

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
DAVID ZELLMER)	CASE 9062-D-91-92
)	
For determination of a dispute)	
concerning union security)	
arising under a collective)	DECISION 4041 - PECB
bargaining agreement between)	
)	
PUBLIC SCHOOL EMPLOYEES OF)	
WASHINGTON)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
and)	AND ORDER
)	
CENTRAL VALLEY SCHOOL DISTRICT)	
)	
)	

David Zellmer appeared pro se.

Eric Nordlof, Attorney at Law, Public School Employees of Washington, appeared for the union.

On March 4, 1991, David Zellmer filed a petition with the Public Employment Relations Commission, seeking a determination on whether he is entitled to assert a right of nonassociation, pursuant to RCW 41.56.122, regarding his obligations under the union security provisions of the collective bargaining agreement between Public School Employees of Washington and the Central Valley School District. A hearing was held at Greenacres, Washington, on November 21, 1991, before Examiner J. Martin Smith. Briefs were filed to complete the record of this case.

BACKGROUND

The Central Valley School District (employer) is one of three suburban districts serving unincorporated Spokane County, to the

east of Spokane, Washington. The employer operates two high schools, three junior high schools and a number of elementary schools for students in kindergarten through 12th grade. The employer maintains a fleet of school busses for transportation of students, and its workforce of classified employees includes bus drivers qualified to transport those students.

Public School Employees of Washington (PSE) is the exclusive bargaining representative of classified employees of the Central Valley School District, including the school bus drivers.

The employer and PSE are parties to a collective bargaining agreement for the 1990-1993 period. Pertinent provisions of that contract are as follows:

Section 18.1. Each employee subject to this agreement, who, on the effective date of this Agreement, is a member in good standing shall, as a condition of employment, maintain membership in the Association in good standing during the period of this Agreement.

Section 18.2. All employees subject to this Agreement who are not members of the Association on the effective date of this Agreement, and all employees subject to this Agreement who are hired at a time subsequent to the effective date of this Agreement, shall, as a condition of employment, become members in good standing of the Association within thirty (30) days of the effective date of this Agreement or within thirty (30) days of the hire date, whichever is applicable. Such employee shall then maintain membership in the Association in good standing during the period of this Agreement.

Section 18.3. The parties recognize that an employee should have the option of declining to participate as a member of the Association, yet contribute financially to the activities of the Association in representing such employee as a member of the collective bargaining unit. Therefore, as an alternative to, and in lieu of the membership requirements of the previous sections of this Article, an

employee who declines membership in the Association may pay to the Association each month a service charge as a contribution towards the administration of this Agreement in an amount equal to the regular monthly dues, less assessments. This service charge shall be collected by the Association in the same manner as monthly dues.

Section 18.4. Any employee who refuses to become a member of the Association in good standing or pay the service in accordance with the previous section, shall, at the option of the Association, be immediately discharged from employment by the District.

Section 18.5. Nothing contained in this Article shall require Association membership of employees who object to such membership 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 mutually 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 Commission pursuant to RCW 41.56.122.

The union security obligation is not imposed on "substitute" school bus drivers.

David Zellmer has worked for the Central Valley School District for five years. During the first four years of that employment and for a brief time at the beginning of the 1990 school year, Zellmer worked as a substitute bus driver. Zellmer became a full-time employee in November, 1990. He worked the balance of the 1990-1991 school year as a regular school bus driver, on a route scheduled for 7.5 hours per day. He continues as a regular route driver in 1991-92.

Zellmer came under the union security obligations of the contract when he became a full-time employee. Zellmer testified that he has

attended some PSE meetings, and that the full amount of dues and fees has been deducted from his pay, but that he never considered himself a member of PSE.

On November 28, 1990, within the month that he came under the union security obligation, Zellmer drafted a "Declaration to Whom it May Concern", setting out his objections to union membership. That declaration stated:

In accordance with the Central Valley School District #356 Collective Bargaining Agreement dated September 1, 1990 through August 31, 1993, page #22, Section 18.5, I David E. Torres-Zellmer, do object to the (previously not mandatory) now mandatory as of the 1990-1991 school year membership in the Public School Employees of Washington "Association", hereinafter referred to as the "P.S.E." Such objections are based upon bona-fide religious beliefs and convictions as a result of my membership for the last 25 years and association with my church. The Indian Trail Church is located at N. 9010 Indian Trail Road in Spokane, Washington 99208. The phone number is (509) 466-2898 and the pastor's name is REVEREND ROBERT PREMUS. Part of my objections are to the support of pro-abortion candidates for public office and one of my other objections is to Article VI in the Local P.S.E. chapter by-laws which endorses a raffle or drawing or other forms of inducement to encourage a better turnout for the meetings, for the monetary or material gain of the participating members. Colossians 3:22-25 is a good employee scripture verse in the Good News translation of the Holy Bible of Christianity. I designate 1.3% of my monthly pay to be sent to the Multiple Sclerosis Inland Empire Chapter as my contract sections 18.3 and 18.5 allow. Thank you from

/s/ David Torres-Zellmer

Although Zellmer made reference to Section 18.3 of the contract in his letter, it does not appear that he sought to invoke the "fair

share" procedure under which he would have paid a reduced dues amount to the union.¹

POSITIONS OF THE PARTIES

David Zellmer states that the union security provision in the 1990-93 contract violates his rights under RCW 41.56.122. He contends that forced membership in Public School Employees is contrary to the teachings of his church, the Church of the Nazarene, in that the union uses and encourages lotteries and other forms of gambling. He also contends that the union offers political support to pro-abortion candidates for public office. Zellmer urges the Commission to allow him to pay an amount equal to union membership fees and dues to the Inland Empire Multiple Sclerosis Society.

PSE contends that Zellmer's assertion of a right of nonassociation should fail, because his beliefs are not bona fide religious beliefs. PSE contends that "door prizes" sold by the union at its meetings are voluntary, occasional and not part of a union policy to promote "gambling" or gaming. PSE contends that it takes no position on the abortion issue in making political contributions. PSE also points out that employees and members may utilize a rebate procedure to curtail expenditure of their membership dues for political purposes. PSE objects to the designation of the Inland Empire Multiple Sclerosis Society as the charity to receive

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A PSE witness testified at the hearing in this matter that a "full member" in a PSE local chapter would pay 1.5% of his or her monthly salary, of which 0.2% of the employee's monthly salary would be set aside for PSE's "political action committee". Fair share members pay only 1.3% of their salary, but forfeit union-paid insurance and the right to vote at union meetings. The same witness indicated that PSE has a rebate procedure under its state by-laws, under which a "full member" can seek return of the political action amounts, but it does not appear that Zellmer was made aware of that procedure at any time prior to the hearing in this matter.

alternative payments from an employee, preferring that any such contributions be directed to an organization whose aims are to combat industrial diseases.

DISCUSSION

The Legal Standards

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, permits the inclusion of union security provisions in collective bargaining agreements. It also provides for exemption from such mandatory clauses:

RCW 41.56.122 COLLECTIVE BARGAINING AGREEMENTS--AUTHORIZED PROVISIONS. 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.** Such public employee shall pay an amount of money equivalent to regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually agreed upon by the public employee affected and the bargaining representative to which such public employee would otherwise pay the dues and initiation fee. The public employee shall furnish written proof that such payment has been made. If the public employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. ... [emphasis by bold supplied]

Under a series of cases culminating with Grant v. Spellman, 99 Wn.2d 815 (1983) ["Grant II"], the courts have directed the Public Employment Relations Commission to hold hearings under RCW 41.56.122, to permit an employee claiming a right of nonassociation to prove his or her bona fide religious objection based upon either: (1) The teachings or tenets of a church; or (2) personally held religious beliefs. The Commission has adopted an implementing rule, as follows:

WAC 391-95-230 HEARINGS--NATURE AND SCOPE. Hearings shall be public and shall be limited to matters concerning the determination of the eligibility of the employee to make alternative payments and the designation of an organization to receive such alternative payments. During the course of the hearing, the examiner may, upon motion by any party, or upon his or her own motion, sequester witnesses. **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:**

(1) In cases where the claim of a right of nonassociation is based on the teachings of a church or religious body, the claimant employee must demonstrate:

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

(b) That the objection is based on a bona fide religious teaching of a church or religious body; and

(c) That the claimant employee is a member of such church or religious body.

(2) In cases where the claim of a right of nonassociation is based on personally held religious beliefs, the claimant employee must 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. [emphasis by bold supplied]

While the first of those alternatives contains more components, it is commonly easier to establish.

This is not a case in which the claimant is relying on church doctrine which clearly "outlaws" union membership. The claimant belongs to the Church of the Nazarene, which has no particular tenets or teachings on the subject of union membership.

Where a claimant clearly sets out personal religious beliefs that are only indirectly based on teachings of a church, other problems arise. An important part of the analysis of "personal religious beliefs" involves separating those beliefs which are personal, political, ethical, and sociological, from those which are religious in nature. Mukilteo School District, Decision 1323-B (PECB, 1984); City of Seattle, Decision 2086 (PECB, 1985); Brewster School District, Decision 3047 (PECB, 1988). Thus, the two-step analysis of WAC 391-95-230(2) must be used in this case.

Application of Standards

At the hearing in this matter, it became clear that Zellmer objects to making any payment to the union. He seeks to limit his alternative charitable contribution under RCW 41.56.122 to 1.3% of his salary, representing the amount paid by employees under the "fair share" option and by "full member" employees who exercise their right to a rebate of political action contributions.

The "Lottery" Issue -

Zellmer's objection to PSE's practice of conducting "lotteries" during membership meetings relates to Article VI, Section 6 of the local PSE chapter by-laws, which says:

Drawings. Drawings may be held at chapter meetings provided:

1. They do not exceed twenty-five dollars (\$25.00) per drawing per chapter meeting.
2. They do not exceed four (4) chapter meetings in any given school year.

General membership meetings are held at least four times each year, but attendance at those meetings is optional.

Zellmer was offered the chance to participate in such drawings, but he declined. His opposition to the door prize drawings is tied to the teachings of his church. Section 33.2 of the Church of the Nazarene's "special rules" admonishes church members to avoid membership in oath-bound societies, all forms of social dancing, and:

Lotteries and other forms of gambling, whether legal or illegal. The church holds that the final result of these practices is detrimental both to the individual and society [citing Matthew 6:24-34; 2 Thessalonians 3:6-13; 1 Timothy 6:6-11; Hebrews 13:5-6; 1 John 2:15-17.3.]

Zellmer testified that he discussed the "lottery" with Tom Conklin, the unit president, who defended the use of the drawings in membership meetings. Zellmer contended that, although no one was required to purchase a "lottery" ticket at those meetings, the prizes were paid for out of union dues. It appeared futile, at least to Zellmer, to think that PSE would change this provision of its by-laws.

The question here is whether voluntary participation in a lottery at meetings where attendance is also voluntary constitutes a sufficient intrusion upon the employee's religious beliefs to warrant assertion of the right of nonassociation. The Examiner thinks not. First, there is no requirement that the employee attend union meetings. Second, the employee could have exercised his contractual right to be a "fee" payer, thereby foregoing voice, vote or office in union affairs. Third, even if Zellmer became a full union member and attended a union meeting to vote on some question of importance to his employment (e.g., ratification of a collective bargaining agreement), the existence of the voluntary door prize drawing does not in any way impact his ability to

represent his interests at the meeting.² Fourth, the explicit command of the "Special Rules" of the Church of the Nazarene appear to be aimed at the conduct of church members only, and does not proscribe association with others who occasionally wager, gamble or play a game of chance.³ There is no evidence that either PSE or its local chapter use gambling or lotteries in any other manner than as an inducement to voluntary attendance at union meetings. Taken as a whole, that union practice is not sufficient to base an assertion of the right of nonassociation under the statute.

The "Abortion" Issue -

Zellmer's objection to PSE's contribution of monies to candidates for public office was based on his belief that those candidates were "pro choice" on the abortion issue.⁴ Zellmer is opposed to abortion on religious grounds. Indeed, section 36 of the Church of the Nazarene's "special rules" says:

The Church of the Nazarene is opposed to the use of induced abortion for personal convenience or population control. It opposes liberalizing the laws which allow induced abortion on demand. ...

Zellmer had a conversation with PSE State President Claire Irwin, who is also a classified employee in the Central Valley School District, and Zellmer remembered Irwin saying that political money was given to "both sides".

² Put another way, the "compulsory unionism" flowing from the union security provision does not extend to compel participation in that aspect of union activities.

³ Indeed, carrying Zellmer's arguments to their logical extensions would raise a conflict with his employment relationship with the school district. The Washington State Lottery generates funds for the state General Fund, from which common school districts including the Central Valley School District receive apportionments.

⁴ Zellmer did not name any candidate in particular.

The question here is whether there is any PSE policy which indicates that, as an organization, it has taken any stand on the current debate concerning "abortion". All that is offered by Zellmer is one hearsay statement by President Irwin, which is ambiguous at best.⁵ Nothing affirmatively indicates that PSE has any concern about "abortion" as a political issue. Further, all employees are entitled to avoid or have rebate of the portion of the PSE full-member dues which are used for payments to candidates for political office. Zellmer has not sought to exercise the options which were made available to him under the contract and PSE's internal procedures, let alone having been denied use of those options.

Secular Humanism -

Zellmer also indicated a general discomfort with PSE policies that he associated with "secular humanism". He did not elaborate. The objection is not supported by the record, and cannot be a basis for granting the right of nonassociation under the statute.

FINDINGS OF FACT

1. Central Valley School District is a common school district operated under Title 28A RCW, and is a public employer within the meaning of RCW 41.56.020 and 41.56.030(1).
2. Public School Employees of Central Valley, an affiliate of Public School Employees of Washington (PSE), a bargaining representative within the meaning of RCW 41.56.030(3), is the

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Her statement could mean that PSE expressly gives money to both "pro-choice" and "pro-life" candidates, but it could also mean that PSE's contributions to legislative candidates are made irrespective of their positions on the "abortion" issue.

exclusive bargaining representative of classified employees of the Central Valley School District.

3. PSE and the employer are parties to a collective bargaining agreement which is effective through August, 1993. That contract contains a "union security" provision which obligates all regular classified employees of the employer to become and remain members of the union, or to pay a representation fee. Employees exercising their option to pay only the representation fee forego rights of voice, vote and office in the union, but do not pay the portion of funds collected by the union from full members for political purposes. The contract recognizes the right of nonassociation of employees based on bona fide religious beliefs.
4. David Zellmer is employed by the Central Valley School District as a school bus driver. Since November, 1990, he has held a regular position and has been obligated under the union security provisions of the collective bargaining agreement.
5. Zellmer is a member of the Church of the Nazarene. That church does not have tenets or teachings expressly directing its members to refrain from association with labor unions. Zellmer has not exercised his option under the collective bargaining agreement to pay only a representation fee to the union, nor has he exercised his option under established internal union procedures to obtain a rebate of funds collected by the union for political action purposes.
6. PSE conducts a voluntary lottery at chapter meetings, where attendees may compete for a door prize. Consistent with the teachings of his church, Zellmer has exercised his option to refrain from participation in the voluntary lottery on the occasions when he has attended union meetings.

7. Zellmer has failed to establish that PSE has a policy or position, as an organization, concerning the issue of "abortion" or that it has in any way based or conditioned its making of political contributions on that issue.
8. Zellmer has failed to establish an objection to association with PSE related to a philosophy of "secular humanism".

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-95 WAC.
2. David Zellmer has failed to meet the burden of proof necessary to establish a right of nonassociation under RCW 41.56.122.

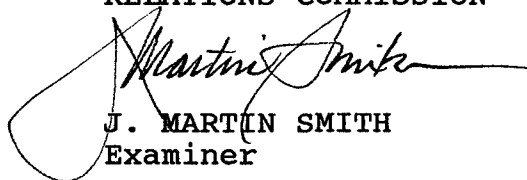
ORDER

1. David Zellmer is directed to pay Public School Employees of Central Valley all dues and fees arrearages owing under the 1989-92 collective bargaining agreement between the union and Central Valley School District, and to thereafter make payments as required by that agreement.
2. If no petition for review of this order is filed with the Public Employment Relations Commission within 20 days following the date of this order, Central Valley School District shall thereafter remit, in accordance with WAC 391-95-130, to Public School Employees of Central Valley any and all funds withheld and retained from the pay of David Zellmer pursuant to WAC 391-95-130.

3. 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.

Entered at Olympia, Washington on the 30th day of April, 1992.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION



J. MARTIN SMITH
Examiner

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