

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
PHILIP IRVIN)	CASE 7453-D-88-77
)	
for determination of a dispute)	DECISION 3344 - PECB
concerning union security)	
arising under a collective)	
bargaining agreement between:)	
)	
CITY OF SEATTLE)	
)	
and)	
)	
INTERNATIONAL FEDERATION OF)	FINDINGS OF FACT,
PROFESSIONAL and TECHNICAL)	CONCLUSIONS OF LAW
ENGINEERS, LOCAL 17, AFL-CIO)	AND ORDER
)	
)	

Philip Irvin, appeared pro se.

Joseph L. McGee, Business Representative, appeared on behalf of the union.

Douglas Jewett, City Attorney, by Patrick J. Oshie, Assistant City Attorney, appeared on behalf of the employer.

On June 23, 1988, Philip Irvin 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 the City of Seattle and International Federation of Professional and Technical Engineers, Local 17, AFL-CIO. A hearing was held on May 3, 1989, before Examiner Rex L. Lacy. Post-hearing briefs were filed in June, 1989. On August 8, 1989, the petitioner advised the Examiner that he would be out of the country from August 10 to October 6, 1989, and unable to respond adequately to a decision issued during that time frame.

BACKGROUND

The union is recognized as the exclusive bargaining representative, pursuant to Chapter 41.56 RCW, of various bargaining units of City of Seattle employees. Chapter 41.56 RCW provides:

RCW 41.56.122 Collective bargaining agreements----Authorized provisions. A collective bargaining agreement may:

(1) Contain union security provisions: Provided, That nothing in this section shall authorize a closed shop provision: Provided further, That agreements involving union security provisions must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member. Such public employees shall pay an amount of money equivalent to regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually agreed upon by the public employee affected and the bargaining representative to which such public employee would otherwise pay the dues and initiation fee. The public employee shall furnish written proof that such payment was made. If the public employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. . . . (emphasis supplied)

The collective bargaining agreement between the employer and union for the period of September 1, 1986 through August 31, 1989 provided, at Article 5:

Section 3. It shall be a condition of employment that all employees covered by this Agreement who are members of the Union in good standing on the effective date of this Agreement shall remain members in good standing, and those who are not members shall either join the Union or contribute monthly an amount equivalent to the regular monthly dues of the Union to the Union, and any employee hired or

assigned into the bargaining unit as defined in Article 2, Section 1 of this Agreement, shall on or after the thirtieth (30th) day following the beginning of such employment, or inclusion within the bargaining unit, either join the Union or contribute monthly an amount equivalent to the monthly dues of the Union to the Union.

Employees who are determined by the Public Employment Relations Commission to satisfy the religious exemption requirements of RCW 41.56.122 shall contribute an amount equivalent to regular union dues and initiation 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 regular monthly dues.

Neither the validity of the bargaining relationship between the employer and union, nor the validity of the collective bargaining agreement or its union security provision are at issue in this proceeding.

Philip Irvin has been an employee of the City of Seattle since October of 1978. He is employed within one of the bargaining units represented by Local 17, and he was obligated by the union security clause in effect at the time he commenced his employment. Irvin joined the union, and has been a member in good standing of Local 17 since that time. Irvin is a member of the Calvary Temple Church, an affiliate of the Assembly of God denomination.

In late May or early June of 1988, Irvin noticed a poster on a union bulletin board, announcing a forum on domestic partnership rights. Local 17 was a co-sponsor of the event, along with the Mayor's Lesbian/Gay Task Force.

Irvin attended the domestic partnership rights forum on June 14, 1988. During the course of the forum, a Local 17 business representative explained the union's general position on the issue, and

detailed the union's processing of a grievance filed by a member of the bargaining unit to seek extension of medical and dental insurance benefits to union members involved in domestic partner relationships.

On June 23, 1988, after further research on the domestic partner relationship issue and its ramifications, Irvin filed this petition asserting a right of non-association based on his religious beliefs.

POSITIONS OF THE PARTIES

In his petition, Irvin made reference to the Calvary Temple Church as the religious body with which he is affiliated. While that church has no specific tenets or teachings which prohibit its members from belonging to labor unions, Irvin relies upon Calvary Temple Church covenants that permit individuals to make their own determination concerning membership in labor unions. Irvin now asserts a right to dis-associate himself from Local 17, because he believes that the union supports domestic partnership causes which are contrary to his religious beliefs.

Local 17 points out that Irvin has been a union member since 1978, under union security provisions that have remained unchanged since he was first employed by the City of Seattle. The union asserts that Irvin's claim of a right of non-association is based upon an erroneous belief that Local 17 has adopted the role of a gay rights advocacy organization. The union asserts that Irvin proposed to withdraw this petition if the union ceased its support of union members involved in domestic partnership relations, and that Irvin threatened to seek decertification of the union if the union did not withdraw its support of employee grievances on the domestic partnership issue. The union also claims that Irvin volunteered to serve on the union's negotiating committee after he filed the petition to initiate these proceedings.

DISCUSSIONThe Applicable Legal Standards

Under the rule of Grant v. Spellman, 99 Wn.2d 815 (1983) (Grant II), an employee can establish a right of non-association under RCW 41.56.122 by demonstrating a bona fide religious objection based on the teachings of a church or religious body of which the employee is a member, or by demonstrating an objection based upon bona fide personal religious beliefs. Implementing that ruling, the Commission has adopted WAC 391-95-230, as follows:

WAC 391-95-230 Hearings--Nature and Scope. Hearings shall be public and shall be limited to matters concerning the determination of the eligibility of the employee to make alternative payments and the designation of an organization to receive such alternative payments. The employee has the burden to make a factual showing, through testimony of witnesses and/or documentary evidence, of the legitimacy of his or her beliefs, as follows:

(1) In cases where the claim of a right of nonassociation is based on the teachings of a church or religious body, the claimant employee must demonstrate:

(a) His or her bona fide religious objection to union membership; and

(b) That the objection is based on a bona fide religious teaching of a church or religious body; and

(c) That the claimant employee is a member of such church or religious body.

(2) In cases where the claim of a right of nonassociation is based on personally held religious beliefs, the claimant employee must demonstrate:

(a) His or her bona fide religious objection to union membership; and

(b) That the religious nature of the objection is genuine and in good faith.

While the first of these alternative tests has more components, it is commonly the easier to establish. See, Edmonds School District,

Decision 1239-A (EDUC, 1983). Where an employee asserts "personal" beliefs under the second alternative, the burden is on the petitioner to establish that the claim of a right of nonassociation is based upon personal beliefs which are religious in nature. Snohomish County (Robert Dokka), Decision 2859-A (PECB, 1988). 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 the belief is religious, as compared with philosophical, sociological, ethical or moral. Mukilteo School District, Decision 1323-B (PECB, 1984). Personal political grounds are not sufficient. City of Seattle, Decision 2086 (PECB, 1985); North Thurston School District, Decision 2433 (PECB, 1986); Brewster School District, Decision 3047 (PECB, 1988). The religious, as opposed to 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 will be discerned from all of the facts and circumstances of the case. A claim based upon erroneous understandings of union actions or positions will not suffice. Brewster School District, Decision 3047-A (EDUC, 1989); Battle Ground School District, Decision 2997-A (EDUC, 1989). Concurrent actions of the employee that are inconsistent with the claimed right of non-association are facts to be considered in evaluating whether the claim is bona fide and in good faith.

Application of the Standards

The evidence indicates that the tenets or teachings of the Calvary Temple Church would not prohibit Irvin, or any of its other members, from holding membership in Local 17 or any other labor organization. Irvin does not argue that his exemption is based directly upon his membership in the Calvary Temple Church, or upon specific teachings of that religious body. In fact, the record

indicates that Irvin has been active in the union in the past, and that he has volunteered to participate in current collective bargaining negotiations.

It is evident that Irvin had no qualms about belonging to Local 17 until he attended the forum on domestic partnership rights held in June of 1988, and that his present claim arises from the issues dealt with at that forum. Irvin's church apparently does have teachings against homosexuality and cohabitation outside of marriage, and it allows its members a freedom of choice based on their own scriptural study and interpretation. The church then supports its individual members in whatever position they choose to adopt. That rationale extends to Irvin's beliefs concerning domestic partnership relations. Irvin correlates such domestic partnership relations with homosexuality and cohabitation, which he believes to be religiously improper and immoral.¹ Thus, although Irvin seeks exemption from union security obligations based upon personally held religious beliefs, there is no doubt as to the sincerity of the petitioner in this case.

The remaining question here is whether the petitioner has met his burden to come forward with evidence linking his religious beliefs to union positions on the issues with which he is concerned. Irvin attended the "forum" to hear the union's position on the domestic partnership issue. Upon hearing of the union's processing of a grievance to extend employee benefits to bargaining unit employees who are involved in domestic partnerships, he determined that union support for such living arrangements was not in keeping with his religious beliefs. Irvin immediately made his position known to Local 17 through a series of correspondence and this petition. He

¹ Irvin has authored at least one article which was published in a church publication, the Advocate, under Irvin's pen name, Carl Wigglesworth. In that article, Irvin adopted the church's position regarding homosexuality and cohabitation.

offered to withdraw the petition, if the union would announce that it was "neutral" on the matter. The union refused to acquiesce to Irvin's request for neutrality, and that refusal led to this petition for non-association. In the instant case the petitioner has established a clear linkage between his religious beliefs and the union's position on domestic relationships.

FINDINGS OF FACT

1. The City of Seattle is a municipal corporation of the state of Washington pursuant to RCW 41.56.020, and is a "public employer" within the meaning of RCW 41.56.030(1).
2. International Federation of Professional and Technical Engineers, Local 17, AFL-CIO, is a "bargaining representative" within the meaning of RCW 41.56.030(3). Local 17 is the exclusive bargaining representative of a bargaining unit of City of Seattle employees which includes professional, technical, business, recreational, and human rights employees.
3. The employer and the union have been parties to a series of collective bargaining agreements containing union shop provisions requiring all bargaining unit employees to maintain their membership in the union. Such union security provisions safeguard the right of non-association of employees based upon bona fide religious tenets or teachings of a church or religious body.
4. Philip Irvin is an employee of the City of Seattle, within a bargaining unit represented by Local 17. Irvin was a member of Local 17 from 1978 to 1988. Irvin is a member of the Calvary Temple Church, an affiliate of the Assembly of God denomination. The church does not have teachings which directly prohibit its members from joining or remaining

members of labor unions. Irvin has bona fide religious beliefs, consistent with church doctrine, against homosexuality and cohabitation without benefit of marriage.

5. In June of 1988, Irvin attended a forum where he became aware of Local 17's support for employee grievances seeking to extend benefits to bargaining unit employees engaged in non-traditional domestic partnership relationships. Irvin has bona fide personal religious beliefs against union support for such relationships and grievances.
6. On June 23, 1988, Irvin filed this petition asserting a right of non-association, because of his dissatisfaction with the direction the union was taking in regard to the domestic partnership issue. Irvin seeks to make alternative payments to a charity, rather than the payments required to the union under the union security provision of the collective bargaining agreement between the employer and union.
7. Irvin's claim of a right of non-association is based upon the fact that Local 17 has supported bargaining unit employees engaged in non-traditional domestic partnerships, and Irvin's belief that the union has thereby aligned itself as an organization seeking to elevate the social and/or legal acceptability of homosexuality and/or cohabitation, in conflict with Irvin's personally-held bona fide religious beliefs.
8. The evidence in this matter establishes that Local 17 has, in fact, been involved in processing of a grievance concerning extension of employee benefits to those members of the union who were involved in non-traditional domestic partnerships.
9. The evidence in this matter fails to establish that Local 17 is involved in the direct support of homosexuality and/or cohabitation.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-95 WAC.
2. Philip Irvin has sustained his burden of proof demonstrating a nexus between his religious beliefs and his assertion of a right of non-association, under RCW 41.56.122, from International Federation of Professional and Technical Engineers, Local 17, AFL-CIO.

ORDER

1. Philip Irvin is directed to make alternative payment of union dues to Children's Hospital. He shall furnish proof that such payments have been made to Local 17.
2. 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, City of Seattle shall thereafter remit, in accordance with WAC 391-95-130, to Children's Hospital any and all funds withheld and retained from the pay of Philip Irvin, pursuant to WAC 391-95-130.
3. 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 17th day of November, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


REX L. LACY, Investigator

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