

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
PATRICIA T. MILLER)	CASE NO. 5584-D-84-50
)	
For determination of a dispute)	DECISION NO. 2433 - EDUC
concerning union security)	
arising under a collective)	
bargaining agreement between:)	
)	FINDINGS OF FACT,
NORTH THURSTON SCHOOL DISTRICT)	CONCLUSIONS OF LAW
)	AND ORDER
and)	
)	
NORTH THURSTON EDUCATION)	
ASSOCIATION WEA/NEA)	
)	
)	

Patricia T. Miller, appeared pro se.

Harriett Strasberg, appeared on behalf of the association.

On December 6, 1984, Patricia T. Miller filed a petition with the Public Employment Relations Commission seeking a declaratory ruling concerning her obligations under the union security provision in a collective bargaining agreement between her employer, North Thurston School District No. 3, and North Thurston Education Association WEA/NEA. A hearing was held on April 4, 1985, before Hearing Officer Frederick J. Rosenberry. The parties submitted post-hearing briefs. The Commission thereafter amended WAC 391-95-250 to provide for a preliminary ruling by the Executive Director and a decision on the merits by the examiner who conducts the hearing. By letter dated February 7, 1986, the Executive Director implemented the preliminary ruling procedure and remanded the case for determination by Frederick J. Rosenberry, as examiner on the record already made, pursuant to WAC 391-95-250.

BACKGROUND

The petitioner, Patricia T. Miller, first became employed at the North Thurston School District in 1975, as a certificated teacher. She continued in that position until 1981. During that period of time, she was employed in the bargaining unit represented by North Thurston Education Association, and she submitted dues to the organization.

In 1981, the school district appointed Miller to the position of principal in one of its elementary schools. That position was outside of the non-supervisory employee bargaining unit, and Miller discontinued her membership in the association.

In late 1983 and early 1984, the association processed several grievances with the school district, alleging incidents of impropriety on the part of the petitioner in the performance of her duties as school principal. As a remedy for those grievances, the association sought Miller's removal as principal. In February, 1984, the school district removed Miller from her position as school principal and reassigned her to an administrative position in the district office.

Effective with the beginning of the 1984-85 school year, the petitioner was reassigned to a teaching position in the bargaining unit represented by the association. That unit is covered by a collective bargaining agreement that requires association membership or the payment of a service fee and safeguards the right of non-association in conformance with RCW 41.59.100. On August 26, 1984, the petitioner advised the association and the employer, by letter, that she wished to exercise her right of non-association. Her request was subsequently denied by the association. Accordingly, Miller filed the instant petition for declaratory ruling.

The petitioner has suggested that United Way be designated as the non-religious charitable organization to receive her alternate payments in lieu of payments required by the union security provision. In the event that the petitioner is found to be entitled to make alternative payments, the association accepts United Way as the recipient of the payments.

POSITIONS OF THE PARTIES

The petitioner contends that it is against her personal religious principles, and as well as the constitutional doctrine of the separation of church and state, to force an employee to be associated with or be financially supportive of a group that acts in a manner contrary to an employee's belief. The petitioner acknowledges that she formerly belonged to the association, however, she claims that it was due to her mistaken belief that membership was required. The petitioner is a member of the Roman Catholic Church. It is the petitioner's understanding that her church generally is in support of labor unions, and has no teachings requiring non-association with them. The petitioner also believes that her church supports and encourages its members to explore and exercise their individual conscience. The petitioner contends that the association has violated her sense of goodness with respect to the "Ten Commandments", (Exodus 20:16) and particularly the fifth, seventh and eighth commandments, by endorsing political candidates who support abortion, by supporting work stoppages during the term of a labor agreement, by misrepresentation and by bearing false witness against her. The petitioner is opposed, for religious reasons, to abortion and work stoppages. Miller claims that the association manipulates information to its members, indulges in antagonistic rhetoric, demonstrates a lack of truthfulness and contrives deliberate omissions. The petitioner further asserts that she has the right

to uphold her personal conscience, to seek the truth and to stand in opposition to that which she believes is not true.

The North Thurston Education Association takes the position that Patricia Miller has failed to establish that her objections are based on a bona fide religious belief. The association denies that it supported work stoppages during the term of a labor agreement, and claims that it supports political candidates based on their position regarding education, not on other issues. It denies taking a position on abortion. The association further asserts that the petitioner's religious objection claim is a pretext due to her personal disagreement with the association while she was a school principal. The association points out that Miller was a member for six years and never asserted a right of non-association until after problems surfaced when she was a school principal. Accordingly, the association argues that her objections are not based on a personal religious tenet or teachings of her church.

DISCUSSION

The applicable statute is RCW 41.59.100, which states:

All union security provisions must safeguard the right of non-association of employees 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 of money equivalent to regular dues and fees to a non-religious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and fees.

The petitioner maintains, without elaboration, that there is a constitutional intent of separation of church and state that requires that religious beliefs permit an employee to refuse to support a group whose activities she rejects. In Renton School District, Decision 924 (EDUC, 1980), it was determined that PERC does not have the authority to rule on the sense or morality of union security provisions. The legislature has authorized union security provisions, has established a limited exception, and has delegated to PERC the authority to make a determination of employee eligibility to make alternative payments. The Commission has adopted Chapter 391-95 WAC for that limited purpose, and those rules have been invoked here. The scope of this decision must be limited to the religious-based right of non-association detailed in the statute and rules.

The Commission, in interpreting and applying the foregoing statute, looks for guidance to Grant v. Spellman, 99 Wn.2d 815 (1983), more commonly referred to as Grant II. Grant II was examined in detail in Edmonds School District, Decision 1239-A (EDUC, 1983), where the Commission stated:

The Grant II court decided that the religious exemption statutes should be disjunctively construed. The results is that an exemption can be based on (1) bona fide individual religious tenets, or (2) bona fide teachings of the church or religious body of which the employee is a member.

Patricia Miller is knowledgeable in the teachings of the Catholic Church as set forth in the contemporary papal encyclicals "Laborem Exercens" (On Working) and "Vatican II". "Laborem Exercens" looks upon unions with general favor as a "constructive factor of social order". The Catholic Church does not teach that membership or association in a labor union is morally wrong or prohibited. The petitioner recognizes that the matter of work

stoppages are also addressed in "Laborem Exercens"; the encyclical states:

One method used by unions in pursuing the just rights of their members is the strike or work stoppage, as a kind of ultimatum to the competent bodies, especially the employers. This method is recognized by catholic social teachings as legitimate in the proper conditions and within just limits.

The Catholic Church does not have teachings prohibiting or opposed to union membership, therefore, Miller does not meet the court-determined standard of church teachings as a qualifying reason for non-association.

Notwithstanding the church's teachings regarding unions and work stoppages, the petitioner claims that her individual conscience dictates that, due to her personal religious beliefs, she should not be associated with the North Thurston Education Association. Because of the Grant II holding that the statute must be interpreted in the disjunctive, Miller's claim of objection based on individual religious tenets must be examined, in order to determine whether they are religious-based, bona fide and a basis for assertion of the right of non-association.

The record here does not reflect that the petitioner's objection is to all labor organizations. In the presentation of her case, all of her testimony and documentary evidence was directed at the North Thurston Education Association and its parent organizations. In the absence of evidence indicating an objection to association with labor organizations in general, the examiner infers that the petitioner's objection is limited in scope to the North Thurston Education Association. The safeguards in RCW 41.59.100 are broadly worded, however. In Central Valley School District, Decision 925-B (EDUC, 1984), the Commission determined

that the statute does permit an exemption based on a selective religious objection that may be limited to a single organization. See also: City of Redmond, Decision 2046 (PECB, 1984).

The petitioner claims that her assertion of the right of non-association is based upon individual religious tenets or beliefs. The petitioner's church recognizes her right to exercise her individual conscience. The petitioner contends that the association has engaged in conduct that violates her sense of goodness with respect to the ten commandments. The petitioner more specifically believes that the education association's activity has violated her sense of what is required by the fifth, seventh and eighth commandments.

Much of Miller's case is based on a background of accusations of wrong-doing by the union and by Miller against each other. The petitioner's motivation for seeking to assert a right of non-association could be concealed retaliation for the union's challenges to her authority while she was in a supervisory position, or for the union's methods during the time she was a school principal. The petitioner's motivation could also be based on what she perceives to be a personal affront to her integrity, and the petitioner could be manifesting a highly personal and emotional reaction that she characterizes as a personally held religious belief. This case cannot, however, be decided on such speculation. The petitioner appears to have a sincere, honest aversion to the association. At relevant inquiry here is whether Miller's aversion to the association is based on an honest, genuine and bona fide belief that a divine power dictates, through her individual conscience, that it is wrong, for religious reasons, for her to be associated with it.

Secular retaliation or political opposition does not suffice. A mixture of secular and religious objections was raised in Tacoma

School District No. 10, Decision 2018 (EDUC, 1984), where it was noted that:

Neither the statute nor the previous decisions of the Commission or of the courts provide any measure for a particular quantum of religious basis necessary to qualify for the exemption, nor is there a threshold for measuring comparative levels of religious versus secular objections among mixed reasons advanced by a person claiming the right of non-association. Although the beliefs asserted by Charles and Charlotte Meyers might be tallied as political, philosophical or ideological in the schema of others, the record compels the conclusion that there is some religious basis for their beliefs.

Although the petitioner was not as specific as might be desirable in her reference to the fifth commandment, by its nature it appears that her objection relates to her opposition to abortion and the claim that the association has endorsed political candidates whose views on abortion differ from her own. The association persuasively points out, however, that it has not taken an official position, as an institution, on the morality of abortion. The association endorses political candidates on the basis of their stand on education issues. This raises the question of whether an objection can be "bona fide" if it is based on an incorrect premise.

The petitioner claims that the seventh commandment requires that "one should fulfill one's obligations to an employer". The petitioner believes that discussions by the association regarding a work stoppage or strike during the term of the collective bargaining agreement with the employer violates the seventh commandment. The association responds that it has never had a strike, that it recognizes the obligations imposed on it by the "no strike" clause in its contract, and that it has never

officially advocated a strike during the term of a contract. As to this issue as well, the association contends that the charge by the petitioner is groundless.

The petitioner contends that the association has violated what she perceives to be required by the eighth commandment, by bearing false witness against her. Miller accuses the association of a number of misrepresentations regarding her service as a school principal, including that it withheld information in its communications in order to strengthen its position. The petitioner also accuses the association of dishonesty and disregard for the truth in some of its publications. She did not elaborate or provide specific information supporting these allegations, and the association denies them.

During the course of the hearing, substantial testimony regarding unions was received from the Reverend Joseph Kramis, a Roman Catholic priest who is also a church lawyer and consultant on canon law. Father Kramis described "Laborem Exercens" as an authoritative teaching and official publication of the church and stated:

It shouldn't be taken lightly. It's a serious document and is part of the teaching authority of the church, and to derogate from it, one needs a strong position of conscience to do so.

Father Kramis also testified that the church views unions as being important and noted that:

It's the right to form associations for the purpose of defending the vital interests of those employed in various professions, and these are commonly called of course, labor or trade unions.

Individual conscience, according to Father Kramis, is discussed in many church documents. The papal encyclical entitled "Vatican II" states that:

In all his activity, a person is bound to follow his conscience faithfully. It follows that he is not to be forced to act in a manner contrary to his conscience; nor on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious.

The union responds that Miller's argument is inconsistent, because she is willing to support United Way, which in turn distributes funds to organizations that support abortions. The association also notes that the Catholic Church supports United Way. Father Kramis explained that church theologians have adopted a standard recognizing the principle of proportionality, which is the act of weighing or comparing the good or favorable features of an activity or circumstance versus the bad, negative features or results, and then asking the question, "Does the final good outweigh the bad?" The church has applied such a standard to the question of supporting United Way, and has determined that the organization warrants the church's support. The church has also applied the standard to unions and, as described in "Laborem Exercens", supports unions provided there is no abuse of power. The record does not reflect whether Miller accepts the concept of proportionality, however, her proposal to contribute to United Way even though it funds organizations that she is morally opposed to, provides a strong inference that she does.

Miller's opposition to funding the association because of its political views raise questions of federal law which are addressed in Aboud v. Detroit Board of Education, 431 US 209 (1977), and Chicago Teachers Union v. Hudson, _____ US _____

(1986). Although Abood and Hudson, upheld the validity of agency fee agreements in the public sector, the court in Abood also stated:

We do not hold that a union cannot constitutionally spend funds for the expression of political views, on behalf of political candidates, or towards the advancement of other ideological causes not germane to its duties as collective bargaining representative. Rather, the Constitution requires only that such expenditures be financed from charges, dues, or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment.

Consistent with Abood, the North Thurston Education Association has adopted a formal political activity rebate procedure that includes binding arbitration as a final means of adjudicating relevant disputes. So far as it appears from the record made here, Miller has not availed herself of the association's rebate procedure or made a claim that she objects to the expenditure of any portion of her agency fee for political activity. In view of the separate availability of those precedents and procedures, the Examiner is not inclined to stretch RCW 41.59.100 or the Grant II precedent to accommodate such claims.

In Central Valley School District, Decision 925-B (EDUC, 1984) and Edmonds School District, Decision 1239-A (EDUC, 1983) the Commission determined that a person claiming a personally-held religious exemption from union security obligations must offer convincing evidence demonstrating:

1. His or her religious objection to union membership, and;

2. That the religious nature of the objection is genuine and in good faith.

There must be a nexus between an objection to union membership and a religious belief. 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).

Among the petitioner's three major areas of objection to the North Thurston Education Association, the association has rebutted the underlying premises concerning abortion and work stoppages while a contract prohibition is in effect. Consequently, the Examiner concludes that the petitioner's conclusions on those matters are based on erroneous understandings regarding official association positions.

The petitioner's claim of a right of non-association cannot be sustained, even if sincerely held, where motivated by animosity traceable to a personnel or professional (but clearly secular) dispute over supervisory activity. In Grant II, supra, 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. There is a distinction between an objection that is based on a belief in a divine or super-human deity that dictates to one's conscience that they should not be associated with a union and a secular objection. Secular, personal, social or political opposition does not meet the statutory criteria and is not a basis for a ruling allowing non-association. In Tacoma School District, Decision 2075 (EDUC, 1985), the petitioner raised several allegations that are similar to the petitioner's changes in the instant case; such as the possibilities of a strike, union attempts to perform what was

characterized as brainwashing and misrepresentations. It was determined that the petitioner had failed to sustain her burden of a nexus between her religious beliefs and her objection to association with the involved labor organization. The petitioner herein has had a long standing religious association with the Catholic Church, however, the record does not reflect that the petitioner has undergone any recent form of religious revelation or that her religious principles have materially changed between 1981 when she withdrew from the association and 1984 when she returned to its bargaining unit. As was the case in Tacoma School District, supra, the petitioner has not offered sufficient evidence of study she has made or teachings to which she subscribed to, to support her claim for non-association. Although Miller has articulated her opposition to strikes, proponents of abortion, misrepresentation and political endorsement, she has failed to demonstrate the necessary relationship between her reasons for desiring to make alternative payments and her personally-held religious beliefs.

FINDINGS OF FACT

1. North Thurston School District No. 3 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 North Thurston Education Association, an employee organization within the meaning of RCW 41.59.020(1), has been recognized by the North Thurston School District No. 3 as exclusive bargaining representative of the district's nonsupervisory certificated employees.
3. Patricia Miller, the petitioner, is employed by the North

Thurston School District in a certificated, nonsupervisory teaching position.

4. Patricia Miller is a member of the Catholic Church. The church has no teachings that prohibit its members from association with unions and generally supports unions. The church recognizes that its members have the right to exercise personal judgment on the basis of the dictates of individual conscience.
5. Patricia Miller was a member of the North Thurston Education Association from 1975 to 1981. In 1981 she was promoted to the position of school principal, outside of the bargaining unit. In 1984 Miller was relieved of her principalship and was subsequently reassigned to her present teaching position in the certificated non-supervisory employee bargaining unit. Miller was requested to pay dues or fees to the North Thurston Education Association pursuant to an "association security" provision of the applicable collective bargaining agreement.
6. Patricia Miller felt that the association violated her sense of goodness of the "Ten Commandments" of God, specifically her perception of what is required by the fifth, seventh and eighth commandments.
7. At the time Patricia Miller returned to the association bargaining unit, she believed that the association manipulated information to its members, engaged in antagonistic rhetoric, demonstrated a lack of truthfulness, and promoted omissions. Miller also believed that the association bore false witness against her through their statements and activities regarding her principalship.

7. Patricia Miller is opposed to political candidates that the association supported particularly in view of their positions on matters such as abortion. The North Thurston Education Association has not adopted an official position regarding the matter of abortion.
8. Patricia Miller believed that the association has promoted work stoppages during the life of a collective bargaining agreement. The record reflects, however, that the association has not promoted a work stoppage or strike when a contract prohibition has been in effect. There has not been a strike at North Thurston School District.
8. Patricia Miller made a request to the association that she be permitted to make alternative payments based on her asserted right of non-association under the terms of the collective bargaining agreement and RCW 41.59.100. The association denied her request.
9. On December 6, 1984, Patricia Miller filed a petition with the Public Employment Relations Commission, seeking a ruling concerning her obligations under the agency shop provisions of the collective bargaining agreement and RCW 41.59.100.
10. Patricia Miller has not demonstrated that her objection to association with the North Thurston Education Association is based on bona fide personally-held religious tenets.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.59 RCW.

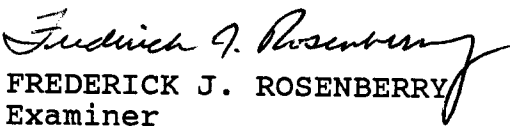
2. Patricia Miller is not entitled under RCW 41.59.100 to assert a right of non-association and to make alternate payments to United Way or other non-religious charitable organizations agreed upon by the petitioner and the association.

ORDER

1. If a petition for judicial review of this order is filed under WAC 391-95-270 within twenty (20) days after the service of this order, the escrows established and maintained in connection with this proceeding under WAC 391-95-130 shall be continued in effect, pendente lite.
2. If no petition for review of this order is filed, the funds held in escrow under WAC 391-95-130 and future payments shall be paid to North Thurston Education Association pursuant to RCW 41.59.100.

DATED at Olympia, Washington, this 23rd day of May, 1986.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION


FREDERICK J. ROSENBERY
Examiner

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