

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)	DECISION 3746-A - PECB
security obligation under a)	
collective bargaining agreement)	
between:)	
)	
WASHINGTON STATE PATROL)	
TROOPERS' ASSOCIATION)	
)	
and)	DECISION OF COMMISSION
)	
STATE OF WASHINGTON)	
)	
)	

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.

This case comes before the Commission on a petition for review filed by Clell Henson, seeking to overturn a decision issued by Examiner Rex L. Lacy.

BACKGROUND

The Washington State Patrol is a "public employer" within the meaning of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, with respect to state patrol officers appointed pursuant to RCW 43.43.020.

The Washington State Patrol Troopers' Association (union) is the exclusive bargaining representative for all troopers and sergeants employed by the employer.

The employer and union are parties to a collective bargaining agreement which contains a "union security" provision. Bargaining unit employees are required to maintain membership in the association, or to make "fair share" payments in lieu of dues. The contract makes mention of "religious" exemptions.

Clell Henson 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.

On August 11, 1989, Henson filed a petition with the Public Employment Relations Commission pursuant to Chapter 391-95 WAC, seeking a ruling concerning his union security obligations under the 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. In a decision dated March 22, 1991, the Examiner concluded that Henson was not eligible to assert the "right of nonassociation".

Henson's petition for review was received at the Commission's office on April 15, 1991, 24 days following the date of the Examiner's decision.

POSITIONS OF THE PARTIES

The petitioner asserts a right of nonassociation under RCW 41.56.122(1), based upon his personally held religious beliefs. He states three bases for reversing the Examiner's decision: (1) That

he met the standard of nonassociation required under WAC 391-95-230 at the hearing; (2) that his recognized sincerity meets the test that "the religious nature of the objection is genuine and in good faith"; and (3) that religious beliefs are a matter of individual determination which cannot be subjected to approval by the state. The petitioner asserts fault with the union's brief, claiming that it was not co-endorsed by the association. The petitioner also submitted additional statements and observations which were not brought up at the hearing.

The union submitted a motion for dismissal of the petition for review as being untimely. It also submitted a motion to strike the petitioner's brief to the Commission, for referring to matters which were not brought up at the hearing.

DISCUSSION

The Public Employment Relations Commission determines "union security / right of nonassociation" disputes under the authority of statute, Supreme Court precedent, and administrative rules. RCW 41.56.122 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 employee 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 has been made. If the public employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. ... [emphasis by **bold** supplied]

In affirming the constitutional validity of that statute on remand from the Supreme Court of the United States, the Supreme Court of the State of Washington stated:

Whether an individual is to be granted an RCW 41.56.122(1) exemption from a union security agreement is dependent upon proof of the bona fide religious beliefs of the individual or the religious group. ... The exemption is not automatic.

Grant v. Spellman, 99 Wn.2d 815 (1983) [GRANT II].

[The Commission] is free to require would-be users of the exemption to make a factual showing of the legitimacy of beliefs.

Id., Concurring opinion of Chief Justice Williams joined by five other justices.

Following the precepts outlined by the Supreme Court in Grant II, the Commission outline a set of tests in case precedents that were eventually codified in 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. During the course of the hearing, the examiner may, upon motion by any party, or upon his or her own motion, sequester witnesses. 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.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. 90-06-075, §391-95-230, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-058 (Order 88-10), §391-95-230, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), §391-95-230, filed 9/30/80, effective 11/1/80.]

There are no questions in this case relating to the validity of the collective bargaining relationship, the validity of the collective bargaining agreement, or the validity of the union security provision.

Timeliness of the Petition for Review

The union's motion for dismissal of the petition for review requires examination of the applicable rule and the Examiner's decision. WAC 391-95-270 provides, in part:

WAC 391-95-270 PROCEEDINGS BEFORE THE COMMISSION--PETITION FOR REVIEW. The final order of the examiner shall be subject to review by the commission on its own motion, or at the request of any party made **within twenty days following the date of the order issued by**

the examiner. The original and three copies of the petition for review shall be filed with the Commission at its Olympia office and the party filing the petition shall serve a copy on the other party to the proceeding and on the employer. ...

In this case, the last page of the Examiner's decision contained the required notice of appeal rights, as follows:

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

The motion to dismiss the petition for review is problematical. The petition for review was, indeed, filed after the time period specified in WAC 391-95-270. In framing his order, however, the Examiner had made reference to a 30-day period for remittance of funds held in escrow. Thus, the last page of the Examiner's decision also contained the following:

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.

The petitioner cited the "escrow disposition" paragraph of the Examiner's decision as the basis for his belief that he had a period of 30 days in which to appeal.

Under the circumstances of this case, it would be unfair to the petitioner to dismiss his appeal when he acted within the time limits he had good reason to believe were valid. See, City of Tukwila, Decision 2434-A (PECB, 1987).

The Motion to Strike the Brief

The petitioner's brief to the Commission included materials that were not admitted in evidence at the hearing, and the union seeks to have the entire brief stricken on that basis. We agree that the Commission should not consider information that was not brought before the Examiner at the hearing. The entire brief need not be stricken, however. The Commission has simply ignored those portions (e.g., pages 2 - 3 and the attached exhibits 1.a. and 1.b.) which were improperly submitted.

The Claim of a Right of Nonassociation

The petitioner's arguments fail on review, as they failed before the Examiner.¹ An objection to a labor organization must be based upon truthful and factual knowledge of the conduct or position taken by that organization. A claim based upon erroneous understandings of union actions or positions will not suffice. Battleground School District, Decision 2997-A (EDUC, 1989) and Brewster School District, Decision 3027 (EDUC, 1988). We do not read the Grant II decision relied on by the petitioner as suggesting any different rule.

Henson's sincerity is not in question. He appears to be quite sincere. If his objections to the union were based on fact, he might have met the standards set forth in WAC 391-95-230 to establish a right of nonassociation. But his allegations concerning the union's activities are clearly unsupported by the facts.

¹

The Commission recognizes that the union has not submitted arguments concerning the "merits" of this appeal. If the facts and direction of this case were less clear, the Commission would accompany its denial of the union's procedural motions with an invitation for the union to now file arguments on the merits of the dispute, to avoid the union being disadvantaged by its reliance on the time limits set forth in the rule.

The Washington State Patrol Troopers' Association did not engage in litigation against the employer, as Henson claims. The union does not contribute to organizations that support abortion. As to any political contributions that are made to candidates that support the association, Henson has the opportunity to pay only "fair share" dues (which do not include any amounts for political contributions), if he so chooses.

No provision of the statute or of the Washington Administrative Code allows for an employee to be granted the religious-based right of nonassociation based on incorrect information. Therefore, the three bases cited by the petitioner for reversing the Examiner's decision are not sufficient: (1) The petitioner did not meet the standard of nonassociation required under WAC 391-95-230 at the hearing; (2) the petitioner's sincerity and good faith are irrelevant in the absence of objections that are based in fact; and (3) the party claiming the right of nonassociation must, under the Grant II decision, establish the validity of that claim in proceedings before the Commission.

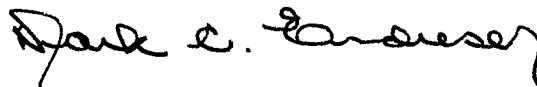
The decision of the Examiner is AFFIRMED.

Issued at Olympia, Washington, the 19th day of December, 1991.

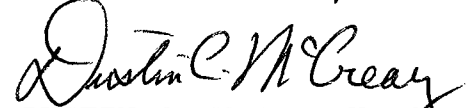
PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



MARK C. ENDRESEN, Commissioner



DUSTIN C. MCCREARY, Commissioner