STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SPOKANE COUNTY, Employer	)	
THOMAS VELJIC, Complainant, vs. WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 1553, Respondent.	)	CASE 10730-U-93-2496 DECISION 4882-A - PECB CASE 10781-U-93-2506 DECISION 4883-A - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Thomas Veljic, appeared pro se.

Audrey Eide, General Counsel, appeared on behalf of the union.

On October 19, 1993, Thomas Veljic filed a complaint charging unfair labor practices with the Public Employment Relations Commission pursuant to Chapter 391-45 WAC, alleging that Local 1553 of the Washington State Council of County and City Employees, AFSCME, AFL-CIO, had attempted to enforce union security obligations upon him in excess of those permitted by law.[1] On November 15, 1993, Veljic filed a second complaint charging unfair labor practices with the Commission, this time alleging that Local 1553 had filed a grievance against him in reprisal for his earlier unfair labor practice complaint.[2] Those cases were consolidated for further proceedings under Chapter 391-45 WAC, and a hearing was

---

[1] Case 10730-U-93-2496.

[2] Case 10781-U-93-2506.

held in Spokane, Washington, on February 22, 1995, before Examiner Jack T. Cowan.[3] Local 1553 filed a post-hearing brief.

BACKGROUND

Local 1553 is the exclusive bargaining representative of approximately 400 employees of Spokane County in what is customarily described as a "courthouse" unit.

The employer and Local 1553 have been parties to a series of collective bargaining agreements. The classifications listed in the appendix to their contract include employees in the departments of: Assessor, auditor, treasurer, clerk, purchasing, printing and duplicating, system services, planning, prosecuting attorney, district clerk, courthouse building and grounds, parks and recreation, animal control, 911 emergency communications, building and safety, community development and community services, except those who work in a classification where another bargaining agent has been certified as the bargaining representative.

The following provisions were included in the collective bargaining agreement between the employer and Local 1553 for the period from January 1, 1993 through December 31, 1994:

---

[3] Excluded from the scope of that hearing, and from this decision, was a third complaint charging unfair labor practices which Veljic filed with the Commission on May 16, 1994. (Case 11126-U-94-2590). Allegations regarding enforcement of union security provisions in that complaint were found to be so lacking in detail as to fail to state a cause of action. The complainant was given a period of 14 days in which to file and serve an amended complaint, or face dismissal of those allegations. No response was received from the complainant, and the complaint in the third case was therefore dismissed as failing to state a cause of action. Spokane County, Decision 4884 (PECB, 1994).

ARTICLE II - UNION SECURITY

A. All employees hired in a department covered by this working agreement on or after July 1 1969, shall, as a condition of employment, become and maintain their membership in the union.

Each employee hired on or after execution date of this agreement shall, as a condition of employment, become a member of the union and remain in good standing thirty (30) days after being employed. Each employee shall be protected by RCW 41.56.122(1).

B. The employers shall deduct any union membership initiation fee, and, once each month, dues from the pay of those employees who individually authorize in writing that such deduction be made. The amounts to be deducted shall be certified to the county auditor by the union, and the aggregate deductions of all employees shall be remitted, together with an itemized statement to the W.S.C.C.C.E. after such deductions have been made.

That collective bargaining agreement was in effect at the time this controversy arose.

Thomas Veljic became a Spokane County employee in 1990. At that time, he worked in the employer's Planning Department, in a position within the "courthouse" bargaining unit. He became a member of Local 1553 in June of 1990.

The monthly union dues increased from $12 to $26 during the period of Veljic's employment, and Veljic alleged the dues had been raised without following the necessary requirement of a vote by the membership. On July 30, 1992, Veljic notified both the employer and union that he was withdrawing his authorization for payroll deduction of his union dues, and indicated he would pay by check. In March of 1993, Veljic stated he would pay only $12.00 per month. On August 20, 1993, he withdrew from membership in Local 1553, and thereafter refused to pay any dues at all. He explored arrange-

ments for paying a reduced fee,[4] but contended the union's procedure was incorrectly administered.[5] Local 1553 did not deny Veljic his right to apply for a reduced fee under its procedure.

Local 1553 is directly affiliated at levels: The first is with the American Federation of State, County and Municipal Employees, AFL-CIO (referred to herein as "AFSCME"); the second is with the Washington Council of County and City Employees, Council 2 of AFSCME (referred to herein as "WSCCCE"), which represents this and other local unions. Local 1553 is thus a sub-group of the council, and is subject to dictates of both the WSCCCE and AFSCME.

Employees in three separate WSCCCE locals, including Local 1553, challenged the chargeable percentage utilized to calculate their reduced union security fee. An arbitration was conducted in that dispute, and it was determined that the union had correctly administered the procedure. Although he inquired about his rights under Hudson, Veljic never attempted to be a participant in that procedure.

On a date not in evidence, but alleged by the union to have been October 5, 1993, the union contacted Planning Director Wallis D.

---

[4] Abood v. Detroit Board of Education, 431 U.S. 209 (1977), and its progeny, require that unions representing public sector employees limit the amounts exacted under a union security obligation to the employee's proportionate share of the union's expenses related to collective bargaining and contract administration. The requirement is rooted in the United States Constitution.

[5] Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986), requires that a procedure for collecting union security fees must be "carefully tailored", to avoid the risk that fees paid by dissenting employees will be used, "even temporarily, to finance ideological activities unrelated to collective bargaining". Hudson also required that "notice and adequate information" concerning the union security obligation must be given to all non-members "before any fees may be collected from them".

Hubbard to initiate a grievance concerning Veljic's refusal to pay union dues. On October 12, 1993, Hubbard routed the grievance to Human Resources Director Charles Wright, along with the following comments:

> Since this department and I as director have nothing to do with payroll deductions, I decline to adjust the grievance. I respectfully waive the steps dealing with this department and request the grievance be moved forward to the human relations department.

On October 22, 1993, the union filed an official, written grievance, stating:

> Spokane County and the planning department has failed to enforce article 2, the union security provision, as it relates to the refusal of planner Tom Veljic to follow this provision which is a condition of his employment; and any other provisions violated.

Veljic terminated his employment with the Planning Department on September 16, 1994, and no longer occupies a represented position with Spokane County.

POSITIONS OF THE PARTIES

The complainant contends the union has an improper Hudson procedure, that the union does not offer employees an opportunity to challenge their union security amounts at mid-year, and that the union continues to take fees which are improper.

The union argues that it exercises its right under the law and the collective bargaining agreement to have all employees covered by the agreement pay dues, as a condition of their employment. It contends that the union's fees are justifiable and correct, that

its fees have been explained in detail, that it correctly administers a Hudson procedure, and that it has provided all information requested by the complainant. The union denies that a grievance was filed in retaliation for the complainant having filed his initial complaint charging unfair labor practices.

DISCUSSION

The Allegation of Reprisals

Early in these proceedings, Veljic contended that the union's grievance was filed in retaliation for his having filed the unfair labor practice charges on October 19, 1993. His contention is refuted, however, by evidence which shows that the union's grievance was initiated with the Planning Department in early October, and that it was routed to the Human Relations Department by October 12, 1993. Thus, the grievance was initiated prior to the filing of Veljic's unfair labor practice complaint. Therefore, there was no retaliation.

Upon being apprised of the foregoing facts, Veljic acknowledged that his retaliation charges had been in error. The unfair labor complaint in Case 10781-U-93-2506 is therefore dismissed from further consideration.

The Union's Apportionment Obligations

This controversy arises under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. That statute provides, in relevant part:

> RCW 41.56.122 COLLECTIVE BARGAINING AGREEMENTS--AUTHORIZED PROVISIONS. A collective bargaining agreement may:

> (1) **Contain union security provisions:** PROVIDED, That agreements involving union security provisions must safeguard the right of non-association 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. ...
>
> [Emphasis by **bold** supplied.]

The Commission does not have the authority to rule on the legality, sense, or morality of union security agreements. Renton School District, Decision 924 (EDUC, 1980). In Abood v. Detroit Board of Education, 431 U.S. 209 (1977), the Supreme Court of the United States upheld the constitutionality of union security arrangements in the public sector, insofar as the union uses amounts collected for collective bargaining purposes. In Grant v. Spellman, 99 Wn.2d 815 (1983) [Grant II], the Supreme Court of the State of Washington indicated its intent to interpret RCW 41.56.122(1) in a manner which preserves the legitimacy of the state union security arrangements under the federal constitution.

When union security language exists in a collective bargaining agreement, as it does in this case, opportunities simply don't exist for covered employees to make choices about financial support for the union's core expenses.[6] Dues are uniform, with the possible exception of reductions for non-members, under Abood and Hudson, for political and social expenses unrelated to the union's collective bargaining functions. The Public Employment Relations

---

[6] There is nothing in evidence to indicate that Veljic at any time sought to re-direct his dues payments to a charity by claiming nonassociation status based on a religious objection.

Commission has found "discrimination" unfair labor practice violations for enforcement of union security obligations in a manner which puts implementation of the state law in conflict with the federal constitution,[7] but has declined to undertake the task of administering the procedures required by Hudson or making the apportionment computations required by Abood.[8]

There were four members of Local 1553 among the total of 13 fee challengers in the 1993 dues dispute. The arbitration centered on the **chargeable percentage** utilized to calculate the members' reduced fee paid to the WSCCCE. The union provided the challengers with its calculation of the fee chargeable, the procedure for registering an objection, and the procedure for challenging the accuracy of the union's calculation. The challengers were informed that 65.36% of the AFSCME per capita and 95.18% of the WSCCCE per capita for 1994 were chargeable. An individualized analysis of expenditures determined that 74.45% of Local 1553's expenditures were chargeable. The arbitrator cited Lehnert v. Ferris Faculty Association, 500 U.S. 507 (1991), in which the majority held that:

> [O]bjecting fee payers could be charged their pro-rata share of the chargeable activities of their local union's state and national affiliates, ... even if those activities were not performed for the direct benefit of the objecting employees' bargaining unit.

The arbitrator concluded that evidence presented by the union supported the conclusion that the expenses challenged by the fee challengers were chargeable. The process used by the union was also weighed and found to be acceptable by the arbitrator. The union provided similar information, and more, to Veljic and others who inquired concerning the dues apportionment process. Lacking

---

[7] Snohomish County (Washington State Council of County and City Employees), Decision 3705 (PECB, 1991).

[8] Brewster School District, Decision 2779 (EDUC, 1987).

any evidence to the contrary, it appears the union has met its obligations under Hudson.

The Dues Increases

The constitution of Local 1553, dated January 24, 1980, provides in part:

> ARTICLE IV - MEMBERSHIP AND DUES
>
> ...
> Section 3. The monthly membership dues of the local shall be $12.00 per member.
>
> ***
>
> ARTICLE VIII - MISCELLANEOUS PROVISIONS
>
> Section 1. This local shall at all times be subject to the provisions of the constitution of the American Federation of State, County and Municipal Employees.
>
> ***
>
> ARTICLE IX - AMENDMENTS
>
> This Constitution shall be amended, revised, or otherwise changed by a two-thirds vote of the members voting on such proposed change and such change shall take effect only upon written approval of the International President. Proposed amendments to this Constitution must be read at a regular or special meeting of the local union and read and voted on at a subsequent meeting of the local union, adequate and proper notice having been given to the membership prior to the date on which the vote is taken. A written copy of the proposed amendment shall be furnished to every eligible voter at the meeting at which the vote is taken.

The constitution of the WSCCCE, adopted August 2, 1991, provides, in relevant part:

> ARTICLE IV - FEES, TAXES AND DUES
>
> Section 1. (A) Members of locals affiliated with the State Council shall pay monthly dues

> of 1.3% of their base salary with a minimum of $10.00 and a maximum of $25.50 effective September 1, 1991; thereafter, the minimum and the maximum shall be adjusted accordingly to the International Constitutional formula January 1st of each year. This total amount of dues shall be deposited in the Trust Fund from which this increased amount would be placed in a special fund solely for use in the political action program. Each local and chapter shall receive the constitutionally specified rate for each employee affiliated with the local or chapter. The Council shall pay from the Council 2 Trust Fund a constitutionally required affiliation fee for each member.

The June 19, 1992, constitution of AFSCME provides, in relevant part:

> ARTICLE IX - Subordinate Bodies
>
> Section 6. The dues of each local union shall be adjusted annually in accordance with the average percentage increase in pay of AFSCME members and persons making service or similar payments to a local union in lieu of dues under agency shop or similar provisions as determined in accordance with Section 7 of this Article. For purposes of this section, the term "increase in pay" shall have the meaning provided in Article XII, Section 6, of the Constitution. That percentage increase shall be applied to the existing minimum dues amount in order to determine the amount of increase in dues and thereby establish a new minimum dues rate. The increase shall be allocated as follows: ten percent to the local union, sixty percent to the AFSCME council or councils with which the local is affiliated, and thirty percent to the International Union; provided that in the case of any local which is not affiliated with an AFSCME council or which is affiliated only with an AFSCME council which does not have as a primary purpose the providing of staff assistance for organizing, servicing and negotiations at the local level and with an AFSCME council that does not have such a primary purpose, the council portion of the increase shall be

> allocated entirely to the council that has the described purpose, and in all cases the amounts to be allocated shall be rounded to the nearest five cents. The International Secretary-Treasurer shall each year notify each subordinate body of the increased amount of dues as soon as possible after the certified calculation pursuant to Section 7 of this Article has been completed, and the increased dues shall be effective beginning with the month of January of the following year.

Thus, the dues structure applicable to members of Local 1553 is not created solely by the union local. It is additionally controlled by Council 2, which is governed, in turn, by direction from AFSCME. While members have input into the process, the final determinations are made by officials who are responding to the overview of the structural and financial needs of the total organization.

Rules and process do exist within the union constitutions, and are carefully monitored to insure conformity. Any claims of violation of the union constitutions at any level would, however, be matters of internal union affairs over which the Public Employment Relations Commission does not assert jurisdiction under Chapter 41.56 RCW.[9]

Cancellation of Dues Checkoff

In letters dated July 30, 1992, Veljic notified the employer and union that he was canceling his payroll deduction, and would be paying his dues by check. He stated that his justification derived from a card which gives union members the option of canceling payroll deduction and paying their dues by check.

---

[9] In making this statement, the Examiner does not imply that there would be any basis here for a challenge. There is nothing in evidence to show any deviation from rules or standards. It appears rates or fees have been properly established and maintained to align with all of the governing rules or regulations.

In response to an employer request, Spokane County Deputy Prosecuting Attorney Gerald Gessinger issued a legal opinion on October 27, 1993, stating that employees must authorize payroll deductions under the union security provision of the collective bargaining agreement, both as a requirement of membership in the union and as a requirement of employment. Language of the agreement which provides, "unless terminated by me upon sixty days written notice to the union in advance..." was interpreted to mean that the **original authorization** was contingent upon its not being terminated in writing sixty days in advance by the employee (emphasis by **bold** supplied). The opinion also stated that the employer agreed to deduct any union dues for "those employees who individually authorize in writing that such deductions be made". The Examiner finds that legal advice was incorrect, but that it had no effect in this dispute.

Dues checkoff is a statutory right of an incumbent exclusive bargaining representative under Chapter 41.56 RCW, upon authorization of a bargaining unit employee.[10] That differs from the situation in the private sector under the National Labor Relations Act, where dues checkoff is bargainable, but also differs from the situation under the Educational Employment Relations Act, Chapter 41.59 RCW, which makes dues checkoff mandatory for all employees covered by a union security provision.[11] Even the Commission's rule calling for escrow of disputed funds during the processing of a "nonassociation" dispute under Chapter 391-95 WAC recognize that an individual employee must authorize payroll deduction.[12] The right of employees to "authorize" is inherently accompanied by the

---

[10] See, RCW 41.56.110 and Snohomish County, Decision 2944 (PECB, 1988).

[11] See, RCW 41.59.100.

[12] WAC 391-95-130 provides that the escrow provision "shall be applicable to employees covered by Chapter 41.56 RCW only upon the employee submitting to the employer a signed authorization for the deduction".

right to refrain from authorizing a payroll deduction. An employee covered by Chapter 41.56 RCW cannot be compelled to utilize payroll deduction, as opposed to making payments by cash or check directly to the union.

The period when Veljic was only seeking to make his union security payments directly to the union was of short duration. Beginning in March of 1993, he invited lawful enforcement of the union security provision against him by stating that he would pay only $12.00 per month. Later, but still in advance of the erroneous legal advice, he refused to pay any dues at all. The timing of the effort to enforce union security puts it in response to the union being short-changed by Veljic, rather than in response to his desire to make direct payments.

FINDINGS OF FACT

1. Spokane County is a political subdivision of the state of Washington, and is a public employer under RCW 41.56.030(1).

2. Washington State Council of County and City Employees, Council 2, AFSCME, AFL-CIO, Local 1553, is the exclusive bargaining representative of employees in the Spokane County Planning Department.

3. Thomas Veljic was employed in the Spokane County Planning Department, in a position within the bargaining unit represented by Local 1553, from 1990 to September of 1994.

4. Spokane County and Local 1553 were parties to a 1991-1993 collective bargaining agreement which contained a union security provision. Thomas Veljic became a member of the union in 1990, pursuant to that contract.

5. Beginning in 1992, Veljic disagreed with the union concerning dues increases. On July 30, 1992, Veljic withdrew his authorization for dues checkoff and indicated he would make his dues payments directly to the union. By March of 1993, Veljic had limited his union dues payment to $12.00 per month. On August 20, 1993, he withdrew from union membership and ceased paying union dues.

6. Thomas Veljic has not asserted a right of nonassociation based upon bona fide religious tenets or teachings of a church or religious body.

7. Thomas Veljic did not join with other employees (including at least four other members of Local 1553) in processing a dispute concerning the union's apportionment formula and procedure to arbitration. The arbitrator who determined that dispute found that the union's apportionment formula was correct, and that the union's procedures for apportionment disputes were proper.

8. The union provided Veljic with the same information provided to the employees involved in the dispute described in paragraph 7 of these findings of fact. Veljic continued to resist the reduced amount demanded by the union as his proportionate share of the union's expenditures for collective bargaining and contract administration.

9. On or about October 5, 1993, the union made a request of Spokane County for enforcement of the union security provision against Thomas Veljic. The employer official who received that request did not take immediate action on it, and routed the request to the employer's Human Resources Department by October 12, 1993.

10. On October 19, 1993, Veljic filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the union's attempts to enforce union security provisions of the collective bargaining agreement were in excess of those permitted by law.

11. On October 22, 1993, the union filed an official written grievance with the employer, alleging that Spokane County was in violation of the collective bargaining agreement by failing to enforce the union security provision on Thomas Veljic, based on his refusal to pay union dues.

12. On November 15, 1993, Veljic filed an additional complaint charging unfair labor practices against the union, alleging that the union had filed a grievance against him because of his having filed the unfair labor practice charge on October 19, 1993. Veljic subsequently acknowledged that the facts and theory of the complaint filed November 15, 1993 were in error.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. Thomas Veljic has abandoned the complaint charging unfair labor practices filed in Case 10781-U-93-2506, so that it is subject to dismissal under RCW 41.56.160 and WAC 391-45-270 for lack of prosecution.

3. The complaint charging unfair labor practices filed in Case 10730-U-93-2496 was untimely under RCW 41.56.160, with respect to any statements made or actions taken by the union in July or August of 1992, at or around the time when Veljic withdrew his authorization for payroll deduction of union dues.

4. By its actions in October of 1993 to enforce union security provisions permitted by RCW 41.56.122(1) and contained within a collective bargaining agreement then in effect between it and Spokane County, Local 1553 has not committed, and is not committing, any unfair labor practice under RCW 41.56.150.

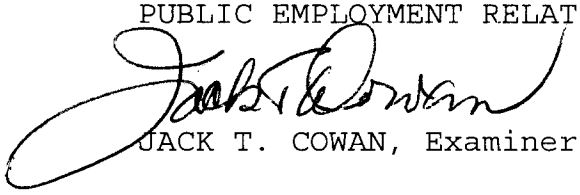
ORDER

1. The complaint charging unfair labor practices filed in Case 10730-U-93-2496 is DISMISSED on the merits.

2. The complaint charging unfair labor practices filed in Case 10781-U-93-2506 is DISMISSED for lack of prosecution.

DATED at Olympia, Washington, this 3rd day of October, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JACK T. COWAN, Examiner

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.