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 - PECB
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1789, Respondent.	)	SUMMARY JUDGMENT

George R. Wickholm, appeared pro se.

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

On May 16, 1991, George R. Wickholm filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that his exclusive bargaining representative violated RCW 41.56.150(1) and (4), by refusing his request to limit his payments under an otherwise lawful union security clause to "a fair assessment fee for representation".

The matter was reviewed under the procedures of WAC 391-45-110, and a preliminary ruling letter issued by the Executive Director on March 3, 1992, concluded that the complaint stated a cause of action within the jurisdiction of the Commission.[1] The Executive Director specifically cited Brewster School District, Decision 2779 (EDUC, 1987), where it was concluded that an unfair labor practice

[1] At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable.

cause of action exists under state law for "discrimination", where a union attempts to enforce a union security obligation in a manner which violates federal constitutional requirements. On March 20, 1992, the undersigned was assigned as the Examiner in the case.

A notice of hearing was issued on April 16, 1992, setting May 20, 1992 as the date for a hearing in the matter and setting May 1, 1992 as the date for the filing and service of an answer to the complaint.

The respondent filed its answer with the Commission on April 27, 1992. In that answer, the respondent advanced three procedural and jurisdictional defenses, but did not deny any of the facts alleged in the complaint.

Acting on his own initiative, the Examiner issued a "show cause" directive on May 1, 1992, to ascertain whether the answer filed by the union should be deemed a waiver of a hearing on the facts alleged, and whether the case could be disposed of by summary judgment on the legal arguments.

The response filed by the union on May 5, 1992, acknowledged that the union does not controvert the "few" factual allegations of the complaint, but asserted that the Commission lacks jurisdiction in the matter. That response was supported by an affidavit of a union official who asserted that the complainant had not invoked the "right of nonassociation" procedures as set forth in Chapter 391-95 WAC.

Based upon the union's answer, its response to the "show cause" directive, and the affidavit filed in support of that response, the Examiner concluded that there were no material facts in dispute and that issuance of a summary judgment, under WAC 391-08-230, was appropriate. A notice was issued on May 13, 1992, indefinitely postponing the hearing previously scheduled in the matter.

BACKGROUND

The Spokane International Airport is a major transportation facility located to the west of the city of Spokane, Washington.[2] In addition to the direct transportation functions which it provides, the Spokane International Airport maintains and 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 Spokane International Airport Fire Department are represented for purposes of collective bargaining by the International Association of Fire Fighters, Local 1879 (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.

In his complaint charging unfair labor practices, Wickholm made the following statement of facts:

> 1. In Jan. 1991 the union started to enforce a tee shirt regulation that the employer and union had established as an optional part of the uniform in 1990. The contract had not been amended as it constitutes a cost item (to the individual). When I protested the wearing of the new tee shirt, I was told by a union member that I would wear them! I continued to protest and was reprimanded under another

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

pretext by this union member. [Emphasis by underline in original.]

2. On Feb. 13, 1991 I submitted a letter of withdrawal to Local 1789 of the IAFF. In this letter I stated that I was willing to pay a fair assessment fee for representation.

3. On Feb. 28, 1991 Mr. Lively, President of Local 1789, verbally acknowledged my letter and stated that the executive board had voted to assess me the full $50.00; the same as dues; and I had the right to appeal to PERC. My response was to tell Mr. Lively that I felt the union was in error and I would be contacting PERC to find out my options.

4. On Apr. 14, 1991 the union hand delivered, to me, a formal letter of reply concerning the monthly service charge. In response to the union letter, I replied that since the amount of monies, for representation service charges, was in dispute the union needed to escrow all funds received in my name until such time as PERC could settle the proper amount to be collected.

5. The amount collected for representing an individual includes a per-capita tax to both the state and international unions. If I am not a member of the local union, I can not be a member of either of these unions, thus the local union is illegally collecting this money.

6. The union officers are not paid, so the only fee I should be assessed is: 1. The actual cost of negotiating a contract divided contract [sic]. 2. The actual costs of training seminars attended by union officers, as set by the union per-diem and expense schedule, divided by 18 and amortized over 12 months. Training seminars should not include political activities.

Included with the complaint were copies of three letters/memos exchanged between the parties concerning this issue:

Feb 13, 1991

To: Local 1789 IAFF

From: George R. Wickholm

Re: Withdrawal from union

I hereby demand a withdrawal from Local 1789 immediately. My reasons are personel [sic] and not religious. I thus am willing to give the union a fee equal to what it actually costs to represent me in a closed shop, and no more.

* * *

April 10, 1991

TO: George Wickholm

SUBJECT: Monthly Service Charge

FROM: Tim Lively, President
Wilburn G. Shamblin, Secretary

In view of your voluntary withdrawal from IAFF Local 1789, February 13, 1991, this letter is to provide you with information regarding Monthly Service Charges.

According to the contract between Local 1789 and the Spokane Airport Board, any employee who is not a member of the Union shall, as a condition of employment, pay a monthly service charge equivalent to the initiation fees, dues and lawful periodic assessments paid by a member of the Union.

Your current monthly service charge will be **FIFTY DOLLARS AND NO CENTS** ($50.00). The monthly service charge will be due on the first day of the following month. Money ($50.00) received on your behalf from the Airport included with the monthly payroll deduction for Union dues shall be considered as your payment of the monthly service charge and not Union dues. [Emphasis by **bold** in original.]

Any charges in the amount of payroll deduction on your behalf will be your responsibility.

* * *

April 14, 1991

TO: IAFF Local 1789

FROM: George R. Wickholm

RE: Fee Assessment Instead of Dues

I welcome your long delayed response to my letter of Feb 13, 1991.

As I feel your figure of $50.00 a month is excessive and incorrect. I am hereby notifying you that you need to escrow all funds, received in my name, until the union, myself and PERC can arrive at a fair settlement.

The defenses asserted by the union in its answer to the complaint were:

1. That by failing to allege facts revealing a violation of any rights protected by RCW 41.56, the Complainant did not state a cause of action; and

2. that the complainant failed to properly follow and/or exhaust the notice requirements and procedures mandated by the Washington Administrative Code; and

3. that the Commission lacks 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 by the respondent.

When directed to show cause why summary judgment should not be granted, the union responded as follows:

> . . . First, I concur that Local 1789's Answer does not dispute the few factual allegations contained in the Wickholm complaint. However, 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 abolition of rights contained by 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 protection, 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.
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> Further, those decisions were decided in 1977 and 1989 such that, even if the executive director's assumptions were correct, there should have been a WAC provision similar, if not identical, to WAC 391-95-030 et seq.
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> Enclosed is the affidavit of Tim Lively, President of Local 1789 containing those facts which we believe to be critical to not only our decision as to whether you want to decide this on summary judgment but, also, whether there is a complaint or even jurisdiction.

Under separate cover, the union supplied an affidavit of its president, Tim Lively:

> . . .
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> 1. I have been, at all times material hereto, President of Local 1879, IAFF.
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> 2. That I am personally knowledgeable and familiar with the facts and circumstances surrounding Mr. Wickholm's allegations of an unfair labor practice.
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> 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.

5. Likewise, Mr. Wickholm has never notified either myself or Local 1789, pursuant to WAC 391-95-030, of his claim of exemption.

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.

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 that proper notices and petitions. None of these things ever took place, nor has Mr. Wickholm ever alleged that they did.

8. It has been, and is, the Local's belief, that the only rights which could be violated for 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.

Nothing further has been received from either party in this proceeding.

DISCUSSION

The essence of the complaint in this case is that, by assessing the equivalent of the full monthly union dues as a fee for service, the union is unlawfully charging Wickholm for union expenses not related to collective bargaining. In his preliminary ruling, the Executive Director noted certain procedural and substantive

limitations on union security obligations which flow from federal constitutional principles, before stating:

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

The complainant filed by Wickholm was thus found to state a cause of action for further proceedings before the Commission.

The union would limit the Commission's jurisdiction to union security obligations under the "religious" objection provided for in RCW 41.56.122. It further asserts that the Commission has no jurisdiction to enforce decisions of the United States Supreme Court, without specific authorization in the form of statutes and administrative codes from the state Legislature.

Legislative/Judicial History of Federal Bargaining Law

The significant federal legislation which established collective bargaining as a legally enforceable mechanism in the private sector is, of course, the National Labor Relations Act of 1935 (NLRA), as amended by the Labor-Management Relations Act of 1947 (the Taft-Hartley Act). Relevant to the case now before the Examiner are the "Rights of Employees" contained in Section 7, the prohibition of "discrimination" as an unfair labor practice in Section 8(a)3, the prohibition of union-solicited discrimination in Section 8(b)(2), and the "Restrictions on Payments to Employee Representatives" contained in Section 302.

Section 7 of the NLRA guarantees employee rights, both to join unions and to refrain from union activities. Section 302(a)(2) prohibits employers from paying money to unions, but with a specific exception in subsection (c)(4) which allows for arrange-

ments for voluntary dues checkoff by employees. Thus, an employer whose employees have chosen to organize may regularly deduct amounts equivalent to union dues from the pay of employees who have submitted a written authorization for such deductions, and remitted such dues to the exclusive bargaining representative. Dues checkoff is a narrow and tightly conditioned exception to Section 302, and it has not been broadened or interpreted by the National Labor Relations Board (NLRB) or federal courts to include any other exceptions.

Sections 8(a)(3) and 8(b)(2) of the NLRA place limitations on "union security" arrangements under which an employee may be compelled to pay union dues. Parties to a collective bargaining agreement may enter into contracts which require employees working under the contract to obtain and maintain union "membership" as a condition of employment. Specific limitations on "union security" arrangements include:

* Employees have 30 days to join the union, after the commencement of their employment;[3]

* A union security obligation is enforceable only if union membership was made available to the employee on the same terms and conditions generally applicable to other members; and

* An employee's discharge can be sought only upon the failure of the employee to tender "the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership".

As characterized in NLRB vs General Motors, 373 U.S. 734, 742 (1963): "[m]embership as a condition of employment is whittled down to its financial core". Further, it must always be kept in mind

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[3] The Taft-Hartley amendments thus outlawed the "closed shop" under which an employee could be compelled to be a member of the union prior to getting the job. The maximum form of union security permitted by the federal law is commonly referred to as "union shop".

that "union security" is fundamentally a narrow and tightly conditioned exception to the prohibition on "discrimination" found in Section 8(a)3 of the NLRA. A companion provision of the NLRA, Section 8(b)(2) prohibits unions from causing or attempting to cause an employer to discriminate against an employee in violation of Section 8(a)(3).

The notion that the federal statutory mandate in Section 8(a)(3) does not compel full union membership, but only payments as a fee for services,[4] was reinforced in NLRB vs Hershey Foods Corp., 207 NLRB 897 (1973), enforced, 513 F.2d 1083 (9th Circuit, 1975). In that case, the union was found to have committed an unfair labor practice in violation of Section 8(b)(2) when it caused the employer to discharge an employee who had voluntarily resigned his union membership, but continued to tender an amount equal to the established membership dues. The NLRB found that tendering the equivalent amount preserved the employee's "financial core membership". Thus "membership" upon which employment may be conditioned under Section 8(a)(3), is not membership in the conventional sense, but rather it is only a requirement of non-discriminatory financial payments.[5]

State Bargaining Law Patterned After Federal Law

By the time the Washington State Legislature adopted the initial provisions of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, in 1967, the NLRA had been on the books for more

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[4] See, The Developing Labor Law, Second Edition, Volume II, Charles J. Morris, Editor in Chief, 1983.

[5] In 1980, the dues collection ability of unions was further narrowed. Section 19 of the NLRA was rewritten to exempt employees from membership requirements if they are adherents of a bona fide religion which has historically held conscientious objections to membership in or financial support of labor organizations.

than 30 years and the major principles of "union security" under the Taft-Hartley amendments had been in effect for about 20 years. The "employee rights" section of the statute, RCW 41.56.040, follows the pattern of the federal law in protecting the right of employees to designate representatives of their own choosing. The Legislature permitted "checkoff" in RCW 41.56.110, but it did not make provision at that time for imposition of "union security" obligations as a condition of employment.

Chapter 41.56 RCW was amended in 1969, adding employer and union "unfair labor practice" provisions. In the context of language in RCW 41.56.040 which already prohibited "discrimination", RCW 41.56.140(1) prohibited employers from interfering with, restraining or coercing public employees in the exercise of their rights under the chapter. RCW 41.56.150(2) broadly prohibited unions from inducing a public employer to commit an unfair labor practice.

Among amendments to Chapter 41.56 RCW adopted in 1969 was creation of a "Public Employees Collective Bargaining Committee" charged with responsibility to study and make recommendations concerning the collective bargaining process in the Washington public sector. The "First Biennial Report" issued by that committee in 1971 contained a glossary of terms which included the following:

> Agency Shop - A provision in a collective bargaining agreement which requires all employees who do not join the union to pay a fixed monthly sum, usually the equivalent of union dues and fees, as a condition of employment, to help defray the union's expenses in acting as bargaining agent for the group. Some arrangements provide that payments be allocated to the union's welfare fund or a charity rather than to the union's treasury.
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> ...
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> Closed Shop - A labor contract provision stipulating that the employer may hire and retain only union members. In 1947, the Taft-Hartley Act banned this practice in industries and businesses engaged in interstate commerce.

> ...
> Maintenance of Membership - An arrangement providing that those who are members of the employee organization at the time the agreement is negotiated, or who voluntarily join it subsequently, must maintain their membership for the duration of the agreement as a condition of employment.
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> ...
> Open Shop - A labor contract provision that the employee does not have to be a union member in order to secure or retain employment. Also used for establishments where no union exists.
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> ...
> Union Security - Protection of union status by provisions in a collective bargaining agreement establishing closed shop, union shop, agency shop or maintenance-of-membership.
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> ...
> Union Shop - A labor contract clause that the employer may hire anyone he wants, but that all workers must join the union within a specific period of being hired and must retain membership, as a condition of continuing employment.
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> Under a modified union shop, current members must remain so, all new hires are obliged to join, but current nonmember employees do not have to join.

The committee recommended amendment of the statute to allow union security provisions, with specific recognition of a "right of non association" of employees based on religious beliefs.

Chapter 41.56 RCW was amended again by the Legislature in 1973, and union security arrangements were authorized. The law now provides:

> **RCW 41.56.122 COLLECTIVE BARGAINING AGREEMENTS--AUTHORIZED PROVISIONS.** A collective bargaining agreement may:
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> (1) Contain union security provisions: PROVIDED, That nothing in this section shall authorize a closed shop provision: PROVIDED FURTHER, That agreements involving union security provisions must safeguard the right

> of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member. Such public employee shall pay an amount of money equivalent to regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually agreed upon by the public employee affected and the bargaining representative to which such public employee would otherwise pay the dues and initiation fee. The public employee shall furnish written proof that such payment has been made. If the public employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. ...

The Supreme Court of the State of Washington has indicated its willingness to interpret the union security provisions of our state collective bargaining laws in accord with federal principles. See, Capitol Powerhouse Engineers v. State, 89 Wn.2d 177 (1977).[6] In Grant v. Spellman, 99 Wn.2d 815 (1983) [Grant II], our Supreme Court gave the "religious nonassociation" provision of RCW 41.56.122 an interpretation that would preserve the constitutionality of that statute as against the "establishment of religion" clause of the United States Constitution.

At least as early as Mukilteo School District (Mukilteo Education Association), Decision 1122, 1122-A (EDUC, 1981), the Commission asserted jurisdiction to determine the merits of employee-filed unfair labor practice complaints alleging employer and/or union "discrimination" by means of unlawful enforcement of union security obligations on the individual employee.

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[6] The statute at issue in Capital Powerhouse Engineers permits state employees to pay a service fee to the union, instead of union dues. The union in that case had a readily accessible procedure for refund of monies which would otherwise be used for political purposes to which an employee objected.

Emergence of Federal Rights of Individuals

The Supreme Court of the United States held, in Abood v. Detroit Board of Education, 431 U.S. 209 (1977), that the First Amendment to the United States Constitution imposed limitations on "union security" arrangements involving public employees. Under Abood, employees who were not union members could only be required to pay the costs of collective bargaining, contract administration and grievance adjustment. Non-members could not be forced to pay fees for the support of ideological causes not germane to the union's duties as exclusive bargaining representative. The restriction on the use of service fees from non-members also prohibited the use of such fees as contributions to political candidates, or to express political views unrelated to the union's duties as a collective bargaining agent.

Later, in Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986), the Supreme Court of the United States set forth certain procedures that unions must follow to protect the substantive distinctions drawn in Abood. The collective bargaining agreement at issue in Hudson authorized the union to specify the amount of the non-member fee, so long as it did not exceed dues paid by union members. The union had established the amount for the 1982-83 school year at 95% of the dues paid by union members, calculated on the basis of union financial records for the fiscal year ending June 30, 1982. Non-members could object to the fee after it was deducted from their pay, by writing to the union president and instituting a three-stage procedure: (1) Consideration by the union executive committee, with notice to the objector within 30 days of the decision; (2) appeal within 30 days to the union's executive board, which would consider the objection; and (3) appeal to an arbitrator paid by the union and selected by the union's president from a list maintained by the Illinois Board of Education. If an objection was sustained at any stage, the remedy was a rebate of amounts overpaid in the past and a reduction in future deductions. The **unanimous**

Hudson court held that the union procedure contained three constitutional defects: First, it failed to minimize the risk that employees' contributions might be temporarily used for impermissible purposes; second, it failed to provide non-members with adequate information about the basis for the fee demanded; and third, it failed to provide for a reasonably prompt impartial decision. The Court emphasized its previous holding from Abood, stating as follows:

> [T]he objective must be to devise a way of preventing compulsory subsidization of ideological activity by employees who object thereto without restricting the Union's ability to require every employee to contribute to the cost of collective-bargaining activities.

Hudson, at page 302, quoting Abood, from page 237.

Accordingly, the Supreme Court required creation of procedural safeguards in all three of the problem areas identified, **as a condition precedent to enforcement of union security obligations on public employees.**

Commission Decisions Adopting Federal Precedents

The principles established in Abood and Hudson have been cited, with approval, in several Commission decisions.

In Brewster School District, supra, cited by the Executive Director in the preliminary ruling in this case, four public school teachers filed unfair labor practice charges accusing their employer and union of enforcing an unlawful union security agreement against employees who were not union members. The collective bargaining agreement covering the employees contained union security language requiring non-members to pay a representation fee in an amount to be determined by the union, and the union had demanded a representation fee equal to the full dues amount paid by members for the

Brewster Education Association, the Washington Education Association and the National Education Association. The Executive Director noted that the union security provisions of state law are subject to having the affirmative obligations set forth in Hudson engrafted onto them in the following manner:

> (1) Adequate explanation of the basis of the fee. The union must provide adequate information explaining the basis for the agency shop fee to the employee. This includes identifying the expenditures for collective bargaining, contract administration and grievance adjustment that were provided for the benefit of nonmembers as well as members, not just the money that had been expended for purposes that did not benefit non-members. [footnote omitted] The Union need not provide non-members with an exhaustive and detailed list of all its expenditures, but adequate disclosure surely would include the major categories of expenses, as well as verification by an independent auditor. The employee has the burden of raising an objection, but the union bears the burden of proving the proportion of political [expenditures] to total union expenditures.
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> (2) Reasonably prompt opportunity to challenge the amount of fee before an impartial decision maker. The non-member's objections must be addressed in an expeditious, fair and objective manner. The procedure cannot be controlled by the union. Special judicial procedures are not necessary, nor is a full administrative hearing with evidentiary safeguards (as had been mandated by the Seventh Circuit in the Hudson case). An expeditious arbitration might satisfy the requirement so long as the arbitrator's selection did not represent the union's unrestricted choice.
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> (3) Escrow for amounts reasonably in dispute while challenges are pending. The risk that non-member contributions might be temporarily used for impermissible purposes must be minimized. A rebate after the fact was held not sufficient. On the other hand, escrow of 100% of the dues amount was not required. If information initially provided

> to the employee by the union includes a certified public accountant's verified breakdown of expenditures, including some categories that no dissenter could reasonably challenge, there would be no reason to escrow the portion of the nonmember's fees that would be represented by those categories. If the union chooses to escrow less than the entire amount, however, it must carefully justify the limited escrow on the basis of the independent audit, and the escrow figure must itself be independently verified.

Brewster School District, Decision 2779 - 2882, at pages 8-9.

Indeed, giving the state law an application which fails to conform to clearly enunciated federal constitutional principals would be contrary to the "conformity" policy followed by our Supreme Court in Grant II. Thus, the complaints in Brewster were found to state a cause of action for proceedings before the Commission.

The "condition precedent to enforcement" principle of Hudson was also implemented in Snohomish County, Decision 3705 (PECB, 1991), where an employee alleged that the union refused to comply with her request for a "reduction of dues obligation to equal only the pro rata costs of collective bargaining" with the employer. The union moved to dismiss the complaint, noting that it had subsequently adopted Hudson procedures and had refunded the full amount of complainant's escrowed dues, with interest. An unfair labor practice violation was found, however, for the time period that had elapsed before the union's publication of its Hudson procedure. The Examiner noted that, on its face, the union's procedure did not appear to be defective, but the union's failure to safeguard the complainant's constitutional rights during the time period when it did not have a Hudson procedure in place was an unfair labor practice in violation of RCW 41.56.150(1).

A husband and wife who were both members of the same bargaining unit alleged that their union was unlawfully charging them for

"special assessments" and "house dues" not related to collective bargaining, contract administration or grievance handling in Spokane Fire District 9 (IAFF Local 2916), Decisions 3773, 3773-A, 3774 and 3774-A (PECB, 1992).[7] The union in that case advanced the same defenses as are propounded by the union here,[8] (i.e., that the complainants had not alleged a right of nonassociation based on bona fide religious beliefs, and that the Commission lacks authority to hear and fashion orders based upon Abood/Hudson). In rejecting those defenses, the Examiner in Spokane 9 held that the Commission had jurisdiction, and that the right of nonassociation based upon religious beliefs had no bearing on Abood/Hudson cases:[9]

> Public employees have a right under the United States Constitution to limit their payments under otherwise lawful union security clauses to amounts reflecting the portion of the union's total expenses that are related to collective bargaining, contract administration and grievance adjustment. Unions representing public employees are required to establish and maintain procedures to protect the constitutional rights of public employees who are compelled to make payments under union security provisions, so as to collect from objecting employees only the chargeable portion of the union dues and initiation fees used for activities normally or reasonable related to implementing or effectuating the union's duties as the exclusive bargaining representative of employees in the bargaining unit. An attempt by a union to enforce union security obligations without conformance to those constitutional requirements is an activity not protected by RCW 41.56.122.

Spokane Fire District 9, supra, Conclusion of Law 3.

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[7] Hereinafter referred to as the Spokane 9 cases.

[8] The union in Spokane 9 was represented by the same counsel as the union in the instant case.

[9] The Examiner's decision in Spokane 9 contains an extensive review of the legislative history and the federal court precedents concerning union security.

In affirming the Examiner's decision on appeal, the Commission analyzed the arguments concerning the jurisdiction of the Commission as follows:

> 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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> . . .
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> RCW 41.56.122(1) does, indeed, provide for payments to charity, in the alternative to paying union dues, for employees who object to union membership on the basis of "religious tenets or teachings of a church or religious body of which such public employee is a member". Grant v. Spellman, 99 Wn.2d 815 (1983) [Grant II]. 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 and 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 (a) bargaining representative.** Hudson set forth procedural requirements relating to determining the dues amounts that 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.

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

Finding the union's arguments in that case to be "frivolous" and "meritless", the Commission imposed an extraordinary remedy of reimbursement of the complainants' attorney fees for the appeal portion of the proceedings, as "necessary to prevent recurrence of dilatory tactics and repetitive misconduct".

Application of Precedent

In the case now before the Examiner, the complainant has clearly asked that his union security obligations be limited to those which are "chargeable" under Abood. The complaint itself specifies:

> ... [T]he only fee I should be assessed is: 1. **The actual cost of negotiating a contract** ... 2. **The actual costs of training seminars attended by union officers**, as set by the union per-diem and expense schedule, divided by 18 and amortized over 12 months. **Training seminars should not include political activities.**

At no time in its pleadings or affidavits did the respondent union assert that any union procedures exist, as required by Hudson as a "condition precedent" to enforcement of union security, to deal with claims such as that made by the complainant. In the absence of such an assertion, the Examiner assumes that no such dues apportionment procedure exists. Spokane Fire District 9, Decision 3773-A and 3774-A (PECB, 1992).

The union argues that the Wickholm does not qualify for a right of nonassociation from union membership, because he failed to allege that his withdrawal from union membership was based on religious beliefs under RCW 41.56.122.[10] Proceedings before the Commission under Chapter 391-95 WAC have been restricted, however, to

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[10] In point of fact, the complainant specifically denied any religious association claim; thus making the union's argument somewhat specious.

circumstances where public employees have alleged a right of non-association based on religious beliefs.[11] The existence of that statutory exception does not, as the union appears to argue, preclude the existence of other exceptions to union security obligations.

Applicability of "Summary Judgment" Procedure

The respondent's answer and affidavit did not deny any of the material facts alleged in the complaint. Upon a failure to answer, or a failure to deny, the facts are deemed to be true as alleged in the complaint, and the respondent is deemed to have waived its right to a hearing on the facts. WAC 391-45-210. The Commission's rule concerning summary judgment is:

> WAC 391-08-230 SUMMARY JUDGMENT. A summary judgment may be issued if the pleadings and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law. Motions for summary judgment made in advance of a hearing shall be filed on the agency and served on all other parties to the proceeding.

Based on the pleadings and admissions on file, including the statement of the union's counsel and the affidavit of union President Lively, it is the conclusion of the Examiner that there are no genuine issues as to any material facts in this case, and that the complainant is entitled to a judgment as a matter of law.

The Supreme Court in Abood, supra, and Hudson, supra, and the Commission in Brewster, supra, and Snohomish County, supra, have

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[11] See, Grant II, supra; Vancouver School District, Decision 224 (EDUC, 1977); City of Seattle, Decision 3344-A (PECB, 1990); Snohomish County, Decision 3579 (PECB, 1990).

clearly established the right of employees to pursue unfair labor practices charges concerning enforcement of union security in contravention of the federal constitution, and to prevail on such charges. Even more specifically on point, the specific defenses advanced by the respondent union here have been heard and rejected by the Commission in Spokane 9, supra:

> 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 undersigned Examiner can hold no differently. The complainant is entitled to a summary judgment in this matter.[12]

FINDINGS OF FACT

1. The Spokane Airport Board (Spokane International Airport) is a public employer within the meaning of RCW 41.56.030(1).

2. International Association of Fire Fighters, Local 1789, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate bargaining unit of non-supervisory fire fighter employees of the Spokane International Airport. The president of the local is Tim Lively.

3. At all times pertinent hereto, George R. Wickholm was employed as a fire fighter at the Spokane International Airport, and was a member of the bargaining unit represented by Local 1789.

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[12] The Examiner has considered, but does not impose, an "attorney fees" remedy in this case. Wickholm has not been represented by counsel; this local union has not engaged in repetitive conduct; and this case has been processed under "summary judgment" procedures.

4. The employer and union are signatories to a collective bargaining agreement covering the fire fighter bargaining unit. Union security provisions of that agreement require any employee who was not a member of the union to pay a monthly service fee to the union.

5. On February 28, 1991, Wickholm notified the union that he wished to withdraw his membership from the union, but that he was willing to pay "a fair assessment fee for representation".

6. On April 10, 1991, the union informed Wickholm that the "monthly service charge" would be the equivalent of the full "initiation fees, dues and lawful periodic assessments paid by a member of the Union".

7. On April 14, 1991, Wickholm asserted that the monthly service charge demanded by the union was excessive, and he requested that the union escrow all funds received in his name until the issue was resolved.

8. A notice was issued on April 16, 1992, informing the parties that a hearing had been set in this matter and specifying the date for the filing of the respondent's answer.

9. The answer filed by the respondent union on April 27, 1992 does not deny or controvert any of the factual allegations of the complaint. The affirmative defenses asserted by the respondent union are limited to matters of law.

10. On May 1, 1992, the Examiner directed the respondent to show cause why this case should not be disposed of by a summary judgment on the legal arguments.

11. In its response to the "show cause" directive filed on May 5, 1992, the respondent union acknowledged that its answer did

not dispute the factual allegations contained in the complaint. The respondent reiterated the points of law which it advanced as legal defenses. The affidavit of the president of Local 1789, submitted by the respondent union, does not controvert the material facts alleged in the complaint.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. Implementation of "union security" obligations on public employees under RCW 41.56.122 must be in conformity with the rights of such employees under the Constitution of the United States, including the right of public employees to limit their payments under an otherwise lawful union security clause to amounts reflecting the portion of the union's total expenses that are related to collective bargaining, contract and grievance administration, and also including the obligation on unions representing public employees, as a condition precedent to enforcement of union security obligations, to establish and maintain procedures to protect the constitutional rights of public employees who are compelled to make payments to the union under otherwise lawful union security provisions, so as to collect from objecting employees only that portion of the dues and initiation fees actually used for activities normally or reasonably related to implementing or effectuating the union's duties as the exclusive bargaining representative of employees in the bargaining unit.

3. The Public Employment Relations Commission has and asserts jurisdiction under RCW 41.56.140(1) and 41.56.150(2) to hear and determine "discrimination" unfair labor practice allegations concerning unlawful enforcement of union security

obligations by public employers and/or unions on public employees.

4. The notice requirements and procedures of Chapter 391-95 WAC are not applicable to "union security" issues other than the assertion of a right of nonassociation based on bona fide religious beliefs under RCW 41.56.122.

5. The "summary judgment" procedures of WAC 391-08-230 are properly invoked in this case, in the absence of any dispute as to the material facts.

6. By its failure to adopt, maintain, and implement procedures to protect the rights of employees under the Constitution of the United States as a condition precedent to enforcement of union security obligations, and by its failure to make and implement an apportionment of its dues upon the demand of George Wickholm, International Association of Fire Fighters, Local 1789, has committed unfair labor practices in violation of RCW 41.56.150(1) and (2).

ORDER

The International Association of Fire Fighters, Local 1789, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Enforcing union security obligations on employees for any period during which the union does not have in effect a procedure to protect the constitutional rights of employees, by collecting from objecting employees only that portion of the union's dues and initiation fees used

for activities normally or reasonably related to implementing or effectuating the union's duties as the exclusive bargaining representative of employees in the bargaining unit.

b. In any other manner interfering with, restraining or coercing its members in exercise of their collective bargaining rights secured by the laws of the State of Washington.

2. Take the following affirmative action to effectuate the purposes and policies of Chapter 41.56 RCW:

a. As a condition precedent to enforcing or threatening enforcement of an otherwise lawful union security obligation on employees, establish and maintain procedures to protect the constitutional rights of public employees who are compelled to make payments to the union, so as to collect from objecting employees only that portion of the union dues and initiation fees used for activities normally or reasonable related to implementing or effectuating the union's duties as the exclusive bargaining representative of employees in the bargaining unit. Such procedures shall provide objecting employees with a reasonably prompt opportunity to challenge the amount of the service fee before an impartial decision-maker.

b. For the period on and after February 28, 1991, provide George R. Wickholm with a notice reflecting the portion of the union's total expenses that are related to collective bargaining, contract administration and grievance adjustment, and provide a refund, with interest, of any "monthly service charge" monies collected or placed in escrow, that were not expended for activities

normally or reasonably related to implementing or effectuating the union's duties as the exclusive bargaining representative of employees in the bargaining unit.

c. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto 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.

d. Notify the above-named complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.

e. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following 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.

Entered at Olympia, Washington, this 18th day of September, 1992.

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 391-45-350.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

APPENDIX

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING ON A COMPLAINT CHARGING UNFAIR LABOR PRACTICES. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE WILL NOT enforce or threaten enforcement of union security obligations on employees for any period during which International Association of Fire Fighters, Local 1789, does not have in effect a procedure to protect the constitutional rights of employees, by collecting from objecting employees only that portion of the union dues and initiation fees used for activities normally or reasonably related to implementing or effectuating the union's duties as the exclusive bargaining representative of the bargaining unit.

WE WILL establish and maintain procedures to protect the constitutional rights of employees who are compelled to make payments to the union under a union security provision, including provision for a reasonably prompt opportunity to challenge the amount of the service fee before an impartial decision maker.

WE WILL provide George R. Wickholm with a notice reflecting the proportion of the union's total expenses on and after February 28, 1991, that were related to collective bargaining, contract administration and grievance adjustment, and will provide a refund, with interest, of any "monthly service charges" collected that were not expended for activities normally or reasonably related to implementing or effectuating the union's duties as the exclusive bargaining representative of employees in the bargaining unit.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DATED: _____

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 1789

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (206) 753-3444.