

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of)

JOE JAROSS)

For Determination of a Dispute)
Concerning Union Security Arising)
Under a Collective Bargaining)
Agreement between)

VANCOUVER SCHOOL DISTRICT NO. 37)

and)

VANCOUVER EDUCATION ASSOCIATION)
_____)

CASE NO. 579-DR-76-04

MEMORANDUM DECISION

DECISION NO. 224 EDUC

The petition in this matter was filed with the Commission on October 20, 1976. The Executive Director caused an investigation of the matter to be conducted by a member of the agency staff. The investigator met with the petitioner, a representative of the employer and a representative of the employee organization involved on April 8, 1977. Arrangements for those interviews had been made through telephone contacts made on April 5 and 6, 1977. The purpose of the investigation, as communicated to all parties, was to determine whether the petition raised questions of fact which could not be resolved without a hearing.

The position of the petitioner is stated in the petition as follows:

"Because "Uni-Serv" is not visible as a party to the total comprehensive agreement, I petition the "Commission" to furnish me with legal evidence showing and proving that the Association can force me to join or pay in lieu and be assessed the full dues and/or fees required to be a Uni-Serv affiliate. In addition, I pray for a judicial explanation why the full \$182 assessment is being considered as a fair share of negotiation fees and/or representation fees. By no means am I objecting to having my fair share of the so-called representation dues and/or fees be donated to the Association For Retarded Citizens (Clark County Chapter). My other basis for objecting into being forced to join or pay the full amount for "Uni-Serv" dues and/or fees is that VEA, WEA, and NEA funds are being used for donations to political candidates who favor abortions, federal payments for abortions to the poor people, and think that abortions in some instances are necessary for population control. I am a devout Roman Catholic. I reiterate my desire of having my fair share contributed to the Association for Retarded Citizens (Clark County Chapter)."

The results of the investigation confirm that the petitioner is employed in the bargaining unit in which the Vancouver Education Association is recognized as exclusive bargaining representative; that a collective bargaining agreement is in effect; that the collective bargaining agreement contains an "agency shop" union security agreement; and that the petitioner is one of the employees affected by the union security agreement.

The procedures contained in WAC 391-30-900 are structured in anticipation of a dispute being joined at the local level before the jurisdiction of the Public Employment Relations Commission is invoked. It does not appear that a request for making of alternative payments was made to the Vancouver Education Association prior to the filing of the petition herein, but it has been established through the investigation that the Vancouver Education Association contests the right of the petitioner to make alternative payments, on the basis that the religious tenets and teachings of the Roman Catholic church do not conflict with the obligations imposed upon the petitioner by the union security agreement.

There is no dispute that the petitioner is a member of the Roman Catholic church. However, the petitioner does not base a claim of a right to make alternative payments upon religious tenets or teachings of the Roman Catholic church. On the contrary, the petitioner indicated to the investigator that he was not claiming religious objections, and that he felt that he could not qualify for alternative payments under RCW 41.59.100 and WAC 391-30-900 on religious grounds. The main thrust of the petitioner's request, as stated in the petition, repeated to the investigator and repeated in further correspondence, is based upon a belief that the UNISERV affiliate of the Vancouver Education Association is not a party to the collective bargaining agreement and is not entitled to benefit from dues payments made under the union security agreement.

In an apparant reference to the Abood case now pending before the Supreme Court of the United States, involving the constitutionality of the union security provisions of the Michigan public employment collective bargaining statute, the petitioner seeks to postpone determination of the instant dispute. However, nothing is known or called to the attention of the undersigned which would indicate that the statute involved in Abood is comparable or that the enforcement of the Washington statute should be stayed.

The petitioner, both in his petition and during the investigation, referenced the term "fair share". Under the public employee collective bargaining statutes of some states, the permitted form of union security arrangement is denominated a "fair share agreement". Under some, but not all, of those arrangements, non-member employees can be required to pay only a portion of the dues and fees required for membership in the exclusive representative. There is no reference in Chapter 41.59 RCW to the "fair share" concept. RCW 41.59.100 permits union security agreements, including an agency shop, but not a union or closed shop. While the breadth of that language would seemingly encompass a lesser form of union security such as a proportional fee arrangement, the collective bargaining agreement between the Vancouver Education Association and Vancouver School District No. 37 contains an agency shop clause under which a fee "equal to the dues required by the Association's bylaws and rules to maintain membership" is assessed as a representation fee. That union security provision is clearly within the authorization of the statute and is controlling in this case. There is no authority in the statute or the collective bargaining agreement for any assessment of a proportional fee or "fair share" of the full dues amount required to maintain membership.

A copy of the investigation report was served on each of the parties and the petitioner has filed a written response. While the petitioner again asserted that he has a legitimate religious objection which he desired to pursue, he objected to invasion of his privacy concerning his religious beliefs and did not set forth any details of the religious tenets or teachings upon which such objection is based. Following notice of an additional 10-day period in which to make the nature of his objections known, the petitioner failed to advance any new information or allegations.

In connection with the above and foregoing, the Executive Director makes and files the following:

FINDINGS OF FACT

1. Joe Jaross, hereinafter referred to as the Petitioner, is a non-supervisory certificated employee of Vancouver School District No. 37.

2. A collective bargaining agreement exists between Vancouver School District No. 37 and Vancouver Education Association; said collective bargaining agreement covers a bargaining unit of non-supervisory certificated employees of Vancouver School District No. 37; said collective bargaining agreement is effective for the period from July 1, 1976 to and including June 30, 1977; said collective bargaining agreement

contains an agency shop provision under which employees within the bargaining unit who do not become and remain members of the Vancouver Education Association will be required to pay a representation fee in lieu of membership dues; such representation fee is specified as an amount equal to the dues required by the Association's bylaws and rules to maintain membership; and such union security provision contains a provision safeguarding the right of nonassociation of employees based upon bona fide religious tenets or teachings of a church or religious body of which the employee is a member.

3. A dispute has arisen concerning the obligation of the Petitioner to pay representation fees to the Vancouver Education Association pursuant to the aforesaid union security provision; the jurisdiction of the Public Employment Relations Commission has been invoked by the Petitioner pursuant to WAC 391-30-900; an investigation of the petition was conducted under the auspices of the Executive Director, at which time the Petitioner failed to advance any objections based upon bona fide religious tenets or teachings of a church or religious body of which he is a member; and the objections of the Petitioner are based upon objections to contributions to UniServ rather than upon religious tenets or teachings of a church or religious body of which he is a member.

CONCLUSION OF LAW

The petitioner has not set forth issues of fact which cannot be disposed of without a hearing; and has not set forth facts which, as a matter of law, could constitute a basis for ruling in his favor pursuant to WAC 391-30-900.


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, Vancouver School District No. 37 shall thereafter remit to the Vancouver Education Association any and all funds withheld and retained pursuant to WAC 391-30-900 from the pay of Joe Jaross and shall henceforth withhold and remit funds as provided in RCW 41.59.100 and Article 3.5 of the collective bargaining agreement between the Vancouver School District No. 37 and the Vancouver Education Association.

2. If a petition for review of this order is filed with the Public Employment Relations Commission within twenty (20) days following the date of this Order, such filing shall automatically stay the effect of this order pending a ruling thereon by the Commission.

DATED this 11th day of May, 1977

PUBLIC EMPLOYMENT RELATIONS COMMISSION


Marvin L. Schurke, Executive Director