

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

John J. Walden, appeared pro se.

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

On March 6, 1987, John J. Walden (petitioner) filed a petition with the Public Employment Relations Commission, seeking a ruling concerning his obligations under the union security provisions of a collective bargaining agreement between Brewster School District No. 111 (employer), and the Brewster Education Association, WEA/NEA (union). Jack T. Cowan was designated as Examiner pursuant to Chapter 391-95 WAC. A hearing was held, and Examiner Cowan issued his decision on November 22, 1988, ruling that the petitioner had not sustained his burden of proof demonstrating a nexus between his religious beliefs and his assertion of a right of non-association. Walden filed a timely petition for review, bringing the matter before the Commission.

POSITIONS OF THE PARTIES

Walden's petition for review asserts that the Examiner made three errors:

1. That the Examiner ignored Walden's religious beliefs, classifying them as philosophical.
2. That Walden was not informed of the need to formally present factual information at the hearing, and was therefore unprepared.
3. That WEA and NEA spokespersons misrepresented their positions on a variety of social issues.

In a post-hearing brief filed in support of his petition, Walden enclosed a number of documents, including resolutions adopted by various NEA general assemblies, which he asserts prove that the NEA supports abortion and gay rights. He cited a number of passages of the Bible which he believed would demonstrate that abortion and homosexuality are condemned in scripture. He asserts that the positions of the NEA are contrary to his beliefs as a "Protestant Born Again Christian."

The union argues that the evidence submitted by the petitioner with his brief is untimely, in that the hearing in the matter was already closed at the time it was submitted. The union claims that the additional evidence cannot now be considered by the Commission. It cites the contents of the Commission's standard notice of hearing as evidence that the petitioner had adequate notice of his obligations to present evidence. It further claims that the Commission may not at this time consider the petitioner's claim that union witnesses misrepresented WEA and NEA positions at hearing. Finally, the union claims that the Examiner correctly held that the petitioner failed to demonstrate the necessary nexus between his religious beliefs and his objections to union membership, and urges the Commission to affirm the Examiner's findings.

DISCUSSION

The 1986-1988 collective bargaining agreement between the employer and the union provides, with regard to union security matters:

ARTICLE II BUSINESS

Section 1 Dues Deduction

D. 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 not 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.

RCW 41.59.100 provides the legal basis for the union security provisions found in the collective bargaining agreement:

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.

The Examiner has accurately and succinctly laid out in his decision the legal requirements which an individual must meet in order for that individual to qualify for a religious-based right of non-association. Where, as here, a petitioner asserts a claimed right of nonassociation based on personally held beliefs (as opposed to one based on the particular teachings of a church or religious body), the burden is on the petitioner to demonstrate the religious objection to union membership, as well as the sincerity of that religious objection. Grant v. Spellman, 99 Wn.2d 815 (1983) (Grant II). Edmonds School District, Decision 1239-A (EDUC, 1983).

While Walden's views on a variety of societal issues appear to be sincere, as does his participation in the Rocky View Nazarene Church on the Water, they do not meet the tests for a claim of religious objection. Snohomish County, Decision 2859-A (PECB, 1988). Walden's stated objections are not to union membership, but to positions which he believes the union supports. Further, as noted by the Examiner, Walden did not develop the necessary nexus between his religious beliefs and any union opposition at the time of the hearing. Walden is not entitled, on the record made at hearing, to assert a right of non-association under the statute and contract.

The documents and quotations from Bible passages that were presented by the petitioner for the first time in his post-hearing brief can be considered as "argument", but not as evidence, in this proceeding. In order to be considered by the Examiner and the Commission as evidence, such information must be presented at the hearing and be subject to the normal evidentiary standards of authentication and cross-examination. See: Chapter 10-08 WAC, Chapter 391-08 WAC, Chapter 391-95 WAC.

Contrary to the petitioner's claim in his brief, the Commission finds that the petitioner was adequately notified of the formal "contested case" hearing, by means of the Commission's standard notice of hearing, issued on June 4, 1987. With regard to the need for factual information to be presented at the hearing, that notice stated:

[T]he parties have the right to appear in person or otherwise and give testimony. The parties are requested to bring to the hearing any relevant facts and documentation bearing on the question of the eligibility of petitioner to make alternative payments or as to the organization which is to receive such payments in lieu of payments to the union.

The Commission acknowledges that a claimant who appears at hearing without benefit of legal counsel may be treading on unfamiliar ground in presenting evidence at a formal hearing, but many claims of the right of nonassociation have been presented and carried to a successful conclusion by pro se claimants working from the standard hearing notice.

The petitioner's claim that WEA and NEA spokespersons misrepresented the positions of their organizations at the hearing in this matter is another subject which should have been dealt with during the formal hearing process. The petitioner had the opportunity to cross-examine those witnesses during the hearing and to

bring forth other testimony or documentary evidence during the hearing, in order to impeach their testimony. The Examiner who conducts the hearing makes determinations as to the veracity of witnesses, and only clear and obvious error in his determination would warrant the Commission imposing its judgment on such a matter in place of that of the Examiner. The Commission does not find such error here.

Further, while the WEA's representatives testifying in this proceeding claimed that their organization does not hold the positions on social issues claimed by Walden, the applicable collective bargaining agreement provides for payment of a "representation fee" by those individuals who do not wish their money to go to political action activities supported by the union. The petitioner apparently has not taken advantage of this possibility.

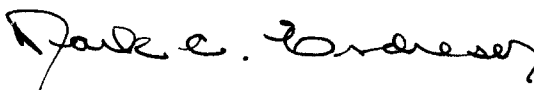
Finally, it must be noted that a petition for declaratory ruling on union security issues may be filed at any time a petitioner believes that additional evidence or witnesses are available to make a case for non-association.

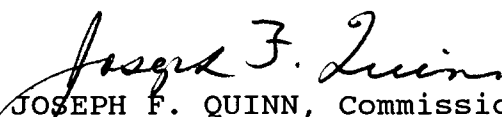
The decision of the Examiner is AFFIRMED.

Issued at Olympia, Washington, this 29th day of September, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


JANE R. WILKINSON, Chairman


MARK C. ENDRESEN, Commissioner


JOSEPH F. QUINN, Commissioner