

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
PUBLIC SCHOOL EMPLOYEES OF NORTH THURSTON	)	CASE 11099-D-94-108
	)	
For determination of a dispute concerning union security arising under a collective bargaining agreement between:	)	DECISION 4938 - PECB
	)	
NORTH THURSTON SCHOOL DISTRICT	)	
	)	
and	)	
	)	
PUBLIC SCHOOL EMPLOYEES OF NORTH THURSTON	)	FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER
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	)	
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Delores Piccinini, appeared pro se.

David Fleming, Attorney at Law, appeared on behalf of the union.

On May 5, 1994, Public School Employees of North Thurston (union) filed a petition with the Public Employment Relations Commission seeking a ruling on the union security obligations of Delores Piccinini. The obligations arise from union security provisions of a collective bargaining agreement between the union and North Thurston School District (employer). A hearing was held on October 20, 1994, in Olympia, Washington, before Examiner Vincent M. Helm. The union filed a post-hearing brief.

BACKGROUND

The union is recognized as the exclusive bargaining representative of bus drivers and food service personnel of the employer. The

collective bargaining agreement between the employer and union for the period of September 1, 1992 through August 31, 1995, provides, at Article XIII:

ASSOCIATION MEMBERSHIP AND CHECKOFF

**Section 13.1** Each employee subject to the Agreement, who, on the effective date of this Agreement, is a member of the Association in good standing, shall, as a condition of employment, maintain membership in the Association in good standing during the period of this Agreement.

**Section 13.2** All employees subject to this Agreement who are hired at a time subsequent to July 1, 19975, shall, as a condition of employment, become members in good standing of the Association within thirty (30) days of the hire date. Such employee shall then maintain membership in the Association in good standing during the period of the Agreement.

**Section 13.3** The parties recognize that an employee should have the option of declining to participate as a member in the Association, yet contribute financially to the activities of the Association in representing such employee as a member of the collective bargaining unit. Therefore, as an alternative to, and in lieu of the membership requirements of the previous sections of this Article, an employee who declines membership in the Association may pay to the Association each month a service charge as a contribution towards the administration of this Agreement in an amount equal to the regular monthly dues. This service charge shall be collected by the Association in the same manner as monthly dues and be within provisions established by legally authorized bodies such as the Public Employee [sic] Relations Commission.

**Section 13.4** Any employee who refuses to become a member of the Association in good standing or pay the service charge in accordance with the previous sections shall, at the option of the Association, be immediately discharged from employment by the District.

**Section 13.5** Nothing contained in this Agreement shall require Association membership of employees who object to such membership 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 equivalent to normal dues to a non-religious charity or other charitable organization mutually agreed upon by the employee and the Association. The employee shall furnish written proof that such payment has been made. If the employee and the Association cannot agree on such matter, it shall be resolved by the appropriate State or governmental entity including P.E.R.C.

**Section 13.7** Checkoff. The District shall deduct PSE dues or service charges from the pay of any employee who authorizes such deductions in writing pursuant to RCW.

**Section 13.8** The District shall transmit all such funds deducted to the Treasurer of the Public School Employees of Washington on a monthly basis.

No questions are raised in this proceeding as to the validity of the bargaining relationship, the effectiveness of the collective bargaining agreement, or the legality of the union security provision.

Piccinini has been employed as a bus driver for approximately 10 years. Pursuant to union security provisions of prior collective bargaining agreements, she has been a dues-paying member of the union for about eight years. During her employment, she has never participated in any union-related activities nor utilized the union with respect to any aspects of her employment.

On April 1, 1994, Piccinini made a written request of her employer to be released from her union membership obligations. She cited the fourth and eighth commandments, and made reference to Hebrews, Chapter 13 verse 17, of the Bible, as the basis for her request. This document resulted in the petition being filed herein.

At the hearing, Piccinini testified that she was not a member of a church or religious body, and that her personal religious beliefs were predicated upon her religious foundation as a child, including the catechism of Martin Luther. She notes that her interpretation of the fourth commandment and chapter 20 verse 17 of the book of Exodus in the Bible requires that she obey her employer and supervisor. Piccinini contends that the union contravenes her views of what is required under these biblical references, by the disloyal and militant attitude of its members and leaders with respect to her, her employer and her fellow employees. Because of her belief that various members of the union falsely accuse her of violations of employer's rules and regulations, principally in connection with parking of her bus and personal vehicle on employer property, she believes that membership in the union violates the eighth commandment.

Piccinini was contradictory with respect to the history of the activities of members of the union with her employer which caused her to view membership in the union as contrary to her personal religious convictions. Initially, she testified that her perception was that conditions which caused her concern had been in the last year and one-half improved. Later, she indicated that matters had become worse during the tenure of the current union president. Piccinini was consistent in her view that payment of union dues was a waste of money. Due to her total lack of involvement in union affairs, however, she had no direct personal knowledge as to what, if any, actions had been taken by the union to support the employer or to improve her terms and conditions of employment. She also failed to note any official positions advanced by the union which contravened her religious convictions.

Testimony was adduced by the union, through its president of six years, that it had acted favorably upon employer requests to improve service and had supported bond levies on behalf of the

employer. Some of these matters required deviations from the collective bargaining agreement.

At the conclusion of the hearing Piccinini indicated her desire to have a monthly contribution made to the Make-a-Wish Foundation in Seattle, Washington, in lieu of monthly dues payments to the union. The union, thereafter, withdrew its motion to dismiss the petition for failure to meet the procedural requirements of WAC 391-25.

#### POSITIONS OF THE PARTIES

Piccinini maintains that her personal religious beliefs satisfy requirements exempting her from association with the union pursuant to RCW 41.56.122 and WAC 391-95-230(2).

The union contends that her scriptural basis for non-association are misconceived, and that her objections to the union are not based on sincerely held personal religious beliefs. It contends her position is based upon her antipathy toward union members and her lack of understanding of union actions.

#### DISCUSSION

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, permits collective bargaining agreements to contain union security provisions so long as there is provision for accommodation of employee non-association based upon religious beliefs.

**RCW 41.56.122 COLLECTIVE BARGAINING AGREEMENTS-AUTHORIZED PROVISIONS.** A collec-

tive 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 non-association 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. When there is a conflict between any collective bargaining agreement reached by a public employer and a bargaining representative on a union security provision and any charter, ordinance, rule, or regulation adopted by the public employer or its agents, including but not limited to, a civil service commission, the terms of the collective bargaining agreement shall prevail.

(2) Provide for binding arbitration of a labor dispute arising from the application or the interpretation of the matters contained in a collective bargaining agreement. [1975 1st ex.s. c 296 §22; 1973 c 59 §2.]

Pursuant to Grant v. Spellman, 99 Wn.2d.815 (1983) [Grant II], an employee may demonstrate that the provisions of RCW 41.56.122 are applicable by showing a bona fide religious objection to association with a labor organization, based upon either the teachings of a church or religious body of which the employee is a member or personal religious beliefs.

In order to apply this decision the Commission developed WAC 391-95:230, which specifies:

**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 non-association 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 non-association 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.

A religious objection may be to membership in a particular union rather than opposition in general to union membership. This, in fact, appears to be the situation in this case. In order to predicate her right of non-association upon personal religious beliefs, Piccinini must show her objection to membership in this is both religious in nature and is sincere. Battleground School District, Decision 2979-B (EDUC, 1990); City of Redmond, Decision 2046 (PECB, 1984); Clover Park Technical College, Decision 4070-A (CCOL, 1993).

Although the Commission will not question the reasonableness or plausibility of an employee's religious beliefs it will apply an objective standard to determine whether the belief is religious and sincerely held based upon an evaluation of all of the facts and circumstances of the case. Central Valley School District, Decision 4016 (PECB, 1992); Snoqualmie Valley School District, Decision 3655 (PECB, 1990); Mukilteo School District, Decision

1323-B (PECB, 1984). The objection to membership in a labor organization must be based upon fact rather than perception, misinformation, or assumption and there must exist, in fact, a nexus between religious belief and assertion of a right of non-association. Brewster School District, Decision 3047-A (EDUC, 1988); Puyallup School District, Decision 2711 (EDUC, 1987); Spokane Community College, Decision 3567 (CCOL, 1990). Applying the foregoing considerations to the facts of the instant case causes the Examiner to reach the following conclusions.

Ms. Piccinini is sincere in her objection to membership in this union. Clearly, such objection was slow to crystalize, as she was a member of the union for approximately eight years before she instigated action to disassociate herself from the union. Her religious beliefs were formed in childhood and, accordingly, it cannot be plausibly argued that her recently expressed objection to union membership was the result of a contemporaneous religious insight.

The Examiner is unable to conclude that the sincerity of the employee's religious beliefs, or a nexus between such beliefs and her objection to union membership, have been sufficiently established to warrant a finding of a right of non-association in this case. Ms. Piccinini appeared to premise her objections upon the attitudes and actions of various individual employees that she believed to be inimicable to her views of harmonious relations and Christian behavior rather than upon actual policies or practices of the union per se.

#### FINDINGS OF FACT

1. North Thurston School District is a school district of the state of Washington created pursuant to Title 28A RCW and is an employer within the meaning of RCW 41.56.030(1).



2. Public School Employees of North Thurston is a bargaining representative within the meaning of RCW 41.56.030(3) and represents certain employees of the North Thurston School District in a bargaining unit of bus drivers and food service personnel.
3. The employer and the union are party to a collective bargaining agreement covering employees in the unit described in 2, above, and which includes a union security provision requiring bargaining unit employees to maintain their membership in the union and which preserves the right of non-association of employees based upon bona fide religious considerations.
4. Delores Piccinini is a bus driver employed by the employer and covered by the terms of the collective bargaining agreement referred to in 3, above.
5. Piccinini has been employed by the employer for approximately 10 years and has been a member of the union for approximately 8 years.
6. On April 1, 1994, Piccinini advised the employer of her intent to exercise her right of non-association in the union. Thereafter, the union, on May 5, 1994, filed the petition herein.
7. Piccinini, while asserting the right of non-association predicated upon various parts of the Bible, did not establish either the sincerity of her religious belief or a nexus between such belief and any activities of the union.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. Delores Piccinini has not sustained her burden of proof to establish her claim of a right of non-association based upon a bona fide religious objection to union membership.

ORDER

1. If no petition for review is filed with the Public Employment Relations Commission within 20 days following the date of this order, North Thurston School District shall thereafter remit in accordance with WAC 391-95-310 to Public School Employees of North Thurston any and all funds withheld and retained pursuant to WAC 391-95-130 from the pay of Delores Piccinini.
2. If a petition for review of this order is filed with the Public Employment Relations Commission, such filing shall stay the effect of this order pending a ruling by the Commission.

ISSUED at Olympia, Washington, this 30th day of January, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



VINCENT M. HELM, Examiner

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