

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of a petition concerning the obligations of:

ROBERT PRESS

Under union security provisions of a Collective bargaining agreement between:

WASHINGTON FEDERATION OF STATE EMPLOYEES

and

WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES.

CASE 23597-N-10-0063

DECISION 10929 - PSRA

ORDER OF DISMISSAL

On October 25, 2010, Robert Press (Press) filed a Petition for Ruling on Nonassociation Claim with the Commission. Press is employed by the Washington State Department of Labor and Industries (employer), and his position is covered by a collective bargaining agreement between the employer and the Washington Federation of State Employees (union). The request for nonassociation was reviewed under WAC 391-95-150.¹ A deficiency notice was issued on October 29, 2010. Press was given 21 days to file and serve an amended petition or face dismissal of the petition. Press has not filed any further information. The Unfair Labor Practice Manager dismisses the petition.

DISCUSSION

In this case, the petition is governed by the provisions of RCW 41.80.100.

1 At this stage of the proceedings, all of the facts alleged in the petition are assumed to be true and provable. The question at hand is whether, as a matter of law, the petition states a basis for assertion of a right to nonassociation before the Public Employment Relations Commission.

RCW 41.80.100 UNION SECURITY-FEES AND DUTIES-RIGHT OF NONASSOCIATION.

....

(2) An employee who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets, or teachings of a church or religious body of which the employee is a member, shall, as a condition of employment, make payments to the employee organization, for purposes within the program of the employee organization as designated by the employee that would be in harmony with his or her individual conscience. The amount of the payments shall be equal to the periodic dues and fees uniformly required as a condition of acquiring or retaining membership in the employee organization minus any included monthly premiums for insurance programs sponsored by the employee organization. The employee shall not be a member of the employee organization but is entitled to all the representation rights of a member of the employee organization.

Under RCW 41.80.100(2), disputes resolved by the Commission in nonassociation proceedings are limited to the following issues: (1) Eligibility of an employee to assert the right of nonassociation based on either (a) Personal religious beliefs, or (b) Teachings of a church or religious body; and (2) Designation of programs of the union to receive alternative payments.

The petition submitted by Press indicates that he is asserting a right of nonassociation based on personal religious beliefs. However, Press attached a statement to the petition which makes clear that his assertion of a right of nonassociation is not based upon his personal religious beliefs, but upon his personal non-religious beliefs. Press alleges, in pertinent part, that:

- Requiring the exemption to be based upon religious beliefs violates Section 12 of the Washington State Constitution, since “the class of citizens professing to ‘religious’ beliefs are afforded and exemption (‘immunity’) not available to more secular citizens,” and that “no matter how arcane or extreme a religious belief may be, it will trump a well reasoned and sincerely held lay conviction”;
- The religious exemption violates Section 11 of the Washington State Constitution, which guarantees religious freedom;
- [unattributed] dictionary definitions of the word religious show that “we can easily equate the religious ‘conscientiousness’ with the more worldly based ‘conscience’”;

- Legal oaths or affirmations, personal holidays for public employees, and conscientious objector status allow for non-religious convictions in place of religious belief; and
- “The rational basis for an exemption is not whether it is a religious objection but whether any objection claimed is itself bona fide, sincerely held and pertinent to union association.”

The Commission does not have jurisdiction to decide constitutional questions. The Commission’s jurisdiction includes the interpretation of collective bargaining statutes. The statute in question, RCW 41.80.100, provides for nonassociation for employees who assert that right based on “bona fide religious tenets, or teachings of a church or religious body of which the employee is a member.” Numerous Commission cases have ruled that bona fide non-religious beliefs may not be substituted for bona fide religious beliefs in asserting the right of nonassociation. For the most recent ruling on this issue, *See North Thurston School District (Public School Employees of Washington)*, Decision 10859 (PECB, 2010). Press is apparently requesting the Commission to revise the statute in order to bring this matter to adjudication. The Commission does not have the authority to amend statutes. Press must seek relief through the legislature or the courts.

NOW, THEREFORE, it is

ORDERED

The petition for nonassociation in Case 23597-N-10-0063 is DISMISSED for failure to state a cause of action.

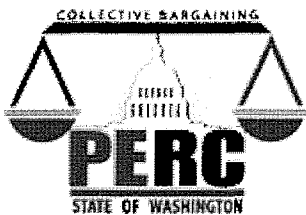
ISSUED at Olympia, Washington, this 9th day of December, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-95-270.



PUBLIC EMPLOYMENT RELATIONS COMMISSION


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The attached document identified as: DECISION 10929 - PSRA has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:  ROBBIE DUFFIELD

CASE NUMBER:	23597-N-10-00063	FILED:	10/25/2010	FILED BY:	PARTY 2
DISPUTE:	NON ASSOCIATION				
BAR UNIT:	ALL EMPLOYEES				
DETAILS:					
COMMENTS:					
EMPLOYER:	STATE - LABOR AND INDUSTRIES				
ATTN:	DIANE LEIGH 210 11TH AVE SW STE 331 PO BOX 43113 OLYMPIA, WA 98504-3113 Ph1: 360-725-5154 Ph2: 360-725-5152				
PARTY 2:	ROBERT PRESS				
ATTN:	7273 LINDERSON WAY SW TUMWATER, WA 98501 Ph1: 360-902-5526				
PARTY 3:	WA FED OF STATE EMPLOYEES				
ATTN:	GLADYS BURBANK 1212 JEFFERSON ST SE STE 300 OLYMPIA, WA 98501-2332 Ph1: 800-562-6002 Ph2: 360-352-7603				