

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
RALPH P. BRESEE )  
For determination of a dispute ) CASE 11136-D-94-109  
concerning union security arising )  
under a collective bargaining ) DECISION 5378 - PECB  
agreement between: )  
CITY OF SEATTLE )  
and ) FINDINGS OF FACT,  
CARPENTERS UNION, LOCAL 131 ) CONCLUSIONS OF LAW  
AND ORDER

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Ralph P. Bresee, appeared pro se.

Mark H. Sidran, City Attorney, by Marilyn F. Sherron, Assistant City Attorney, appeared on behalf of the employer.

Bob Zappone, Business Representative, appeared on behalf of the union.

On May 23, 1994, Ralph P. Bresee filed a petition with the Public Employment Relations Commission pursuant to Chapter 391-95 WAC, seeking a ruling concerning his obligations under the union security provisions of a collective bargaining agreement between the City of Seattle and District Council of Carpenters Union, Local 131. A pre-hearing conference was conducted by a member of the Commission staff on December 20, 1994, and a statement of results of that pre-hearing conference was duly issued and made a part of the record in this proceeding. A hearing was held before Examiner Kathleen O. Erskine on March 7, March 8, April 5, April 20, and May 18, 1995. A period was established for the filing of briefs. Bresee did not file a brief, but the union filed a brief on June 16, 1995.

BACKGROUND

The union is the exclusive bargaining representative of various employees of the City of Seattle, pursuant to the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. That statute includes:

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 by **bold** supplied.]

The employer and union were parties to a collective bargaining agreement that was in effect for the period from September 8, 1992 through December 31, 1994, covering a bargaining unit which includes building inspectors, carpenters, and bridge maintenance employees. That contract included a union security provision in its Article III, as follows:

3.1 It shall be a condition of employment that each employee covered by this Agreement who voluntarily is or who voluntarily becomes a member of said Union shall remain a member of

same during the term of this Agreement. It shall also be a condition of employment that each employee hired prior to January 1, 1972, currently covered by this Agreement, who is not a member of the Union shall on or before the thirtieth (30th) day following said date either join the Union or contribute an amount equivalent to the regular monthly dues of the Union to the Union. Any employee hired or permanently assigned into the bargaining unit covered by this Agreement on or after January 1, 1972, shall on or before the thirtieth (30th) day following the beginning of such employment join the appropriate Union. Failure by such employee to apply for and/or maintain such membership in accordance with this provision shall constitute cause for discharge of such employee; provided however, the requirements to apply for Union membership and/or maintain Union membership shall be satisfied by the employee's payment of the regular initiation fee and the regular dues uniformly required by the Union of its members.

...

3.1.2 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 non-religious 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.

Bresee is employed by the City of Seattle, as a building inspector within the bargaining unit represented by Local 131.

The pre-hearing conference held in this matter on December 20, 1994, was conducted by Settlement Judge Katrina Boedecker of the Commission staff. At that time, it was stipulated by all parties that Ralph Bresee had asserted a valid and legitimate right of non-association under RCW 41.56.122. The union and Bresee were unable to agree, however, upon a charitable organization to which Bresee would contribute an amount equivalent to regular union dues and initiation fees. The Statement of Results of Pre-Hearing Confer-

ence which was issued on December 21, 1994, set forth the matters which were stipulated by the parties, and indicated that some other matters which Bresee sought to raise were not appropriate issues for determination in this proceeding.<sup>1</sup>

The hearing in this matter was limited to the issue of what charitable organization should receive the alternate payments made by Ralph Bresee in lieu of payments to the union under the union security provision. Although the union sought at the hearing to reopen the question of whether Bresee is eligible to assert a right of nonassociation under the statute, it was held to the stipulation it made on that issue at the pre-hearing conference.

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<sup>1</sup> Two matters raised at the pre-hearing conference were found to be outside the scope of this proceeding under Chapter 391-95 WAC:

(1) Bresee sought to question whether he, as a building inspector, was properly included in the bargaining unit covered by the collective bargaining agreement between the City of Seattle and Carpenters Union, Local 131. Any unit determination or representation issue raised by an individual employee would have to be resolved through representation proceedings under Chapter 391-25 WAC. In fact, a petition for investigation of a question concerning representation (Case 11379-E-94-01874) had been filed on October 14, 1994, by David B. Cordaro, a bargaining unit member. Local 131 was certified as exclusive bargaining representative of the bargaining unit on July 31, 1995. City of Seattle, Decisions 5159 and 5159-A (PECB, 1995).

(2) Bresee sought to question whether the union gave him adequate notification of his financial obligations. Any claim by an individual employee of unlawful enforcement of union security would have to be determined and remedied through unfair labor practice proceedings under Chapter 391-45 WAC. In fact, Bresee had filed unfair labor practice charges with the Commission on October 27, 1994, alleging the employer and union violated the statute by their unlawful enforcement of union security obligations. Two separate cases were docketed, consistent with the Commission's docketing procedures (Cases 11413-U-94-2676 and 11414-U-94-02677). Those complaints were dismissed on June 29, 1995, however, as factually insufficient to state a cause of action. City of Seattle, Decisions 5181 and 5182 (PECB, 1995).

POSITIONS OF THE PARTIES

Bresee asserts that he should be allowed to make his alternative payments to the University of Dallas, located in Irving, Texas. He acknowledges that institution is operated by the Dominican order of the Roman Catholic church. During the course of the hearing, Bresee offered into evidence brochures, college bulletins, newsletters, and pamphlets from various Catholic schools and organizations, and proposed those as other organizations to which he could make alternative payments. Bresee argues that, "Charity without God is nonsense, it's ridiculous, it doesn't exist. . . .", and that there is no such thing as a "nonreligious" charity. Bresee further contends that compelling him to make alternative payments to a charity not of his own choosing would be a violation of his constitutional right to religious liberty.

The union asserts that both RCW 41.56.122 and Article 3 of the collective bargaining agreement provide for payments to a non-religious charity for those employees who avail themselves of the right of nonassociation with the union. It is the position of the union that the charitable organization to which Bresee should make alternative payments should be within the geographical jurisdiction of Carpenters Local 131 (i.e., the city limits of Seattle, south to Sea-Tac and north to the Snohomish County line), and that it should be a nonreligious charity that can supply the union with receipts for the alternative payments made. The union asserts that appropriate nonreligious charitable organizations would be the King County Labor Agency, Northwest Harvest, or Children's Hospital. The union asserts that other bargaining unit members who have asserted the right of "nonassociation" are making alternative payments to one of those agencies.

The employer took no position on the designation of a charitable organization to receive alternative payments, but contends that all the parties should follow the laws of the State of Washington.

DISCUSSIONThe "Constitutional" Claims

The Examiner finds no merit in Bresee's claim of a constitutional violation. A union security provision of a collective bargaining agreement does not violate the rights of employees under the U.S. Constitution, if the obligation for non-member employees is limited to their paying the union their proportionate share of the union's costs incurred for negotiations and contract administration.

The Supreme Court of the United States ruled in Aboud v. Detroit Board of Education, 431 U.S. 209 (1977), that union security provisions can be constitutional in the public sector.

The Superior Court for Thurston County ruled in 1979 that the exemption for employees having bona fide religious objections is not a violation of Article I, Section 12, of the Washington State Constitution. Hordyk and Radke vs. Clallam County, et al., WPERR CD-106 (Thurston County Superior Court, No. 51368 (1979)).

The Supreme Court of the State of Washington has also upheld the constitutionality of union security arrangements in the public sector collective bargaining laws of this state. Capitol Power-house Engineers v. State of Washington, 89 Wn.2d 277 (1977); Grant v. Spellman, 99 Wn.2d 815 (1983) [Grant II].

The Commission is not the appropriate forum for a general challenge to the constitutionality of union security arrangements. The Commission is an administrative agency charged with the interpretation and application of a statute. RCW 41.56.122 authorizes union security provisions in collective bargaining agreements, and authorizes the Commission to designate the charitable organization to receive alternative payments in the event the employee and union are unable to agree on an organization to receive the funds.

Designation of Charitable Organization

Bresee devoted much energy at the hearing to his position that there is no such thing as a "nonreligious charity". His arguments are not persuasive, however.

The term "nonreligious" appears in the statute the Commission is authorized to administer. It is a fundamental precept of statutory construction that administrative agencies and courts are not at liberty to selectively ignore words used by the Legislature, and must give effect to all of the words used in a statute if it is possible to do so.

For the purpose of the interpretation and application of a statute, one must look to the ordinary and common usage of the language of the law. Webster's II New Riverside Dictionary (Houghton Mifflin Co., 1988) defines "charity" as, "An institution, organization, or fund set up to help the needy." The same dictionary defines "religious" as, "Of, relating to, or teaching religion." An organization or institution that is associated with a religious body, or teaches a specific or particular religion as part of its function, is a religious organization even if it is a "charity".

All of the organizations proposed by Bresee to receive his payments in lieu of union dues and fees are associated with the Roman Catholic church. While it might be possible under RCW 41.56.122 for an employee and union to agree on a religious charity (as an implementation of the statutory words "or another charitable organization mutually agreed upon"), it is clear no such agreement exists in this case. At least Bresee and Local 131 were unable to agree on any of the organizations proposed by Bresee. In the absence of an agreement between the parties involved, the parties must fall back to the "to a nonreligious charity" words of the statute, and it is necessary for the Commission to designate a non-religious charity to receive the funds.

Northwest Harvest is a charitable organization which provides food to needy persons in the Seattle area. It is among the charities proposed by the union, and there is no evident basis to infer or conclude that its mission or beneficiaries are at odds with any argument advanced by Bresee in this case.

FINDINGS OF FACT

1. The City of Seattle is a municipal corporation of the state of Washington, and is a "public employer" within the meaning of RCW 41.56.020 and RCW 41.56.030(1).
2. Carpenters Union, Local 131, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of City of Seattle employees which includes building inspectors, carpenters, and bridge maintenance employees.
3. Ralph Bresee is employed by the City of Seattle as a building inspector. His position is within the bargaining unit represented by Local 131.
4. A collective bargaining agreement existed between the employer and Local 131 for the period from September 8, 1992 through December 31, 1994. That contract contained a union security clause which safeguarded 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.
5. Ralph Bresee asserted a right of nonassociation. Local 131 stipulated in this proceeding that Bresee is entitled to nonassociation under RCW 41.56.122.



6. All of the charitable organizations proposed by Bresee to receive his alternative payments are religious organizations affiliated with the Roman Catholic church.
7. Local 131 and Ralph Bresee are unable to agree on a charitable organization to which Bresee can make alternative payments in an amount equivalent to regular union dues and initiation fees.
8. Among others, Local 131 has proposed that Bresee make alternative payments to Northwest Harvest, a charitable organization which provides food to needy persons in the Seattle area.

#### 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. The charitable organizations proposed by Ralph Bresee for his alternative payments do not qualify under RCW 41.56.122, in the absence of agreement between Bresee and Local 131 to designate a religious organization.
3. Northwest Harvest is a nonreligious charitable organization which qualifies to receive alternative payments under RCW 41.56.122.

#### ORDER

1. Ralph Bresee is directed to make his alternative payment of union dues and fees to Northwest Harvest, and shall furnish proof to Carpenters Union, Local 131 that such payments have been made.

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 City of Seattle shall remit to Northwest Harvest any and all funds withheld and retained from the pay of Ralph Bresee, 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.

DATED at Olympia, Washington, this 5th day of December, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script that reads "Kathleen O. Erskine".

KATHLEEN O. ERSKINE, Examiner

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