

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
PATRICIA HILL)	CASE 9061-D-91-91
for determination of union)	
security obligations under a)	
collective bargaining agreement)	DECISION 4070-A - CCOL
between:)	
WASHINGTON FEDERATION OF)	
TEACHERS, LOCAL 3913)	
and)	DECISION OF COMMISSION
CLOVER PARK TECHNICAL COLLEGE)	
)	
)	

Patricia Hill, appeared pro se.

Schwerin, Burns, Campbell & French, by John Burns,
Attorney at Law, appeared on behalf of the union.

This case comes before the Commission on cross-petitions for review. Washington Federation of Teachers, Local 3913, has filed a petition for review, seeking to overturn a decision issued by Examiner William A. Lang; Patricia Hill has filed a petition for review, seeking to modify certain portions of the order issued by Examiner Lang.

BACKGROUND

Clover Park Technical College is now a state institution of higher education, operated under Chapter 28B.50 RCW. As such, the institution is now an employer within the meaning and coverage of

the collective bargaining statute which covers the "academic employees" of community college districts, Chapter 28B.52 RCW.¹

Washington Federation of Teachers, Local 3913, is the exclusive bargaining representative of all full-time and regular part-time academic personnel employed by the employer. Local 3913 is affiliated with, and makes payments from members' dues to, the American Federation of Teachers, AFL-CIO (AFT).

Patricia Hill has been an employee of the institution for approximately 18 years. Hill was active in getting the union organized at the college many years ago, and she held membership in the union for approximately 14 years. In 1987, Hill withdrew from membership in Local 3913, because of her objection to a position taken by the AFT in a lawsuit regarding "creationism".² At the time of Hill's withdrawal, the collective bargaining agreement did not require a representation fee in lieu of union membership. Hill voluntarily began making payments to the United Way, however, in lieu of paying union dues.

In September, 1990, the predecessor employer and Local 3913 signed a collective bargaining agreement which is effective for the period from September 1, 1990 to August 31, 1993. That contract contains an agency shop provision, which requires bargaining unit employees

¹ At the time the petition in this matter was filed, the institution was operated by the Clover Park School District as the Clover Park Vocational-Technical Institute (CPVTI), and the provisions of Chapter 41.59 RCW were thus applicable. While the case was being processed by the Commission, the Legislature transferred the CPVTI and similar institutions to the jurisdiction of the State Board for Community and Technical Colleges. Chapter 28B.52 RCW thereupon became applicable to the bargaining relationship. See Chapter 238, Laws of 1991.

² The AFT had filed an amicus curiae brief opposing a Louisiana law requiring a balanced treatment in teaching evolution and creationism.

to become a member of the union or to pay a "representation fee", as follows:

Article VI - Union Security

...
Representation Fee: No member of the bargaining unit will be required to join the Union; however, those employees who are not Union members, but are members of the bargaining unit, will be required to pay a representation fee to the Union. The amount of the representation fee will be determined by the Union, and transmitted to the Business Office in writing. The representation fee shall be an amount less than the regular dues for the Union membership in that nonmembers shall be neither required nor allowed to make a political deduction. The representation fee shall be regarded as fair compensation and reimbursement to the Union for fulfilling its legal obligation to represent all members of the bargaining unit.

In the event that the representation fee is regarded by an employee as a violation of their right to non association, such bona fide objections will be resolved according to the provisions of RCW 41.59.100, or the Public Employment Relations Commission.

After being informed of this "agency shop" provision, Hill advised the union that she had been making voluntary contributions to the United Way since resigning from the union. Hill noted that she had resigned from Local 3913 because of the AFT's opposition to the equal teaching of creation science when evolution is taught, and because of AFT and WFT support for political candidates who advocate abortion. Hill asked to be permitted to continue payments to the United Way in lieu of the representation fee.³

³ Hill offered to be a member of and pay a representation fee to the local union only. She was told that the union's by-laws required membership in the AFT as well.

The union denied Hill's request, asserting that she did not qualify for nonassociation under RCW 41.59.100. Hill then filed a petition with the Commission under Chapter 391-95 WAC, asserting a right of nonassociation pursuant to RCW 41.59.100 and RCW 28B.52.045.

On May 18, 1992, Examiner William A. Lang ruled that Hill was entitled to make alternative payments, because she had demonstrated a nexus between her religious beliefs and her assertion of a right of nonassociation on the "creationism" issue. Finding it unnecessary to do so, the Examiner did not resolve Hill's claim of a right of nonassociation based upon the "abortion" issue.

On May 22, 1992, Hill filed a timely petition for review, seeking to modify portions of the Examiner's order. The union filed its petition for review seeking to overturn the Examiner's order on June 17, 1992.

POSITIONS OF THE PARTIES

Hill agrees with the Examiner's ruling, but asks that it be modified to address the disposition of union dues automatically withheld by the employer since September, 1990.

The union acknowledges that its petition for review was filed more than 20 days after the date of the Examiner's order, but argues that the petition should be deemed timely because the text of the order led union staff members to believe that the applicable period for filing an appeal was 30 days. As to the merits of the Examiner's decision, Local 3913 contends there was insufficient evidence to establish the union's opposition to creationism. The union does not question the fact that Hill holds genuine personal religious beliefs regarding creationism in general, but it contends those beliefs are not sufficient to establish a right of non-association.

DISCUSSIONThe Timeliness of the Union's Petition

The time period for filing a petition for review of an Examiner's decision is set forth in WAC 391-95-270 as follows:

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. The petition for review shall identify the actions or rulings claimed to be in error. ...

[Emphasis by **bold** supplied.]

In accordance with standard Commission practice, the last page of the Examiner's decision contained a notation referring to this administrative rule, as follows:

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

The union's petition for review was filed after the time period specified in WAC 391-95-270, and would normally be dismissed on that basis.

The Commission has retained authority to waive Commission rules, when a party is not prejudiced. The subject is addressed in Chapter 391-08 WAC, which sets forth general rules of practice and procedure applicable to all types of proceedings before the Commission. That chapter provides, in relevant part:

WAC 391-08-003 POLICY--CONSTRUCTION--
WAIVER. The policy of the state being primarily to promote peace in labor relations, these rules and all other rules adopted by the agency shall be liberally construed to effectuate the purposes and provisions of the statutes administered by the agency, and nothing in any rule shall be construed to prevent the commission and its authorized agents from using their best efforts to adjust any labor dispute. **The commission and its authorized agents may waive any requirement of the rules unless a party shows that it would be prejudiced by such a waiver.**

[Emphasis by bold supplied.]

The Commission's exercise of discretion in such matters is based upon whether a waiver would effectuate the purposes and provisions of the applicable collective bargaining statute. The negligent failure to comply with a procedural requirement will not, by itself, justify the waiver of a time limit.⁴ The Commission has waived its rules, however, when action or inaction by the agency misleads a party to its detriment.⁵

The Examiner's appeal notice referring to WAC 391-95-270 did not specifically mention the 20-day time period set by that regulation. On the other hand, specific mention of a 30-day time period was made in paragraph 2 of the Examiner's order, which read:

If no petition for review of this order is filed within 30 days following the date of this order, the Clover Park Technical College shall promptly thereafter remit any and all funds withheld and retained from the pay of

⁴ See, Mason County, Decision 3108-B (PECB, 1991).

⁵ See, e.g., City of Tukwila, Decision 2434-A (PECB, 1987) [union delayed filing petition for review based on erroneous advice of Commission staff member]; Central Kitsap School District, Decision 3671-A (PECB, 1991) [union continued to use defective authorization card in absence of rejection by Commission].

Patricia Hill pursuant to WAC 391-95-130, to United Way of Washington.

Decision 4070, page 19. [Emphasis by **bold** supplied.]

This case thus presents a fact situation similar to that which the Commission faced in State of Washington, Decision 3746-A (PECB, 1991). There, too, an Examiner's reference to the disposition of withheld funds in a case involving an asserted right of nonassociation misled a party into believing it had 30 days in which to appeal. The Commission decided that, under those circumstances, the actions of the agency had misled a party to its detriment, and the petition for review should not be dismissed. We reach the same result in the present case. The union's petition for review is deemed timely.

The Right of Nonassociation

Hill asserted in her initial petition that: (1) financing a legal challenge contrary to her religious beliefs is a violation of the bona fide religious tenets and teachings of her church, and (2) supporting political candidates who support abortion is contrary to her religious beliefs. The latter contention was not addressed by the Examiner and need not be addressed by the Commission, because we find Hill's religious beliefs regarding "creationism" suffice to grant her a right of nonassociation.

The Applicable Legal Standards -

Both RCW 41.59.100, which was applicable at the outset of this dispute, and RCW 28B.52.045, which became applicable during the pendency of the proceedings before the Commission, require union security provisions to safeguard a right of nonassociation based upon bona fide religious tenets or teaching of a church or religious body to which an employee belongs. Those union security provisions are similar to RCW 41.56.122(1), and have been applied

in accordance with rulings construing the provision found in Chapter 41.56 RCW.

Through a series of cases culminating with Grant v. Spellman, 99 Wn.2d 815 (1983) [Grant II], it is now well-established that an employee can secure a right of nonassociation based upon either: (1) personally held religious beliefs, or (2) the teachings of a church or religious body to which the employee belongs. The Commission adopted and amended WAC 391-95-230 as an implementing rule to codify the Grant II policy. It sets forth the burden which rests upon an employee who asserts a right of nonassociation:

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.

[Emphasis by **bold** supplied.]

The Commission does not inquire into the reasonableness or plausibility of the religious beliefs claimed by an employee, but instead applies an objective standard to determine whether the claimed belief is religious, as compared with philosophical, sociological, ethical, or moral.⁶ Personal political grounds do not suffice, and neither will a claim based upon erroneous understandings of union actions or positions.⁷

Bona Fide Religious Beliefs -

Hill is a born-again Christian, with a religious belief that she was created by God and did not evolve from some prehistoric ape. Hill's beliefs concerning the creation of the world are as taught by her church. There can be little doubt that Hill's claim in this case regarding "creationism" is based upon a deeply held and bona fide religious belief.

Hill views the position taken by the union, through its affiliation with AFT, as inconsistent with her beliefs in "creationism". Even if the Examiner's description of the union as being opposed "to the teaching of 'creationism'" is too broad, that does not change the result here. The record indicates that, while the AFT does not oppose the teaching of "creationism" as a legitimately held religious belief, the AFT has taken the position that "creationism" does not have the scientific acceptance of "evolution".⁸ It is this position which conflicts with Hill's religious belief. The Commission finds the record persuasive that Hill has a bona fide

⁶ Mukilteo School District, Decision 1323-B (PECB, 1984).

⁷ Brewster School District, Decision 3047 (PECB, 1988).

⁸ In a letter to Hill, AFT President Albert Shanker acknowledged that the AFT's brief in the Louisiana case was based, in part, upon the view that creationism should not be included in a science curriculum, because it does not meet high scientific standards. Shanker noted, however, that the AFT agreed that creationism deserved a hearing, as a legitimately held religious belief, in discussions about religion in social studies classes.

religious belief against the teaching of evolution as having greater scientific validity than creationism. There is thus a clear nexus between Hill's religious belief and her objection to financial support of the union.

Selective Objection to Union Membership -

A question remains as to whether the nexus established by Hill is of a type that is sufficient to sustain a religious objection to union membership and dues. The union takes the position that, in order to qualify for the right of nonassociation under Grant II, an individual's objection must be grounded in a religious objection to unions in general. The church to which Hill belongs does not have tenets or teachings which specifically prohibit church members from belonging to a labor union. Nor does Hill have any personal objection to union membership in general. Hill's objection is specific to Local 3913, because she views actions by that union as conflicting with certain of her religious beliefs.

We find Hill's selective objection concerning "creationism" suffices to establish a right of nonassociation. In our reading of the cases that culminated with the Grant II decision, we find no suggestion that the right of nonassociation can be conditioned upon having a global objection to membership in any labor union. We note, for example, that the Grant II ruling was based upon an interpretation by the Washington Supreme Court as to the intent of the legislature in granting the RCW 41.56.122(1) exemption from a union security agreement. The union has offered no legislative history to support the conclusion that RCW 41.56.122(1) and related statutes, including RCW 28B.52.045, were intended to require a religious objection to membership in any labor union, as opposed to a particular union. Nor would such a requirement seem reasonably read into the statute.

Other cases decided by the Commission and courts have implemented the statutory right of nonassociation for employees who assert

selective, rather than global, objections to union actions. In Irvin vs. PERC, CD-595 (King County Superior Court, 1991), a judge ruled that an individual's religious beliefs opposing homosexuality and cohabitation outside of marriage entitled him to the right of nonassociation. There was no assertion of a conflict between religious belief and union membership in general. Like Hill, the employee in the Irvin case became upset about a particular union action which the employee perceived as being in opposition to his religious belief. The focus of the conflict was on the particular union which represented the bargaining unit in which Irvin was employed. Finding that the union's activities sufficed to grant a right of nonassociation, the court observed:

An objection does not have to be a global objection to be constitutionally cognizable. Neither the statutes nor the regulations so require, and the Constitution does not permit such a limitation. The regulations likewise require only that the objection be a bona fide religious objection based upon the religious teaching of a church or religious body of which the claimant is a member.

[Emphasis by **bold** supplied.]

We concur with the Examiner that, because Hill has demonstrated the bona fide and religious nature of her belief and the conflicting nature of a position taken by the union, she has fulfilled the requirements of the statute and Commission rules to assert a religious-based right of nonassociation. The Examiner's Findings of Fact and Conclusions of Law will be amended only to reflect additional facts which serve as the basis for this ruling.

Modification of the Remedial Order

The hearing before the Examiner focused upon the question of Hill's entitlement to make alternative payments. No evidence was presented regarding the amounts withheld from Hill's pay by the employer, or the disposition of those funds.

The Commission has adopted rules regarding the escrow and disposition of dues payments disputed in union security cases, as follows:

WAC 391-95-130 UNION SECURITY--ESCROW OF DISPUTED FUNDS BY EMPLOYER. Upon being served with a copy of a petition filed under WAC 391-95-070, the employer shall preserve the status quo by withholding and retaining the disputed dues for periods during the pendency of the proceedings before the commission. Said funds shall draw interest at the rate provided by commercial banks for regular passbook savings accounts. While the proceedings remain pending before the commission, the employer shall not honor or otherwise act upon any request for discharge or other action against the affected employee based on the employee's union security obligations.

The Examiner's order was premised upon the assumption that the employer(s) in this case had been complying with the mandatory escrow requirements of WAC 391-95-130. The order therefore read as follows:

1. Patricia Hill 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 United Way of Washington, and Patricia Hill shall furnish proof to Local 3913 that such payments have been made, in accordance with the union security provisions of the collective bargaining agreement between Local 3913 and Clover Park Vocational Technical College.
2. If no petition for review of this order is filed within 30 days following the date of this order, the Clover Park Technical College shall promptly thereafter remit any and all funds withheld and retained from the pay of Patricia Hill,

pursuant to WAC 391-95-130, to United Way of Washington.

[Decision 4070 at page 19.]

In her petition for review, Hill asserts that monthly dues in the amount of \$23.50 have been withheld from her pay by the employer since September of 1990, at the same time that Hill made contributions to United Way in an amount equal to the union dues. Hill further alleges or assumes that the amounts deducted by the employer have been remitted to Local 3913, rather than being held in escrow as required by the cited Commission rule. Hill now seeks a directive that the employer furnish the union proof of her charitable contributions, that Local 3913 be ordered to promptly remit any funds it has received, and that the amount deducted from her pay for union dues be remitted to Hill.

Since the parties and the Examiner properly refrained from cluttering the record with evidence concerning remedy issues, there is no evidence from which we can judge the accuracy of Hill's assertions regarding the disposition of funds withheld from her paycheck. If Hill's factual assertions are correct, she is certainly entitled to relief. The issue will properly be dealt with in supplemental "compliance" proceedings, where a hearing can be held on the remedial issues, if necessary.

NOW, THEREFORE, The Commission makes the following:

AMENDED FINDINGS OF FACT

1. Clover Park Technical College is operated pursuant to Chapter 28B.50 RCW, and is an employer under Chapter 28B.52 RCW. The employer is the successor to the Clover Park School District, which formerly operated the institution under the name "Clover Park Vocational-Technical Institute".

2. Washington Federation of Teachers, Local 3913, is the exclusive bargaining representative of a bargaining unit consisting of all full-time and regular part-time academic employees of the employer. Local 3913 is affiliated with, and makes payments from members' dues to, the American Federation of Teachers, AFL-CIO (AFT).
3. The employer and Local 3913 are parties to a collective bargaining agreement that is effective from September 1, 1990 to August 31, 1993. That contract contains a union security provision which requires employees to become a member of the association or to pay a "representation fee" to Local 3913. The contract also safeguards the right of religious-based non-association by reference to the state law applicable at the time the contract was negotiated.
4. Patricia Hill, an employee of Clover Park Technical College and its predecessor for approximately 18 years, is an "academic employee" within the meaning of RCW 28B.52.020(2). Her employment is within the bargaining unit represented by Local 3913, and is subject to the union security obligations of the collective bargaining agreement described in paragraph 3 of these findings of fact.
5. Patricia Hill is a member of the Harrison Park Baptist Church of Tacoma, Washington. That church does not have tenets or teachings which specifically prohibit church members from belonging to a labor union. The church does teach that human beings were created by a divine being, God, and that they did not evolve from a prehistoric ape. Hill's assertion of a right of nonassociation is based upon her belief in the creation of the world as taught by her church.
6. Hill's differences with the union date back to 1986, when the AFT filed an amicus curiae brief in a lawsuit concerning

"creation science". The Louisiana statute under challenge in that lawsuit required educators to provide "balanced treatment" in teaching evolution and creationism. In November of 1986, Hill wrote to President Albert Shanker of the American Federation of Teachers, AFL-CIO, requesting an explanation of the reasons for the AFT becoming involved in the Louisiana case.

7. Responding to Hill's letter, Shanker explained that the AFT supported a strong public education system, that the published article indicated the AFT's belief in high academic standards, and that the organization supported the concept of the separation of church and state. Shanker acknowledged that the AFT brief was based, in part, upon the view that creationism should not be included in a school's science curriculum because it does not meet high scientific standards. Shanker noted, however, that in discussion about religion in social studies classes, the AFT agreed that creationism deserved a hearing as a legitimately held religious belief.
8. Following Shanker's response, Hill resigned from Local 3913. Although no union security obligation was then in effect, she made voluntary payments to a non-religious charity in lieu of the dues she would have paid to remain a member of the union.
9. When union security obligations were added to the collective bargaining agreement covering her employment in 1990, Hill asserted a right of nonassociation and requested that she be permitted to continue the payments she had voluntarily been making to a non-religious charity. The union denied that request.
10. On March 4, 1991, Patricia Hill filed a petition with the Public Employment Relations Commission under Chapter 391-95

WAC, asserting a right of nonassociation pursuant to RCW 41.59.100 and RCW 28B.52.045.

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. On the basis of her belief in the scientific validity of "creationism", Patricia Hill has sustained her burden of proof to demonstrate a nexus between her religious beliefs and her assertion of a right of nonassociation, under RCW 28B.52.045, from Washington Federation of Teachers, Local 3913.
3. In light of the eligibility of Patricia Hill to assert a right of nonassociation on the basis described in paragraph 2 of these conclusions of law, no ruling is necessary in this proceeding on her claim of a right of nonassociation under RCW 28B.53.045 based on the "abortion" issue.

ORDER

1. Patricia Hill 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 United Way of Washington, and Patricia Hill shall furnish proof to Local 3913 that such payments have been made, in accor-

dance with the union security provisions of the collective bargaining agreement between Local 3913 and Clover Park Vocational Technical College.

2. Clover Park Technical College shall provide Patricia Hill an accounting for all funds deducted from her pay since the filing of the petition in this matter, and shall remit any excess deductions of union dues to Patricia Hill.
3. Washington Federation of Teachers, Local 3913, shall provide Patricia Hill an accounting for all dues received from or on account of Patricia Hill since her assertion of a right of nonassociation, and shall remit any excess deductions of union dues to Patricia Hill.
4. Any disputes concerning compliance with paragraphs 2 or 3 of this order will be resolved by the Commission in supplemental proceedings.

Issued at Olympia, Washington, the 29th day of July, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson

[ABSTAINED]

MARK C. ENDRESEN, Commissioner



DUSTIN C. MCCREARY, Commissioner