

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of a dispute concerning the obligations of:

GREGORY BAKER

Under union security provisions of a collective bargaining agreement between:

WALLA WALLA SCHOOL DISTRICT

and

PUBLIC SCHOOL EMPLOYEES OF WASHINGTON

CASE 22809-N-09-00059

DECISION 10950 - PECB

FINDINGS OF FACT,
CONCLUSION OF LAW,
AND ORDER

Gregory Baker appeared on his own behalf.

Elyse B. Maffeo, Assistant General Counsel, for the union.

On October 23, 2009, the Public School Employees of Washington (union) filed a petition for a ruling on a nonassociation claim. The petition related to the eligibility of Gregory Baker to assert a right of nonassociation under RCW 41.56.122(1). Baker is an employee of the Walla Walla School District and his position is in a bargaining unit represented by Public School Employees of Walla Walla, a chapter of the union. Baker has claimed an exemption from the membership requirement in the union and school district's collective bargaining agreement based upon personally held religious beliefs. Examiner Emily Martin held an evidentiary hearing on July 15, 2010. After the hearing, both the union and Baker filed written arguments.

ISSUE PRESENTED

Is Baker eligible to assert the right of nonassociation which would allow him to make a charitable donation instead of paying dues or representation fees to the union?

Baker failed to sufficiently establish a connection between his personally held religious beliefs and his objection to union membership. Therefore, the Examiner finds that Baker is not entitled to an exemption from paying dues or representation fees to the union under RCW 41.56.122(1).

APPLICABLE LEGAL PRINCIPLES

Under RCW 41.56.122, a collective bargaining agreement may contain a union security provision provided that the provision safeguards “the right of nonassociation of public employees based on bona fide religious tenants or teachings of a church or religious body of which such public employee is a member.” An employee who qualifies to assert a right of nonassociation, “shall pay an amount equivalent to regular union dues and initiation fee to a nonreligious charity” or to a charitable organization which the union and employee mutually agree upon.

The “bona fide religious tenants” clause of RCW 41.56.122 has been interpreted by our State Supreme Court to allow an employee who is not a member of any church or religious body to claim a right of nonassociation based on personal religious beliefs. *Grant v. Spellman*, 99 Wn.2d 815 (1983) (*Grant II*). After *Grant II*, the Commission codified the tests used to make determinations on petitions filed by individuals asserting a right of nonassociation based on personally held religious beliefs. WAC 391-95-230 directs:

(2) The employee has the burden to make factual showing, through testimony of witnesses and/or documentary evidence, of the legitimacy of his or her beliefs, as follows:

.....

(b) In cases where the claim of a right of nonassociation is based on personally held religious beliefs, the claimant employee shall demonstrate:

- (i) His or her bona fide religious objection to union membership; and
- (ii) That the religious nature of the objection is genuine and in good faith.

In applying WAC 391-95-230, the Commission does not inquire into or make judgments concerning the content of the religious beliefs, but on whether the belief is religious or secular, and whether it is held in good faith. *Columbia Basin Irrigation Council*, Decision 7842 (PECB, 2002). For example, in *Puyallup School District*, Decision 2086 (PECB, 1985), an employee’s

claim to the right of nonassociation was rejected because the employee's strong objection to the union's involvement in certain political activities was not sufficiently related to the religious beliefs. Likewise, in the *City of Seattle*, Decision 2086 (PECB, 1985), an employee's beliefs were found to be sincerely held but not religious and so the employee's claim to the right of nonassociation was rejected.

Not only must a decision be based on religious rather than political objections, an employee's objections also cannot be based on a lack of knowledge or erroneous perception of the objectionable conduct or positions taken by the labor organization. *North Thurston School District*, Decision 2433 (EDUC, 1986). When asserting a religious objection, employees must show that they have attempted to determine a union's actual position on the issue in controversy, and not merely infer a position based on assumptions. For example, in *Brewster School District*, Decision 3027 (PECB, 1988), an employee was denied a religious objection where she claimed that the national affiliate of her union had taken stands on abortion and homosexuality which she felt contradicted her religious views. In *Brewster*, the employee proved that the national affiliate had taken a position which supported "reproductive freedom without government intervention," but she had failed to take any steps to study, understand, or evaluate the union's stand on the matter of abortion.

ANALYSIS

Walla Walla School District and the union are parties to a collective bargaining agreement containing a union security provision under which bargaining unit members are required to pay union dues or representation fees. While Baker had initially authorized the union to collect an agency fee, he has subsequently taken the position that his personally held religious beliefs make him eligible to assert the right of nonassociation.

Baker's objections to the union developed as a result of its recent affiliation with a national union, the Service Employees International Union (SEIU). Baker had been a union member before the affiliation, and had taken part in the statewide union election to determine whether or not it should

become a SEIU affiliate. Baker's local chapter voted against the affiliation, but the overall election resulted in affiliation.

After the affiliation, Baker determined that membership in a union associated with SEIU was inconsistent with his personally held religious beliefs which influence his political beliefs. Baker identified his political point of view as conservative, and testified that he would not want his union to be active in political and liberal causes. Baker expressed a concern that SEIU was "very liberal" and supports liberal politicians who would further a liberal political agenda. Baker argues that SEIU and the union share a goal of supporting a liberal agenda because the agreement states that SEIU and the union "intend to create a more just and humane society."

Baker believes that some liberal political ideas are "evil" and came from Satan. He also testified that his views on some political issues are based on his Christian beliefs. In support of this assertion, he submitted Biblical quotations which informed his political viewpoint. While Baker's testimony is credible to show his personally held religious beliefs regarding abortion, homosexuality, and violence, the evidence to link his religious beliefs to his opposition to union membership is insufficient.

Baker's objection to SEIU is linked to his beliefs on abortion, homosexuality, and violence. Baker testified that SEIU supported President Obama, who in Baker's view is the "most pro-abortion President we've ever had." Baker stated that he based his view on an action that Obama had taken regarding stem cell research and a comment that Obama made when interviewed about abortion. Baker also objects to Obama's appointment of Kevin Jennings to a position in his administration's Department of Education commonly known as the "Safe School Czar." Baker's objection is that Jennings is a homosexual, and Baker believes Jennings promotes immoral acts.

Baker failed to present sufficient evidence regarding SEIU's support of Obama, or of Jennings's alleged promotion of immoral acts. The only evidence Baker provided regarding the actions of SEIU and any politicians was his own beliefs and understanding of the actions of the unions and politicians. Baker did not establish any foundation as to how he would have personal knowledge

of the actions of SEIU, Obama, or Jennings. Therefore, his testimony is unreliable evidence as to the underlying facts upon which he bases his opinions. As was the case in the *Brewster* decision, Baker has failed to show that he had attempted to research or determine his local or nationally affiliated union's stand on issues which contradict his religious views.

Baker also testified that his objection to SEIU is linked to his religious beliefs about committing acts of violence. He provided information that he gathered from internet sources which alleged that people in SEIU marked clothing had committed violent acts. These documents were relevant in so much as they help explain the information that Baker used to determine his objection to the union. However, this evidence is not reliable and does not lead to a conclusion that SEIU endorsed the violence or supported the people who were wearing SEIU clothing. Like the issues of abortion or homosexuality, Baker has failed to show that SEIU has endorsed or encouraged violence.

Lastly, Baker argued that that SEIU was a supporter of the now-defunct organization called ACORN, and that ACORN engaged in behavior that he does not want to be "anything a part of." To support this element of his argument, he again provided information from the internet regarding a widely reported incident where ACORN officials were recorded giving advice regarding illegal activities. This article stated that SEIU had given ACORN financial support and therefore Baker does not want to be associated with such an organization. Like his arguments regarding SEIU's support of violence, abortion, and homosexuality, this is another example of SEIU allegedly supporting individuals or in ACORN's case, an organization. The evidence that he presented is not sufficient and does not show that SEIU encouraged ACORN's illegal actions.

Baker has not proven that he is eligible to assert the right of nonassociation. According to WAC 391-95-130, the funds at issue in nonassociation proceedings should be held in escrow while the case is pending before the commission. Therefore, at the conclusion of this matter, any funds related to this dispute being held in escrow are to be released to the union. Baker is responsible to make future payments under the union security clause of the collective bargaining agreement.

FINDING OF FACT

1. Walla Walla School District is a public employer within the meaning of RCW 41.56.030(1).
2. Public School Employees of Washington (union) is a bargaining representative within the meaning of RCW 41.56.030(3). It is affiliated with Service Employees International Union (SEIU).
3. Walla Walla School District and the union are parties to a collective bargaining agreement containing a union security provision under which bargaining unit members are required to pay union dues or representation fees.
4. Gregory Baker is an employee of the Walla Walla School District working in a position within the bargaining unit represented by the union. He is subject to the union security obligations under the collective bargaining agreement between the employer and the union.
5. Baker gave testimony regarding his religious views on issues such as abortion, homosexuality, and violence.
6. Baker failed to provide sufficient evidence to show that SEIU or the union took actions or held positions which contradicted Baker's religious views.

CONCLUSION OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under RCW 41.56.122 and Chapter 391-95 WAC.


2. Baker has not sustained his burden of proof to establish that his objections to union membership are based on bona fide personally held religious beliefs that are genuine and in good faith, so he is not entitled to assert the right of nonassociation under RCW 41.56.122.

ORDER

1. If a notice of appeal of this order is filed under WAC 391-95-270, any escrow account established and maintained in connection with this proceeding under WAC 391-95-130 shall be continued in effect pending a further order of the Public Employment Relations Commission.
2. In the absence of a notice of appeal filed and served within twenty (20) days following the date of this order, the amount held in escrow shall be remitted to the union.
3. Gregory Baker shall pay union dues or representation fees as long as he remains obligated under union security provisions in a collective bargaining agreement between Walla Walla School District and the union.

ISSUED at Olympia, Washington, this 28th day of December, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



EMILY H. MARTIN, Examiner

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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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:  S/ ROBBIE DUFFIELD

CASE NUMBER:	22809-N-09-00059	FILED:	10/23/2009	FILED BY:	PARTY 2
DISPUTE:	NON ASSOCIATION				
BAR UNIT:	ALL EMPLOYEES				
DETAILS:	-				
COMMENTS:					
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