

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
GALE L. BROUGHTON)	CASE NO. 6795-D-87-69
)	
for determination of a dispute)	DECISION 3048 - 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)	
)	
)	

Gale L. Broughton, appeared pro se.

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

On March 9, 1987, Gale L. Broughton filed a petition with the Public Employment Relations Commission, seeking a ruling pursuant to Chapter 391-95 WAC concerning her 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 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 the representation fee is regarded by the employee as a violation of their right to nonassociation, 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 non-members thereof, a fee equivalent to such dues. All union 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 employees 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.

The petitioner, Gale Broughton, is a member of the First Presbyterian Church in Omak, Washington. In her petition, she asserts a right of non-association under RCW 41.59.100, based on teachings of that church.

In a February 27, 1987, letter to the Brewster Education Association, Broughton stated, in part:

From 1968 to 1973, I was a member of B.E.A. and thus the affiliated organizations, W.E.A. and N.E.A. Because of the direction these organizations were taking and the things they supported were in conflict with the religious teachings I had and continue to have, I could not continue my membership

In testimony, Broughton detailed her religious background, beginning at age 15 and moving through a wealth of religious experience with several denominations in varied locations.

Ms. Broughton testified, further, that she had an unexpected pregnancy in 1979, and was advised by her physician at that time that:

... it might be a very definite consideration for me to have an abortion because of

my health and the problems I had in prior pregnancies. I went for further medical counseling and they agreed also that it was a very chancy thing. This was a great burden upon my heart. I found it in great adversity to my prayers and the reading of the Bible and I did spend a great deal of time in prayer over this matter. I felt the Lord answered my prayers and guided me and I did not have the abortion and I felt a great burden was lifted from my heart. This is my evidence of my extreme opposition to abortion. I had personally lived through this and I do not support abortion and it seems that it is one of the themes that BEA, NEA and WEA has promoted legislation in this matter and I am definitely opposed to this. That's the basic conclusion to my testimony.

In response to the question, "Is it true to say that you are politically and philosophically opposed to positions taken by NEA on abortion," Broughton responded, "Not politically opposed. I would say religiously opposed. According to my prayers and my scriptures."

In response to the question, "Isn't it true you dropped out of membership in the education association because of something offensive that was said to you by another member person named Dave Gibb," Broughton responded, "No. I began studying their feelings and their procedures and found them to be militant."

In questions concerning the Presbyterian church, Broughton responded as follows:

Q Isn't it true that a group of Presbyterians known as Presbyterians for pro-life are opposed to abortion, but the church as a whole has taken no position on abortions?

A The church has taken a position that you follow your conscience.

Q So the Presbyterian church does not forbid abortions, does it?

A It says thou shalt not kill. The Presbyterian church adheres to the Bible and the teachings of Christ, and the thou shalt not kill and that is against the scriptures.

Q But the church has no official position of abortion, isn't that true?

A Well, if you go by the scriptures they do.

Pastor Elbert G. Harlow, of the First Presbyterian Church of Omak testified:

... the Presbyterian position is to support its members in their conscientious beliefs and their attitudes that are carefully thought out, scripturally based and expressing something that is very much a part of their lives. As I have talked to Gale [Broughton], I've come to the conclusion that she is conscientious in this position, that she has thought it out carefully and while the denomination has taken the position of free choice, it also supports her in her determination that abortion, for instance, is something that she cannot accept.

When questioned concerning the teachings of the Presbyterian church about union membership, Harlow responded:

Here again the Presbyterian church, while as a majority view takes a position in support of union, it also supports the right of individuals within the denomination to disagree with that majority view, and there is a strong movement within the Presbyterian church that has some real questions about unions.

Testifying from a base of knowledge as a local union officer and WEA and NEA delegate over a period of several years, the President of the Brewster Education Association, Fred Frost, stated that resolutions adopted by the Washington Education Association and by the National Education Association are not acted upon or binding upon the local association. He described them as, "... just statements of philosophies so there is no action taken as a result of a resolution." When asked whether member dues and agency fees were ever used to advocate abortion or freedom of reproductive choice, Frost responded in the negative. When questioned by Broughton, he responded as follows:

Q. Is WEA for abortions?

A. No.

Q. Support abortions?

A. No.

Q. Is there a statement against abortions then?

A. There is no statement on abortion. They have no position.

The legislative program adopted by the NEA in 1986 was introduced into evidence. Under the heading, "Second tier:¹ current priority congressional issues", that document states:

II. Civil and human rights protection.

NEA supports:

... reproductive freedom without governmental intervention.

¹ "Second tier" is defined as legislative issues originated in the Congress or the Administration which require ongoing NEA activity to advance NEA's objectives.

Frost testified, further, that no change was being made in the 1987 NEA legislative program with regard to the statement on the right for reproductive freedom. In response to Broughton's questions concerning the resolutions adopted by the NEA, Frost responded, in part:

Q. I thought they (NEA/WEA) operated as one unit?

A. They do not operate as one unit. They each have their own set of resolutions. They are totally independent of each other on the resolutions.

Q. Are you saying when I give my money I am not supporting this resolution?

A. If you are a dues paying member. You are not a dues paying member.

Q. But if I am expected to pay my dues, am I supporting this legislation?

A. No.

* * *

Q. My money might be likely to support this?

A. Support the statement? There is no action.

Q. Support the promotion of this legislation?

A. It's possible your money could be used for anything.

Frost stated that, to the best of his knowledge, the word "abortion" does not appear in any NEA literature or documents. He testified, further, that neither the WEA or BEA have a position on abortion or reproductive freedom.

Robert Maier, WEA field representative for governmental relations, and also a former NEA and WEA delegate, testified that the WEA raises money for political purposes from a separate political action arm called PULSE. Maier affirmed that employees making agency fee payments do not make contributions to PULSE. Maier testified that the NEA has a similar political arm, called NEAPAC, which likewise receives no funds from membership dues or agency fee payments. When asked whether NEA or WEA legislative program ever included a provision for lobbying on behalf of legislation that would permit abortion, Maier answered no.

POSITIONS OF THE PARTIES

Broughton does not wish to be a member of BEA. She seeks to base a right of non-association on the teachings of her church and upon her own, personally held, religious objections. She views the BEA/WEA/NEA as a traditional union, with accompanying philosophies, and disagrees with the program resolutions of the union, particularly in the area of "abortion" or reproductive freedom.

The union contends there has been no evidence to substantiate that the BEA, WEA or NEA subscribe to the positions which Broughton attributes to them. Seeing no conflict between the position of the union and the church tenets on the subject of reproductive freedom, the union questions whether the refusal to join the association is based on a bona fide personally held religious belief or is hinged upon an historic affront with another union representative. In any event, the union feels Broughton has failed to meet the necessary burden of proof and is not entitled to an exemption from the obligations of the union security provision.

DISCUSSION

Under Grant v. Spellman, 99 Wn.2d 815 (1963) (Grant II), and Edmonds School District, Decision 1239-A (EDUC, 1983), an employee need not become a union member if he/she 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. In this case, Broughton claims exclusion on both the tenets of the church and on her personally held belief.

The evidence does not establish that the First Presbyterian Church of Omak has tenets or teachings which would prohibit Broughton or any of its other members from union membership. Rather, that church allows its members a freedom of choice based on their own scriptural study and interpretation, and then supports the member in whatever position or belief the member may choose to adopt. The same rationale would apply to matters such as abortion or reproductive freedom.

Without a base in church teachings sufficient to satisfy the "church-based" alternative set forth in Grant II, supra, the decision of this case must hinge on proof of bona fide personally held religious beliefs of the petitioner, as they relate to membership in the association.

To effectively assert the right of non-association, the employee must prove that the religious belief is bona fide, and not merely a subterfuge to escape union security obligations. Snohomish County, Decision 2859 (PECB, 1988). There is no doubt as to the sincerity of the petitioner in this case. Rather, the question here is whether the petitioner has met her burden of proof pursuant to Grant II, supra; that of coming

forward with evidence linking religious beliefs to union positions on the issues with which she is concerned.

While the Commission cannot inquire into the reasonableness or plausibility of the religious beliefs claimed by a petitioner, the Commission does apply an objective standard to determine, as a question of fact, whether or not the belief is religious, as compared with philosophical, sociological, ethical or moral. Mukilteo School District, Decision 1323-B, (EDUC, 1984). In the instant case, the petitioner did not provide scriptural documentation of her beliefs, other than to cite the commandment, "Thou shalt not kill." in connection with explaining her beliefs about abortion. Otherwise, she stated only an opposition derived from her prayers and scriptures, without specifying the scriptures or the objects of her opposition.

The only evidence submitted of objectionable union positions was the NEA document containing reference to "reproductive freedom". Evidence provided by the union substantiates that the Brewster Education Association, and even the Washington Education Association, have no stated position on abortion, and that the dues and agency fee payments of the members of the bargaining unit are not used for support of resolutions or association legislation. The activities or positions of a union that are seen as conflicting with an individual's religious beliefs must be based on facts, not on misinformation or erroneous assumptions. Puyallup School District, Decision 2711 (EDUC, 1987).

Having presented only minimal evidence regarding her religious beliefs as related to union membership, and having provided insufficient evidence as to the union's position on the issue of concern to her, the petitioner has not satisfied the requirements necessary to sustain her burden of proof. Her

request for nonassociation based upon religious objection must be denied.

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 41.69.020(1), is the exclusive bargaining representative for a bargaining unit of 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" in lieu of full association membership dues. The agreement also safeguards the right of nonassociation of employees based upon bona fide religious tenets or teachings of a church or religious body.
4. Gale Broughton was a member of the Brewster Education Association from 1968 to 1973. Broughton terminated her membership with the association when she became dissatisfied with the direction the association was taking and the things they supported were in conflict with the religious teachings which she had and continues to have.
5. Broughton now seeks to assert a right of non-association and to make charitable payments rather than the payments

required under the union security language of the current bargaining agreement, claiming religious beliefs.

6. Broughton is associated with the First Presbyterian Church of Omak, Washington, which does not have church teachings prohibiting membership in or association with unions.
7. Broughton's claim of a right of non-association is based primarily upon a claim that the Brewster Education Association and its WEA and NEA affiliates are involved in the support of abortion, which is in conflict with her religious beliefs.
8. The evidence of record fails to establish the Brewster Education Association and its WEA and NEA affiliates are involved in the support of abortion.

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. Gale L. Broughton has not sustained her burden of proof demonstrating a nexus between her religious beliefs and her assertion of a right of non-association with the Brewster Education Association under RCW 41.59.100.

ORDER

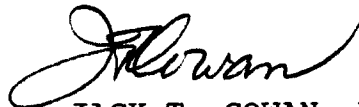
1. If no petition for review of this order is filed with the Public Employment Relations Commission within twenty (20)

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 Gale L. Broughton.

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.