

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
PUBLIC SAFETY EMPLOYEES, LOCAL 519)	CASE 11801-D-95-115
)	
For determination of the union)	
security obligations of:)	DECISION 5595 - PECB
)	
JONATHAN DUTCZAK)	
)	
under a collective bargaining)	
agreement between:)	
)	
KING COUNTY)	
)	
and)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
)	AND ORDER
PUBLIC SAFETY EMPLOYEES, LOCAL 519)	
)	
)	

Jared Karstetter, Legal Advisor, appeared on behalf of the union.

Jonathan Dutczak, appeared pro se.

David Gaba, Lead Labor Negotiator, appeared on behalf of the employer.

On May 26, 1995, Public Safety Employees, Local 519, SEIU, AFL-CIO (union) filed a petition with the Public Employment Relations Commission under Chapter 391-95 WAC, seeking a ruling on the obligations of Jonathan Dutcza under the union security provision of a collective bargaining agreement between the union and King County (employer). A hearing was held at Kirkland, Washington, on October 26, 1995, before Examiner Paul T. Schwendiman. The union filed a post-hearing brief, while the employer and Dutcza did not file briefs.

BACKGROUND

King County maintains a Department of Public Safety, which operates the King County Jail and related corrections facilities.

Public Safety Employees, Local 519 is the exclusive bargaining representative of a bargaining unit of approximately 350 corrections officers, sergeants and jail aides working in the King County Department of Public Safety.

Jonathan Dutczak is a corrections officer employed by King County within the bargaining unit represented by the union.

The employer and union were parties to a collective bargaining agreement that was effective from January 1, 1993 to December 31, 1995. Article 2 of that contract contained a provision titled "UNION RECOGNITION AND MEMBERSHIP" which reads, in part:

Section 2. Unit Membership. It shall be a condition of employment that all regular full-time employees who are members of the union on the effective date of this Agreement, shall remain members in good standing. Timely payment of dues and initiation fees shall constitute being a member in good standing.

It shall also be a condition of employment that regular full-time employees covered by this Agreement and hired on or after its effective date shall, on the thirtieth day following such employment, become and remain members in good standing in the union.

Provided, that employees with a bona fide religious objection to union membership and/or association based on the bona fide tenets or teachings of a church or religious body of which such employee is a member shall not be required to tender those dues or initiation fees to the union, for deposit, into its general account, as a condition of employment. Such employees shall have deducted, on a monthly basis, an amount of money equivalent to regular union dues and initiation fees.

Said money shall be deposited into a special interest-bearing account by the Union and, and at the end of the fiscal year, donated to a non-religious charity, mutually agreed upon between the public employee and the Union. If the employee and the Union cannot agree on the non-religious charity organization, the Public Employment Relations Commission shall designate the charitable organization. It shall be the obligation of the employee requesting or claiming the religious exemption to show proof to the Union that he/she is eligible for such exemption.

The Union records concerning the special charitable contribution by non-union objectors shall be available for inspection by the County and by the contributors to the special account, upon reasonable notice.

[Emphasis by **Bold** supplied].

Jonathan Dutczak has previously been granted the right of nonassociation by the union under the collective bargaining agreement, RCW 41.56.122(1) and WAC 391-95-030. Dutczak avers that he is a member of the Seventh Day Adventist church and follows the tenets and teachings of that religious faith. During the course of the hearing, the union and employer agreed that members of the Seventh Day Adventist church qualify for right of nonassociation under the statute.

Since at least 1992, Dutczak has been making alternative payments to the Copperas Cove Independent School District, a political subdivision of the state of Texas.

POSITIONS OF THE PARTIES

The union asserts that Dutczak should not be allowed to make alternative payments to the Copperas Cove Independent School District, because it is a political subdivision of the state of Texas, and because political subdivisions do not qualify as

charitable organizations under Section 501(C)(3) of the Internal Revenue Code and Chapter 41.56 RCW. The union suggests that a non-political, non-religious charity such as the American Heart Association, American Cancer Society, American Diabetes Association, American Red Cross or Children's Orthopedic Hospital would be the appropriate charity to receive Dutczak's contribution.

Dutczak asserts that his religion is the basis for his desire to continue make his alternative payments to the Copperas Cove Independent School District at Copperas Cove, Texas. Dutczak does not argue that the charities proposed by the union are religious or political organizations.

DISCUSSION

This case comes before the Commission pursuant to the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. That statute states, in part:

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 representa-**

**tive do not reach agreement on such matter,
the commission shall designate the charitable
organization. . . .**

[Emphasis by bold supplied.]

Article 2, Section 2 of the collective bargaining agreement between the union and the employer generally parallels the language of RCW 41.56.122(1).

No issue arises in this case as to whether Jonathan Dutczak has stated a bona fide religious belief. The union's rejection of his request is based upon its belief that the charity selected by Dutczak does not qualify for a charitable contribution by a public employee of the state of Washington under RCW 41.56.122(1).

In making its inquiry into the basis for an employee's objection to union membership under RCW 41.56.122(1), the Commission necessarily operates within the narrow limits on governmental intrusion into religious beliefs which are imposed by the First Amendment to the United States Constitution.¹ Mere assertion of a religious basis, without explanation, will not suffice. Mukilteo School District,

¹ For a decade after it was first enacted in 1973, RCW 41.56.122(1) was narrowly interpreted to make the exception available only to those who were members of a church or religious body which taught against union membership. In Grant v. Spellman, 99 Wn.2d 815 (1983) (Grant II), the Supreme Court of the State of Washington gave a more expansive interpretation to RCW 41.56.122(1), opening up the "right of nonassociation" to those with personally-held religious beliefs against support of labor organizations. It is no longer necessary that the employee's beliefs be sponsored or promoted by a church or religious body, but the beliefs relied upon must still be of a "religious" nature.

The term "religious" inherently connotes reverence, worship, obedience or submission to the mandates and precepts of superior beings. Black's Law Dictionary, Fourth Edition, p. 1455. In a number of decisions made subsequent to Grant II, the Commission struggled with formulating a test for determining nonassociation claims. The Commission codified its precedents in WAC 391-95-230.

Decision 1323-B (EDUC, 1984); Tacoma School District, Decision 2018 (EDUC, 1984). Purely secular views, no matter how strongly held, do not qualify an employee for the right of nonassociation.

Application of Standards

The Copperas Cove Independent School District was described in a letter from its superintendent as "a non-profit, non-religious, political sub-division of the state of Texas".

Dutczak has not provided any evidence supporting his claim of a religious basis for his preference for the Copperas Cove Independent School District. As with eligibility to assert the right of nonassociation under Mukilteo School District and Tacoma School District, supra, mere assertion of a religious basis will not suffice to support a designation of a charity over the objection of another party.

Allowing that the Copperas County Independent School District is non-religious, that does not necessarily satisfy the charity or charitable organization requirements of RCW 41.56.122(1). It is noteworthy that the Legislature did not designate the political subdivisions of the state of Washington (or even the state itself) as potential recipients of alternative payments under that statute. It is thus particularly difficult to discern any state interest in bringing the laws of the state of Washington to bear to compel the payment of funds to a political subdivision of another state.

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. The union aptly refers to Section 501(C)(3) of the United States Internal Revenue Code, which regulates designation of charitable organizations. In City of Seattle, Decision 5378-A and 5378-B (PECB, 1996), the Commission looked to the in-state organizations suggested by the union involved there, upon

concluding that the out-of-state charity suggested by the employee involved there was disqualified under the nonreligious standard. The Commission ultimately selected the King County Food Bank as an appropriate recipient of alternative dues payments in that case.

In this case, the Examiner has looked to the organizations suggested by the union in the absence of any viable suggestions from the employee after disqualification of his preference under the charitable standard. Designation of Children's Orthopedic Hospital would appear to comport with the concern for children stated by Dutczak on the record in this proceeding.

FINDINGS OF FACT

1. King County, Washington, is a "public employer" within the meaning of RCW 41.56.030(1).
2. Public Safety Employees, Local 519, an employee organization within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of full-time and regular part-time corrections officers, sergeants and jail aides employed by King County.
3. The employer and the union are parties to a collective bargaining agreement effective from January 1, 1993 to December 31, 1995. The contract contains a union security provision which safeguards the right of nonassociation of employees based on bona fide religious objections.
3. Jonathan Dutczak is employed by King County in a position within the bargaining unit represented by the union, and is a public employee within the meaning of RCW 41.56.030(2).

4. Jonathan Dutczak is a member of the Seventh Day Adventist church. The employer and the union agreed that the faith practiced by Dutczak qualifies him to make alternative dues payments under RCW 41.56.122(1).
5. On May 26, 1995, the union filed a petition with the Public Employment Relations Commission seeking a determination concerning the union security obligations of Dutczak. The union considered the charity to which Dutczak had been making alternative dues payments to be inappropriate under RCW 41.56.122(1), because it is a political subdivision of the state of Texas.
6. The union and Dutczak were not able to agree on an acceptable non-religious, non-political charity to receive Dutczak's contribution.
7. Children's Orthopedic Hospital of Seattle, Washington, is an acceptable non-religious, non-political charity qualified to receive alternative dues contributions.

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 organization proposed by Jonathan Dutczak for his alternative payments does not qualify under RCW 41.56.122 in the absence of agreement between Dutczak and Local 519 to designate a political subdivision.
3. Children's Orthopedic Hospital of Seattle, Washington, is an organization which qualifies to receive alternative payments under RCW 41.56.122.

ORDER

1. Jonathan Dutczak is directed to make his alternative payments of union dues and fees to Children's Orthopedic Hospital, and shall furnish proof to Public Safety Employees, Local 519 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, King County shall remit to Children's Orthopedic Hospital any and all funds withheld and retained from the pay of Jonathan Dutczak, 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.

Issued at Olympia, Washington, the 5th day of July, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



PAUL T. SCHWENDIMAN, Examiner

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-95-270.