a right of non-association, or to make alternative payments to a charity, under RCW 41.56.122.

#### ORDER

1. If a notice of appeal of this order is filed under WAC 391-95-270 within 20 days following this issuance of this order, any escrow established and maintained in connection with this proceeding under WAC 391-95-110 shall be continued in effect pending a further order of the Public Employment Relations Commission.
2. In the absence of a notice of appeal filed under WAC 391-95-270 within 20 days after the issuance of this order, any funds held in escrow under WAC 391-95-110 shall be paid to Public

School Employees of Washington promptly thereafter, and Byron Haner shall thereafter pay the union dues required of him under the union security provision of the collective bargaining agreement applicable to his employment with the Mt. Baker School District.

Issued at Olympia, Washington, on the 19<sup>th</sup> day of July, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KATRINA I. BOEDECKER, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-95-270.