

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
EDMONDS EDUCATION ASSOCIATION)	CASE NO. 2068-D-79-20
For a ruling concerning the obligations of:)	
JOHN PATRICK)	DECISION NO. 1239-A EDUC
Under a union security agreement between the petitioner and:)	
EDMONDS SCHOOL DISTRICT NO. 15)	DECISION OF COMMISSION

Williams, Lanza, Kastner and Gibbs by Jerry Edmonds and Kenneth E. Petty, Attorneys-at-Law, appeared on behalf of John Patrick.

Joe C. Bullard, Administrative Assistant, appeared on behalf of the District.

Symone Scales, Attorney-at-Law, appeared on behalf of the Association.

John Patrick sought exemption from payment of an agency shop fee because of a bona fide religious objection. He based his claim upon RCW 41.59.100 and the relevant provisions of the collective bargaining agreement between the Edmonds Education Association (the Union) and the Edmonds School District No. 15 (the employer). The Executive Director granted the exemption, Decision No. 1239-EDUC, and the union seeks the reversal of that decision.

RCW 41.59.100 states that:

[A]ll union security rights must safeguard the right of nonassociation of employees based on bona fide religious tenets or teachings of the church or religious body of which such employee is a member.

The statute permits the payment of the equivalent dues to a charity, in lieu of the agency shop fee, if a person qualifies for the exemption. The relevant provision of the collective bargaining agreement between the union and the employer Section 2.2., states:

a. All employees hired after June 1, 1978 may elect to become members of the Association or may pay an agency shop fee equivalent to the dues of the Association. Employees who fail to authorize payroll deductions will have the agency shop fee deducted from their salary and paid to the Association, pursuant to Chapter 41.59 RCW.

* * *

d. In order to safeguard the right of employees based on a bona fide religious objection, the teachings or tenets of a church or religious body of which such employee is a member, said employee may pay an amount of money equivalent to the agency shop fee to a non-religious charity mutually agreed upon by the employee affected and the Association, pursuant to Chapter 41.59.100 RCW.

In the proceedings before the Executive Director, as well as before us on this appeal, Patrick argues alternative theories of the case: First, that he is qualified for the exemption based on the bona fide religious teachings of the church or religious body of which he is a member; and second, that he is qualified for the exemption under a disjunctive reading of the statute based on his personally held bona fide religious tenets. The Executive Director granted the exemption based exclusively on the first theory.

At the time the Executive Director granted Patrick the exemption, Grant v. Spellman, 96 Wn.2d 454, 635 P.2d 1071 (1981) (Grant I), was the leading case interpreting Washington agency shop-religious exemptions statutes. In that case, the Supreme Court ruled that a claim of religious exemption under the statute must be based on the bona fide religious tenets or teachings of the religious body of which the employee is a member. Individually held religious beliefs, not supported by a church or religious body of which the employee is a member, were not deemed sufficient to qualify an employee for the exemption. The Grant I court rejected the claim that the statutes are constitutionally infirm without an allowance for individual beliefs, relying primarily on Abood v. Detroit Board of Education, 431 U.S. 209, 52 L. Ed. 2d 261, 97 S. Ct. 1782 (1977). The Abood decision stands for the proposition that union security agreements do not violate the First Amendment to the U.S. Constitution.

Grant appealed to the U. S. Supreme Court, which issued a terse decision directing the Washington Supreme Court to reconsider its decision in light of Larson v. Valente, 456 U.S. 228, 72 L. Ed. 2d 33, 102 S. Ct. 1673 (1982). Grant v. Washington Public Employment Relations Commission, 456 U.S. 955, 72 L. Ed. 2d 479, 102 S. Ct. 2028 (1982). The Larson decision required a showing of a compelling state interest for the statutory granting of a denominational preference.

The Washington Supreme Court reconsidered Grant I in Grant v. Spellman, 99 Wn.2d 815 (1983) (Grant II). Finding the remand of the case by the United States Supreme Court "delphic at best," 99 Wn.2d at ____, the Court decided to construe the religious exemption provision in RCW 41.56.122(1), a provision identical to RCW 41.59.100, in a manner to avoid constitutional difficulty. As suggested in a dissenting opinion when the case was

originally before this Commission, King County, Decision 591-A (PECB, 1979), the Grant II court decided that the religious exemption statutes should be disjunctively construed. The result 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. A concurring opinion, adhered to by six justices, opined that this construction was constitutionally compelled. Hence, under Grant II, an employee can demonstrate a bona fide religious objection that he or she subscribes to as a member of a church or religious body, based on the teachings of that body, or the employee can demonstrate a bona fide religious objection that is personally held. Left for consideration, among other things, is whether an exemption can be claimed:

(1) when the employee or the employee's church objections only to certain unions, and not all unions (selected conscientious objection); or

(2) when the objection to union membership is based on the employee's churches teachings, but the employee does not individually subscribe to that teaching.

Regardless of whether a religious objection to union membership is personally held, or church supported, the entitlement to the exemption is a question of proof. The Commission's task as a fact-finder is to review the evidence and decide whether or not the claim is religious and bona fide.

In cases where the claim is supported by church-held beliefs, we believe that the following should suffice. The claimant should demonstrate:

(1) his or her bona fide religious objection to union membership, and

(2) that the objection is based on a bona fide religious teaching of a church or religious body, and

(3) that the claimant is a member of such church or religious body.

If the claim is personally held, and not supported by church teachings, the claimant should demonstrate:

(1) his or her religious objection to union membership, and

(2) that the religious nature of the objection is genuine and in good faith.

Although fewer elements of proof are involved when the claim is based on personal beliefs only, ordinarily a claim based on church-supported beliefs would be easier to prove. The claimant would have the benefit of independent third-party evidence to support his or her claim, and that third-party evidence might be a more articulate vehicle for explaining the religious foundation of the claimant's beliefs.

The genuineness and sincerity of a claimant's objection is something that will be discerned from all of the facts and circumstances of the case. The religious, as opposed to purely secular, nature of union opposition is also an evidentiary matter, bearing in mind that "religion" is defined as:

[T]he personal commitment to and serving of God or a god with worshipful devotion, conduct in accord with the divine commands especially as found in accepted sacred writings or declared by authoritative teachers, a way of life recognized as incumbent on true believers, and typically the relating of oneself to an organized body of believers.

Webster's Third New International Dictionary, unabridged, at 1918 (1967 ed.).


Patrick's claim in the instant case rests primarily on his church affiliation, and that church's objection to union membership. The evidence shows that Patrick is a member in good standing of a church, and that the church's pastor has articulated specific, non-selective anti-union religious sentiments to which Patrick subscribes. The union, however, contends that Patrick's evidence as to the second requirement set forth above is not persuasive because the church will not enforce its teachings with an expulsion rule against members who fail to follow church teachings. The union also suggests that the lack of longevity or institutionalization of the church to which Patrick is a member is fatal to his case. Assuming, without deciding, that the union's view of the evidence is correct, we nevertheless agree with the Executive Director that Patrick has met the minimum requirements for persons claiming the exemption because of church affiliation; adding that Patrick would be eligible for the exemption even without church affiliation. We do not believe that the exemption should be denied in this case because the church is newly formed, has only one small congregation, or has an evolving church doctrine that is based largely on the interpretations of one person. While an expulsion rule would lend credibility to the sincerity of the religious teaching, it is not needed if the evidence is otherwise convincing, which it is here. Church discipline can take on many forms, and we look at it as one of the many ingredients in the petitioner's evidentiary package.

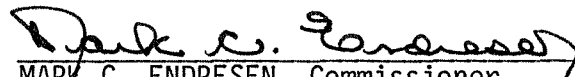
ORDER


Accordingly, the decision of the Executive Director is affirmed.

ISSUED at Olympia, Washington, this 23rd day of November, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


JANE R. WILKINSON, Chairman


MARK C. ENDRESEN, Commissioner


MARY ELLEN KRUG, Commissioner