

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of a dispute)	
concerning the obligations of:)	
)	
JAMES O. EPPS)	CASE 12088-D-95-116
)	
Under union security provisions)	DECISION 5735 - EDUC
of a collective bargaining)	
agreement between:)	
)	
HOQUIAM TEACHERS' ASSOCIATION)	
)	
and)	FINDINGS OF FACT,
)	CONCLUSIONS OF
HOQUIAM SCHOOL DISTRICT)	LAW AND ORDER
)	
)	
)	

James O. Epps, appeared pro se.

Gary W. King, Uniserv Representative, appeared on behalf of the union.

Stan G. Pinnick, Superintendent, appeared on behalf of the employer.

On October 4, 1995, James O. Epps filed a petition for ruling on union security obligations with the Public Employment Relations Commission. The petition asserts Epps' right of nonassociation based on bona fide religious tenets or teachings, from union security obligations contained in a collective bargaining agreement between the Hoquiam School District (employer) and the Hoquiam Teachers' Association (union). The agreement between the employer and union is effective for the period of September 2, 1993 through August 31, 1997. A hearing was held on April 12, 1996 in Hoquiam, Washington before Examiner Mark S. Downing. A deadline was established for post-hearing briefs. A brief was received from the union.

BACKGROUND

Epps began his employment with the Hoquiam School District in the autumn of 1995. He is a member of a bargaining unit consisting of all certificated non-supervisory employees of the employer.

The parties' collective bargaining agreement contains agency shop provisions. Employees must join the union or pay to the union a representation fee in an amount equal to the dues paid by union members. The agreement recognizes the right of employees under RCW 41.59.100 to nonassociation from union security obligations based on bona fide religious beliefs. Under this statute, employees who qualify for nonassociation pay an amount of money equivalent to regular union dues and fees to a nonreligious charity agreed upon by the employee and the bargaining representative.

On September 7, 1995, Epps sent a letter to Pennie Coffey, president of the Hoquiam Teachers' Association. The union is affiliated with the Washington Education Association (WEA) and the National Education Association (NEA). The letter notified the union that Epps was requesting nonassociation status "because of moral and religious conflicts" and stated as follows:

During my first few years of teaching, I heartily endorsed union membership, until I discovered, by reading NEA publications and mass news media reports, that the organization was influencing legislation and public opinion about issues unrelated to teaching ...

Not electing to maintain a paid clergy, the church in which I hold membership is maintained only on the basis of personal choice. The members serve voluntarily as spiritual leaders, administrators, representatives, and evangelists, without remuneration. As a member of that lay clergy, I cannot serve in good conscience if I belong to any organization which advocates practices contrary to basic gospel tenets.

In a letter of September 11, 1995, the union responded to Epps' request for nonassociation status, indicating that his request was denied "based upon the reasons stated in [his] letter". Shortly thereafter, on October 4, 1995, Epps filed his nonassociation petition with the Commission.

Epps has been a member of the Church of Jesus Christ of Latter-Day Saints since 1979.¹ He is currently a member of the Grays Harbor Ward. Epps testified that he is an elder in the Melchizedek Priesthood, which authorizes him to act in the name of Jesus Christ for the benefit of others. He stated that being a church member is an important part of his life, providing the basis for his personal decisions and conduct. His church does not prohibit its members from joining labor organizations.

When Epps began his career as a public school teacher in Utah during the 1983-84 school year, he joined the NEA and pertinent affiliate organizations. Although he began to doubt some of the union's actions, Epps continued his membership through the following school year. In the 1985-86 school year, Epps joined the local education association but refused membership in the national and state organizations. Based on readings in various NEA publications, he had become uncomfortable with the union's positions and lobbying activities and was concerned that the union was influencing legislation and public opinion about issues unrelated to education.

More recently, Epps taught for a year in California and for five years with the Department of Defense Dependents Schools in Okinawa, Japan. During this period of time, he did not join a union. While in Japan he became convinced that the union was to be avoided as it was inserting itself into noneducational, personal issues.

¹ This church is commonly known as the Mormon Church.

POSITIONS OF THE PARTIES

Epps objects to membership in the union based on his personal religious beliefs. His beliefs emanate from his interpretation of the Bible, as well as doctrine and covenants of the Mormon Church. Epps believes that free choice is a Biblical mandate, and that freedom of choice in matters of conscience is essential to his eternal salvation. In his mind, compulsory membership in the union is a form of bondage, as employees are compelled to support the union both financially and by association. Epps believes that the union's exercise of compulsion by requiring employees to join the union implies an opposition to God, and that membership in such an organization would put him in opposition to God.

The union argues that Epps is not entitled to a religious exemption from union dues, as his objections are political and ideological in nature and not based on religious beliefs. The union maintains that Epps' religious objection is a pretext for his philosophical disagreements with the union. In response to Epps' claim that the union's political activities violate his religious beliefs, the union states that it offers a "political activity" rebate procedure for employees. Under this procedure, an employee who objects to expenditures of his or her monies for political activities unrelated to collective bargaining may become a non-member, pay a representation fee to the union, and receive a rebate of monies spent by the union on political activities. The union contends that by use of this procedure, Epps is not required to adhere to the union's social or political viewpoint or to pay for activities in support of such views.

Although an employer representative was present during the hearing, it did not participate by offering evidence or questioning witnesses, and has taken no position in regard to the petition filed by Epps.

DISCUSSION

Two basic issues are involved when an employee asserts a right of nonassociation based on their religious beliefs: 1) eligibility of the employee to make alternative payments; and 2) designation of an organization to receive such alternative payments. The union and Epps have agreed that Epps will make alternative payments to the YMCA of Hoquiam if he is granted nonassociation status. The sole issue in this proceeding concerns the eligibility of Epps to make alternative payments.

Epps' claimed right of nonassociation is based on his personally held religious beliefs, in contrast to specific teachings of a church or religious body that prohibit church members from joining a labor organization. The following requirements are placed on Epps under WAC 391-95-230:

(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.

Epps has the burden of proof to make a factual showing supporting his claimed right of nonassociation.

Religious Nature of Objection

Epps believes that freedom of choice is a religious principle which governs his life. In his mind, freedom of choice is essential to eternal salvation. This belief flows from his understanding of teachings of the Bible and his church, including statements by various church leaders. The church's president, along with members of the Council of the Twelve Apostles, consider themselves to be

prophets to the world. In 1965, church president David O. McKay made the following statement:

Next to the bestowal of life itself, the right to direct ourselves is God's greatest gift to man. Freedom of choice is more to be treasured than any possession earth can give ...

Epps also refers to the following statements by Joseph Smith, who founded the Mormon church in the United States in 1830:²

[W]ho wants salvation when it comes through compulsion, if we have not power to choose and act according to the dictates of conscience?

[Men and women] all have the privilege of thinking for themselves upon all matters relative to conscience.

Epps indicates that the principle of free agency underlies all beliefs and practices of his church. Church members do not believe in the doctrine of original sin, but instead that "all men will be punished for their own sins, and not for Adam's transgression."³ Epps stated that most church functions are performed voluntarily, without remuneration. Church members receive pastoral care from lay workers called from among the congregations. Missionaries serve voluntarily and pay their own living expenses. Epps indicates that church teachings contain the following statements:⁴

² See, Seek ye Earnestly ..., and The Teachings of the Prophet Joseph Smith, by Joseph Fielding Smith, published in 1970 and 1976 respectively by Deseret Book Company, Salt Lake City.

³ Pearl of Great Price, The Church of Jesus Christ of Latter-Day Saints, (Salt Lake City, 1979).

⁴ The first quote is from Helaman 14:30 of the Book of Mormon. The second quotation is from the church's Doctrine and Covenants, section 98, verse 8.

[Y]e are free; ye are permitted to act for yourselves.

I, the Lord God, make you free, therefore ye are free indeed, and the law also maketh you free.

In accordance with the teachings of Joseph Smith, Epps believes that after the kingdoms of this world have been subsumed by the kingdom of Jesus Christ, Jesus will personally reign on Earth and that people will be:

governed by common consent, for the Lord will recognize the agency of man, then as he has recognized it since before the foundation of the world.

Epps presented a 10-page position paper entitled "Statement of Religious Beliefs" at the hearing. This document included the following statements:⁵

[My] church teaches that free agency is an eternal principle. It applies 'on earth as it is in heaven'. Free agency existed prior to mortality, in heaven, where we [sic] all people lived as spirit children of [our] Heavenly Father. In that state, God gave His children the opportunity to decide how they would return from mortality to Him. The Firstborn Son (Jesus Christ) said that He would provide a way, and that He would do it according to the Father's plan of sacrifice and obedience. When the spirit children heard the Lord's plan, 'all the sons of God shouted for joy.' (Job 38:7)

⁵ The references are to books of the Holy Bible, except as follows: "Smith" refers to Seek ye Earnestly . . ., by Joseph Fielding Smith, Deseret Book Company (Salt Lake City, 1976), while "2 Nephi" is part of the Book of Mormon. The reference to "Moses" is unknown. While the Holy Bible includes information about the life of Moses, it does not contain a book by that name.

Lucifer sought to obviate the agency of man, because he was unwilling to accept Christ as the Redeemer. He offered to make certain, by compulsion, that everyone was saved, provided God would give him the glory. (Smith 64)

When Lucifer rejected the Father's plan, he was expelled from Heaven, and he took a third of God's spirit children with him, those who also did not want to accept Christ's part in the plan of salvation. When rejected, Lucifer, also known as Satan, said he would 'exalt his throne above the stars of God ... to be like the Most High.' (Isaiah 14:12-20) (Revelation 13:8-10)

The spirits who objected to granting liberty to their brothers and sisters lost their opportunity to come to earth and learn, through the temptations and opportunity that could happen only with mortal bodies and only in the temporal world. Thus, they are damned, for they will never have the freedom of choice sufficient to obtain full salvation. Instead, they are subject to Satan's compulsion. He uses them still to fight against God and those who seek to follow God. (Revelation 12:7-10) (Moses 4:1-4) (Luke 10:18) (Jude 6) (2 Peter 2:4) (2 Nephi 2:17-18) (2 Nephi 9:8-9) (Jeremiah 1:5)

[Emphasis by underline in original text]

Epps believes that there is no neutral ground on the subject of freedom of choice. Either a person chooses to follow God or Satan. He believes that part of Satan's plan is to reduce one's choices in whatever way possible. Epps cites the following teachings of his church in support of this position:⁶

We have learned by sad experience that it is the nature and disposition of all men, as soon as they get a little authority, as they suppose, they will immediately begin to exercise unrighteous dominion ... No power or influence can be or ought to be maintained by virtue of the priesthood, only by persuasion,

⁶ Doctrine and Covenants 121:39-46.

by long-suffering, by gentleness and meekness, and by love unfeigned; By kindness, and pure knowledge, which shall greatly enlarge the soul without hypocrisy, and without guile ...

Epps objects to the agency shop provisions of the parties' collective bargaining agreement. He views the agreement's union security language as compelling employees to become union members. He feels that the union does not rely on the free will of its constituents for the positions that it takes on political, moral and religious issues. He contends that regardless of whether a union member agrees or disagrees with a particular position of the union, the member is forced to support the organization both financially and by association in its advocacy of such positions. Epps stated in his position paper:

If the [union] desires political prestige, it should operate on the same principles as American government, namely consent of the governed and competition for loyal members.

Epps feels that his religious beliefs are violated when an organization uses money taken by compulsory means to support candidates or advocate political programs of any type.

Epps agrees with the following statement by a leader of his church:⁷

I would like to address ... members of our church as well as others, about one of the most important tenets of our faith and one of the most precious gifts of God to mankind. It is our freedom, our agency, our inalienable and divine right to choose what we will believe ... and to choose what we want to be and what we want to do. ... Abraham Lincoln once

⁷ Hunter, Howard W., "The Golden Thread of Choice", Ensign, November, 1989. Hunter is a former president of the church.

asked, 'What constitutes the bulwark of our own liberty and independence?' He then answered, 'It is not our frowning battlements, our bristling sea coasts, our army and our navy. ... Our reliance is in the love of liberty which is planted in us.' ... Brigham Young once said, 'volition is free; this is a law of their existence, and the Lord cannot violate his own law; were he to do that, he would cease to be God. ... This is a law which has always existed from all eternity, and will continue to exist throughout all the eternities to come. Every intelligent being must have the power of choice.'

The union argues that Epps' objection to union membership is based on political and ideological beliefs. The union failed to provide evidence supporting this argument. In contrast, Epps presented ample evidence of the religious nature of his beliefs, including quotations from the Holy Bible, Book of Mormon, and statements by various church leaders. He met his burden of proof to show that his objection to union membership is based on religious beliefs.

Good Faith Nature of Objection

After joining a union during the early years of his teaching career, Epps has consistently maintained his religious objection to union membership. His objection is based on his interpretation of teachings of the Bible and his church.

The Commission cannot inquire into the quality of an employee's religious beliefs, other than to determine whether such beliefs are "bona fide". Brewster School District, Decision 2888 (EDUC, 1988). There is no evidence that Epps is being fraudulent or deceitful in describing his religious beliefs or their influence on his life. Epps met his burden of proof to show that his religious beliefs are sincerely and honestly held.

Conclusion

Epps contends that employees are compelled to provide financial support to the union. The parties' collective bargaining agreement provides employees with three options regarding union membership. Employees must either: 1) join the union; 2) pay a representation fee to the union; or 3) assert a right of nonassociation under RCW 41.59.100. The union provided information at the hearing on a fourth option. Under a "political activity" rebate procedure, employees pay a representation fee to the union, and receive a rebate of monies spent by the union on political activities. Under options 1, 2 and 4, employees are compelled to give financial support to the union. Only the third option, which Epps is asserting, allows employees to provide financial support to an organization other than the union. Epps is correct in his contention that the collective bargaining agreement negotiated by the union and employer compels employees to provide financial support to the union, absent an employee exercising their statutory right of nonassociation. Epps has proven that his objection to union membership is based on his religious beliefs, which are genuine and held in good faith. He is entitled to assert a right of nonassociation under RCW 41.59.120.

FINDINGS OF FACT

1. The Hoquiam School District is an "employer" within the meaning of RCW 41.59.020(5).
2. The Hoquiam Teachers' Association, an "employee organization" within the meaning of RCW 41.59.020(1), is the exclusive bargaining representative of a unit of all certificated non-supervisory employees of the Hoquiam School District.

3. James O. Epps is a certificated employee of the Hoquiam School District, employed within a bargaining unit represented by the Hoquiam Teachers' Association. Epps has been a member of the Church of Jesus Christ of Latter-Day Saints since 1979. He is currently a member of the Grays Harbor Ward. His church does not prohibit its members from joining labor organizations.
4. The employer and union are signatories to a collective bargaining agreement for the period of September 2, 1993 through August 31, 1997. Under the agreement, employees must: 1) join the union; 2) pay a representation fee to the union; or 3) assert a right of nonassociation under RCW 41.59.100. Non-members may also utilize a rebate procedure by paying a representation fee to the union, and receiving a rebate of monies spent by the union on political activities.
5. In September 1995, Epps requested that the union allow him to make alternative payments to a nonreligious charity pursuant to the parties' collective bargaining agreement. The union refused the request, and Epps filed a petition for ruling on union security obligations with the Commission.
6. Epps believes that freedom of choice is essential to his eternal salvation. He opposes compulsory union membership, as members are compelled both financially and by association to support the union's positions on political, moral, and religious issues. His beliefs, based on his interpretation of teachings of the Bible and his church, are religious in nature and are sincerely held in good faith.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.59 RCW and Chapter 391-95 WAC.

2. James O. Epps has demonstrated that his objection to membership in the Hoquiam Teachers' Association is based upon personally held bona fide religious beliefs, and has sustained his burden of proof to assert a right of nonassociation under RCW 41.59.100 and to make alternative payments to the YMCA of Hoquiam.

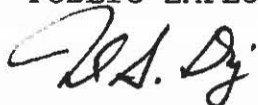
ORDER

1. James O. Epps shall be permitted to make alternative payments, in lieu of paying union dues, as follows:
 - a. The alternative payments shall be in an amount equal to the periodic dues and initiation fees required for membership in the union.
 - b. The alternative payments shall be made to the YMCA of Hoquiam, and James O. Epps shall furnish proof to the Hoquiam Teachers' Association that such payments have been made, in accordance with the union security provisions of the collective bargaining agreement between the Hoquiam Teachers' Association and the Hoquiam School District.
2. If no petition for review of this order is filed with the Public Employment Relations Commission within 20 days following the date of this order, the Hoquiam School District shall remit to the YMCA of Hoquiam any and all funds withheld and retained from the pay of James O. Epps, pursuant to WAC 391-95-130.
3. If a timely 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.

ISSUED at Olympia, Washington, the 4th day of November, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "M.S. Downing".

MARK S. DOWNING, Examiner

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-95-270.