STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PASCO SCHOOL DISTRICT, Employer.	)	
JOANNE ALDERSON, Complainant,	)	CASE 11127-U-94-2591
vs.	)	DECISION 5418 - PECB
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 280, Respondent.	)	FINDING OF FACT, CONCLUSIONS OF LAW, AND ORDER

John Scully, Staff Attorney, National Right to Work Legal Defense Foundation, Inc., appeared on behalf of the complainant.

Critchlow, Williams, Schuster, Malone & Skalbania, by Alex J. Skalbania, appeared on behalf of the respondent.

Robert D. Schwerdtfeger, Labor Relations Consultant, appeared on behalf of the employer.

On May 17, 1994, Joanne Alderson filed a complaint charging unfair labor practices against her exclusive bargaining representative, International Union of Operating Engineers, Local 280. Alderson alleged that the union interfered with her rights as an employee of the Pasco School District under Chapter 41.56 RCW, when it failed or refused to supply her with procedural fee-for-service safeguards required by the United States Constitution. Specifically, she objected to the collection and use of agency fees for any purpose other than collective bargaining, contract administration and grievance adjustment.

On June 6, 1994, the union filed both a motion to dismiss and a motion for summary judgment. The union argued that the "religious"

nonassociation specified in RCW 41.56.122(1) "... is the only legal basis in this state for objecting to the application of a union security provision that is contained in a collective bargaining agreement that is applicable to public employees". In a supporting memorandum, the union cited the decisions of the Superior Court for Spokane County in two cases where unions had been granted summary judgments reversing Commission decisions on issues similar to those raised in this case.[1] Because both Superior Court decisions were on appeal to the Supreme Court of the State of Washington, the Examiner denied the union's motions pending the outcome of that litigation. The union's motions were renewed during the hearing, following the cross-examination of Alderson, and were denied on the same basis. This decision was held in abeyance following the filing of the parties' briefs, however, pending the Supreme Court's decision on the earlier cases.

BACKGROUND

Alderson has been employed as a school bus driver by the Pasco School District (employer) since December 1, 1991. Local 280 is the exclusive bargaining representative of the employer's bus drivers, and the collective bargaining agreement between the employer and union contains a union security provision:

> UNION REPRESENTATION/
> UNION DUES/REPRESENTATION FEE
>
> ...
> Section 5.7. No member of the bargaining unit will be required to join the Union, however, those employees who are not members,

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[1] Local 2916, IAFF v. PERC and Local 1789, IAFF v. PERC. Those decisions were issued on appeals from Commission decisions in Spokane Fire District 9 (IAFF Local 2916), Decisions 3773-A and 3774-A (PECB, 1992), and Spokane International Airport (IAFF Local 1789), Decision 4153-A (PECB, 1993).

> but are part of the bargaining unit will be required to pay a representative fee to the Union after thirty (30) days employment. The amount of the fee shall be determined by the Union and transmitted to the business office in writing. The representation fee shall be regarded as fair compensation and reimbursement to the Union for fulfilling its legal obligation to represent all members of the bargaining unit.
>
> Section 5.8. In the event that the representation fee is regarded by an employee as a violation of his/her right to non-association, such bona fide objections shall be resolved according to the provisions of RCW 41.56.122, or the Public Employment Relations Commission.

She was initially hired as a part-time, substitute bus driver. As a part-time employee, she was not required to pay dues or fees to the union. At the end of September of 1993, however, she was assigned a bus route as a full-time driver in the bargaining unit.

Alderson was approached by the union's representative at the school district, Ron McLean, in the autumn of 1993. She understood McLean to tell her that she should voluntarily join the union or he would not be able to guarantee her continued employment. At the time of this discussion, McLean gave her a copy of the collective bargaining agreement which covered her position.

On November 17, 1993, Alderson sent a letter to the union, as follows:

> Per our conversation concerning union membership and fees.
>
> I have the right not to join the union under the United States Supreme Court's decision in Patternmakers v. National labor Relations Board, (1985).
>
> Per the United States Supreme Court's decision in Communications Workers of America v. Beck, (1988), I hereby declare myself protected by

> financial core status as defined in the aforementioned decision.
>
> I protest and object to the use of the money I am forced to pay to you for any purposes other than my pro rata share of your expenses for collective bargaining, contract administration, and grievance processing for the transportation unit of employees of the Pasco School District.
>
> I demand a fair assessment of my forced union obligation by an independent accountant's verification of the International Union of Operating Engineers, Local 280's cost of collective bargaining, contract administration, and grievance adjustment in the bargaining unit which shows how the cost are [sic] derived. C.W.A. v. Beck, (1988).
>
> Please see that my rights under Beck are put into effect immediately.

Donald H. Bushey, the union's business manager, responded to Alderson in a letter dated January 10, 1994:

> After receiving your letter and the telephone conversation between yourself and Mr. McLean, attempting to clarify the issues concerning Union membership and payment of Union dues, a number of your concerns became apparent.
>
> First of all, I wish to assure you that the Officers of this Local Union take their duties and responsibilities seriously. This Union and its officers make a conscious effort to assure that Union dues monies are used only for Union membership representation activities.
>
> Concerning joining the Union, you do have the right of non-association and are not required to join the Union if you object to being a member of the Union. As for paying Union dues, you are required to pay Union membership dues when you join the Union. If you should wish to exercise you rights of non-association, you are required to pay a representation fee.
>
> By exercising your rights of non-association, you would not be a Union member and unable to attend Union meetings to voice your concerns

> and opinions, nor would you have a right to vote on the Union contract with your employer which effects your working conditions, wages, and benefits on the job.
>
> You expressed a concern as to what your representation fee would be used for, and one of your concerns was political donations by the Union. First, the Union has elected Officers who are auditors whose function is to audit the Union's finances on a regular basis. We are required to submit yearly reports to the Department of Labor concerning the Union's financial status, and are subject to periodic audits by the Department of Labor. The Local Union does not make Political donations, any Political donations are made by the Political Action Committee out of a totally separate account. These funds are received from voluntary donations.
>
> I hope this answers most of your questions and concerns. As of this date, we will continue to carry you as an agency fee (non-association) employee, unless you should change your mind. If you have any further questions or concerns, please contact me.
>
> [Capitalization replicated from original]

Alderson corresponded again with the union under date of May 13, 1994, as follows:

> On November 17, 1993 I wrote to the union stating that I only was willing to pay for whatever I could be legally required to pay as a nonmember. To date, the fees have not been reduced, I have not received an audited breakdown of the chargeable expenditures, proof of escrow, a procedure to challenge the union's fee determination or any of the other protection required pursuant to Chicago Teacher Union v. Hudson. In light of the above, the union should immediately return to me all fees that the union has unlawfully required me to pay and to cease requiring that I pay any fees until the protection required under Hudson are in place.

On June 1, 1994, the union replied to Alderson through its attorney, Alex J. Skalbania, as follows:

> My client, Local 280, has asked me to correspond with you concerning the above-referenced matter. Until receipt of your May 13, 1994 letter to Donald Bushey and, within a couple of days thereafter, receipt of an unfair labor practice which you apparently have filed with the Public Employment Relations Commission, Local 280 was under the impression that any concerns which you had about your dues with Local 280 had been resolved. However, it is apparent from your recent correspondence that you still have some concerns about this matter.
>
> As a result, Local 280 is planning to begin placing the dues that you pay to Local 280 in a separate, interest-bearing account from this date forward so that the amount of dues that you pay to Local 280 as an individual can be accurately determined. Local 280 will continue to retain these dues in a separate bank account until this matter has been satisfactorily resolved. Local 280 will also be in contact with you in the future concerning this matter in order to provide you with additional information in order to discuss the possible resolution of your concerns.

The unfair labor practice charges mentioned in that letter are the subject of this decision.

POSITIONS OF THE PARTIES

The complainant argues that the exclusive bargaining representative has neither provided her with the requested dues information nor established the appropriate escrow procedures for dues monies or a pro rata fee-for-service. It asserts that Abood v. Detroit Board of Education, 431 U.S. 209 (1977) and Chicago Teachers Union v. Hudson. 475 U.S. 292 (1986) clearly apply in this case, that those decisions stand for the proposition that a bargaining unit member

may only be required to pay those dues and fees directly related to collective bargaining, and that a bargaining agent must establish procedures to protect the rights of nonmembers in an agency fee or union shop situation.

The union contends that public employees who object to union security requirements may only do so under state law on the basis of a bona fide religious objections to union membership or participation. It asserts that Alderson made no claim of religious objection, and therefore is not entitled to the relief that she is seeking.

An employer representative was present throughout the hearing, but the employer took no position in these proceedings.

DISCUSSION

The essence of Alderson's complaint is that, by refusing to provide her with an accounting of how her union fees were to be allocated among the various functions and responsibilities of the union, she is being deprived of her constitutional right to pay only those expenses related to collective bargaining. She does not assert a religious-based right of nonassociation under RCW 41.56.122(1).

The Commission has traditionally taken a narrow role in this type of situation, described by the Executive Director in his preliminary ruling quoted in Spokane International Airport, Decision 4153 (PECB, 1992), as follows:

> The Public Employment Relations Commission has not undertaken to become the arbiter of dues apportionment disputes, but has asserted jurisdiction at the behest of employees to assure the existence and proper functioning of the constitutionally-required procedures.

In its decision on review in that case, the Commission indicated concern for avoidance of a constitutional conflict "which would occur if state law were brought to bear to enforce 'union security' obligations in contravention of the federal constitution". It indicated its intent to assert jurisdiction in order to find either "inducing discrimination" violations (RCW 41.56.150(2), unions enforcing union security obligations without providing constitutionally-required safeguards) or "discrimination" violations (RCW 41.56.140(1), employers cooperating in the enforcement of union security obligations). The complaint in this case was thus found to state a cause of action for further proceedings before the Commission.

As in Spokane International Airport, supra, and Spokane Fire District 9, supra, unions had argued in earlier cases that the only exception to their legal ability to enforce collectively bargained union security provisions was if a complainant is able to provide sufficient evidence to indicate a religious belief and/or membership in a recognized religious organization which prohibits the payment of union dues or fees. The Commission's rejections of those arguments in the previous cases were not challenged in court.

On December 21, 1995, the Supreme Court of the State of Washington issued its decision in the Spokane International Airport and Spokane County Fire District 9 cases. Holding that the issue before it was whether the Commission has jurisdiction to rule on a worker's complaint that their exclusive bargaining agent's use of an agency fee is an unfair labor practice, when the worker's challenge is **other** than on religious grounds, the Court stated:

> Because it is settled law that PERC has only been given authority by the Legislature to determine whether an alleged unfair labor practice affects a right protected by statute, and because we conclude that there has been no showing that the only relevant statutorily protected right, "the right of nonassociation of public employees based upon bona fide religious tenets," RCW 41.56.122(1), has been

> affected, let alone violated, we affirm the trial court's ruling dismissing, for want of jurisdiction, the unfair labor practice complaints that are the subject of this appeal.

Thus, questions of whether state law is being brought to bear in contravention of the federal constitution will be left to decisions by federal (or possibly state) courts in lawsuits filed by various employees in the absence of an administrative remedy.

Had the Supreme Court's decision been handed down prior to the filing of this case, the Executive Director would undoubtedly have dismissed this complaint for lack of jurisdiction.[2] Had the Supreme Court's decision been handed down after the assignment of the Examiner but before the close of the hearing, the Examiner would have granted the union's motion for dismissal when made. Jurisdiction can be raised at any time, however, so it is now appropriate to revisit the union's motion for dismissal in light of the Supreme Court's decision, and to dismiss the complaint charging unfair labor practices for lack of subject matter jurisdiction.

FINDINGS OF FACT

1. Pasco School District is a public employer within the meaning of RCW 41.56.030(1).

2. International Union of Operating Engineers, Local 280, a bargaining representative within the meaning of RCW 41.56.030-(3), is the exclusive bargaining representative of an appropriate bargaining unit of nonsupervisory employees of the Pasco School District.

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[2] The preliminary ruling process of WAC 391-45-110 assumes that all of the facts alleged in a complaint are true and provable, and calls for a legal conclusion as to whether an unfair labor practice violation could be found.

3. Joanne Alderson is an employee of the school district and a member of the bargaining unit represented by Local 280.

4. The employer and the union were signatories to a collective bargaining agreement covering the period of September 1, 1992 through August 31, 1995. Union security provisions of that agreement required any employee who was not a member of the union to pay a monthly service fee to the union that was equivalent to the amount of dues paid by union members.

5. In September of 1993, the union advised Alderson of her obligations under the union security provisions of the collective bargaining agreement.

6. On November 17, 1993, Alderson wrote a letter to the union, declaring herself to be a "financial core status" employee, and she requested that her dues be placed in an escrow account. She further demanded an accounting of the union costs of collective bargaining, contract administration and grievance processing. Alderson did not assert, and has not subsequently asserted, a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body under RCW 41.56.122(1) and Chapter 391-95 WAC.

7. Union representatives replied generally to Alderson on January 10, 1994, but did not provide her with a specific accounting of the union's costs of collective bargaining and it maintained her fee-for-service at an amount equal to a full dues paying member.

8. After further correspondence and the filing of the complaint charging unfair labor practices to initiate this proceeding, the union agreed on June 1, 1994, to put Alderson's service fees in an escrow account until final resolution of this matter.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission does not have jurisdiction in this matter under RCW 41.56.122(1) and Chapter 391-95 WAC.

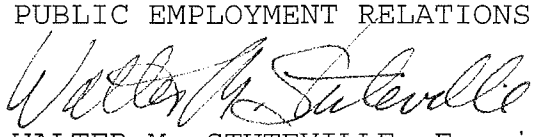
2. The Public Employment Relations Commission does not have jurisdiction in this matter under RCW 41.56.150(1) or (2), or under Chapter 391-45 WAC.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED for lack of jurisdiction.

Dated at Olympia, Washington, on the 25th day of January, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WALTER M. STUTEVILLE, 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 391-45-350.