

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
CLELL HENSON) CASE 8130-D-89-81
for determination of union)
security obligations under a) DECISION 3746 - PECB
collective bargaining agreement)
between:)
WASHINGTON STATE PATROL)
TROOPERS' ASSOCIATION)
and) FINDINGS OF FACT,
STATE OF WASHINGTON) CONCLUSIONS OF LAW
AND ORDER
_____)

Clell Henson, appeared pro se.

Aitchison & Hoag, Labor Consultants, by William B. Aitchison, appeared on behalf of the Washington State Patrol Troopers' Association.

Lieutenant Donald J. Miller, Labor Relations Coordinator, appeared on behalf of the Washington State Patrol.

On August 11, 1989, Clell Henson filed a petition with the Public Employment Relations Commission, seeking a ruling pursuant to Chapter 391-95 WAC concerning his union security obligations under a collective bargaining agreement between the Washington State Patrol and the Washington State Patrol Troopers' Association. A hearing was held on November 15, 1990, before Examiner Rex L. Lacy. The petitioner and the association filed post-hearing briefs. The employer did not file a post-hearing brief.

BACKGROUND

The Washington State Patrol is a "public employer" within the meaning of the Public Employees' Collective Bargaining Act, Chapter

41.56 RCW, for all state patrol officers appointed pursuant to RCW 43.43.020.¹ George Tellevik is chief of the patrol.

The Washington State Patrol Troopers' Association is the exclusive bargaining representative of all troopers and sergeants employed by the employer. Dan Davis is president of the association.

The employer and association are parties to a collective bargaining agreement which was signed on an unspecified date in December of 1989, and was to be effective for a period of two years from the date of its signing. Article 6 of that contract, entitled "Association Security", sets forth the union security obligations of bargaining unit members, as follows:

A. Dues Deduction. The employer shall deduct Association dues from the salary every month of employees who are members of the Association. The amounts deducted shall be transmitted within twenty (20) days to the Association. The Employer will not be held liable for good faith check off [sic] errors, but will make proper adjustments with the Association for errors within a thirty (30) day period. Provided the Employer acts in good faith, the Association will indemnify, defend, and hold the Employer harmless against any claims made and against any suit instituted against the Employer as a result of the Employer's enforcement of the above provisions, as a result of any check-off [sic] errors, or as a result of the application of Sections B and C of this Article.

B. Fair Share

1. Employees who are not members of the Association shall make payments, not to exceed an amount equal to Association dues, in lieu of Association dues. These payments shall be for costs related to negotiations, contract administration, and processing grievance(s). Failure of an employee to pay the "fair share" dues or become a member of the Association

¹ See, RCW 41.56.020.

within thirty (30) calendar days following the employee's start of employment or within sixty (60) calendar days of the signing of this contract, whichever is latter [sic], shall cause that employee to be dismissed as hereinafter provided. Such payments shall be made in the amounts allowed under applicable federal and state law for payments, and shall be deducted from the salary of each employee, each month. The Employer shall remit the share payments to the Association within twenty (20) days after the deduction is made.

If an employee wishes to challenge the amount of the fair share payment, an independent arbitrator shall be selected by PERC from their outside panel of arbitrators. The Association shall bear all costs of such arbitration. The Association shall develop procedures for providing notice by a challenging employee. Such procedures shall provide for a reasonably prompt determination. The Association shall be responsible for providing notice to all employees of the challenge procedures on at least an annual basis.

2. From the time the Employer receives notice of a challenge, the disputed fair share payments shall be deposited in an escrow account pending final determination of the challenge. The Association shall set up and pay for any costs associated with the escrow account.

3. The Association shall provide advance information to all employees on the amount and calculation by major categories of expenses of the fair share payment. Such information shall be based upon an annual independent audit provided by the Association for its fiscal year expenditures.

4. Upon written notification by the Association representative that an employee has not complied with the "fair share" requirements, the Employer shall give thirty (30) calendar days written notice to the employee of their dismissal for failure to join the Association or pay the "fair share" dues. If an employee complies with the "fair share" re-

quirements within thirty (30) calendar days, the dismissal action shall be rescinded.

C. Religious Exemption. Religious exemptions shall be handled as per state law.

...

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

Clell Henson, the petitioner in this matter, has been a trooper with the Washington State Patrol since 1966. He is a member of the Fellowship Bible Church of Tacoma, Washington. That church has no specific tenets or teachings regarding its members belonging to, or not belonging to, a labor organization.

POSITIONS OF THE PARTIES

The petitioner asserts a right of nonassociation under RCW 41.56.122, based upon his personally held religious beliefs. He cites five reasons in support of his request: (1) All power comes from God; (2) God designed a balance of power; (3) All should be under authority; (4) There are two purposes for power; and (5) Abuse of power must be appealed.

The association does not question the sincerity of Henson's personally held religious beliefs. Rather, it contends that the request for nonassociation should be denied because Henson's objections to association membership are based on errors of fact. The association understands Henson to object on the basis of the association having been a party-of-record in litigation against the employer; on the basis of the association making charitable

contributions to groups that promote, support, or condone abortion; and on the basis of the association making political contributions without polling the members of the association. The union argues that all of Henson's objections are philosophical, sociological, ethical, or moral, but not "religious" in nature.

The employer took no position on the issue of nonassociation.

DISCUSSION

Chapter 41.56 RCW authorizes public employers to enter into union security agreements with unions representing their employees, as follows::

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]

In this case, the collective bargaining agreement between the employer and union contains three membership options for bargaining unit employees. A trooper may be a member of the association, may pay a "fair share" fee, or make a contribution to a charity under RCW 41.56.122.

The Applicable Legal Standards

Under the rule of Grant v. Spellman, 99 Wn.2d 815 (1983)[Grant II], an employee can establish a right of nonassociation under RCW 41.56.122, either 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 those 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 employee to establish that the claim of a right of nonassociation is based upon personal beliefs which are religious in nature. Snohomish County, 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 in nature, as compared with beliefs that are philosophical, sociological, ethical or moral in nature. Mukilteo School District, Decision 1323-B (PECB, 1984). Personal political beliefs 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); Spokane Community College, Decision 3567 (CCOL, 1990). Concurrent actions of the employee that are inconsistent with the claimed right of nonassociation are also facts to be considered in evaluating whether the claim of a right of nonassociation is bona fide and in good faith.

The claimant in this case has the burden to establish, through the presentation of factual evidence, the legitimacy of his religious beliefs and how such beliefs qualify him for an exception to mandatory payments to the union, either for membership or the "fair share" fee. See, Puyallup School District, Decision 2711 (EDUC, 1987); Snohomish County, Decision 2859-A (PECB, 1988); Brewster School District, Decision 3048 (EDUC, 1988). Any refusal or failure on the part of the claimant to go forward towards a burden of proof will weigh against the exemption. Mukilteo School District, Decision 1323-A, 1323-B (EDUC, 1984); Tacoma School District, Decision 2075 (EDUC, 1984).

Application of the Standards

The evidence indicates that the tenets or teachings of the Fellowship Bible Church would not prohibit Henson, or any of its other members, from holding membership in the Washington State Patrol Troopers' Association or any other labor organization. Henson does not argue that his request for nonassociation is based directly upon his membership in the Fellowship Bible Church, or upon specific teachings of that religious body. Rather, Henson acknowledged that his request is based upon his personally-held religious beliefs.

Erroneous Understanding of Union Policies

The record indicates that Henson believed that the union has engaged in litigation against the employer, citing litigation between the employer and Grant Sherman as one example. President Dan Davis of the union testified that the association has not engaged in that activity. The record suggests that the Sherman case was litigated directly between the employer and that employee.

The record indicates, further, that Henson believed that the union has made contributions to organizations that support abortion.

Again, Davis testified that the association has not engaged in that activity.

In response to Henson's assertion concerning political contributions, the union admitted that contributions are made to political candidates who are supportive of the Washington State Patrol and/or the association. Davis explained that such political contributions are approved by the association membership, in accordance with the organization's by-laws, before actually being remitted to the candidate. Further, Davis explained that, in any event, monies paid by troopers under the "fair share" arrangement of the collective bargaining agreement are not used for political contributions.

The Commission dealt with erroneous beliefs in Battleground, supra, as follows:

In addition to establishing the bona fide nature of his religious beliefs, the petitioner must show how those beliefs dictate his opposition to union membership. This analysis requires examination of the union's actual positions on various social issues of concern to the petitioner. An objection to a labor organization must be based on truthful and factual knowledge of the objectionable conduct or position taken by the labor organization. Brewster School District, Decision 3027 (EDUC, 1988). Objections based on misinformation or erroneous assumptions do not qualify as a basis for assertion of the right of non-association provided by statute. North Thurston School District, Decision 2433 (EDUC, 1986); Puyallup School District, supra.

Thus, all three of Henson's reasons for objecting to financial support of the association, either by paying regular dues or by paying "fair share" fees, are based upon his erroneous understanding of the union's operations. As such, Henson's objections cannot be sustained.

FINDINGS OF FACT

1. Washington State Patrol, an agency of the state of Washington, is a "public employer" within the meaning of RCW 41.56.020 for state patrol officers appointed under RCW 43.43.020.
2. Washington State Patrol Troopers' Association, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive representative of a bargaining unit of troopers and sergeants employed by the employer.
3. The employer and the association are parties to a collective bargaining agreement that is effective for two years following the signing of that contract during or about December, 1989. That contract contains a union security provision which requires employees to become a member of the association or to pay "fair share" dues to the association. The contract also safeguards the right of religious-based nonassociation by reference to state law.
4. Clell Henson has been employed as a trooper by the Washington State Patrol since 1966, and is a "public employee" within the meaning of RCW 41.56.030(2). His employment is subject to the collective bargaining agreement described in paragraph 3 of these findings of fact.
5. On August 11, 1989, Clell Henson filed a petition with the Public Employment Relations Commission, asserting a right of nonassociation pursuant to RCW 41.56.122.
6. Henson's assertion of a right of nonassociation is generally based upon five reasons relating to the sources and abuse of power and authority. He has specifically cited three claimed actions by the association in support of his contention that the association has violated his religious principles:

- (1) That the association has engaged in litigation against the employer; (2) That the association has made financial donations to organizations which support abortion; and (3) That the association has made political contributions to candidates for public office, without authorization from the association membership.
7. The association presented evidence that refutes the three specific objections cited by the petitioner. President Dan Davis testified that the association has not filed and processed any litigation against the employer, that the association has not made financial contributions to any organization which supports abortion, and that any political contribution has been approved by the membership.

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. Clell Henson has not sustained his burden of proof demonstrating a nexus between his religious beliefs and his assertion of a right of nonassociation, under RCW 41.56.122, from the Washington State Patrol Troopers' Association.

ORDER

1. Clell Henson is directed to pay union dues or make "fair share" payments to the Washington State Patrol Troopers' Association, in accordance with the union security provisions of the collective bargaining agreement between that organization and the Washington State Patrol.

2. If no petition for review of this order is filed within 30 days following the date of this order, the Washington State Patrol shall thereafter remit to the Washington State Patrol Troopers' Association, in accordance with WAC 391-95-130, any and all funds withheld and retained from the pay of Clell Henson, pursuant to WAC 391-95-130.

3. If a petition for review of this order is filed, such filing shall automatically stay the effect of this order.

ISSUED at Olympia, Washington, this 22nd day of March, 1991.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



REX L. LACY, Hearing Officer

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