

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
GRANT PELESKY)	CASE NO. 6056-D-85-54
)	
For determination of a dispute)	
concerning union security)	DECISION 2711 - EDUC
arising under a collective)	
bargaining agreement between:)	
)	
PUYALLUP SCHOOL DISTRICT)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
and)	AND ORDER
)	
PUYALLUP EDUCATION ASSOCIATION)	
)	
)	

Grant Pelesky appeared pro se.

Harriet Strasberg, Attorney at Law, appeared on behalf of the Puyallup Education Association.

On October 25, 1985, Grant Pelesky filed a letter with the Public Employment Relations Commission (PERC), seeking determination pursuant to the provisions of Chapter 391-95 WAC of a dispute concerning obligations under a union security clause contained in a collective bargaining agreement between the Puyallup Education Association (union) and the Puyallup School District (employer). The petitioner filed an amended petition on February 25, 1986, using the petition form promulgated by the Commission. A hearing was held at Puyallup, Washington on May 21, 1986, before Examiner Martha M. Nicoloff. All parties were invited to submit post-hearing briefs. A brief was received from the association. The petitioner did not submit a post-hearing brief.

BACKGROUND

At the time of the hearing, Grant Pelesky had been a classroom teacher in the Puyallup School District for over ten years. As such, he is within a bargaining unit of non-supervisory certificated employees of the school district, represented by the Puyallup Education Association. The union is affiliated with the Washington Education Association (WEA) and the National Education Association (NEA). The record in this matter does not reveal precisely when the union became the exclusive bargaining representative of the teachers in the Puyallup School District. However, it can be inferred that the association has represented the bargaining unit for some time.

Article 5, Section 2 of the September 1, 1985 through August 31, 1987 collective bargaining agreement between the employer and union sets forth the agency shop/representation fee provisions which are at issue here.¹ The contract states:

Section 2. Representation Fee. The terms and conditions of this Agreement in regard to membership in the Association, as a required condition of employment, or alternatively, the payment of an amount equal to Association dues required for membership, as a required condition of employment, subject to certain exceptions as set forth below, are as follows:

A. Every member of the bargaining unit in the employ of the District and a member of the Association on August 23, 1979, shall thereafter maintain his membership in good standing for the life of this Agreement, or,

¹ The parties made no record regarding the content of agency shop or representation fee language of prior agreements. This case relates only to the current contract, however, and the Examiner confines the analysis to the language of the current agreement.

alternatively, have deducted from his salary a representation fee equivalent to the Association dues required for membership, as a condition of employment, subject to the provisions of (E) below.

B. Every member of the bargaining unit in the employ of the District and not a member of the Association on August 23, 1979, shall become a member of the Association on or before September 11, 1979, and shall thereafter maintain his membership in good standing for the life of this Agreement, or alternatively, have deducted from his salary a representation fee equivalent to the Association dues required for membership, as a condition of employment, subject to the provisions of (D) and (E) below.

C. Every employee hired after August 23, 1979, who is a member of the bargaining unit, shall become a member of the Association within ten (10) days after his contractual date of employment and shall thereafter maintain his membership in good standing for the life of this Agreement, or alternatively, shall have deducted from his salary a representation fee equivalent to prorated Association dues required for membership, as a condition of employment, subject to the provisions of (D) and (E) below.

D. The period of September 1, 1979 through September 11, 1979 in (B) above and the ten (10) day period in (C) above shall be known as periods of election for those employees described in (B) and (C). During said periods, each such employee desiring not to pay a representation fee may notify the Association and the District of such desire. This notice must be in writing and must be mailed by either certified or registered mail during the applicable period of election. The notice to the Association must be addressed to: President, Puyallup Education Association, 5308A 112th East, Tacoma, WA 98446 and the notice to the District must be addressed to: Superintendent, Puyallup School District No. 3, Post Office Box 370, Puyallup, Washington 98371. Such eligible

employees who serve the notice outlined above shall not be required to maintain membership in the Association or to pay a representation fee as a condition of employment during the life of this Agreement.

E. A certificated employee who objects to the payment of representation fees based on bonafide religious tenets or teachings of a church or religious body of which said employee is a member, shall have deducted from his salary an amount equivalent to the representation fee, which shall be transmitted to a charitable organization mutually agreed to by such employee and the Association. If the employee and the Association are unable to agree on a charitable organization, the organization shall be determined by the Public Employment Relations Commission (PERC), provided that such organization shall not be the church or religious body described above. The District shall send the Association verification of such transmittal. (Emphasis added)

It can be inferred that at least certain components of the current union security provisions came into being on or about August 23, 1979, since the language expresses a clear intent to allow teachers who had not previously been association members the option of retaining their non-member status, and to allow newly-hired teachers the option of not becoming members or fee payers.

Pelesky testified that he did not become a member of the Puyallup Education Association when he was first employed. Shortly thereafter, he was prevailed upon by a fellow teacher to join, and he did so. In 1978 or 1979, after he had been teaching for about three years, Pelesky began having doubts about whether he could continue paying dues to the association. Specifically, he cited concerns about positions which the association took which "crossed [his] religious grain." Pelesky testified that he raised

his concerns with the individual who was then president of the local union, and that he was told there was no option under the terms of the then-existing collective bargaining agreement for a teacher to drop membership in the union or to cease paying assessments to the union. As Pelesky understood it, "My only way out of the education association was either to quit teaching, to be fired from teaching or to die." Pelesky thereupon decided to become involved in union activities, in an attempt to "change from within" the political and ideological direction of the union.

No record was made specifying exactly what steps Pelesky took in his efforts to change the union, or when he took those steps.² In 1984, at the encouragement of other teachers, Pelesky ran for president of the PEA. His campaign was based on the idea that the union had lost touch with the membership. His campaign statements also expressed concerns about agency shop, partisan politics, and the so-called "reverse check-off" method of securing an exemption from contributing to the association's political action committee. The membership elected Marian Sohn to the PEA presidency in a vote held in February, 1984.

In August, 1985, Pelesky wrote to Sohn, requesting a "revocation" of his dues payment. In his letter, Pelesky noted that he was a member in good standing of the Bonney Lake Baptist Church, which teaches that the Bible is the inspired word of God. Pelesky then cited certain Biblical references which he asserted were illustrative of the Bible's position against abortion, homosexuality,

² Certain undated documents handwritten by Pelesky were admitted into evidence. In those documents, he protested to the leadership of the PEA what he perceived to be its lack of communication with its membership, and his concerns about "forced unionism", partisan politics, and association positions on the Equal Rights Amendment and abortion.

and the Equal Rights Amendment. Pelesky further indicated his belief that the American free enterprise concept has its roots in the Bible, and stated his opposition, because of that, to forced unionism. Finally, Pelesky voiced his resentment of the "left-wing political agenda" supported by the NEA and its affiliates. He requested that Mary Bridge Children's Hospital be designated as the non-religious charitable organization to which his alternative payments be submitted.

Sohn presented Pelesky's request to the PEA Executive Board, which denied it. Pelesky then filed this proceeding with the Public Employment Relations Commission under the provisions of RCW 41.59.100 and Chapter 391-95 WAC.

Pelesky testified at the hearing that he remains opposed to WEA-NEA positions on teacher "merit pay" proposals, "forced unionism" and right-to-work legislation, disapproval of teaching of the Biblical theory of man's creation and evolution (termed "scientific creationism"), tuition tax credits, and prayer in the public schools. He also testified of his belief that the WEA-NEA "reverse check-off" system for political action contributions is "another example of forcing to take money from people against their will" (sic).

Pelesky's pastor testified that Pelesky has been a member of the Bonney Lake Baptist Church since January of 1983 or 1984. The record does not reflect the nature or extent of Pelesky's religious affiliations prior to that time. The church teaches that, insofar as possible, people are to be subject to governmental authorities, which are put in place by a sovereign God. The church teaches that "the Bible is the inspired word of God." The pastor testified that the Bible teaches that it is wrong to withhold wages from those who have earned them, and quoted the apostle Paul that "if a man doesn't work he shouldn't eat." The

church teaches through the Bible that such things as abortion and homosexuality are sins. The church has no specific teaching that its members may not join labor unions, nor would church members be expelled for joining or supporting a union.

Karen Davis, a governmental relations field representative for the WEA, testified that WEA encourages its members to be active in the political process, including participation in electoral politics and the precinct caucuses of both major political parties. She testified that "PULSE", the WEA political action committee, is separately funded from the WEA, that none of its money comes from WEA membership dues, and that WEA has not lobbied on homosexuality issues or for abortion.

Portions of the continuing resolutions from the 1986 WEA representative assembly were entered into evidence. They indicate that the WEA supports the proposed Equal Rights Amendment to the U. S. Constitution, and that it supports the provision of education without regard to (among a number of other factors) sexual preference. Excerpts from the NEA handbook for 1985 and 1986 were also entered into evidence. They reflect positions against discrimination on the basis of sexual orientation, and in support of affirmative action. The WEA's staff representative to the PEA, Ron Scarvie, testified that, to the best of his knowledge, those documents reflect all positions taken by the WEA and the NEA with respect to abortion and homosexuality. Scarvie also explained that the "political rebate" procedure enables an individual paying a representation fee to receive refunds of moneys used for lobbying and political purposes. Scarvie also indicated that the WEA was, at the time of hearing, in the process of revising that procedure "because of some Supreme Court decision."

Pelesky has exercised the option not to contribute to the political action committee. There is no indication as to the date he first took that action.

POSITIONS OF THE PARTIES

The petitioner argues that the agency shop provision of the collective bargaining agreement violates his rights under the first and fourteenth amendments to the Constitution, by requiring him to belong to an organization which takes philosophical and religious positions with which he disagrees in several respects. He argues that his beliefs are bona fide and supported by the teachings of his church, and that he should therefore qualify for an exemption in accordance with RCW 41.59.100.

The union contends that Pelesky does not qualify for a religious exemption under the statute because 1) his church does not require non-affiliation with unions, and 2) his personally-held opinions concerning a number of union positions are politically rather than religiously based. The union supports its view with the observation that it was only after Pelesky lost an election for union president that he asserted a religious objection to union membership. It asserts that Pelesky has failed to demonstrate the necessary nexus between his objections and his religious beliefs. Finally, the union argues that the petitioner has failed to take advantage of the contract provision which allows payment of a "representation fee" in lieu of joining the union.

The parties to this proceeding have stipulated that, in the event the petitioner's religious exemption from dues payment is granted, Mary Bridge Children's Hospital is an appropriate recipient of his alternative payments.

DISCUSSION

The issue in this case is whether the petitioner has stated and proven a bona fide religious objection to the union security provisions of the collective bargaining agreement, such that an alternative payment should be ordered pursuant to RCW 41.59-.100.³ The burden of proof in such a case is on the petitioner, who must show that he sincerely holds a religious objection to affiliation with a labor union. The Public Employment Relations Commission is required by the courts to "require would-be users of the exemption to make a factual showing of the legitimacy of beliefs." Grant vs. Spellman, 99 Wn.2d 815 (1983). Such objection may be based on either a specific teaching of a church or religious body, or on a personally held "religious tenet." Edmonds School District, Decision 1239-A (EDUC, 1983).

³ RCW 41.59.100 UNION SECURITY PROVISIONS--AGENCY SHOP PROVISION, COLLECTION OF DUES OR FEES. A collective bargaining agreement may include union security provisions including an agency shop, but not a union or closed shop. If an agency shop provision is agreed to, the employer shall enforce it by deducting from the salary payments to members of the bargaining unit the dues required of membership in the bargaining representative, or, for nonmembers thereof, a fee equivalent to such dues. All union security provisions must safeguard the right of non-association of employees based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular dues and fees to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. [1975 1st ex.s. c 288 Section 11.]

The Bonney Lake Baptist Church, of which Pelesky is a member, has no specific religious teaching barring its adherents and members from joining, forming or assisting labor unions or assisting or participating in collective bargaining generally. Nor does the record show that this church professes doctrine of any type dealing with labor relations, except that "if a man does not work, he should not eat....," and that it is wrong to withhold wages from those who have earned them. Thus, the petitioner does not sustain a claim of non-association based on the specific teachings of his church.

In its decision in Edmonds, supra, the Commission held that an individual claiming a religious exemption from union security obligations based on personally held beliefs must demonstrate:

1. his or her religious objection to union membership, and;
2. that the religious nature of the objection is genuine and in good faith.

While it is not again necessary to review the entire series of Public Employment Relations Commission and court decisions in cases of this type, certain guidelines have particular relevance in reaching a determination here. In Mukilteo School District, Decision 1323-A, 1323-B (EDUC, 1984) and Tacoma School District, Decision 2075 (EDUC, 1984), it was noted that a petitioner must assist in building a record before this agency that is sufficient to allow an Examiner to reach a cogent decision, and that any refusal or failure to go forward towards a burden of proof will weigh against the exemption. The petitioner's demonstration that positions or activities of the subject union are antithetical to his religious belief(s) must be based on a comparison grounded in fact, and not on misinformed or erroneous assumption. North Thurston School

District, Decision 2433 (EDUC 1986). The petitioner must demonstrate that his objection is grounded on religious and not political-philosophical grounds. City of Seattle, Decision 2086 (PECB 1985); North Thurston School District, supra.

Based on the record as a whole, there is no doubt that Grant Pelesky sincerely holds religious beliefs, and that he is a member of a church which promotes a Bible-based Christianity. It is also clear that the petitioner holds strong convictions with respect to agency shop agreements, and to his understanding of the local and national political agenda of the Puyallup Education Association and its affiliates. What is problematic is the lack of a connection, or "nexus", between the two. Pelesky's letter requesting withdrawal from union membership cited Biblical passages, and he entered some Bible passages into evidence, but he has not made a record as to how those passages relate to his opposition, or by what study or prayer he arrived at his religious opposition. The record dates his church membership to early 1983 or 1984 and does not describe his previous religious affiliations, yet his testimony would indicate that his opposition to certain union positions was long-standing by 1983. There is no record as to the origin of that opposition other than that the positions "crossed his religious grain." Further, there is no record made as to whether his affiliation with the Bonney Lake church provided the impetus for his later request to withdraw from association membership.

The documentary evidence which the petitioner submitted in support of his claimed exemption consists primarily of articles written by third parties. The bulk of those articles detail the authors' opposition to agency shop provisions, while the remainder speak to the NEA's opposition to certain merit pay systems for teachers, and discuss various of its political

positions. The petitioner is clearly opposed to a number of positions which he understands the NEA to hold, and these articles are apparently intended to document those positions.⁴

There is no evidence in the record that the NEA takes any position with regard to abortion. To the extent that the petitioner's objection is based on a mistaken belief, it cannot be sustained. North Thurston School District, supra. Indeed, much of the record developed with regard to NEA positions is inferential at best. It is inferred that the petitioner supports conservative candidates for public office, and the WEA/NEA does not; that the NEA supports restrictions on prayer in public schools; that it supports teaching evolution in the schools; and that it opposes merit pay and voucher payments for private school tuition. None of these inferences are proven to the extent that they comprise appropriate findings of fact in this proceeding. Even if proven, the petitioner has failed to develop a record with regard to the nexus between his religious beliefs and his opposition to those union positions.⁵

4 Those exhibits were admitted in evidence by stipulation of the parties. The Examiner has reviewed them in detail. Several of the articles are political opinions expressed prior to January 1, 1976, viz, "The End of Academic Freedom," by Russell Kirk (dated July 18, 1975); "What Price Freedom," by Sarah Barrie (dated February 10, 1974). While they may reveal the historiography and depth of feeling regarding the agency-fee controversy, it is noted that these statements reflect conditions prior to the effective date of the Education Employment Relations Act, Chapter 41.59 RCW, as Chapter 288, Laws of 1975.

5 In presenting his case against the NEA political philosophy, Pelesky attempted to enter into evidence a document called "NEA Fact Sheet". The association did not stipulate to that document, and Pelesky did not thereafter pursue its admission. However, the document was also included with Pelesky's letter petition and therefore warrants some comment. This

The bulk of the record in this matter denotes Pelesky's philosophical rather than religious opposition to the union. His campaign literature from 1984 mentions positions against agency shop, reverse check-off and the union's participation in partisan politics, but mentions nothing with regard to union positions which might impinge on members' freedom of religion. One letter authored by Pelesky faults the union for apathy and a failure to communicate to teachers in his building, but there is no mention of religious issues. Another letter discusses "forced unionism" without citing any religious basis against it. It was not until August of 1985 that Pelesky ever voiced to the union any religious/Biblical justification for his opposition.

As noted in North Thurston School District, supra, at page 12:

There is a distinction between an objection that is based on a belief in a divine or super-human deity that dictates to one's conscience that they should not be associated with a union and a secular objection. Secular, personal, social or political opposition does not meet the statutory criteria and is not a basis for a ruling allowing non-association.

The Examiner cannot sustain a determination that the petitioner holds a bona fide religious belief where, as here, the record

document is lacking in foundation and probative value, at best. It is not ascribed to any author, sources are not identified, and vague summaries are used. Such evidence cannot be relied upon in determining the positions of the association or in buttressing the case for the petitioner's religious objections.

demonstrates clear political opposition, but confusing and sketchy evidence as to religious belief.⁶

FINDINGS OF FACT

1. Puyallup School District is a school district of the state of Washington created pursuant to Title 28A RCW, and is an employer within the meaning of RCW 41.59.020(5).
2. The Puyallup Education Association is an employee organization within the meaning of RCW 41.59.020(1). The association is the exclusive bargaining representative for a bargaining unit of non-supervisory certificated employees of the Puyallup School District.
3. The employer and the union are parties to a collective bargaining agreement which contains an agency shop provision. This clause requires all bargaining unit employees to maintain their membership in the union or pay an equivalent "representation fee" in lieu of full association membership dues. The contract also safeguards the right of non-association of employees based upon bona

⁶ Pelesky's arguments based on constitutional principles are beyond the scope of this proceeding. The decisions of the U.S. Supreme Court in Abood vs. Detroit Board of Educ., 430 US 209 (1977) and Chicago AFT Local #1 vs. Hudson, ___ US ___, 121 LRRM 2793 (1986) affirm the constitutionality of agency shop provisions in public sector labor agreements. The Examiner cannot reach the question of whether this particular agency shop clause conforms to those decisions, as this proceeding is limited to the administration of provisions of RCW 41.59.100. That statute speaks exclusively of exemptions of employees based on bona fide religious beliefs.

fide religious tenets or teachings of a church or religious body, as per RCW 41.59.100.

4. Since 1975 or 1976, Grant Pelesky has been a non-supervisory certificated employee of the Puyallup School District, employed within the bargaining unit represented by the Puyallup Education Association. Pelesky joined the union shortly after commencing his employment with the school district.
5. Around 1978 or 1979, Pelesky became upset with positions he believed had been taken by WEA-NEA with respect to national social issues such as treatment of homosexuals, funding of abortions, and prayer in the public schools. The record does not reflect a religious basis for those concerns, other than a statement that the positions of the association "crossed [his] religious grain." Pelesky attempted to remove himself from union membership, but was informed that there was no provision for him to do so. There is no evidence that Pelesky ever exercised his option under the contract to pay a representation fee to the union in lieu of becoming a union member. Pelesky became active in the union, and mounted an unsuccessful campaign in 1984 for election to the office of local union president.
6. Pelesky became a member of Bonney Lake Baptist Church in 1983 or 1984. The church does not prohibit its members from being members of unions or labor organizations.
7. In September, 1985, Pelesky made a written request to the union for permission to make alternative payments to a non-religious charity as per the collective bargaining

agreement and RCW 41.59.100. The union denied his request. Pelesky thereafter initiated these proceedings.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.59 RCW and Chapter 391-95 WAC.
2. Grant Pelesky has not shown, by evidence in this record, a connection between the teachings of his church or his religious beliefs and his objections to the union, and so has failed to sustain his burden of proof demonstrating a bona fide nexus between his religious beliefs and his assertion of a right of non-association with the Puyallup Education Association.

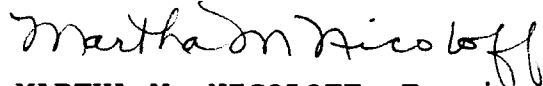
ORDER

1. If no petition for review of this order is filed with the Public Employment Relations Commission within twenty (20) days following the date of this order, Puyallup School District shall thereafter remit, in accordance with the provisions of WAC 391-95-310, to the Puyallup Education Association any and all funds withheld and retained pursuant to WAC 391-95-130 from the pay of Grant Pelesky.
2. If a 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.

DATED at Olympia, Washington, this 18th day of June, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARTHA M. NICOLOFF, Examiner

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-95-270.