

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-A - PECB  
agreement between: )  
CITY OF SEATTLE )  
and ) DECISION OF COMMISSION  
CARPENTERS UNION, LOCAL 131 )  
\_\_\_\_\_ )

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.

This matter comes before the Commission on a petition for review filed by Ralph P. Bresee, seeking to overturn a decision issued by Examiner Kathleen O. Erskine.<sup>1</sup>

BACKGROUND

On May 23, 1994, Ralph P. Bresee filed a petition with the Commission under Chapter 391-95 WAC, seeking a ruling concerning a right of nonassociation in relation to obligations under the union security provisions of a collective bargaining agreement between

<sup>1</sup> City of Seattle, Decision 5378 (PECB, 1995).

the City of Seattle (employer) and District Council of Carpenters, Local 131 (union).

At a pre-hearing conference on December 20, 1994, all parties stipulated that Bresee had asserted a valid and legitimate right of nonassociation, but the union and Bresee were not able to agree upon an appropriate charitable organization.

The Examiner held a hearing on March 7 and 8, April 5 and 20, and May 18, 1995. In her decision issued on December 5, 1995, the Examiner ordered Bresee to make his alternative payments to Northwest Harvest. Bresee filed a petition for review on December 26, 1995, thus bringing the matter before the Commission.

#### POSITIONS OF THE PARTIES

Bresee asserts various theories in support of his desire to make his "in lieu of union dues" payments to the University of Dallas at Irving, Texas. Bresee also argues that the "Northwest Harvest" charity is a religious organization of protestant affiliation.

The union asserts that Northwest Harvest does not ask religious preference before it contributes to those in need, but it acknowledges that the organization's board includes representatives from numerous religious affiliations. The union suggests that the Commission consider the King County Food Bank if Northwest Harvest is deemed inappropriate.

#### DISCUSSION

The only issue before the Examiner in this case was: To what charitable organization should Ralph Bresee make alternative payments in lieu of the payments required by the union security

provision in the collective bargaining agreement? Since the issue before us is whether the Examiner's designation of charity was appropriate, we confine our remarks to this specific issue.<sup>2</sup>

RCW 41.56.122 requires collective bargaining agreements containing union security provisions to safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which the employee is a member. The statute requires such employees to pay an amount equivalent to regular union dues and initiation fee to a "nonreligious charity or to another charitable organization mutually agreed upon by the employee and the bargaining representative". The collective bargaining agreement between the employer and union in this case complied with the statutory direction.

When an employee and union do not agree upon a charitable organization, RCW 41.56.122 limits the Commission to designating a non-religious charity.<sup>3</sup> Bresee's preference, the University of Dallas, is sponsored by the Roman Catholic Diocese of Dallas, so that institution must be disqualified. Other charitable organizations offered by Bresee as alternatives are also affiliated with the Roman Catholic Church, and must be similarly disqualified.

The Examiner properly looked to the charitable organizations suggested by the union in the absence of any viable suggestions from the petitioner. Because of the assertions as to the potential religious nature of Northwest Harvest and the lack of any factual evidence showing the organization is nonreligious, however, we have

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<sup>2</sup> We have thoroughly reviewed all of the arguments advanced by the petitioner in this case, but find most of them do not relate to the specific issue litigated at the hearing, or are unpersuasive.

<sup>3</sup> This limitation is consistent with avoiding any "establishment of religion" concerns under the United States Constitution and the Constitution of the State of Washington.

no basis on which to conclude that it is a nonreligious organization.<sup>4</sup> In his opening statement, Bresee asserted that Northwest Harvest is a religious organization. In his petition for review, Bresee stated that a witness was prepared to testify as to the religious nature of the charity.<sup>5</sup> In its response to the petition for review, the union acknowledges Northwest Harvest has some religious affiliation. Under these conditions, we are very uncomfortable with designating the organization as a nonreligious charity.

Because of both the union's and Bresee's assertions as to the potential religious nature of Northwest Harvest, we look to the union's alternative suggestion of King County Food Bank. We are establishing a period during which Bresee may raise a factual issue as to the appropriateness of King County Food Bank.

NOW, THEREFORE, it is

ORDERED

1. This matter will be held open for 14 days following the date of this order, to permit Ralph Bresee time to file and serve specific information sufficient to raise a factual claim that the King County Food Bank is not a nonreligious charity.

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<sup>4</sup> Northwest Harvest was a charity mentioned in this case at several stages, beginning with the pre-hearing conference.

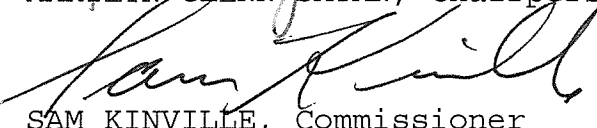
<sup>5</sup> Bresee states that Dave Cordaro was prepared to testify at the hearing that Northwest Harvest is a Christian charity founded by heads of several protestant churches. A review of the hearing transcript indicates Bresee intended to call Cordaro as a witness, but called others instead. On the fourth day of hearing, April 20, 1995, time ran out before Cordaro could testify, and Cordaro did not appear at the last day of hearing, which was May 18, 1995.

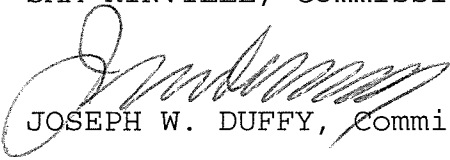
2. If Ralph Bresee files materials in response to paragraph 1 of this order, the union will be allowed 14 days thereafter to file and serve a response, and the matter will be acted upon by the Commission.
  
3. If Ralph Bresee fails to file materials in response to paragraph 1 of this order, he will be required to make his alternative payments of union dues and fees to King County Food Bank, and to furnish proof to Carpenters Union, Local 131 that such payments have been made.

Issued at Olympia, Washington, the 16th day of April, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARILYN GLENN SAYAN, Chairperson

  
SAM KINVILLE, Commissioner

  
JOSEPH W. DUFFY, Commissioner