

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
SANDRA PITOTTI)	CASE 8839-D-90-87
For determination of a dispute)	
concerning union security arising)	DECISION 4016 - PECB
under a collective bargaining)	
agreement between:)	
PUBLIC SCHOOL EMPLOYEES OF)	FINDINGS OF FACT,
WASHINGTON)	CONCLUSIONS OF LAW
and)	AND ORDER
CENTRAL VALLEY SCHOOL DISTRICT)	
_____)	

Eric T. Nordlof, General Counsel, appeared on behalf of the union.

Sandra L. Pitotti, appeared pro se.

The employer did not appear.

On October 18, 1990, Sandra Pitotti filed a petition with the Public Employment Relations Commission seeking a declaratory ruling on her union security obligations. The obligations arise from union security provisions of a collective bargaining agreement between the union, Public School Employees of Washington (PSE), and Central Valley School District. A hearing was held on April 11, 1991, in Spokane, Washington, before Examiner Katrina I. Boedecker. The union filed a post-hearing brief.

BACKGROUND

The union is recognized as the exclusive bargaining representative of classified employees of the Central Valley School District. No

question is raised in this proceeding as to the validity of that bargaining relationship.

The collective bargaining agreement between the employer and union for the period of September 1, 1990 through August 31, 1993 provides, at Article XVIII:

Section 18.1 Each employee subject to this Agreement, who, on the effective date of this Agreement, is a member in good standing shall, as a condition of employment, maintain membership in the Association in good standing during the period of this Agreement.

Section 18.2 All employees subject to this Agreement who are not members of the Association on the effective date of this Agreement, and all employees subject to this Agreement who are hired at a time subsequent to the effective date of this Agreement, shall, as a condition of employment, become members in good standing of the Association within thirty (30) days of the effective date of this Agreement or within thirty (30) days of the hire date, whichever is applicable. Such employee shall then maintain membership in the Association in good standing during the period of this Agreement.

Section 18.3 The parties recognize that an employee should have the option of declining to participate as a member of 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, less assessments. This service charge shall be collected by the Association in the same manner as monthly dues.

Section 18.4 Any employee who refuses to become a member of the Association in good

standing or pay the service charge in accordance with the previous section, shall, at the option of the Association, be immediately discharged from employment by the District.

Section 18.5 Nothing contained in this Article 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 nonreligious 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 Public Employment Relations Commission pursuant to RCW 41.56.122.

Neither the effectiveness of the collective bargaining agreement nor the legality of its union security provision are at issue in this proceeding.

Sandra Pitotti has been employed as a non-certificated employee of the Central Valley School District since October, 1979. Her employment is within the bargaining unit for which PSE is the certified bargaining representative, but Pitotti has never joined PSE.

In September, 1980 she sent a letter to PSE requesting nonassociation. The status was granted and honored for 10 years.

The collective bargaining agreement quoted above was negotiated between the parties during the summer of 1990. The union security provisions were newly incorporated into the bargaining agreement at that time.

On September 4, 1990, Pitotti received a letter from Ed Mikesell, business manager for the school district, notifying her that the

new collective bargaining agreement required her to become a member in good standing of PSE and maintain that membership during the period of the agreement.

Pitotti obtained a copy of Chapter 391-95 WAC and found that the union had not fulfilled its obligation under 391-95-010.

Pitotti testified that because of her "personal relationship with Jesus Christ, I cannot unite myself with an organization which does not literally obey God's word and interpret it as universal truth." She gave a detailed accounting of her personal and family involvement with Evangelical churches for longer than the 12 years she has been with Central Valley School District.

She interprets God's Word to mean that bargaining salaries is a selfish character trait that God will not bless. She avowed that God orders her to be subject to governments and not challenge their authority. She believes that the Bible mandates that an employee is called upon to be submissive to the employer in all respects.

She affirmed that her views are principles that she has learned and followed throughout her Christian life.

Pitotti requests that she be allowed to make alternative payments to the D.A.R.E. program in Spokane, Washington. PSE raised no objection to the designation of the D.A.R.E. program as a non-religious charity.

POSITIONS OF THE PARTIES

PSE argues that Pitotti does not meet the burden of proof required by the statute. It does not dispute the bona fide nature of Pitotti's religious beliefs, but argues that she did not provide much information regarding her specific beliefs as they relate to

the payment of money to a union. PSE advances that although Pitotti personally opposes paying dues to an organization that does not coincide with her convictions, there is no evidence that her personally held religious beliefs preclude such a payment. PSE contends that the petitioner has confused personal moral beliefs with personally held religious beliefs. PSE claims that while Pitotti may have religious beliefs which would preclude her from joining a union, actually joining the association and paying money to the union are separate and distinct activities. In order to demonstrate her right to exercise the option of nonassociation, she needed to prove that her objection to the payment of money stemmed from religious beliefs. PSE argues that was not done, therefore the petition should be dismissed.

Pitotti seeks dismissal of the union's claim against her because the union has not followed the requirements of Chapter 391-95 WAC. She contends that since the union has abridged vital and necessary steps in the process, the intent of the law would be abridged if the declaratory ruling petition was processed at this time. Pitotti also argues that the matter would be more easily resolved in frank and candid conversation with Tom Conklin, the local PSE president. Additionally, Pitotti contends that her religious beliefs are principles that she uses throughout her Christian life.

The employer took no position as to whether Pitotti is entitled to assert a right of nonassociation.

DISCUSSION

Procedural Questions

Pitotti seeks dismissal of the union's right to contest her status based on three points. She argues that she is exempt because: (1) She was hired in 1979, prior to the signing of the current labor

agreement and should be grandfathered at her present status in 1980; (2) PSE never asked her opinion, even though a union is required by law to represent the views of those in their affected group; and (3) PSE never fulfilled its obligation under WAC 391-95-010.

Gene Volz, the business representative for the PSE of Central Valley School District, testified that the union bargaining team was sensitive to the inclusion of the new union security language. It posted notices of the ratification meeting extensively throughout the school district, inviting all unit members to the meeting. Additionally, instead of presenting the entire contract for ratification, each article was ratified item-by-item. Volz also testified that the petitioner never asked him for a copy of the by-laws, and that he always provides copies to whoever asks for them.

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, expressly provides for union security clauses to be included in a collective bargaining agreement negotiated between an exclusive bargaining representative and the employer as long as it provides for the accommodation of religious beliefs:

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 fees 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 supplied]

The above-quoted statute allows the exclusive bargaining representative and the employer to negotiate a union security clause at any time in the life of their collective bargaining relationship. Although some parties negotiate a "grandfathered-out" status for certain employees, nothing in the statute mandates it. Pitotti's first objection fails. See, Mukilteo School District, Decision 1122-A (EDUC, 1981).

Nothing in the statute mandates that a union contact each individual bargaining unit member for his or her opinion before ratifying a contract that contains a union security clause. Additionally, Volz's uncontested testimony shows that PSE did go to great lengths to allow input from all bargaining unit members.

Pitotti appears to want an automatic default of the union's right to proceed for collection of dues because the union did not follow the procedures detailed in WAC 391-95-010 and WAC 391-95-050.¹ The

¹ Specifically:

WAC 391-95-010 UNION SECURITY -- OBLIGATION OF EXCLUSIVE BARGAINING REPRESENTATIVE: An exclusive bargaining representative which desires to enforce a union security provision contained in a collective bargaining agreement negotiated under the provisions of chapter 28B.52, 41.56 or 41.59 RCW shall provide each affected employee with a copy of the collective bargaining agreement containing the union security provision and shall specifically advise each employee of his or her obligation under that agreement, including informing the employee of the amount owed, the method used to compute that amount, when such payments are

motion to dismiss was denied at the hearing, and that ruling will stand in this decision. The procedures the parties are directed to follow in the WAC's are established to ensure that if a union does not respond within 60 days of notice of the employee's claimed right of nonassociation, then the employee has the right to proceed with the petition to have the question resolved. A union's inaction cannot block an employee's right to petition for the declaratory ruling. If an employee believes that the union withheld the information required by WAC 391-95-010, then the employee may file a complaint of unfair labor practice that the union and the employer conspired to deprive the employee of money illegally under RCW 41.56.150(1) and (2). These principles were enunciated in Brewster School District, Decision 2779 (EDUC, 1987) and applied in Snohomish County, Decision 3579 (PECB, 1990).

The Applicable Legal Standards

Under the rule of Grant v. Spellman, 99 Wn.2d 815 (1983) [Grant II], an employee can establish a right of nonassociation under RCW 41.56.122, by demonstrating a bona fide religious objection based on the teachings of a church or religious body of which the employee is a member, or by demonstrating an objection based upon bona fide personal religious beliefs. In implementing that ruling, the Commission adopted WAC 391-95-230:

to be made, and the effects of a failure to pay.

and

WAC 391-95-050 UNION SECURITY -- RESPONSE BY EXCLUSIVE BARGAINING REPRESENTATIVE: Within sixty days after it is served with written notice of a claimed right of nonassociation under WAC 391-95-030, the exclusive bargaining representative shall respond to the employee, in writing, both as to the eligibility of the employee to make alternative payments and as to the charitable organization(s) suggested by the employee. ...

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 supplied.

While the first of those alternative tests has more components, it is commonly the easier to establish. See, Edmonds School District, Decision 1239-A (EDUC, 1983), and University of Washington, Decision 3499 (PECB, 1990).

Where an employee asserts "personal beliefs" under the second alternative as Pitotti has done, the burden is on the employee to establish that the claim of a right of nonassociation is based upon personal beliefs which are religious in nature. Snohomish County, Decision 2859-A (PECB, 1988). While the Commission cannot inquire into the reasonableness or plausibility of the religious beliefs claimed by an employee, the Commission does apply an objective standard to determine, as a question of fact, whether the belief is

religious, as compared with philosophical, sociological, ethical, or moral. Mukilteo School District, Decision 1323-B (PECB, 1984). Personal political grounds are not sufficient. City of Seattle, Decision 2086 (PECB, 1985); North Thurston School District, Decision 2433 (PECB, 1986); Brewster School District, Decision 3047 (PECB, 1988). The religious, as opposed to secular, nature of opposition to a union is an evidentiary matter. Edmonds, supra.

The Commission has determined that the genuineness and sincerity of an employee's objections will be discerned from all of the facts and circumstances of the case.

A claim based upon erroneous understandings of union actions or positions will not suffice. Brewster School District, supra. Concurrent actions of the employee that are inconsistent with the claimed right of nonassociation are facts to be considered in evaluating whether the claim is bona fide and in good faith. Community College District 1, Decision 3567 (CCOL, 1990).

Application of the Standards

The only question left in this case is whether Sandra Pitotti has met her burden to come forward with evidence that establishes personally held religious beliefs statutorily sufficient to counter the requirements of the union security provisions of the collective bargaining agreement.

Establishment of a "Religious" Basis for the Claim -

Pitotti testified to the presence of God's Word in her life to guide her daily living and to her interpretation that the teaching of the Bible's words do not allow her to pay money to any union. Her sincere testimony showed these were religious beliefs beyond personal philosophical holdings.

Establishment of the "Bona Fides" of the Claim -

Pitotti's demeanor while on the witness stand established that her testimony regarding her religious beliefs was sincere and bona fide. Her beliefs were based on direction and interpretation from God's word. She demonstrated that her personally held religious beliefs are genuine and in good faith.

PSE argues that Pitotti did not demonstrate that her personally held religious beliefs preclude her from paying money to a labor union. It contends that since she does not state that her God has specifically ordained against the payment of money to labor unions, her belief must then be characterized as a personal philosophical belief. Thus, while Pitotti may have religious beliefs which would preclude her from joining a union, PSE argues that actually joining the association and paying money to the union are separate and distinct activities. PSE has here missed the impact of Pitotti's sincere testimony regarding her interpretation of God's word.

Conclusion -

Sandra Pitotti has fulfilled the requirements of the statute and rules necessary to assert a religious-based right of nonassociation. Her claim is granted.

FINDINGS OF FACT

1. Central Valley School District is a school district is a "public employer" within the meaning of RCW 41.56.030(1).
2. Public School Employees of Central Valley, an affiliate of Public School Employees of Washington (PSE), is a "bargaining representative" within the meaning of RCW 41.56.030(3).
3. PSE is the exclusive bargaining representative of a bargaining unit of classified employees of Central Valley School District. The employer and union are parties to a collective

bargaining agreement which is effective through August 31, 1993. The agreement contains a union security provision requiring all bargaining unit employees to establish and maintain their membership in the union, or pay a representation fee, for the life of the collective bargaining agreement. The union security provision safeguards the right of nonassociation of employees based upon bona fide religious tenets or teachings of a church or religious body.

4. Sandra Pitotti is employed by the Central Valley School District within the classified employees bargaining unit represented by PSE. Pitotti filed a petition with PSE, asserting a right of nonassociation and requesting that she be permitted to make alternative payments to a charity, rather than the payments required to the union under the union security provision of the collective bargaining agreement.
5. PSE did not respond to Pitotti's request. On October 18, 1990, Pitotti filed a petition with the Public Employment Relations Commission for a ruling on her union security obligations.
6. Pitotti holds personal religious beliefs that prohibit her from joining or paying dues to labor organizations.
7. The D.A.R.E. program of Spokane, Washington, is an appropriate charitable organization to receive alternative payments under RCW 41.56.122(1).

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.

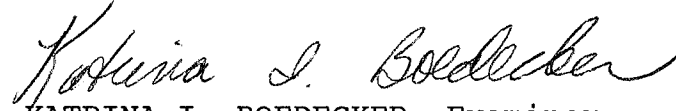
2. Sandra Pitotti has met her burden of proof to sustain her assertion of a right of nonassociation under RCW 41.56.122(1).

ORDER

1. Sandra Pitotti shall henceforth make alternate payments of the amount of union dues charged by Public School Employees of Central Valley School District to the D.A.R.E. program of Spokane, Washington, and shall furnish proof to Public School Employees of Central Valley School District 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, Central Valley School District shall release and pay over any funds held in escrow pursuant to WAC 391-95-130 to the D.A.R.E. program of Spokane, Washington.
3. If a petition for review of this order is filed with the Commission within 20 days following the date of this order, such filing shall automatically stay the effect of this order pending a ruling by the Commission.

Entered at Olympia, Washington, this 18th day of March, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


KATRINA I. BOEDECKER, Examiner

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