

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
CHAD T. LEWIS)	CASE 9304-D-91-95
For determination of a dispute)	
concerning union security arising)	DECISION 4342 - CCOL
under a collective bargaining)	
agreement between:)	
WASHINGTON FEDERATION OF)	FINDINGS OF FACT,
TEACHERS, LOCAL 1873)	CONCLUSIONS OF LAW
and)	AND ORDER
EVERETT COMMUNITY COLLEGE.)	
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In the matter of the petition of:)	
JACKIE H. AMBURGEY)	CASE 9327-D-91-96
For determination of a dispute)	
concerning union security arising)	DECISION 4343 - CCOL
under a collective bargaining)	
agreement between:)	
WASHINGTON FEDERATION OF)	FINDINGS OF FACT,
TEACHERS, LOCAL 1873)	CONCLUSIONS OF LAW
and)	AND ORDER
EVERETT COMMUNITY COLLEGE.)	
<hr/>)	

Chad T. Lewis, appeared pro se.

Jackie H. Amburgey, appeared pro se.

Kenneth Eikenberry, Attorney General of Washington, by Antoinette Ursich, Assistant Attorney General, appeared on behalf of the employer.

Howard and Rosen, by Jon Howard Rosen, appeared on behalf of the union.

On August 6, 1991, Chad T. Lewis filed a petition with the Public Employment Relations Commission, seeking a determination under

Chapter 391-95 WAC of a dispute concerning his union security obligations under a collective bargaining agreement between his employer, Everett Community College, and his exclusive bargaining representative, Washington Federation of Teachers, Local 1873.

On August 23, 1991, Jackie H. Amburgey filed a similar petition with the Commission, relating to her employment under the same collective bargaining agreement.

The cases were consolidated for processing, and a hearing was held before Examiner Walter M. Stuteville on October 6, 1992, at Everett, Washington. The parties filed post-hearing briefs.

BACKGROUND

Everett Community College (employer) and Washington Federation of Teachers, Local 1873 (union or "Federation") have a collective bargaining relationship concerning a bargaining unit of academic personnel of the employer. The collective bargaining agreement between the employer and union contains the following provisions pertinent to these proceedings:

ARTICLE 2 - Agency Fee and Payroll Deduction

2.11

All academic employees in the District shall, as a condition of continued employment on or after the thirtieth day following the beginning of such employment, become a member of the Federation or pay a service fee equal to the periodic dues uniformly required as a condition of acquiring or retaining membership in the federation, to reimburse the Federation for the expense of representing members of the bargaining unit.

...

2.13

If an academic employee asserts a right of nonassociation based on bona fide religious

tenets or teachings of a church or religious body of which such academic employee is a member, that academic employee shall pay to a nonreligious charity or other equivalent to the periodic dues uniformly required as a condition of acquiring and retaining membership in the Federation. The charity shall be agreed upon by the academic employee and the Federation. The academic employee shall furnish written proof that such payments have been made. If the academic employee and the Federation can not reach agreement on such matter, PERC shall designate the charitable organization.

That bargaining relationship and contract are subject to Chapter 28B.52 RCW, which permits union security agreements.

Chad Lewis is an instructor in the business department at Everett Community College. He has been so employed for approximately 14 years. Previously, Lewis worked at Seattle Central Community College and at Fort Steilacoom Community College. Lewis has a master's degree in business administration. Lewis voluntarily joined the union in 1979. From 1982 until 1988, Lewis was a member of the union's executive committee. In 1983, he was chief steward of the union. In 1990, Lewis was actively involved in the election of union officers, by campaigning for one of the candidates for the presidency of the local union.

Jackie Amburgey is an instructor of office skills and technology at Everett Community College. She became a member of the union in 1982 or 1983. She has also been active in the union, as a member of the union's executive council from 1984 until 1988, when she lost an election for a position on the union executive committee.

Amburgey testified to a variety of problems with bureaucratic organizations. Most of the problems involved her son, and she described them as "traumatic experiences with collectivism". She listed the Washington State Department of Social and Health Services, St. Peter Hospital (a health care facility located in

Olympia, Washington), the Olympia School District, and the Rainier School (a state institution located in Buckley, Washington) as bureaucratic organizations that she had to struggle with in order to receive education and medical services needed for her son.

As early as 1988, Lewis began seeing specific behaviors of Local 1873 officials, "operating within the context and cover of a collective", as evil. He listed specific examples of what he judged to be evil as: Union leaders "jumping to management positions without regard to the effect on their brethren"; union presidents "moonlighting"; and one union president applying for a management position while remaining in the union office. He wrote:

... I watched, aghast, as the evil of the collective enriched faculty at the expense of their brethren -- faculty who had earned their position on the faculty pay scale in good faith.

In a series of letters written in 1991, Lewis registered strong disagreement with how the union conducted bargaining for the academic staff at the college. In a February 6, 1991 letter to President Gary London of Local 1873, Lewis wrote:

The recent ratification vote [concerning a tentative agreement reached in collective bargaining] was not a victory. All faculty - including those who again received healthy pay increases - were losers. We can only win if legitimate expertise of colleagues is respected and if faculty concerns are truly heard. And if contractual rewards are balanced.

For my part, I communicated in writing on three occasions with the negotiators. None of my concerns were addressed by the contract. ...

I will continue to speak for myself. I don't need or want faculty representation on matters pertaining to my job.

The attached memo deals with the compensation issue.

I think the thing that irks me the most was the lack of respect afforded me by the negotiators. I'm not blowing smoke about my expertise! My last two publications on compensation appeared in Public Personnel Management, the major journal that covers human resources practices in the public, nonprofit sector. I've taught and published in the management area for ten years. Perhaps the negotiators felt EvCC is a special organization, where normal compensation and management practices don't apply. Perhaps they thought that subjects like compensation don't warrant any more than intuitive analysis. Common sense right?

Maybe the negotiators thought that: "Chad just gets mad when he doesn't get his way. As the team didn't respond meaningfully to any of my written communications, its hard to peg my behavior in this regard. Of course, I'm angry. But there's a lot more to my anger than a neurotic obsession to "be right."

Also, as you will see from the enclosed memo, I am angry because my family and I continue to be hurt by constant tinkering with compensation.

The schizophrenic thing about my lousy attitude is that I continue to have great respect for you. You conducted yourself with self-control and elegance at the ratification meeting. In fact, all the negotiators did a good job of biting their tongues. It must have been tough for the negotiators to remain silent to criticism after a long, grueling, volunteer process.

If I had declined an invitation to be on the negotiating team, then I'd really have nothing to bitch about. But I wasn't asked to participate, and will not deny expressing how I feel.

Lewis also wrote a four-page memo to the union executive committee and the union negotiators on February 6, 1991. That memo included:

I was very disappointed to hear the contract was ratified.

I have tried to come up with a balanced, mature response to what has happened to me - not just with this contract, but with contracts ratified since 1979. Writing is a good way to precisely convey meaning. So, I thought I'd write a memo.

I don't expect to change anybody's mind. But as a matter of principle, I want you to formally know why I don't support the contract.

I've taken courses, published refereed (sic) articles in good journals, written chapters, and taught course sections pertaining to compensation. I know a great deal about the subject. (I'll happily show you academic transcripts, articles, and book chapters if you doubt me.) Based on my expertise, I can tell you with a great deal of assurance that the pay fiasco was unnecessary. It could have been avoided! Ross, Giles, Honer and, yes, you too Gary, could have had most of the compression you sought without totally bifurcating the faculty.

Giles should have included the Peterson/Lewis option on his salary poll last fall. I understand he "thought" our option had been included, but why did he prepare his survey without talking with Bob or me? Unnecessary friction resulted when we were compelled to add our option to the survey. Many faculty felt that the negotiators didn't give a damn about the previous spring's salary workshop. Then, after this communication breakdown, why didn't the negotiating team ask me questions or for clarification after I submitted my October 11th position paper?

The negotiators may have been so confident of the correctness of compressing pay that other communication or consideration of other options was felt to be unnecessary. The perceived need to increase the base may have overrode any of "Chad's theoretical concerns." The negotiators may have believed that faculty such as me, Bob Peterson, or Bob Buck were shortsighted. It's unfortunate that we are business faculty. It's difficult to avoid the stereotype that "business types" are short-sighted money-grubbers. Comments at the ratification meeting, however, demonstrated there's a hell of lot more to the salary issue than just "increasing the base." And more than just "business types" were concerned.

...
At an individual level, my situation gives clear evidence that faculty compensation has been grossly mismanaged in District V since 1979. There has been tendency to slap money hither and

yon without consideration of the on-going effect on individuals.

...
This is not fair. My family and I should not have had to bear the burden each time over the past 13 years that the Federation (and to a much lesser degree, management) decided to change the pay schedule.

...
As I stated at the ratification meeting, I strongly recommend that you stop the practice of subjectively changing the pay schedule based on political expediency of the moment. I recommend that you work in concert with management to determine strategic objectives of faculty pay, that you more carefully consider compensable factors (e.g. experience gained by faculty at other institutions), that you incorporate findings from a comprehensive, systematic salary survey of comparable institutions, and that you communicate throughout this process with concerned faculty. The Federation, perhaps in concert with management, should consider hiring a competent consultant.

I made reference in the previous paragraph to "you" because I will not waste my time in the future with contract concerns.

I'm not interested in a vendetta. I do hope to maintain my friendships with each of you such as they are.

[Emphasis by underline in original.]

It appears that the problems raised by Lewis were not resolved to his satisfaction.

Also in early 1991, Lewis and Amburgey began meeting and discussing a document which Lewis had written under the title of "Tenets of the Twig".¹ Lewis testified in this proceeding that he wrote the Tenets based upon his readings from the works of the eminent Swiss

¹ Lewis testified that Tenets was written "during the winter of 1991", and that he discussed it with Amburgey during either January or February of 1991.

psychologist Carl Jung,² and the Russian/American author Ayn Rand.³ Lewis also testified that his beliefs had been "crystalized" by "the 1989 collapse of Soviet communism and the fall of the Berlin Wall -- with it's consequent affirmation of the power of the individual, ..."

In April of 1991, Amburgey and Lewis decided to form the Twig Society. On April 11, 1991, Lewis filed articles of incorporation for the Twig Society with the office of the Secretary of State of the state of Washington. Article III of those articles of incorporation state the purpose of the Twig Society:

The Society is a religious body that requires each member to worship "That which is greater..." in his or her own way. The society is comprised of individuals who recognize that during times of travail individuals--like twigs --must become strong and must share their strength with other twigs so that the union of humankind--the tree of life--can become strong. The Society asserts that scarce resources must be redirected to meeting individual needs--feed the hungry, house the homeless, or otherwise mitigate the causes of human misery.

Lewis is listed as the registered agent for the corporation, and his home address is listed as the address of the registered office. Lewis and Amburgey are the only persons listed as directors and as incorporators.

On April 15, 1991, Lewis again wrote London with specific concerns relating to his personal financial situation:

² (1875-1961); a psychological theorist distinguished for his profound investigations of the unconscious and mythology.

³ (1905-1982); an author whose work reflected her theory of "objectivism"; an ethic of "rational self-interest" and laissez-faire capitalism.

...
At this point I'm not planning to talk with you about the dysfunctionality of our faculty compensation structure. As I mentioned before, the Federation might want to hire a consultant or, perhaps, someone might want to take a course on the subject of compensation or review relevant literature.

Right now, my primary concern is with how significant inequity affecting me and my family will be resolved.

Following are my questions:

1. At present, I am earning approximately \$3500 less per contract year than my counterparts at the top of salary schedules at most other Puget Sound area community colleges. Put another way, I would be earning about \$3500 more per nine month contract year if I was working at Edmonds Community College -- an institution that just a few years ago had the same salary schedule as EvCC.

When will this inequity be resolved? Time is important. I'm losing thousands of dollars in present and future value -- dollar amounts that, when amortized over a ten to fifteen year period, could pay for my children's college education or the mortgage on my house.

2. I put a significant amount of time and money into moving to the top of the salary schedule. I started at step five and moved to the top at step 12. If one professional improvement credit is equal to 30 hours of effort, and 30 pics equal to one step increase, then I put in approximately 5600 hours of effort (give or take 1000 hours -- I'm not picky) for which I am being inadequately compensated. I also paid several thousand dollars in tuition and books. I figure this effort and expenditure is conservatively worth about \$49,000 (4600 hours @ \$10 per hour, plus \$3000 for tuition and books).

If the salary inequity noted in (1) above is not resolved, does the Federation plan to negotiate a buyout compensating me for a reasonable portion of this time and money? Does the Federation expect me to donate this time and money? Does the Federation think that my past good faith expenditure of time and money is inconsequential just because the rules changed?

3. During 1986-87, I was shorted approximately \$1900 because the Federation agreed that increments wouldn't be paid that year. Will I ever be compensated for this income that I earned in good faith?

4. Looks like the legislature is planning to restore increments. If this occurs, how do you think the Federation will equitably allocate incremental resources in the future?

I am very upset with the fact that I've been on the losing end every time the Federation has fiddled with pay since 1979. I am appalled by the unprofessionalism inherent in our salary practices (e.g. not conducting a salary survey of comparable institutions last time)

I want an equitable solution.

I look forward to our talk.

Thank you.

[Emphasis by underline in original.]

On April 30, 1991, Lewis and Amburgey sent a memo entitled "Redirection of Union Dues" to Paulette Alston, the employer's director of personnel:

In accordance with Section 2.13 of the negotiated agreement between Community College District V and AFT Local 1773 (the "Federation"), we assert our right of nonassociation with the Federation based on the tenets of a bona fide religious body of which we are members. This in no way relinquishes our right to the usual protections offered through the negotiated agreement.

The Twig Society -- "that Which Is Greater" -- the organization to which we belong, has been officially recognized as a legal entity by the State of Washington. Attached is a copy of the Certificate of Incorporation issued by the office of Ralph Munro, Secretary of State. Our bona fide also resides in the important areas of personal conviction and belief.

Consequently, we ask that District V immediately stop payroll deductions to the Federation from our paychecks. In accordance with Section 2.13, payment equivalent to the periodic dues uniform-

ly required as a condition of acquiring and maintaining membership will be made to a charitable organization. The beneficiary of our charitable contributions will be the American Diabetes Association.

A copy of this memo is being sent to Federation president, Gary London. This serves as formal notice to the Federation of our intent. The Federation constitution expressly forbids discrimination on the basis of religious faith (Article III-Section 3). It is our expectation that the Twig Society and the American Diabetes Association will be accepted without contest.

Lewis and Amburgey sent another memo to Alston on May 6, 1991, in response to a memorandum written by Alston on May 3rd.⁴ That memo included the following:

The Twig Society is both a nonprofit organization and a religious body.

Enclosed are the Tenets of the Twig. These are the bona fide religious tenets of the Society. The tenets set forth the beliefs and obligations of Society members ("twigs").

The Twig Society is a bona fide separate entity as established by incorporation within the state of Washington. It is to this entity that members belong. Moreover, the successful application for incorporation expressly defines the Twig Society as a religious body (please see enclosed). Our bona fide further resides in the indisputable areas of conviction and belief based on personal revelation (as addressed in the tenets).

We have complied with section 2.13 of the negotiated agreement between WFT local #1873 and District V. We look forward to speedy acceptance of our request for redirection of Union dues.

⁴

On an unspecified date, the employer began holding the dues money deducted from the pay of Lewis and Amburgey in an escrow account, as specified in WAC 391-95-130.

On June 7, 1991, Amburgey and Lewis sent a memo to London, as follows:

The April 30 memo sent to the administration with a copy to the Federation was "formal notification" to the Federation of our intent. From your last memo, it appears this notification was not accepted by the Federation leadership. You have chosen instead to regard the May 25 memo as formal notification. As you know from our last message, this is okay. (We're not going to get into a "memo war" over this issue.)

However, you need to know that the April 30 memo to the administration was also intended to serve as formal notice of our resignation from the Federation. Sorry if our intent wasn't clear. Please remove our names from local, state, and federal mailing lists. We understand that the Federation will continue to represent us as a matter of contractual obligation.

Thank you.

Although a stated purpose of that memo was to "to clear up potential confusion", it did not put an end to the correspondence. On June 13, 1991, Lewis wrote London again concerning his relationship with the union:

I am writing to provide information and to reiterate my understanding of the Federation's role with regard to my concerns as a faculty member. I also have thoughts regarding your last commentary in the Federation news letter.

Main points:

1. The Federation has an obligation to represent me in a fair manner. I have never been on the "winning side" of a contract issue pertaining to pay since coming to EvCC. I expect this trend to end. Keep in mind that this concern and concerns I expressed in my April 15 memo are independent of my religious beliefs.

Please don't confuse my membership in a religious organization with my anger at unfair contracts negotiated by the Federation. My membership in the Twig Society is only tangentially associated with this anger. ...

On July 23, 1991, London wrote Alston concerning the request by Lewis and Amburgey to have their union dues forwarded to a charitable organization:

The Federation has received a legal analysis of the requests of Mssrs [sic] Lewis and Amburgey to divert their union dues to a charitable organization. Based on this analysis by our attorneys, we disagree that there is any basis under the statute for a good faith diversion of those dues. Consequently, we expect that Everett Community College will continue to withhold the union dues from the regular paychecks of Mssrs Lewis and Amburgey and forward them to the Federation in the usual manner.

The petitions in these matters followed, in August of 1991, but the correspondence continued. On October 24, 1991, Lewis sent London another memo concerning his request to redirect his dues:

Following is a summary of past events that had bearing on our 10-24 conversation:

1. I wish to redirect my dues to a charitable organization as provided for by the contract. Your union has contested this request.
2. I resigned from the Federation with an April 30, 1991 letter sent to Paulette Alston and copied to you. Your union contested this resignation. (Apparently, you felt the statements "we assert our right of nonassociation with the Federation...." and "This serves as formal notice to the Federation.." were unclear.)
3. After receipt of a very clear letter of resignation, you asked that I unnecessarily sign another payroll authorization form before you would accept my resignation. I've already signed such a form and there is no reason for me to do so again. The administration agrees with me on this point.
4. I asked that you stop sending me AFT literature. Yet, I continue to receive this literature at my home address and college mailbox.

5. I requested a rebate of the nonbargaining unit-related portion of my dues as provided for by the contract. (This is my money -- it has nothing to do with the dues going into escrow.) From your comments, it appears your union feels it must consult an attorney before acting on my request. Seems a rather extreme action given the simple, straightforward nature of the request.

These events constitute a clear pattern of harassment. It's all rather disconcerting. Many of the members of the Executive Council have known me for 13 years and know that I am not an "evil Person." I don't deserve this type of treatment. I am not interested in fighting with anyone, I just want to be left alone.

The harassment must stop immediately. I ask that you provide me with my contractually-defined rebate within 30 days of the date of my previous request; that you stop sending me AFT literature; and that you formally accept my resignation from your union. My request to redirect the Federation's portion of my dues will have to await the PERC's determination. Please let me know if I have been unclear on any point.

[Emphasis by underline in original.]

As admitted in evidence in this proceeding,⁵ the document titled Tenets of the Twig include:

TENETS OF THE TWIG (That Which is Greater....")

The Twig Society asserts that individuals need to shepherd and to direct scarce resources toward meeting individual needs -- the needs of the twig -- that serve the tree of life.

Charitable contributions that help feed the poor, house the homeless, or otherwise help to mitigate the causes of individual human misery serve this purpose. The Twig Society is rooted

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The copy of the "Tenets of the Twig" admitted into evidence is dated June, 1992. Lewis testified that the document written and discussed with Amburgey in January or February of 1991 was amended in June of 1992. The record does not include a copy of the original document.

in the notion that strength lies in individual members ("Twigs") helping other individuals -- unselfishly -- so that the entire tree may once again be returned to health and strengthso that times of travail will come no more.

Twigs may not be members, nor may they financially support, secular organizations based on the philosophy of collectivism. Such organizations hold that strength lies in the group, rather than with the individual. Such organizations include the Communist Party and labor unions.

Twigs may only be members of organizations that have import related to the personal life of the individual and those close to the individual (e.g. the family group, synagogue or church congregation). The twig gains strength from individual effort! If each individual twig is strong the tree of life will stand forever....

Twigs gain strength through faith in a greater power. Accordingly, the Society is a religious body that requires all Twigs to worship "that which is greater..." in his or her individual way. Society meetings will respect the differences that exist among individual Twigs in this regard. The ten seconds of silence that begin and conclude each Society meeting require only reflection on "that which is greater...."

The documents placed into evidence by the petitioners to establish the "bona fide" nature of the Twig Society also include the "Rules of the Branch", written by Lewis:

RULES OF THE BRANCH

1. Members of the Society are required to accept the Tenets of the Twig.
2. Twigs must believe in a higher power, in "That Which Is Greater."
3. Membership is open to anyone who accepts the Tenets of the Twig -- regardless of race, creed, religion, county of national origin, handicap, or any other factor.
4. The Society shall have four officers designated as the Branch Council:

The President - This officer will develop meeting agendas and will chair meetings.

The Vice-President - This officer will take minutes and will replace the President anytime he or she must be absent.

The Speaker - This officer will be the formally designated mouthpiece of the Society. This person will be the official communicator with those outside the Branch.

The Secretary / Treasurer - The society will not require dues nor will it take collections. The only exception to this provision will be if the Society's right of religious expression is challenged. The Secretary / Treasurer will coordinate collections for legal defense.

Meetings must include worship of "That Which Is Greater ..."

6. Twigs must respect fellow human beings. Members may not engage in acrimonious debate with those who espouse different religious or philosophical preferences.

One member of the Branch Council -- the Speaker -- has the responsibility of defending the faith. Of course, each individual has the right to express opinions and feelings about anything. However, in the interest of protecting the Society (and the rights of individuals within the Society), Twigs are urged to refer challenges to religious freedom to the Speaker.

7. All Twigs will give evidence of their commitment to "that which is greater..." by donating to a worthy charitable organization a financial sum equal to or greater than the sum that otherwise would be paid to a labor union or to the Communist Party. Twigs are encouraged to donate more than this sum, but that is not required.

8. Twigs must be in regular attendance at Branch meetings. A meeting must take place at least once every two months.

So far as it appears from this record, however, there is only one branch of the Twig Society, and the petitioners in these cases are its only members.

POSITIONS OF THE PARTIES

The petitioners assert a "right of nonassociation" under RCW 28B.52.045(3), based upon the tenets of the Twig Society. The petitioners testified of their belief that many of the problems in their professional and personal lives are the result of "collectivism". They particularly identify labor unions and the Communist Party as organizations which the members of the Twig Society may not support. In addition, the petitioners accuse the union of not attempting to "ascertain the nature or extent" of their religious beliefs, and of engaging in a pattern of harassment against them.

The union asserts that the petitioners have failed to prove that they are entitled to an exemption from union security obligations based upon their religious beliefs, or a bona fide religious objection. The union argues that the petitioners have not established a nexus between their religious beliefs and union membership, so that their request for nonassociation should be denied.

The employer took no position as to whether the petitioners are entitled to assert a right of nonassociation under the statute.

DISCUSSIONStatutory Standards

Chapter 28B.52 RCW sets forth both a definition of "union security" and the requirements for contractual union security obligations:

RCW 28B.52.020 DEFINITIONS. As used in this chapter:

...

(6) "Union security provision" means a provision in a collective bargaining agreement under which some or all **employees in the bargaining unit may be required**, as a condition of

continued employment on or after the thirtieth day following the beginning of such employment or the effective date of the provision, whichever is later, **to become a member of the exclusive bargaining representative or pay an agency fee equal to the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative.**

...

RCW 28B.52.045 COLLECTIVE BARGAINING AGREEMENT--EXCLUSIVE BARGAINING REPRESENTATIVE --UNION SECURITY PROVISIONS--DUES AND FEES.

...

(2) A collective bargaining agreement may include union security provisions, but not a closed shop. If an agency shop or other union security provision is agreed to, the employer shall enforce any such provision by deductions from the salary of bargaining unit employees affected thereby and shall transmit such funds to the employee organization or to the depository designated by the employee organization.

(3) 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 such employee is a member** shall pay to a nonreligious charity or other charitable organization an amount of money equivalent to the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. The charity shall be agreed upon by the employee and the employee organization to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payments have been made. If the employee and the employee organization do not reach agreement on such matter, the commission shall designate the charitable organization.

[Emphasis by **bold** supplied.]

Although different in details of language, the union security and "right of nonassociation" provisions of Chapter 28B.52 RCW are to the same effect as provisions found in the Public Employees' Collective Bargaining Act at RCW 41.56.122. In Grant v. Spellman,

99 Wn.2d 815 (1983) [Grant II], the provisions in Chapter 41.56 RCW were interpreted by the Supreme Court of the State of Washington as making the "right of nonassociation" available to persons who espouse personally-held "bona fide religious tenets ..." against supporting unions, as well as to persons who follow the "bona fide religious ... teachings of a church or religious body". Implementing that holding, the Commission adopted the following rule to regulate the processing of "right of nonassociation" claims:

WAC 391-95-230 HEARING--NATURE AND SCOPE.

Hearings shall be public and shall be limited to matters concerning the determination of the eligibility of the employee to make alternative payments and the designation of an organization to receive such alternative payments. The employee has the burden to make a factual showing, through documentary evidence, of the legitimacy of his or her beliefs, as follows:

(1) In cases where the claim of a right of nonassociation is based on the teachings of a church or religious body, the claimant employee must demonstrate:

(a) His or her bona fide religious objection to union membership; and

(b) That the objection is based on a bona fide religious teaching of a church or religious body; and

(c) That the claimant employee is a member of such church or religious body.

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

(a) His or her bona fide religious objection to union membership; and

(b) That the religious nature of the objection is genuine and in good faith.

That rule codifies a Commission decision which commented on the relative difficulty involved in the two different approaches:

Although fewer elements of proof are involved when the claim is based on personal beliefs only, ordinarily a claim based on church-supported beliefs would be easier to prove. The

claimant would have the benefit of independent third-party evidence to support his or her claim, and that third-party evidence might be a more articulate vehicle for explaining the religious foundation of the claimant's beliefs.

Edmonds School District, Decision 1239-A (PECB, 1983).

The petitioners in the instant cases assert both of the alternative tests. They allege that the Twig Society is a religious organization that prohibits its members from belonging to or supporting a labor organization, and they assert that their personally-held religious beliefs (as exemplified by the Tenets of the Twig) also prohibit their belonging to or supporting a labor organization. Additionally, the petitioners assert that it is their own personal belief that "collectivism" must be avoided.

The "Religious Body" Test

An employee can prevail on a claim of a "right of nonassociation" only if a **RELIGIOUS** basis is established for that claim. Snohomish County, Decision 2859-A (PECB, 1988). In Mukilteo School District, Decision 1323-B (PECB, 1984),⁶ the Commission discussed the distinction between religious beliefs and personal philosophy, quoting from a decision of the Supreme Court of the United States:

United States v. Seeger, 380 U.S. 163 (1965) ... was one of three cases consolidated by the Supreme Court for argument, which required interpretation of the Universal Military Training and Selective Service Act. [statute citation omitted] ... Congress had defined "religious training and belief" as:

An individual's belief in a relation to a Supreme Being involving duties superior to those arising from any

⁶ The case was decided under the Educational Employment Relations Act, Chapter 41.59 RCW, which also has union security provisions and a "right of nonassociation" essentially similar to that applicable in this case.

human relation, but not including essentially political, sociological, or philosophical views or a merely personal moral code.

The Washington State Legislature has not favored us with a definition of "religious" so we must assume that the word is used in RCW 41.59.100 in its customary sense. The Random House Dictionary of the English Language, Unabridged Edition, 1979, defines "religious" as pertaining to or concerned with religion. The first definition of "religion" is:

Concern over what exists beyond the visible world, differentiated from philosophy in that it operates through faith or intuition rather than reason, and generally including the idea of the existence of a single being, a group of beings, an eternal principle, or a transcendent spiritual entity that has created the work, that govern it, that controls its destinies, or that intervenes occasionally in the natural course of its history, as well as the idea that ritual, prayer, spiritual exercises, certain principles or everyday conduct, etc., are expedient, due or spiritually rewarding, or arise naturally out of an inner need as a human response to the belief in such a being, principle, etc.

Despite the lack of any legislative definition of "religious" in RCW 41.59.100, the Seeger opinion is helpful. The Court was trying to assist appeal boards in evaluating the claims for exemption which came before them. It said:

We recognize the difficulties that have always faced the trier of fact in these cases. We hope that the test that we lay down proves less onerous... the test is simple of application. It is essentially an objective only, namely, does the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption? [Emphasis added]

The Court went on to explain:

In such an intensely personal area, of course, the claim of the registrant that his belief is an essential part of a religious faith must be given great weight ... The validity of what he believes cannot be questioned. Some theologians, and indeed some examiners, might be tempted to question the existence of the registrant's "Supreme Being" or the truth of his concepts. But these are inquiries foreclosed to the government. As Mr. Justice Douglas stated in United States v. Ballard, 322 US 78, (1944): "Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others." Local boards and courts in this sense are not free to reject beliefs because they consider them "incomprehensible." Their task is to decide whether the beliefs professed by a registrant are sincerely held and whether they are, in his own scheme of things, religious.

...
Thus, Seeger holds that while we cannot inquire into the truth, reasonableness or plausibility of the claimed belief, we apply an objective standard to determine, as a question of fact, whether or not the belief is religious.

Applying those principles in Mukilteo, the Commission rejected a "right of nonassociation" claim where the petitioner failed to provide sufficient information to distinguish claimed "religious" beliefs from philosophical, sociological, ethical or moral beliefs.

In reading the "Tenets of the Twig" (as amended) and the "Rules of the Branch", it is not apparent to the Examiner how those documents reflect anything other than "political, sociological, or philosophical" views. Virtually nothing in the Twig documents themselves

refers even remotely to a system of beliefs in, or any relationship with, a Supreme Being or other deity. The only exceptions are the enigmatic phrase "That Which Is Greater ...", which is recurrent in the documents, and a vague reference in rule "2" of the "Rules of the Branch" to a "higher power". In the absence of anything which explains or establishes the meaning of those ambiguous terms, the Examiner can only speculate about their precise meaning.

Contradicting an inference that the Twig Society is itself a bona fide religious body, rule "3" of the "Rules of the Branch" states that membership in the Twig Society "is open to anyone ... **regardless of religion**". That juxtaposition of the Twig Society with other religious institutions or beliefs appears more consistent with a statement of a philosophical society than of a religious body.

Philosophical or philanthropic grounds, or secular political or social views, are not sufficient to support the right of non-association, no matter how strongly or sincerely held:

In Grant II, supra, the Supreme Court put the burden on an employee seeking exemption from obligations under a union security agreement to come forward with evidence to demonstrate the religious basis for their objection to union membership. 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 nonassociation.

North Thurston School District, Decision 2433 (PECB, 1986).

Questions of fact arise in each case where a right of nonassociation is asserted. In each case, the employee or employees

asserting an exemption from union security obligations has the burden of proof that the claim has a "religious" basis.

In attempting to discern whether the Twig Society is of a "religious" nature, an examination of its sources is useful. None of the sources described by the petitioners for the "Tenets of the Twig" are religious in nature. Neither the writings of Jung or Rand are commonly viewed as espousing religious philosophy; although they certainly are read by many as reflecting ethics or perspectives that are useful or inciteful. Neither can current events in Europe, nor conflicts with bureaucratic institutions, objectively be said to have an inherently religious content. Although they may cause an individual to seek out religious significance in them, such sources and events may result in a personal revelation, but by themselves are more accurately characterized as "political, sociological or philosophical" analysis, rather than "religious" thought or belief.

The petitioners argue that the State of Washington has already recognized the Twig Society as a religious organization, by issuing articles of incorporation, but that argument is not persuasive. Lewis established his own set of principles and tenets, and he and Amburgey then incorporated the society which they formed under the laws of the state of Washington. The fact that the incorporated Twig Society is a bona fide nonprofit corporation under Washington law does not make the Twig Society a bona fide "religious" body.⁷ The petitioners needed to prove, by objective evidence, that their organization is "religious" in nature and content. Such proof cannot be bootstrapped by the act of incorporation.

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Nothing cited by the petitioners or found by the Examiner in statute suggests that the office of Secretary of State investigates or rules on the validity of the factual allegations made in the documents filed with it concerning a potential corporate entity.

The situation dealt with in City of Seattle, Decision 2086 (PECB, 1985), bears some similarities to the instant cases. There, the employee asserting the right of nonassociation had obtained papers as an ordained minister of the Universal Life Church. He had received his credentials through a correspondence course which cost him \$200.00. Thereafter, the employee and his congregation of 8 to 12 people held approximately three meetings each month in the employee's home. The employee believed that the individual is responsible for himself and should rise supreme above institutions so long as he doesn't interfere with anyone else's rights, and he had fashioned his sermons on those beliefs.

But the Supreme Court has put the burden on an employee seeking exemption from obligations under a union security agreement to come forward with evidence to demonstrate the religious basis for their objection to union membership.

City of Seattle, Decision 2086 at page 8. [Emphasis by underline in original.]

Looking behind or beyond the superficial trappings, the Executive Director found that evidence did not provide that foundation in that case.

In both the "Tenets of the Twig" and the "Rules of the Branch", Lewis has tied together "labor unions" and "the communist party" in the same phrase. His rejection of "collectives" appealed to Amburgey, who testified of her dissatisfaction with bureaucratic organizations in her attempts to provide care and education for a handicapped child. While neither affirming nor criticizing the petitioners' views on those subjects, the Examiner concludes that their dissatisfactions and focus on what they defined as "collectivism" are of a political, not "religious", nature.

The timing and language used in the Twig Society documents must also be considered in assessing the existence of a bona fide claim of the right of nonassociation. The testimony indicates that the

"Tenets" was first developed when Lewis was in the midst of series of letters criticizing the union on very specific issues. He believed that the union had ignored or rejected his ideas and concerns about the distribution of salary increases. He, in turn, rejected the union. Just as Lewis testified that his past readings had influenced his religious beliefs, it appears likely that his frustrations with the union influenced his writings. From close examination of the "Tenets of the Twig" (as amended after the petitions in these cases were filed) and the "Rules of the Branch", it is also apparent that a focus of both documents is the "right of nonassociation" language of the collective bargaining statute. Both documents refer specifically to financial support of labor unions, in terms familiar to those who have read the statutory provisions under which this case must be decided. Both documents make reference to charitable contributions which are clearly derived from the statutory language on payments made in the alternative to paying union dues. There is no religious context to such contributions. Circumstantially at least, it is possible that the Twig Society was developed, not as a religious organization as is asserted by the petitioners, but specifically as a vehicle for the petitioners to claim nonassociation.⁸

The burden of proof was on the petitioners to establish that their claim of a right of nonassociation is based upon the teachings or beliefs of a religious body. The petitioners have not established that the Twig Society is a bona fide religious body.

The "Personal Religious Beliefs" Test

The second part of the Grant II test, as incorporated by the Commission into its rules, permits an employee to establish a right

⁸ Supporting this analysis is the lack of any specific purpose for the Twig Society, except the condemnation of labor unions and the Communist Party and the somewhat vague references to charitable giving.

of nonassociation by proving that their claim is based upon a personal **religious** objection to union membership. Even if the "Tenets of the Twig" and the "Rules of the Branch" are not sufficient to establish the existence of a bona fide religious body, the question remains in this case as to whether the petitioners' statements establish the existence of personal **religious** beliefs sufficient to establish a right of nonassociation.

Both petitioners read prepared statements into the record at the hearing in this matter. Under examination for evidence of their personal **religious** beliefs, however, neither Lewis nor Amburgey met the requirements of the test outlined in WAC 391-95-230(2).

Lewis made reference to his readings of Jung and Rand. From his own description, it is evident that he has developed a philosophy concerning his personal relationship with God. However, he then uses only the collapse of Soviet Communism, the fall of the Berlin Wall, and his judgment that leaders of the union were in fact working for management while representing the union, to justify his withdrawal from the union. None of this analysis establishes a "religious" content for his claim of non-association. Furthermore, in all of his extensive correspondence with the union, he never once mentioned a religious objection to the union or how it functions. In fact, one of his basic criticisms was that he was not consulted or made a member of the negotiating team.

Amburgey made reference to "a true belief that [the Twig Society] is a shield against the horrors of collectivism", but she did not explain what those beliefs are, or how they are related to union membership. The majority of her statement was devoted to recounting her ongoing struggle to obtain medical treatment and residential placement for her son.

The Examiner concludes that the petitioners have not met their burden of proof of personal **religious** beliefs against unions.

Quality of Proof Required

During the course of the hearing and in their brief, the petitioners raised several additional issues which should be addressed.

The petitioners correctly argue that there is no requirement that a religious organization keep a minimum bank account, or take minutes at meetings, or actively proselytize. Those are not the basis for the conclusions reached by the Examiner above.

Likewise, it is irrelevant to the core issue here that Lewis' wife is not a member of the Twig Society, or that she pays union dues where she is employed. Although adduced during the hearing in this matter, those facts are irrelevant to the determination made here.

The petitioners continuously argued that they believed that their truthfulness was at issue; that they needed to prove the veracity of what they believed; and that they needed to prove that their beliefs were in "good faith". They charged that the Examiner suggested by his rulings that he believes that the Twig Society and its tenets are a farce. The existence of the Twig Society and the principles espoused by it are not subjected to evaluation or criticism here, except to determine whether they are "religious" in nature. The object of the hearing was not to "challenge" the petitioners' beliefs, and it does not make any difference what the Examiner believes. Contrary to the arguments raised repeatedly by Lewis at the hearing, the issue to be decided here is not whether he and Amburgey developed an organization which reflects their beliefs, or whether they could develop a religious organization. The sole issue in this case is whether the petitioners have proven that, as a factual matter, the organization which they developed is a bona fide religious organization or, in the alternative, that their beliefs relating to nonassociation are based upon personal religious beliefs. See, Snohomish County, Decision 2859-A (PECB,

1988) and Central Valley School District, Decision 4016 (PECB, 1992).

Finally, the petitioners raised objections to the conduct of the hearing, and to the conduct of the union in reaction to their petition for nonassociation. They alleged that the Examiner "discounted our concerns regarding Federation harassment, grudgingly accepting a few exhibits" and they charged that the union created a "hostile environment". In fact, the Examiner was deliberately attempting to limit the scope of the inquiry as required by the Washington Administrative Code:

WAC 391-95-230 HEARING -- NATURE AND SCOPE. Hearings shall be public and shall be limited to matters concerning the determination of the eligibility of the employee to make alternative payments and the designation of an organization to receive such alternative payments. ...

As the petitioners were advised during the course of the hearing in these matters, any charges by the petitioners concerning harassment, discrimination, or breach of the duty of fair representation by the union would have to be filed and pursued as unfair labor practice proceedings under Chapter 391-45 WAC, and could not be the subject of any ruling or remedy in this proceeding under Chapter 391-95 WAC.

FINDINGS OF FACT

1. Everett Community College is an institution of higher education of the State of Washington, operated pursuant to Chapter 28B.50 RCW, and is an employer within the meaning of Chapter 28B.52 RCW. Paulette Alston is the director of personnel for the employer.

2. Washington Federation of Teachers, Local 1873, an "employee organization" within the meaning of RCW 28B.52.020(1), is the exclusive bargaining representative of the academic employees of Everett Community College. During the time period relevant to these proceedings, Gary London was president of Local 1873.
3. The employer and Local 1873 are parties to a collective bargaining agreement which contains a union security provision requiring employees, as "a condition of continued employment" to pay a representation fee to the union. The contract provides for the right of nonassociation based upon bona fide religious tenets or teachings of a church or religious body.
4. Chad Lewis is an academic employee of Everett Community College. That employment is within the bargaining unit represented by Local 1873, and is subject to the union security provisions of the collective bargaining agreement between the employer and Local 1873.
5. Jackie Amburgey is an academic employee of Everett Community College. That employment is within the bargaining unit represented by Local 1873, and is subject to the union security provisions of the collective bargaining agreement between the employer and Local 1873.
6. Both Amburgey and Lewis had been active members of Local 1873 in the past, and both of them are former members of the union's executive council. Each of them subsequently became disenchanted with the union and its ability to represent issues specific to each of them.
7. In early 1991, Lewis and Amburgey formed the Twig Society. Lewis wrote the "Tenets of the Twig Society", based on his readings of the works of Karl Jung and Ayn Rand, together with his understandings and observations of current affairs in

- Europe. Lewis also wrote the "Rules of the Branch" which sets forth principles of the organization. Lewis and Amburgey were listed as the sole incorporators of the Twig Society in Articles of Incorporation filed with the Secretary of State of the state of Washington.
8. On April 30, 1991, Amburgey and Lewis sent Alston a request, with a copy to the union, that their union dues be "redirected" to the American Diabetes Association. They asserted a right of nonassociation based upon their membership in the Twig Society.
 9. On June 7, 1991, the union was notified directly of their desire to resign their membership in the union.
 10. On July 23, 1991, the union denied the petitioners' request to make alternative payments to a charitable organization. The union indicated that it disagreed that there was any basis for a diversion of dues.
 11. Amburgey and Lewis base their claim of nonassociation in this proceeding upon the "Tenets of the Twig Society". As admitted in evidence under date of June, 1992, that document directs that members of the Twig Society may not be members of "secular organizations based upon the philosophy of collectivism. ... Such organizations include the Communist Party and labor unions", and that members of the Twig Society may not be members nor financially support "collectivist" organizations such as the Communist Party or labor unions.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 28B.52 RCW and Chapter 391-95 WAC.

2. Chad Lewis has not established, as required by RCW 28B.52-.045(3), that his claim of a right of nonassociation is based on the teachings of a bona fide religious organization, or is based upon bona fide, personal religious beliefs.
3. Jackie Amburgey has not established, as required by RCW 28B.52.045(3), that her claim of a right of nonassociation is based on the teachings of a bona fide religious organization, or is based upon bona fide, personal religious beliefs.

ORDER

1. DECISION 4342 - PECB. Chad Lewis is obligated to make payments of union dues to Washington Federation of Teachers, Local 1873, pursuant to RCW 28B.52.045(2) and the collective bargaining agreement between Local 1873 and Everett Community College.
 - a. If no petition for review of this order is filed within 20 days following the date of this order, Everett Community College shall promptly thereafter remit any and all funds withheld and retained from the pay of Chad Lewis, pursuant to WAC 391-95-130, to Local 1873.
 - b. If a petition for review of this order is filed, such filing shall automatically stay the effect of this order pending a ruling from the Commission.
2. DECISION 4343 - PECB. Jackie Amburgey is obligated to make payments of union dues to Washington Federation of Teachers, Local 1873, pursuant to RCW 28B.52.045(2) and the collective bargaining agreement between Local 1873 and Everett Community College.

- a. If no petition for review of this order is filed within 20 days following the date of this order, Everett Community College shall promptly thereafter remit any and all funds withheld and retained from the pay of Jackie Amburgey, pursuant to WAC 391-95-130, to Local 1873.

- b. If a petition for review of this order is filed, such filing shall automatically stay the effect of this order pending a ruling from the Commission.

Issued at Olympia, Washington, on the 23rd day of April, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WALTER M. STUTEVILLE, Examiner

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