

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
MUKILTEO EDUCATION ASSOCIATION)	CASE NO. 1974-D-79-16
For declaratory ruling concerning)	
the union security obligations of:)	DECISION NO. 1323-B - EDUC
GORDON ROSIER)	
Under a collective bargaining)	DECISION OF COMMISSION
agreement between petitioner and:)	
MUKILTEO SCHOOL DISTRICT NO. 6)	

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

Gordon Rosier, Pro Se, appeared on behalf of the employee.

On February 20, 1979, Mukilteo Education Association (petitioner) filed a petition with the Public Employment Relations Commission seeking a declaratory ruling concerning the union security obligations of Gordon Rosier, a certificated employee of Mukilteo School District No. 6. The petition was held in abeyance while the parties litigated unfair labor practice allegations in which Rosier claimed that the union security agreement involved was unlawful. See: Mukilteo School District No. 6, Decision 1122 (EDUC, 1981). After the unfair labor practice charges were heard and dismissed, a pre-hearing conference was conducted in the instant matter on September 29, 1981, by Ronald L. Meeker, Hearing Officer. A statement of results of the pre-hearing conference was issued on November 16, 1981. On November 25, 1981, Rosier filed objections to the statement, taking issue with that portion of the statement which characterized his asserted right of nonassociation as being based on personal beliefs. Rosier claimed that he was asserting a religious belief. Based upon the statement of results of the pre-hearing conference, both parties filed motions seeking summary judgment. The motions were denied. A hearing was held on March 15, 1982, before Kenneth J. Latsch, Hearing Officer. A decision, including findings of fact, conclusions of law, and order was issued March 5, 1984. A petition for review was filed by Rosier, received March 22, 1984.

POSITIONS OF PARTIES ON REVIEW

The complainant's petition for review argues that: (1) the Commission does

not have the authority to inquire into the nature of a person's religious belief; (2) the association, charged with the burden of proof, offered no evidence or proof that the complainant's beliefs are not religious nor sincerely held; and (3) absent the association's proof in (2) the Commission should rule in favor of complainant.

Both respondents support the decision of the Executive Director.

DISCUSSION

The facts are as set forth in the Executive Director's decision, and are adopted by reference.

The relevant part of RCW 41.59.100 provides:

...all union security 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....

There is nothing in the record that documents either institutional or individual religious beliefs that conflict with the payment of an agency shop fee by the complainant. If the basis for individual beliefs, in addition to the sincerity of such beliefs, were part of the record, the Commission might evaluate this case in light of Grant v. Spellman, 99 Wn.2d 815 (1983) (Grant II). Such is not the situation. Because there is no showing of religious basis for the objection, only a claim of basis, the Commission cannot find for the employee claimant.

RCW 41.59.100 requires a person asserting a union security exemption to demonstrate his religious objection to nonassociation with a union.

Mr. Rosier is attempting to prove his case by using eight character witnesses who each testified that they believe his "objection" is sincere and that he is an honest person. A major evidentiary defect exists in that no reference is made as to what his "objection" concerns. There is no testimony whatsoever that he objects to union membership. Obviously that is what this case is about, but pleadings, opening arguments and the like are not substitutes, in our judicial system, for sworn statements under oath. If, one were to read only the testimony in the record constructed by Mr. Rosier, he or she would not have the slightest idea of what this case is about.

Mr. Rosier obviously feels severe personal constraints about revealing, either in this proceeding or to his acquaintances, anything about the

substantive nature of his religious beliefs. He believes he has a constitutional right to refuse to reveal those beliefs at a hearing. While it might be possible for a claimant to obtain a religious objection from a union security agreement without testifying himself, the claimant seriously risks an adverse finding by doing so. This is certainly the case where all witnesses are ignorant as to the claimant's beliefs. Moreover, their credibility as witnesses is impaired when they testify that they believe him to be sincere in his belief on a given matter, but give no reason as to the basis of that opinion. Were Mr. Rosier to apply more skilled methods in the examination of witnesses, he might have made a better case for himself. However, the technique he used can result in the abuse of our system for determining the facts, and should not be encouraged.

Mr. Rosier relies on United States v. Seeger, 380 U.S. 163; 85 S. Ct. 850; 13 L.Ed.2d 733 (1965), from which he quoted at the hearing, and which he cited in his petition for review. However, he misconceives the holding of that case. Seeger was one of three cases consolidated by the Supreme Court for argument, which required interpretation of the Universal Military Training and Selective Service Act, as amended, 50 USC App. sec. 456(6j) (1958 ed.). The cited section exempted from military service those who by reason of their "religious training and belief" were conscientiously opposed to war in any form. Congress had defined "religious training and belief" as:

An individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but not including essentially political, sociological, or philosophical views or a merely personal moral code.

The Washington State Legislature has not favored us with a definition of "religious" so we must assume that the word is used in RCW 41.49.100 in its customary sense. The Random House Dictionary of the English Language, Unabridged Edition, 1979, defines "religious" as pertaining to or concerned with religion. The first definition of "religion" is:

Concern over what exists beyond the visible world, differentiated from philosophy in that it operates through faith or intuition rather than reason, and generally including the idea of the existence of a single being, a group of beings, an eternal principle, or a transcendent spiritual entity that has created the world, that governs it, that controls its destinies, or that intervenes occasionally in the natural course of its history, as well as the idea that ritual, prayer, spiritual exercises, certain principles of everyday conduct, etc., are expedient, due or spiritually rewarding, or arise naturally out of an inner need as a human response to the belief in such a being, principle, etc.

Random House Dictionary of the English Language, Unabridged Edition, 1979.

Despite the lack of any legislative definition of "religious" in RCW 41.59.100, the Seeger opinion is helpful. The Court was trying to assist appeal boards in evaluating the claims for exemption which came before them. It said:

We recognize the difficulties that have always faced the trier of fact in these cases. We hope that the test that we lay down proves less onerous. The Examiner is furnished a standard that permits consideration of criteria with which he has had considerable experience. While the applicant's words may differ, the test is simple of application. It is essentially an objective only, namely, does the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption? id. at 863. (Emphasis added)

The court went on to explain:

In such an intensely personal area, of course, the claim of the registrant that his belief is an essential part of a religious faith must be given great weight ... The validity of what he believes cannot be questioned. Some theologians, and indeed some examiners, might be tempted to question the existence of the registrant's "Supreme Being" or the truth of his concepts. But these are inquiries foreclosed to the Government. As Mr. Justice Douglas stated in United States v. Ballard, 322 US 78, 86, 64 S.Ct. 882, 886, 88 L.Ed.1148 (1944): "Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others." Local boards and courts in this sense are not free to reject beliefs because they consider them "incomprehensible." Their task is to decide whether the beliefs professed by a registrant are sincerely held and whether they are, in his own scheme of things, religious. id. at 863.

The court then examined with particularity the beliefs claimed by the three petitioners and found them to be religious as compared to philosophical, sociological, ethical or moral beliefs.

Thus, Seeger holds that while we cannot inquire into the truth, reasonableness or plausibility of the claimed belief, we apply an objective standard to determine, as a question of fact, whether or not the belief is religious.

The petitioner here has claimed a religious belief, but he has declined to tell us what that belief is. Accordingly, we cannot evaluate it to determine whether or not it is religious as compared with philosophical, sociological, ethical or moral.

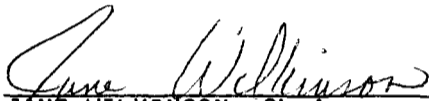
One claiming exemption from a statute of general application has the burden of proving every element requisite to the exemption. Even if we assume that petitioner's belief, whatever it is, is bona fide, we have no basis for determining whether or not it is religious. While his claim that it is religious is entitled to weight, we cannot allow the petitioner to judge his own case.

ORDER

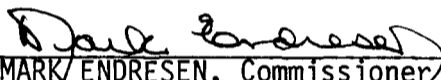
The findings of fact, conclusions of law and order of the Executive Director are affirmed.

DATED at Olympia, Washington, this 16th day of July, 1984.


PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANE WILKINSON, Chairman



MARK ENDRESEN, Commissioner



MARY ELLEN KRUG, Commissioner