STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SPOKANE AIRPORT BOARD, Employer.	
GEORGE R. WICKHOLM, Complainant,	CASE 9167-U-91-2028
vs.	DECISION 4153-A - PECB
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1789, Respondent.	DECISION OF COMMISSION

George R. Wickholm, appeared pro se.

Barry E. Ryan, Attorney at Law, appeared on behalf of the respondent.

This case comes before the Commission on a timely petition for review filed by International Association of Fire Fighters, Local 1789, seeking to overturn a summary judgment issued by Examiner Walter M. Stuteville.[1]

BACKGROUND

The facts surrounding this dispute are fully set forth in the Examiner's decision, and are repeated herein only to the extent necessary to discussion of the specific issues raised by the union's petition for review.

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[1] Decision 4153 (PECB, 1992).

The Spokane International Airport is major transportation facility located west of the city of Spokane, Washington.[2] In addition to services and functions dealing directly with air transportation, the employer operates a fire department to provide fire suppression services for the buildings, equipment, personnel and public at the airport site.

The non-supervisory fire fighters employed by the employer are represented for purposes of collective bargaining by International Association of Fire Fighters, Local 1789 (union). Tim Lively is the president of the local union.

George Wickholm is employed as a fire fighter at the Spokane International Airport. His employment is within the bargaining unit represented by the union.

After describing the circumstances by which Wickholm came to have a dispute with the union, the complaint alleged, in essence, that:

* On February 13, 1991, Wickholm submitted a letter of withdrawal from the union,[3] stating his willingness to pay a fee for the actual costs for representation.

* On April 14, 1991, the union formally notified Wickholm that his monthly service charge would be $50.00, which was equal to the full amount of initiation fees, dues and periodic assessments paid by union members.[4]

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[2] The decision in an earlier case indicates that the Spokane International Airport is jointly operated by the City of Spokane and Spokane County, through a five-member "Spokane Airport Board" appointed jointly by the city and the county. See, Spokane Airport Board, Decision 919 (PECB, 1980).

[3] Wickholm's reasons for withdrawal from the union were not of a "religious" nature.

[4] The union indicated that payment was due on the first day of the following month, but that service charge payments would be accepted through payroll deduction.

* On April 14, 1991, Wickholm advised the union, in writing, that he felt a $50.00 monthly charge was excessive and incorrect. He also notified the union that it needed to "escrow all funds received in my name, until the union, myself, and PERC can arrive at a fair settlement".

In its answer to the complaint, the union did not deny the allegations contained therein, but asserted:

> That by failing to allege facts revealing a violation of any rights protected by RCW 41.56, the complainant failed to state an unfair labor practice pursuant to RCW 41.56-.150 et seq; that complainant failed to properly follow and/or exhaust "the notice requirements ... mandated by the Washington Administrative Code"; and that the Commission lacked jurisdiction to hear the case because there was no allegation of a violation of RCW 41.56 or relevant portions of the Washington Administrative Code.

When directed to show cause why a summary judgment should not be granted, the union's counsel agreed that the answer "did not dispute the few factual allegations contained in the Wickholm complaint", and went on to state:

> I can find no provision in RCW 41.56 or the WAC's for pleading affirmative defenses, or their waiver for failure to do so. As a result, and to place what we believe are the proper issues in the record, we have asserted that Wickholm has failed to allege any facts leading to violation of rights contained by [sic] RCW 41.56 and that he has failed to even allege that he has utilized or exhausted the relevant WAC provisions that are applicable. As a result, the PERC does not have jurisdiction.
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> If, as the Executive Director assumes, the U.S. Supreme Court decisions in Abood and Hudson provide Constitutional protections, above and beyond RCW 41.56, then he has failed

> to demonstrate how he, or the PERC, has jurisdiction over such rights where they are not the result of statute or WAC.
>
> Further, those decisions were decided in 1977 and 1986 such that, even if the executive directors' [sic] assumptions were correct, there should have been a WAC provision similar, if not identical, to WAC 391-95-030 et seq.

The union also supplied an affidavit of its president, Tim Lively, which stated in part:

> 3. At no time, including the present, have I been made aware that Mr. Wickholm has ever based his request for withdrawal upon any provision of RCW 41.56, et seq.
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> 4. Further, Mr. Wickholm has never informed me, orally or in writing, that he claimed non-association due to a religious belief.
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> 5. Likewise, Mr. Wickholm has never notified either myself or Local 1789, pursuant to WAC 391-95-030, of his claim of exemption.
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> 6. I am not familiar with any other statutory or WAC provision that addresses either union security agreements or petitions for exemptions from union membership.
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> 7. The only statutory provision that I am aware of that PERC has promulgated, and which deals with disputes over dues paid by either a member or service fee of a non-member, is WAC 391-95-130 which, in turn, is premised on 391-95-070. However, that presupposes the proper notices and petitions. None of these things ever took place, nor has Mr. Wickholm ever alleged that they did.
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> 8. It has been, and is, the Local's belief, that the only rights which could be violated for [sic] RCW 41.56.150, are those "rights guaranteed by this chapter".
>
> I can find no right protected by RCW 41.56 that Mr. Wickholm claims was violated.

> Nor can I find either a statutory or WAC provision which either notified the Local, or myself, of a duty or requirement as to procedures on dealing with disputes for anyone other than a person who objects due to a religious belief.

The Examiner noted that the very same defenses had been advanced by a respondent, considered by the Commission, and rejected by the Commission in Spokane Fire District 9, Decision 3773-A and 3774-A (PECB, 1992).[5] The Examiner then granted summary judgment in favor of the complainant, stating that the Spokane 9 cases have "clearly established the right of employees to pursue unfair labor practice charges concerning enforcement of union security in contravention of the federal constitution and to prevail on such charges."[6]

POSITIONS OF THE PARTIES

The union takes issue with virtually all of the Examiner's conclusions of law. It specifically argues that the only exception to its legal ability to enforce its collectively bargained union security provisions is if, and when, "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". The union contends that the record in

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[5] Hereinafter referred to as the Spokane 9 cases. In those cases, two bargaining unit members objected to making union security payments beyond their proportionate share of the costs of collective bargaining and contract administration. The union there asserted that those complainants had not alleged a right of non-association based on bona fide religious beliefs, and that the Commission lacked authority to hear and fashion orders based upon Abood v. Detroit Board of Education, 431 U.S. 209 (1977) and Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986). The union in the Spokane 9 cases was represented by the same counsel as the union in the instant case.

[6] Decision 4153 at page 23.

this case lacks any evidence of the complainant's membership in a religious organization, so as to justify exemption pursuant to RCW 41.56.122 or RCW 41.59.100. The memorandum filed by the union in support of its petition for review is identical to the memorandum filed by IAFF Local 2916 in the Spokane 9 cases.

No counsel of record has appeared on behalf of complainant in this proceeding, and no brief was filed in opposition to the petition for review. The complainant's support for the Examiner's decision is implied, however, in a letter requesting the assistance of the Commission in obtaining compliance with the Examiner's order.

DISCUSSION

When the Supreme Court of the State of Washington was called upon to interpret the union security provisions of Chapter 41.56 RCW in light of the rights of employees under the United States Constitution, it evidenced a clear purpose "to keep within constitutional limits" when giving application to the state statute. Grant v. Spellman, 99 Wn.2d 815 (1983) [Grant II], at page 819.

In the Spokane 9 cases, we addressed each and every defense raised by the union in this case, stating:

> RCW 41.56.122(1) authorizes the inclusion of union security arrangements within collective bargaining agreements negotiated under the Public Employees' Collective Bargaining Act. Employees have an unfair labor practice cause of action before the Commission where they are subjected to unlawful enforcement of state union security obligations. Mukilteo School District, Decision 1122-A (EDUC, 1981).
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> ...
> The union is correct that there is no religious-based claim in this case. **That does not mean that there are no other exceptions to a**

> **union's ability to enforce union security obligations upon bargaining unit employees.**
>
> The union's arguments fail to consider Abood v Detroit Board of Education, ... and Chicago Teachers Union v. Hudson, ... In Abood, the Supreme Court of the United States held that Union members and non-members alike can be held liable for union expenses directly related to contract negotiations and member representation, but that **non-members may not be required to pay for union activities that are not directly related to the union's role as bargaining representative.** Hudson set forth procedural requirements relating to determining the dues amounts the non-members could be required to pay under Abood. **By attempting to focus on the "religious beliefs" provisions of the state law, the union ignores these significant federal court decisions, and the many state decisions based upon them.**
>
> **Both Abood and Hudson are based on the rights of employees under the United States Constitution, and our state law must be interpreted and applied in conformity with those decisions.** The existence of an unfair labor practice cause of action concerning enforcement of union security in contravention of the federal constitution was discussed in Brewster School District, Decision 2779 (EDUC, 1987), and applied in Snohomish County, Decision 3705 (PECB, ... 1991), both of which were cited by the Examiner in his decision in this case. We thus affirm the Examiner's conclusion that the union would commit unfair labor practices by failing to provide the procedures required by Hudson.

Spokane Fire District 9, Decision 3773-A and 3774-A (PECB, 1992), at pages 5-7. [Emphasis by **bold** supplied.]

The union has made no attempt to demonstrate why the Commission's holding in the Spokane 9 cases should not be followed here, and we continue to conclude that our interpretation and application of the statute avoids the conflict which would occur if state law were brought to bear to enforce "union security" obligations in contravention of the federal constitution.

As with many other principles in the field of labor-management relations, this case is controlled by the interpretations of state and federal law emanating from the decisions of the Commission and courts. The legal precedents relied upon by the Examiner and Commission in this case are of long standing. They have been published and indexed, in conformity with the state public disclosure law.[7] While they have not been codified in the form of Washington Administrative Code (WAC) rules, that is not a basis to disregard them.[8] Organizations and practitioners operating under Chapter 41.56 RCW are reasonably expected to research their obligations under legal precedent, as well as under the statute and rules.

The union was not diligent in researching the legal precedents applicable in this case, or in addressing the points raised by the Examiner's decision, while pressing this appeal as to issues that were clearly resolved by the Examiner.[9] The union continues to act as though it were free to enforce exactions of funds from employees in the name of "union security" under state law, notwithstanding that: (1) such exactions are in violation of the federal constitution; (2) the employer would commit a "discrimination" unfair labor practice under RCW 41.56.140(1) by taking any steps to enforce an unlawful union security obligation; and (3) a union commits an unfair labor practice under RCW 41.56.150(2) by even asking an

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[7] See RCW 42.17.260.

[8] The Administrative Procedure Act (APA) encourages, but does not require, a conversion of long-standing "interpretive and policy statements" into rules. See, RCW 34.05.230(1). The validity of decision-based precedent was clearly left intact by the APA.

[9] The defenses advanced in support of the union's petition for review fall to the level of being frivolous or meritless, and appear calculated to simply prolong the process. But for the fact that the record fails to show that complainant incurred legal expenses in opposing the union's petition, we would grant attorney's fees for the "review" portion of this proceeding in this case, as was done in the Spokane 9 cases.

employer to commit an unfair labor practice. We find the union's position to be entirely without merit.

NOW, THEREFORE, it is

ORDERED

1. The findings of fact, conclusions of law and order issued in the above-captioned matter by Examiner Walter M. Stuteville are AFFIRMED and adopted as the findings of fact, conclusions of law and order of the Commission.

2. International Association of Fire Fighters, Local 1789, its officers and agents, shall immediately:

   a. Post, in conspicuous places on the employer's premises where notices to bargaining unit members are usually posted, copies of the notice attached to the Examiner's decision and marked "Appendix". Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

   b. Notify the above-named complainant, in writing, within 30 days following the date of this order, as to what steps have been taken to comply with the order issued by the Examiner in the above-captioned matter, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.

   c. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 30 days fol-

lowing the receipt of this order, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

Issued at Olympia, Washington, the 9th day of February, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JANET L. GAUNT, Chairperson

MARK C. ENDRESEN, Commissioner

DUSTIN C. McCREARY, Commissioner