

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
JOHN J. WALDEN	)	CASE NO. 6794-D-87-68
	)	
for determination of a dispute	)	DECISION 3047 - EDUC
concerning union security	)	
arising under a collective	)	
bargaining agreement between:	)	
	)	
BREWSTER SCHOOL DISTRICT No. 111	)	
	)	FINDINGS OF FACT,
and	)	CONCLUSIONS OF LAW
	)	AND ORDER
BREWSTER EDUCATION ASSOCIATION	)	
	)	
	)	

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John J. Walden, appeared pro se.

Catherine C. O'Toole, General Counsel, and  
Maria Sun, Legal Intern, appeared on behalf  
of the Association.

On March 6, 1987, John J. Walden filed a petition with the Public Employment Relations Commission, seeking a ruling pursuant to Chapter 391-95 WAC concerning his obligations under the union security provisions of a collective bargaining agreement between Brewster School District No. 111, and the Brewster Education Association WEA/NEA. A hearing was held on August 18, 1987, before Examiner Jack T. Cowan.

BACKGROUND

The collective bargaining agreement between the employer and the Brewster Education Association (BEA) for the period of September 1, 1986 through August 31, 1988, provides in part:

## ARTICLE II BUSINESS

## Section I Dues Deduction

No member of the bargaining unit will be required to join the Association; however, those employees who are not Association members, but are members of the bargaining unit will be required to pay a representation fee to the Association. The amount of the representation fee will be determined by the Association, and transmitted to the Business Office in writing. The representation fee shall be an amount less than the regular dues for the Association membership in that non-members shall be neither required nor allowed to make a political (PULSE or NEAPAC) deduction. The representation fee shall be regarded as fair compensation and reimbursement to the Association for fulfilling its legal obligation to represent all members of the bargaining unit. In the event that the representation fee is regarded by an employee as a violation of their right to non-association, such bona fide objections will be resolved according to the provisions of RCW 41.59.100, or the Public Employment Relations Commission.

The provision of statute referred to in the collective bargaining agreement specifies:

RCW 41.59.100 UNION SECURITY  
PROVISIONS -- SCOPE -- AGENCY SHOP  
PROVISION, COLLECTION OF DUES OR FEES.

A collective bargaining agreement may include union security provisions including an agency shop, but not a union or closed shop. If an agency shop provision is agreed to, the employer shall enforce it by deducting from the salary payments to members of the bargaining unit the dues required of membership in the bargaining representative, or, for nonmembers thereof, a fee equivalent to such dues. All union provisions must safeguard the right of nonassociation 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 nonreligious 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 employee shall furnish written proof that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization.

Walden belonged to the BEA for a number of years, and he had also been associated with the BEA's "uniserv" affiliate. He more recently became disenchanted with what he perceived as an adversarial atmosphere, created in part by the association's attempt to include both state and national association issues into the local negotiations process. Walden feels this type of activity, which resulted in protracted strife within the district, to be in conflict with his religious beliefs. Walden alleged that the NEA has supported such non-scriptural items as abortion, ERA candidates and homosexual teachers, positions which he, as a Christian, could not support. Walden would now prefer to present his needs to his employer, and then trust that the employer would meet those needs as a result of the prayers of the person(s) presenting the needs. Since the collective bargaining agreement requires a charitable contribution in lieu of contributing to the association, he proposes a charity to which he is willing to contribute, and offers to accept another if the first is unacceptable to the association.

On January 27, 1987, Walden received a letter informing him of the agency shop provision of the collective bargaining agreement. At a meeting on February 3, 1987, between those bargaining unit members who pay an agency shop fee and the BEA, some of those members indicated a willingness to support the

local association but not the larger association. Walden did not agree with that position, however. On February 9, 1987, he sent a letter to his employer requesting exemption from agency fee, saying that he could not agree with having to pay an agency fee unless he were given a chance to present it, to which the employer agreed.

In response to questions put forth by counsel in cross-examination, Walden answered that he was philosophically opposed to positions or organizations favoring the ERA; to organizations which support children's rights without corresponding responsibilities; to organizations which support situational ethics; to organizations that support any kind of sexual revolution; and to organizations that support homosexual liberation. In response to the question, "So your objection then is not to joining or belonging to the association per se or union per se, your objection is to the manner in which the local association fights for rights as opposed to simply presents needs, is that accurate", Walden responded, "That's right, and also the larger associations I have mentioned why I cannot support them, too. I could easily belong to the Brewster Education Association were it done differently."

Contradicting Walden's testimony, Fred Frost, who had been President of the Brewster Education Association since 1979, as well as a former NEA and WEA delegate, testified that, on the evening of February 3, 1987, Walden had voiced objections to Frost about having to pay dues to the association.

In other testimony, Frost denied that NEA and WEA resolutions affect the activities of the Brewster Education Association. Frost also testified that member dues and agency fees were never used to advocate abortion, to advocate homosexual liberation, or to advocate children's rights. Frost likewise respon-

ded in the negative to questions as to whether the WEA, NEA or the Uniserv council has a position on abortion, homosexual liberation, children's rights, secular humanism or situational ethics. Frost further testified that agency shop fees for persons who object to the use of agency fees for political or ideological purposes are reduced from the full membership dues by the amount of the money the WEA and NEA spend on political activities.

Robert Maier, a WEA field representative for governmental relations who is also a former NEA and WEA delegate, testified that the basis for the organization's support of political candidates is whether they are pro-education, regardless of the candidate's position on other matters.

Brewster Education Association Treasurer Bonnie Colpitts testified that sometime after May 28, 1986, but before October 28, 1986, she had received a contribution to the BEA from John Walden, "plus a WEA contribution from the dues that are deducted from the payroll deductions and it was in the amount of \$10.00".

Walden responded to Colpitts' testimony by stating that Frost had asked all of the teachers "to give \$10.00 to cover pay for costs of stuff that was being given to all us teachers ... but I didn't see it as a support for the organization but rather just a cover pay for cost as, you know, a minimal kind of thing".

#### POSITIONS OF THE PARTIES

Walden has not asserted that his claim of a right of non-association is based on the teachings of a specific church or

religious body. Walden claims, however, that he declines to associate himself with organizations which are opposed to Biblical principles. He contends the BEA, Uniserv, WEA and NEA do not always present his needs respectfully before those in authority over him, and that the NEA has departed from Biblical principles in areas such as the ERA, abortion, homosexual liberation, children rights, secular humanism, sexual revolution and situational ethics. Contending that the BEA and its affiliates violate the Biblical concepts of employer-employee relationships and espouse positions on moral issues contrary to God's word, Walden believes that he cannot be in association or support organizations.

The BEA contends there has been no proof of any sort that the BEA, Uniserv, WEA or NEA subscribe to the positions which Walden attributes to them. It further contends that Walden's personal beliefs are predicated on philosophical, political and personal disagreements with the union, and are not religious objections to union membership, so that Walden is not eligible for exemption from payment of representation fees to Brewster Education Association.

#### DISCUSSION

Under Grant v. Spellman, 99 Wn.2d 815 (1963) (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 can demonstrate a bona fide religious objection that is personally held. Walden does not argue his exemption based upon his membership in the Rocky View Nazarene Church on the Water, or the specific teachings of that religious body. Rather, he seeks exclusion

from union security obligations based upon personally held religious beliefs.

Interpreting the statute in light of Grant II, the Commission has ruled that such a claimant must 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.

Edmonds School District, Decision 1239-A (EDUC, 1983).

The burden of proof remains on the petitioner, and the claim of a right of nonassociation must be based upon beliefs or teachings which are religious in nature. Snohomish County (Robert Dokka), Decision 2859-A (PECB, 1988). The petitioner must demonstrate that his objection is grounded on religious and not political-philosophical grounds. City of Seattle, Decision 2086, (PECB, 1985); North Thurston School District, Decision 2433, (EDUC, 1986). The religious, as opposed to purely secular, nature of opposition to a union is an evidentiary matter. Edmonds, supra. Going beyond the nature of the objection, the genuineness and sincerity of a claimant's objection is something that will also be discerned from all of the facts and circumstances of the case.

While the petitioner attributes his present claim of a right of non-association to alleged activities or conduct of the association which are deemed contrary to his personal religious beliefs, union membership in itself does not appear to be in conflict with his beliefs. In fact, Walden previously espoused active membership in the association and has, on the record in this proceeding, affirmed a willingness to again become a member if certain BEA activities were to be modified.

The sincerity of Walden's profession of faith and his scriptural interpretations are not at issue, but a question remains as to whether the religious beliefs held by the petitioner satisfy the meaning and intent of the religious objection envisioned by the statute. In Puyallup School District, Decision 2711, (EDUC, 1987), the employee asserting a right of non-association set forth certain allegations concerning conduct of the WEA/NEA, but the Examiner found:

None of these inferences are proven to the extent they comprise appropriate findings of fact in this proceeding. Even if proven, the petitioner has failed to develop a record with regard to the nexus between his religious beliefs and his opposition to those union positions.

The bulk of the record in the instant case, like that in Puyallup, denotes philosophical rather than religious opposition to the association. The petitioner's allegations are inference, rather than evidence verified by fact. Conflicting evidence presented by the association serves to negate the assertions of the petitioner.

#### FINDINGS OF FACT

1. Brewster School District 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 Brewster Education Association, an employee organization within the meaning of RCW 41.59.020(1), is the exclusive bargaining representative for non-supervisory certificated employees of the Brewster School District.



3. The employer and the union are parties to a collective bargaining agreement which contains an agency shop provision requiring all bargaining unit employees to maintain their membership in the union or pay a "representation fee". The agreement also safeguards the right of non-association of employees based upon bona-fide religious objections, as per RCW 41.59.100.
4. John Walden belonged to Brewster Education Association for a number of years when he first became a teacher with the Brewster School District. Walden also became active in the Brewster Education Association's Uniserv affiliate.
5. Walden later became dissatisfied with the manner in which negotiations were conducted between the parties. He came to view the process as being unnecessarily confrontational because of the influence of the Washington Education Association and the National Education Association, and he then elected to withdraw from membership in the Brewster Education Association.
6. Walden now seeks exclusion from the membership and representation fee obligations of the current collective bargaining agreement on the basis of personal religious beliefs. He alleges the NEA, WEA, BEA and uniserv council to be involved in support activities which are in conflict with such belief. He declined an earlier opportunity to pay dues to the local association only, and to exclude the larger associations.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.59 RCW and Chapter 391-95 WAC.
2. John Walden has failed to sustain his burden of proof demonstrating a nexus between his religious beliefs and his assertion of a right of non-association with the Brewster Education Association under RCW 41.59.100.

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, Brewster School District shall thereafter remit, in accordance with the provisions of WAC 391-95-310, to the Brewster Education Association any and all funds withheld and retained pursuant to WAC 391-95-130 from the pay of John Walden.
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 22nd day of November, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JACK T. COWAN, Hearing Officer

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