

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)

LINDA LEONARD)

CASE NO. 4093-D-82-37

For determination of a dispute)
concerning union security)
arising out of a collective)
bargaining agreement between:)

OLYMPIA EDUCATION ASSOCIATION)

and)

OLYMPIA SCHOOL DISTRICT NO. 111)

In the matter of the petition of:)

OLYMPIA EDUCATION ASSOCIATION)

CASE NO. 4982-D-83-43

For determination of a dispute)
concerning union security)
obligations of:)

DECISION NO. 1963 - EDUC

LINDA LEONARD)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

Under a collective bargaining)
agreement between petitioner and:)

OLYMPIA SCHOOL DISTRICT NO. 111)

John Scully, Attorney at Law, National Right to Work Legal Defense Foundation, Inc., appeared on behalf of Linda Leonard.

Durning, Webster and Lonquist, by Mark E. Brennan, Attorney at Law, appeared on behalf of the Olympia Education Association.

On May 21, 1982, Linda Leonard filed a petition with the Public Employment Relations Commission (PERC), seeking determination pursuant to the provisions of RCW 41.59.100 of a dispute concerning her obligations under a union security provision contained in a collective bargaining agreement between the Olympia Education Association (association) and Olympia School District (district). That matter was docketed as Case No. 4093-D-82-37.

At the time the petition in Case No. 4093-D-82-37 was filed, litigation was pending in the courts on review of a decision in which PERC had interpreted

and applied the provisions of RCW 41.56.122(1). Since the provisions of RCW 41.56.122(1) and RCW 41.59.100 are virtually identical, the Commission deferred action on this and a number of similar cases pending reconsideration of Grant v. Spellman, 96 Wn.2d 454 (1981) (GRANT I) ordered by the Supreme Court of the United States in Grant v. Public Employment Relations Commission, 456 U.S. 955 (1982). The parties 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/}

On November 17, 1983, the Olympia Education Association filed a petition with PERC for declaratory ruling on Leonard's union security obligations. That matter was docketed as Case No. 4982-D-83-43.

The cases were consolidated for hearing on February 29, 1984, before Martha M. Nicoloff, Hearing Officer. The parties filed post-hearing briefs.

BACKGROUND:

Linda Leonard is a non-supervisory certificated employee of the district, working in the bargaining unit for which the association is recognized as exclusive bargaining representative.

The parties stipulated that Leonard is among the class of district employees obligated under union security provisions negotiated subject to RCW 41.59.100, to either become a member of the association or pay an agency shop fee equivalent to the dues of the association. Article II, Section 11A(7) of the collective bargaining agreement provides:

In order to safeguard the right of nonassociation of employees based upon bonafide religious tenets or teachings of a church or religious body of which such employee is a member, the provisions of RCW 41.59 and WAC 391-30-900 (sic) shall apply to Association members and Agency Shop employees otherwise bound to remain an Association member or to pay an Agency Shop fee under A(2) and A(3) and A(4) above. Such fee shall be paid to a nonreligious charity or to another charitable organization mutually agreed upon by the employee and the Association. If the employee and the Association do not reach agreement on such matter, the Public Employment Relations Commission shall designate the recipient. The District shall, upon receipt of an appropriate authorization form provided by the District, make a monthly payroll deduction and transmit same to the designated recipient.

^{1/} For a more complete history of the actions of the courts in the Grant case, see: Central Valley School District, Decision No. 925-B (EDUC, 1984) and Edmonds School District, Decision No. 1239-A (EDUC, 1983).

In September, 1981, Leonard requested the Olympia Education Association to exempt her from the union security obligations of the contract. The association denied her request, and she subsequently filed her petition with PERC. At the time she requested exemption, Leonard designated a number of charitable organizations to which she would be willing to contribute. At the time of hearing, she designated Pregnancy Aid as her preferred charity, but also listed a number of others, including the Thurston County Food Bank. Pregnancy Aid is housed in a Salvation Army building, and receives free rent and assistance in telephone services from the Salvation Army.

POSITIONS OF THE PARTIES

Leonard argues that she is entitled to an exemption from paying fees to the union, in that her beliefs against association are sincere and based upon religious convictions. She claims that her Biblical study has led her to an objection to association or financial support of any labor union, in that she believes such organizations are contrary to Scripture. She also claims that she is opposed to the Olympia Education Association/WEA/NEA in particular, because its positions on issues violate Biblical standards. She claims she is entitled to an exemption on either ground. She also claims that her preferred charity cannot be classified as religious simply because it receives support from a religious organization, and that the Commission should grant her choice of charity.

The union argues that Leonard has failed to meet her burden of proof, either that her objection to unions is based upon the teachings of her church, or that she holds personal religious beliefs which would entitle her to the exemption. It claims that the evidence supports a finding that Leonard's beliefs are not based on religion, but rather on disagreement with the local's leadership strategies and the positions of the National Education Association (NEA) on such issues as affirmative action, abortion, and the equal rights amendment. It claims that her objections are not to all unions, as she claimed, but rather only to NEA affiliates. The association argues that Pregnancy Aid is not a non-religious charity and that, should the exemption be allowed, any alternative payments should go to the Thurston County Food Bank.

DISCUSSION

In its first decision following Grant II, the Commission formulated alternative tests for making determinations under Chapter 391-95 WAC, depending on whether the claim of a right of non-association was based on teachings of a church or religious body or was based on personally held religious beliefs. Edmonds School District, Decision 1239-A (EDUC, 1983).

Linda Leonard has been a member of the Westwood Baptist Church, affiliated with the Baptist General Conference, for approximately five years. She regularly attends services, participates in Bible study groups, and is active with the church youth groups. Although one of the witnesses called by Leonard in support of her claim was her clergyman, she does not claim that her church has particular tenets or teachings against membership in or support of labor unions. Thus, this case must be decided under the two-element test applicable to personally held religious beliefs.

Leonard has been a practicing Christian for approximately 26 years, and describes her religious beliefs as "critical" to her. She has been in the education profession since at least 1975, when she was a classroom teacher with the Longview Public Schools. While employed in Longview, she joined the Longview Education Association, an affiliate of the Washington Education Association, even though she was not required by contract to do so. After teaching in Longview, she attended graduate school and taught in Minnesota. She testified that she encountered the American Federation of Teachers while in Minnesota, and was somewhat disquieted by the militance she perceived in that organization. She became an employee of the Olympia School District in 1980. At that time, she paid a fee to the Olympia Education Association under the agency shop provisions of the collective bargaining agreement. Although Leonard felt some concerns about paying that fee, she testified that she was not certain at that time that her concerns were religious-based, and did not therefore request an exemption.

During the 1980-1981 school year, Leonard's concerns about the association increased, and she determined that she would attend association meetings to become better acquainted with association practices. She attended a meeting at which a negotiations update was distributed, and agreed to distribute information fliers to the community subsequent to that meeting. She was also informed that the association intended to distribute fliers only in the neighborhoods of administrators and school board members, "to make them look bad". After the meeting, she asked an administrator whether the negotiations material was an accurate reflection of the district's position, and was informed that it was not. She testified that, as a result of her conversation with the administrator, she felt she had been deceived by the association's presentation. She withdrew from her agreement to help distribute the fliers, and did not participate in any other association activities.

During the summer of 1981, Leonard undertook study to determine if her objections to the association were religious-based. While the Westwood Baptist Church does not forbid its members to associate with unions, it does subscribe to the doctrine of Christian conscience. According to the pastor of the church, the doctrine of Christian conscience provides that, where

Scripture does not set forth specific mandates to the individual, an individual should study and pray about an issue which concerns them and, when a decision is reached concerning the issue, carry out that decision in their daily living. Leonard studied Biblical passages, used reference guides to assist her in locating any passages dealing with the employer and employee, and prayed and thought about the problem. She discussed her thinking with her pastor and showed him her Biblical references. He believed that her analysis was thorough and her study sound.

Leonard concluded as a result of her study that her objections to association membership were religious in nature, and that she could not support unions in any way. She summarized her objections as follows: First, she believes that unions, by their very nature, violate Biblical concepts of employer-employee relationships; second, that unions in general, and specifically the National Education Association and its Washington affiliates, have come to espouse positions on moral issues which, she believes, violate Biblical standards; and third, she believes that, under the principle of separation, she is forbidden Scripturally to be in close association with people or organizations which are not consistent with scriptural teaching on moral issues. Among the moral issues of particular concern to her are the union's alleged support of abortion, which she considers to be murder, and its support of the equal rights amendment to the constitution, which she believes would provide an opportunity for redefinition of Biblical standards regarding the appropriate roles of men and women. She is also concerned with the association's support of equal employment rights for homosexuals, as she believes the Bible defines homosexuality as a capital crime. She also believes that the association supports the teaching of relative ethics, which she believes violates Biblical standards. Leonard concluded that her religious beliefs not only would keep her from joining a union, but also from contributing to it financially, because the Bible teaches that faith without works is dead.

In making its inquiry into the basis of a claimant's objections, the Commission operates within the limits on governmental intrusion into religious beliefs which are imposed by the first amendment to the United States Constitution. In the case at hand, Leonard has asserted a religious basis for her claim of a right of non-association, and has supported the religious nature of the claim with testimony and documentary evidence. She has a long history of religious affiliations. She has attended and been active in church for many years. It is uncontroverted that she made a serious study of religious materials and principles before coming to her present conclusion regarding association with unions. Leonard's claim derives from her study under the Christian conscience doctrine of her church. Leonard asserts an objection to joining or paying an agency shop fee to the Olympia Education Association based on a belief that all labor unions violate

Biblical precepts. Leonard's asserted right of non-association derives from her sincere and genuine religious beliefs, held in good faith.

An issue remains as to the appropriate charity to be the recipient of Leonard's alternative payments. The parties agree that the Salvation Army is a religious organization. Leonard testified that she did not believe Pregnancy Aid to be a Salvation Army program, or a religious charity. Testimony of an association official placed the non-religious nature of that charity in question, particularly in connection with services provided to it by the Salvation Army. No official of Pregnancy Aid was called to testify, and we do not have the benefit of any documentation on the Pregnancy Aid program other than a Salvation Army flier which mentions Pregnancy Aid among its services. The statute provides that an employee asserting a right of non-association pay the requisite amount of money to a non-religious charity or to another mutually agreed upon charity. In the absence of the association's concurrence with her choice, Leonard has the burden of proving that her proposed charity is non-religious. She has not met the burden of proving its non-religious base. Therefore, alternative payments will be directed to be made to her indicated alternative choice, the Thurston County Food Bank.

FINDINGS OF FACT

1. Olympia School District No. 111 is a school district of the State of Washington created pursuant to Title 28A RCW, and is a public employer within the meaning of RCW 41.59.020(5).
2. The Olympia Education Association, an employee organization within the meaning of RCW 41.59.020(1), has been recognized by Olympia School District No. 111 as exclusive bargaining representative of non-supervisory certificated employees of the district.
3. Since 1980, Linda Leonard has been a non-supervisory certificated employee of Olympia School District No. 111, employed within the bargaining unit represented by the Olympia Education Association.
4. Olympia School District No. 111 and the Olympia Education Association have been parties to collective bargaining agreements which contained agency shop provisions requiring employees within the bargaining unit who do not become and remain members of the union to pay an "agency shop" fee in lieu of membership dues (Article 2, Section 11). The contract safeguards the rights of non-association of employees based upon bona fide religious tenets or teachings of a church or religious body.

5. Leonard is an active member of Westwood Baptist Church of Olympia, Washington, affiliated with the Baptist General Conference. The Baptist General Conference takes no position prohibiting its members from associating with labor unions. The Baptist General Conference teaches its members that as Christians they are obligated to exercise decisions of conscience based upon Bible study and prayer. Once an individual makes a choice as a result of such study, the individual is admonished to act in accordance with his or her decision.
6. Leonard had some concern about association with unions prior to her employment with the Olympia School District. During the course of her initial year of employment, she became offended by what she perceived as dishonesty by the Olympia Education Association in the distribution of information regarding negotiations. During the summer of 1981, she undertook a study to determine whether her concerns with the association were religious-based. She concluded that unions violate Biblical standards for employer/employee relations; that she found several of the policy stands of the National Education Association to be opposed to Biblical standards; and she believes that the Bible forbids her to associate with an organization which violated such standards.
7. On or about October 1, 1981, Leonard made a written request of the association that she be permitted to make alternative payments based on her asserted right of non-association under the provisions of RCW 41.59.100 and the collective bargaining agreement. Her claim of a right of non-association is made in good faith on the basis of genuine personally held religious beliefs.
8. The Olympia Education Association refused to allow Leonard to make alternative payments in lieu of payments under the agency shop clause of the collective bargaining agreement.
9. Leonard proposed several charities, among them Pregnancy Aid and the Thurston County Food Bank, to which she would be willing to make alternative payments. The association objected to Pregnancy Aid, in that it receives free rent and periodic clerical service from the Salvation Army, a religious organization. Leonard did not sustain her burden of proof showing Pregnancy Aid to be a non-religious charity.

CONCLUSIONS OF LAW

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

2. Linda Leonard's claim of a right of non-association is based upon well-studied and sincerely held bona fide religious tenets, personal in nature. She is entitled to assert a claim of non-association under RCW 41.59.100.
3. The Thurston County Food Bank program is an appropriate non-religious charity to which an amount equal to agency shop fees may be paid.

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, Olympia School District No. 111 shall thereafter remit, in accordance with WAC 391-95-310, to the Thurston County Food Bank any and all funds withheld and retained pursuant to WAC 391-95-130 from the pay of Linda Leonard.
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 27th day of September, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Hearing Officer

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