

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of a dispute concerning the obligations of:	)	
SUSAN WIGGS	)	CASE 20711-N-06-0053
Under union security provisions of a collective bargaining agreement between:	)	DECISION 9959 - EDUC
VANCOUVER SCHOOL DISTRICT	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
and	)	
VANCOUVER EDUCATION ASSOCIATION	)	

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Michael J. Gawley, Attorney at Law, for the union.

Thomas F. Klein, Attorney at Law, for the employee religious objector.

On October 18, 2006, the Vancouver Education Association (union), an affiliate of the Washington Education Association, filed a petition for ruling on nonassociation claim with the Public Employment Relations Commission. On November 28, 2006, Commission staff issued a preliminary ruling finding a cause of action existed regarding Susan Wiggs' s designation of a charitable organization to receive her alternative union security payments. I held a hearing on February 26, 2007, and March 21, 2007. The Vancouver School District (employer) is not a party and did not participate in the hearing or other proceedings.

ISSUES PRESENTED

This case raises a question of first impression and requires me to address the following two interconnected issues:

- 1A. Which charity should be designated to receive Susan Wiggs' s alternative union security payments made in lieu of her regular dues and fees to the union?
- 1B. If Wiggs proves her designated organization is both nonreligious and a charity, does Washington law require the union to agree to her designation?

I find Washington law requires the union to agree to Wiggs' s designation of Shared Hope International (SHI) to receive her alternative union security payments, once Wiggs proves SHI is both nonreligious and a charity.

FACTS

The Educational Employment Relations Act, Chapter 41.59 RCW, permits employers and unions to include "union security" provisions in their collective bargaining agreements. Union security provisions obligate some or all of the bargaining unit employees to pay dues and fees to the union which represents them as a condition of continued employment. The Act also provides employees the right to make alternative payments of union dues and fees to a nonreligious charity if the employees' religious beliefs prevent them from associating with the union. The Act designates the Commission to

resolve nonassociation disputes between unions and employee religious objectors.

Susan Wiggs is a certificated teacher in the Vancouver School District. Wiggs, who has an undergraduate degree in French and Spanish and a graduate degree in linguistics, teaches English to children from other cultures. In August 2005, Wiggs wrote the union and requested nonassociation status. In January 2006, the union agreed to her request and recognized Wiggs as a religious objector. At the hearing, the union confirmed that Wiggs was entitled to the right of nonassociation, and no evidence was presented regarding the issue of whether Wiggs had bona fide religious beliefs that prevented her from joining the union.

The union and Wiggs disagreed regarding the charity that should be designated to receive Wiggs's alternative payments made in lieu of her regular dues and fees to the union. The union denied Wiggs's request that her alternative payments be redirected to SHI. The union informed Wiggs her alternative payments would be placed in an interest-bearing escrow account pending resolution of the disagreement.

The union initially did not provide Wiggs with a clear explanation regarding why it denied her request to redirect her alternative payments to SHI. At the hearing, for the first time, the union explained that it would approve Wiggs's designation of an organization if the organization met three unpublished criteria: (1) the organization is a nonreligious Internal Revenue Code section 501(c)(3) charity; (2) the charity benefits children; and (3) the charity provides services primarily to local beneficiaries -- beneficiaries in the geographic area of Vancouver, Washington. At the hearing, the union stated SHI met the first two criteria. The union would not agree to SHI because the union believed SHI's primary mission was worldwide, not local to the Vancouver area.

SHI's main mission is to intervene and rescue women and children in crisis because they have been, or are about to be, sold into prostitution or sex slavery. SHI is a nonreligious Internal Revenue Code section 501(c)(3) charity whose home office is located in Vancouver, Washington. SHI has an office in Washington D.C. and performs most of its work in numerous foreign countries.

SHI runs two local programs in the Vancouver area. SHI's first local program is the Women's Investment Network (WIN), which started in 2000. The WIN program provides education and job skills training to at-risk women with children, so the mothers can support their families. In 2006, SHI spent approximately \$90,000 on the WIN program. The second local program is Defenders USA, which was started in June 2006. The main goal of Defenders USA is to prevent men from exploiting women and children.

The union and Wiggs disagree regarding whether the union must agree to the charity Wiggs designates. The union argues it has the authority to approve or disapprove any nonreligious charity Wiggs proposes, here SHI. Wiggs argues the union must approve her designation of SHI, so long as SHI is both nonreligious and a charity. The disagreement centers around the interpretation and application of RCW 41.59.100.

#### LAW AND ANALYSIS

RCW 41.59.100 (underlining added) provides that a religious objector can make alternative payments "to a nonreligious charity or to another charitable organization mutually agreed upon," and reads in pertinent part as follows:

RCW 41.59.100 UNION SECURITY PROVISIONS SCOPE AGENCY  
SHOP PROVISION, COLLECTION OF DUES OR FEES. . . . Such  
employee shall pay an amount of money equivalent to regular  
dues and fees to a nonreligious charity or to another  
charitable organization mutually agreed upon by the employee  
affected and the bargaining representative to which such

employee would otherwise pay the dues and fees. . . . If the employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization.

The union and the employer agreed to a collective bargaining agreement that was effective from August 16, 2005, to August 15, 2007. Article 3.6 in the collective bargaining agreement contains language identical to the disputed language in RCW 41.59.100, which is underlined in the preceding paragraph. (fn: 1)

fn: 1 Similar provisions are also found in RCW 41.56.122(1) (Public Employees' Collective Bargaining Act); RCW 41.80.100(2) (State Collective Bargaining Act); RCW 41.76.045(3) (faculty at public four-year institutions of higher education); RCW 28B.52.045(3) (faculty at community and technical colleges).

Each party relies upon a different interpretation of the statute based upon the meaning it attributes to the phrase before, and the phrase after, the word "or." Wiggs cites *Grant v. Spellman*, 99 Wn.2d 815 (1983) (Grant II) and other cases for the proposition that courts presume the word "or" in a statute is disjunctive unless clear legislative intent indicates the contrary. Wiggs argues the disputed language offers two choices that are separated by the word "or": (1) a religious objector can designate "a nonreligious charity" without union approval; or (2) a religious objector can designate "another charitable organization," like a religious charity, but only if the charity is "mutually agreed upon" by both the objector and the union.

The union challenges Wiggs' position that the disputed language offers an "either or" choice between the phrase before, and the phrase after, the word "or" in the statute. The union argues the phrase "mutually agreed upon" modifies both "a nonreligious charity" (the phrase before the "or") and "another charitable organization" (the phrase after the "or"). If I accept the union's interpretation, a religious objector can designate a nonreligious charity only if the union agrees to the designation.

When interpreting a labor relations statute it administers, the Commission accords the statute its plain and ordinary meaning - unless the statute is ambiguous. *State - Transportation*, Decision 8317-B (PSRA, 2005). When a statute is ambiguous, courts rely upon legislative history and rules of statutory construction to determine meaning. In *re Sehome Park Care Center*, 127 Wn.2d 774 (1995). A statute is ambiguous if the statute is subject to more than one reasonable interpretation. *Central Washington University*, Decision 8127-A (FCBA, 2004) (case citations omitted).

I find the disputed language in RCW 41.59.100 is ambiguous because the union and Wiggs each rely upon different reasonable interpretations of the statute. Legislative history provides no information regarding the legislature's intent when it adopted RCW 41.59.100. Absent any legislative history, I must rely upon rules of statutory construction to interpret the statute.

The "last antecedent rule," described in detail in *Sehome Park Care Center*, is the rule of statutory construction that best explains how to interpret RCW 41.59.100: "The last antecedent rule provides that, unless a contrary intention appears in the statute, qualifying words and phrases refer to the last antecedent." Applying the last antecedent rule to RCW 41.59.100, the qualifying words "mutually agreed upon" modify the last antecedent, "another charitable organization," and do not modify the first antecedent, "a nonreligious charity."

The absence of a comma before the qualifying phrase "mutually agreed upon" further supports the conclusion that the qualifying phrase modifies only "another charitable organization" and does not modify "a nonreligious charity." A corollary to the last antecedent rule is the rule that "the presence of a comma before the qualifying

phrase is evidence the qualifier is intended to apply to all antecedents instead of only the immediately preceding one." In re Smith, 139 Wn.2d 199 (1999) (citing Sehome Park Care Center). The union's argument that the qualifying phrase "mutually agreed upon" modifies both antecedent phrases would be persuasive only if a comma preceded the qualifying phrase. It does not. The absence of a comma before the qualifying phrase "mutually agreed upon" confirms that the qualifying phrase modifies only the last antecedent, "another charitable organization," and does not modify the first antecedent, "a nonreligious charity."

Even if I did not apply the last antecedent rule, the result would be the same. The legislature had strong reasons to draft RCW 41.59.100 so the phrase "mutually agreed upon" modifies the phrase "another charitable organization." The legislature required mutual agreement to designate "another charitable organization" a religious organization - to avoid constitutional problems that would result if the Commission, a state agency, designated a religious charity to receive a religious objector's alternative payments. The legislature structured RCW 41.59.100 to allow the designation of a religious organization but only if the parties mutually agree and the Commission is not involved in the designation. The legislature drafted RCW 41.59.100 to allow the Commission only to designate "a nonreligious charity" to avoid constitutional problems if a state agency designated a religious charity. Requiring the Commission not to participate in designating a religious charity avoids establishment of religion concerns and avoids separation of church and state problems in both the United States and Washington State Constitutions. City of Seattle, Decision 5378-A (PECB, 1996).

The union argues that a decision holding the "mutually agreed upon" qualifying phrase does not modify "a nonreligious charity" would nullify the last sentence in RCW 41.59.100, which reads as follows: "If the employee and the bargaining representative do not reach agreement on such matter, the Commission shall designate the charitable organization." The union argues the last sentence in RCW 41.59.100 requires the union to agree when a religious objector designates "a nonreligious charity." I disagree.

The last sentence in RCW 41.59.100 authorizes the Commission to resolve disagreements that may arise when a religious objector designates "a nonreligious charity." For example, the union could disagree that the designated organization is a charity. That is precisely what happened in King County, Decision 5595 (PECB, 1996), when the religious objector designated a school district in Texas. The examiner ruled the school district was not a charity and, in the absence of viable alternative suggestions from the religious objector, the examiner designated a nonreligious charity proposed by the union.

Further, the last sentence in RCW 41.59.100 also authorizes the Commission to resolve disagreements that may arise when a religious objector designates an organization that the union believes does not meet the "nonreligious" requirement. For example, a previous Commission decision addressed a situation where the religious objector designated a university sponsored by the Roman Catholic Church. The examiner ruled the university did not meet the "nonreligious" requirement. In the absence of viable alternative suggestions from the objector for another nonreligious charity, the Commission designated a nonreligious charity proposed by the union. City of Seattle, Decision 5378-B (PECB, 1996); City of Seattle, Decision 5378-A (PECB, 1996); City of Seattle, Decision 5378 (PECB, 1995).

## CONCLUSION

I find RCW 41.59.100 requires the union to agree to Wiggs' designation of an organization to receive her alternative dues payments once she proves the designated organization is both nonreligious and a charity. (fn: 2) Wiggs met her burden of proof. Wiggs' alternative payments shall be made to Shared Hope International.

fn: 2 The conclusion the statute should be interpreted to allow Wiggs to designate a nonreligious charity without union agreement is consistent with brief statements made in two Commission decisions. See Olympia School District 111, Decision 1963 (EDUC, 1984), and the dissenting opinion in King County, Decision 591-A (PECB, 1979), cited with approval in Grant II.

#### FINDINGS OF FACT

1. The Vancouver School District (employer) is a public employer within the meaning of RCW 41.59.020(5).
2. The Vancouver Education Association (union), an employee organization within the meaning of RCW 41.59.020(1), is the exclusive bargaining representative under RCW 41.59.020(6) of all nonsupervisory certificated employees who work for the Vancouver School District.
3. The union and the employer were parties to a collective bargaining agreement effective from August 16, 2005, to August 15, 2007. The collective bargaining agreement contains a union security clause which includes the same language as RCW 41.59.100 and authorizes a religious objector to make alternative payments "to a nonreligious charity or to another charitable organization mutually agreed upon."
4. Susan Wiggs is a certificated employee of the Vancouver School District, within the bargaining unit represented by the Vancouver Education Association. Wiggs teaches English to children from other cultures.
5. Wiggs asserted a right of nonassociation, which the union granted. The union agreed Wiggs is a religious objector and that she is entitled to nonassociation rights.
6. Wiggs designated Shared Hope International (SHI) to receive her alternative union security payments made in lieu of her regular dues and fees to the union. SHI's main mission is to intervene and rescue women and children in crisis because they have been, or are about to be, sold into prostitution or sex slavery. SHI, whose home office is located in Vancouver, Washington, performs most of its work in numerous foreign countries. SHI runs two local programs in the Vancouver area, Women's Investment Network (WIN) and Defenders USA. SHI is a nonreligious Internal Revenue Code section 501(c)(3) charity.
7. The union disagreed with Wiggs's designation of SHI. The union approves a religious objector's designation of a nonreligious charity if the charity meets three unpublished criteria: (1) the organization is a nonreligious Internal Revenue Code section 501(c)(3) charity; (2) the charity benefits children; and (3) the charity provides services primarily to local beneficiaries -- beneficiaries in the geographic area of Vancouver, Washington. The union denied Wiggs's designation of SHI because the union believed SHI's primary mission was worldwide, not local to the Vancouver area.
8. The union and Wiggs were not able to agree on the charitable organization to receive Wiggs's alternative payments made in lieu of regular dues and fees to the union. On October 18, 2006, the Vancouver Education Association, an affiliate of the Washington Education Association, filed a petition with the Commission seeking resolution of the disagreement between the union and Wiggs, regarding Wiggs's designation of SHI to receive her alternative payments.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.59 RCW and Chapter 391-95 WAC.

2. The organization designated by Wiggs, Shared Hope International, described above in Finding of Fact 6, is a nonreligious charity qualified to receive alternative payments within the meaning of RCW 41.59.100.
3. RCW 41.59.100 requires the union to agree to a religious objector's designation of an organization to receive alternative dues payments once the objector proves the designated organization is both nonreligious and a charity.

ORDER

1. Wiggs's alternative payments shall be made to Shared Hope International.
2. If the union does not file a notice of appeal with the Public Employment Relations Commission within 20 days following the date of this order: (a) the union shall comply with WAC 391-95-130 and release all funds currently held in an interest-bearing escrow account to Shared Hope International; and (b) the employer and employee shall comply with WAC 391-95-310 and make all future alternative payments to Shared Hope International.
3. If the union files a timely notice of appeal with the Public Employment Relations Commission, the union's filing shall automatically stay the effect of this order pending a ruling by the Commission.

Issued at Olympia, Washington, on this <u> 22nd </u> day of January, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JOEL GREENE, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-95-270.