

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of a dispute	)	
concerning the obligations of:	)	
	)	
DEAN HAGY	)	CASE 16089-N-01-27
	)	
Under union security provisions	)	DECISION 7842 - PECB
of a collective bargaining	)	
agreement between:	)	
	)	
QUINCY-COLUMBIA BASIN IRRIGATION	)	
DISTRICT	)	
	)	
and	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
COLUMBIA BASIN IRRIGATION COUNCIL	)	AND ORDER
	)	
	)	

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Noel McMurtray, Attorney at Law, appeared for the Columbia Basin Irrigation Council.

Dean Hagy appeared pro se.

On November 5, 2001, the Columbia Basin Irrigation Council filed a petition with the Public Employment Relations Commission under Chapter 391-95 WAC, seeking a ruling as to whether Dean Hagy is qualified to assert a right of nonassociation under RCW 41.56.122, based upon personal religious beliefs. A preliminary ruling was issued on December 18, 2001, finding a cause of action to exist, and Examiner Kenneth J. Latsch conducted a hearing on May 21, 2002. The parties filed post-hearing briefs.

Based upon the evidence in the record and the arguments made by the parties, the Examiner rules that Hagy failed to establish a right of nonassociation based upon personal religious beliefs.

BACKGROUND

The Quincy-Columbia Basin Irrigation District (employer) is a public entity that operates and maintains irrigation canals in Grant County, Washington. The Columbia Basin Irrigation Council (union) is the exclusive bargaining representative of certain employees of the public employer.

The employer and union signed a collective bargaining agreement which provided, in pertinent part:

SECTION 1.6 - COUNCIL SOLICITATION AND UNION SECURITY

. . . .  
AGENCY SHOP - Employees covered by work classification[s] listed in Appendix A of this Agreement and who complete one hundred (120) days (ninety (90) days for temporary employees) of continuous employment shall be subject to sharing the cost of operating the COUNCIL as their collective bargaining agency. All such employees must as a condition of employment either be a member of a union affiliated with the COUNCIL and pay union dues, or pay an agency fee to the COUNCIL, but not both. Agency fees shall not exceed regular and customary dues. Basic dues are those monies, excluding initiation fees, paid monthly by any other regular members in similar work classifications.

These provisions in no way bind an employee to become a member of any Union or COUNCIL affiliate.

EXCLUSIONS - Employees who certify in writing that due to a bona fide religious tenet or teaching of a church or religious body that their dues or fees should not go to the Union shall be exempt. However, employees filing a written request for exception for religious reason shall pay an equal amount to a charity mutually agreeable to the COUNCIL and DISTRICT.

The employee involved in this case, Dean Hagy, commenced working for the employer on May 8, 2000, in a position within the bargaining unit represented by the union.

On November 21, 2000, Secretary/Treasurer John Masterjohn of the union sent a letter to Hagy, stating in pertinent part:

I have received a copy of the Dues and Fee Check-off form that you filled out on November 3, 2000. On the form you checked the NO box for both Union Affiliation and Agency Fee. According to Article 1, Section 1.6 of our current collective bargaining Agreement you must choose one or the other.

You completed your probationary period on November 3<sup>rd</sup> of the [sic] this year and according to the Agency Shop section on page 3 of the current collective bargaining Agreement "people who have completed one hundred twenty (120) days of continuous employment shall be subject to sharing the cost of operating the Council as their collective bargaining agency."

You have past [sic] the one hundred twenty (120) days by over sixty (60) days now and we are requesting you fill out another Dues and Fee Check-off form or we will be obligated to request that you be terminated from your position.

Masterjohn gave Hagy ten days from the date of the letter to send in a corrected form.

On November 28, 2000, Hagy submitted another form, on which he indicated that he did not want to affiliate with any of the unions comprising the Council, and that he chose to pay the agency fee. In checking a "yes" box on the form, he referred to an attached letter, which stated in its entirety:

I Dean Hagy, a Quincy Columbia Irrigation District Employee, choose not to join the union due to personal and moral beliefs. I instead choose to have dues sent to a charity of my choice as documented from the Benefits & Wages for Employees information sheet.

I choose to donate my dues to the St. Jude Children's Research Hospital.

St. Jude Children's Research Hospital  
Inet Department  
501 St. Jude Place  
Memphis, TN. 38105

St. Jude fax 1 (901) 578-2805  
Phone 1-800-931-1200

                                  /s/ Dean D. Hagy  
Witnessed by           /s/ Roger Etter  
Dated:                   11-18-00

The document titled "Benefits & Wages for Employees" is in evidence as Exhibit 4 in this proceeding. It includes: "UNION: CLOSED SHOP (DUES GO TO UNION OR CHARITY OF YOUR CHOICE)."<sup>1</sup>

On December 18, 2000, Hagy submitted a signed declaration to the employer and union, the text of which stated:

Dean D. Hagy hereby declares as follows:

I have strong religious beliefs. I feel that I am a true believer in God and in his word in the Holy Bible. I feel that I must follow his word.

I believe that I cannot compromise my religious beliefs by belonging to or financing the

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<sup>1</sup> By mention of this document, the Examiner does not condone the language used in it. Like the federal Labor-Management Relations Act of 1947 (the Taft-Hartley Act), RCW 41.56.122 prohibits the "closed shop" form of union security. Inapt use of the "closed shop" terminology by an employer in a letter to employees led to finding an unfair labor practice violation in *Pasco Housing Authority*, Decision 5927 (PECB, 1997), *aff'd* Decision 5927-A (PECB, 1997).

union. To do so would be contrary to my beliefs.

I cannot denounce my religious tenets or give up my beliefs by participation in contributing to the Council.

I respectfully request that an amount equal to the required assessment be paid to the charity of my choice which is:

St. Jude's Children's Research Hospital.  
[address omitted].

Thank you for allowing me to exercise my beliefs as an individual.

The union thereafter initiated this proceeding, to obtain a ruling from the Commission.

#### POSITIONS OF THE PARTIES

The union maintains that Hagy does not qualify for nonassociation based on a bona fide religious belief. It contends that his opposition to paying union dues or the agency fee is personally, not religiously, based.

Hagy stated his preference to pay the equivalent of union dues to the charity of his choice, and asserts that his refusal to pay dues or an agency fee to the union is based on personal, moral, and religious beliefs.

The employer did not participate in the hearing.

#### DISCUSSION

This employer and union bargain collectively under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. RCW

41.56.122 both authorizes union security arrangements and provides for nonassociation on religious grounds:

A collective bargaining agreement may:

(1) Contain union security provisions: PROVIDED, That nothing in this section shall authorize a closed shop provision: PROVIDED FURTHER, That agreements involving union security provisions must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member. . . .

WAC 391-95-230(2) sets forth the standard for employees who assert the right of nonassociation on the basis of personal religious beliefs, as follows:

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

(i) His or her bona fide religious objection to union membership; and

(ii) That the religious nature of the objection is genuine and in good faith.

That rule codifies Commission precedents developed in light of *Grant v. Spellman*, 99 Wn.2d 815 (1983) [Grant II], where the Supreme Court of the State of Washington held that the exemption must be based on "proof of bona fide religious beliefs" and that the exemption is "not automatic." *Id.*, at 820.

The Washington courts have given definition to "religious" and "religion" and similar terms. In *Hazen v. Catholic Credit Union*, 37 Wn. App. 502 (1984), the court held that a credit union was not a religious organization merely because it was formed to serve

members of the Roman Catholic Church. In defining the term "religious," the court stated:

Statutes are to be construed according to ordinary and common meanings; absurd consequences are to be avoided. *Yakima First Baptist Homes, Inc., v. Gray*, 82 Wn.2d 295, 299-300 (1973). Webster's Third New International Dictionary and Black's Law Dictionary define "religious" in terms of manifesting devotion to a superior being through worship.

[religious] . . . 1: relating to that which is acknowledged as ultimate reality: manifesting devotion to and reflecting the nature of the divine or that which one holds to be of ultimate importance: exemplifying the influence of religion: PIOUS, GODLY . . . 2: committed, dedicated, or consecrated to the service of the divine: set apart to religion . . . 3: of or relating to religion: . . . \*also\*: SACRED, HOLY . . . 4a: scrupulously and conscientiously faithful . . . b: FERVENT, ZEALOUS . . .

Webster's Third New International Dictionary 1918 (1966).

Black's Law Dictionary 1161 (5<sup>th</sup> ed. 1979) similarly defines "religion":

Man's relation to Divinity, to reverence, worship, obedience, and submission to mandates and precepts of supernatural or superior beings. In its broadest sense includes all forms of belief in the existence of superior beings exercising power over human beings by volition, imposing rules of conduct, with future rewards and punishments. Bond uniting man to God, and a virtue whose purpose is to render God worship due him as source of all being and principle of all government of things.

*Hazen*, at 505-06.

Religious beliefs are to be distinguished from philosophical or moral beliefs. In *United States v. Seeger*, 380 U.S. 163 (1965), the Supreme Court of the United States noted:

Congress . . . 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."

*Id.*, at 863.

The Commission has granted the exemption based upon personal, bona fide religious tenets. See *City of Redmond*, Decision 2046 (PECB, 1984); *Brewster School District*, Decision 2888 (EDUC, 1988); *Snohomish County*, Decision 7047 (PECB, 1998). However, the Commission will only grant the exemption where the employee asserting the right of nonassociation articulates a religious belief and demonstrates a nexus between that belief and opposition to unions.

An evidentiary record which fails to establish a connection, or nexus, between a bona fide religious belief and an opposition to union membership is insufficient to support an exemption. In *Puyallup School District*, Decision 2711 (EDUC, 1987), the employee had sincerely-held religious beliefs as well as strong convictions about unions, but there was "no record as to the origin of that opposition other than that the positions 'crossed his religious grain'." In *City of Seattle*, the employee described an elaborate set of personal beliefs, including 13 reasons for his request and 15 rules of life that he claimed were based upon "actual Church beliefs or Church doctrines," but the employee was not a member of a religious organization and did not identify the organization to which he referred.



The articulation of religious beliefs must be specific. See *Mukilteo School District*, Decision 1323-B (PECB, 1984); accord *Mount Baker School District*, where the record showed that the employee had deeply-held religious beliefs which encompassed her social and political life, demonstrating a "consistent faith-based belief system." Similarly, the employee in *Snohomish County* was able to explain the nexus between her religious beliefs and her opposition to unions.<sup>2</sup>

The Commission does not inquire into or make judgments concerning the content of religious beliefs, but only whether the belief is religious or secular, and whether it is held in good faith. As stated in *Mukilteo School District*, "while we cannot inquire into the truth, reasonableness or plausibility of the claimed belief, we apply an objective standard to determine, as a question of fact, whether or not the belief is religious." The corollary of this is a logical requirement that the reasons for opposing unions also be articulated. Without a record detailing both religious belief, reasons for opposition to unions, and a nexus between the two, the Commission will not find for an exemption. In *Mount Baker School District*, where the employee stated beliefs that unions protect employees who may not do the best they can and that persons should only be allowed to work because of their skills (not because of union membership), but did not provide any of the asserted personal religious beliefs, the Commission ruled "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." In *Mukilteo School District*, where the employee supplied multiple witnesses who testified of his sincerity but

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<sup>2</sup> It was her perception that unions were dishonest and promoted disharmony between employers and employees, in direct contradiction of her religious beliefs.

refused to provide evidence about either his religious beliefs or his objection to paying union shop fees, the Commission noted a person restricted to reading the record would have no idea what the case was about.<sup>3</sup>

#### Application of Standards

The issue in the instant case does not concern union membership, since the collective bargaining agreement provides (and the union acknowledges) that Hagy need not join the union. Indeed, the issue is limited to whether Hagy must pay an agency fee or contribute an equivalent amount to a charity.

Hagy's intentions and arguments must be must be deduced (with some difficulty) from the record. Hagy did not call any witnesses at the hearing, and his case-in-chief was limited to the following statement:

All right. I made the statement of [November 18, 2000, wherein he stated that he chose not to join the union due to "personal and moral beliefs"] based off of [the Benefits and Wages sheet described in footnote 2, above] information on dues going to Union or charity of my choice. By November 21 I realized that the irrigation council wasn't going to agree to that and that is when I hired Mr. Hansen to be my attorney to find out by definition what a bona fide religious tenet was so that I could comply with the contract and keep my job and stay consistent to my religious beliefs. That's it.

Transcript at 38-39.

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<sup>3</sup> The Commission noted that the technique used by that employee could "result in the abuse of our system for determining the facts, and should not be encouraged" and "[W]e cannot allow the petitioner to judge his own case."

The bulk of the evidence regarding Hagy's position came forth in Hagy's responses to questions from the union's attorney. Hagy testified that: He has "strong religious beliefs" and is a believer in "God and in his word in the Holy Bible"; personal and moral beliefs kept him from joining the union; the employer told him at the time he was hired that he could give money to a charity in lieu of paying union dues or the agency fee; and he does not belong to a church but considers himself "an organized body of religious belief." Transcript at 37. Hagy refused to articulate the nature of his religious beliefs, stating his religious beliefs prohibit him explaining what they are.<sup>4</sup>

Two other bargaining unit employees testified on behalf of the union:

- One quoted Hagy as stating that he did not like unions, that they were corrupt, that members paid money for no service, and that unions supported Democrats. That witness further stated that Hagy expressed hatred against Democrats (Transcript at 46-47) and that Hagy refused to talk about his religious beliefs. Transcript at 49.
- The other testified that Hagy wanted to give money to Ducks Unlimited in lieu of paying union dues or agency fees, and quoted Hagy as telling fellow employees that: he did not like unions, unions were corrupt, union members were lazy, the co-workers were "pond scum," he was opposed to abortion, and the Democrats supported abortion. That witness testified that Hagy did not refer to religious beliefs. Transcript at 53-55.

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<sup>4</sup> The facts that: (1) Hagy consulted an attorney to ascertain the nature of a "bona fide" religious tenet; and (2) Hagy still refused to articulate his beliefs, provides basis for an inference adverse to Hagy with regard to the bona fides of his asserted beliefs.

Review of the documents submitted in connection with this controversy also fails to establish bona fide religious beliefs:

- On November 28, 2000, Hagy wrote that he would not join the union, but he made no mention of a refusal to pay the agency fee. He only asked that he be allowed to make contributions to St. Jude's Hospital.
- On December 18, 2000, Hagy submitted his declaration stating only, "I cannot compromise my religious beliefs by belonging to or financing the union" and reiterated his desire to contribute to St. Jude's.

Thus, neither of those documents detailed a religious basis for Hagy's refusal to pay the agency fee.

Hagy joins a list of similarly-situated employees whose attempts to assert the right of nonassociation have been denied where they have: (1) Refused to discuss the nature of their claimed religious beliefs; and (2) failed to establish any nexus between religious beliefs and opposition to unions. See *Mukilteo School District* and *Mount Baker School District*. In light of uncontroverted testimony about his statements to other employees that provides basis to characterize his claims here as disingenuous, Hagy's written statements and his testimony at the hearing fall far short of the good faith showing required to establish eligibility for the right of nonassociation under the statute and Chapter 391-95 WAC.

#### FINDINGS OF FACT

1. The Quincy-Columbia Basin Irrigation District is a public employer within the meaning of RCW 41.56.030(1).
2. The Columbia Basin Irrigation Council, a bargaining representative within the meaning of Chapter 41.56 RCW, is the

exclusive bargaining representative of certain employees of the Quincy-Columbia Basin Irrigation District.

3. The employer and union were parties to a collective bargaining agreement that contained a union security provision which protects the right of nonassociation of employees based upon bona fide religious tenets or teachings.
4. Dean Hagy is an employee of the Quincy-Columbia Basin Irrigation District working in a position within the bargaining unit represented by the union.
5. Hagy is subject to union security obligations under the collective bargaining agreement between the employer and union. He initially declined to pay either union dues or an agency shop fee. He later requested that he be permitted to make alternative payments to a hospital.
6. Although Hagy stated that his refusal to join the union or pay an agency shop fee was based on personal religious or moral beliefs, Hagy produced no evidence detailing those beliefs or establishing that they are held in good faith.
7. The union provided uncontroverted testimony of other employees that Hagy's opposition to the unions is based upon personal, secular beliefs.

#### 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. Dean Hagy has failed to sustain his burden of proof establishing his eligibility to assert a right of nonassociation under RCW 41.56.122.

ORDER

1. Dean Hagy shall pay an agency fee to the Columbia Basin Irrigation Council, retroactive to November 30, 2000, and continuing so long as he remains obligated under union security provisions in a collective bargaining agreement between the Quincy-Columbia Basin Irrigation District and the Columbia Basin Irrigation Council.
2. If a notice of appeal is filed with the Public Employment Relations Commission and served on the other parties within twenty (20) days following the date of this order, such filing and service shall automatically stay the effect of this order pending a ruling by the Commission.
3. In the absence of a notice of appeal filed and served within twenty (20) days following the date of this order, the Quincy-Columbia Basin Irrigation District shall thereafter remit to the Columbia Basin Irrigation Council any and all funds withheld and held in escrow from the pay of Dean Hagy under the union security provisions of the applicable collective bargaining agreement.

Issued at Olympia, Washington, on the 17<sup>th</sup> day of September, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
KENNETH J. LATSCH, 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.