

ALASKA LABOR RELATIONS AGENCY
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JOHN J. EGENOLF,)
Petitioner,)
vs.)
UNITED ACADEMICS, AAUP/AFT, AFL-CIO,)
Respondent,)
and)
UNIVERSITY OF ALASKA,)
Intervenor.)
_____)
Case No. 98-888-RE)

DECISION AND ORDER NO. 241

Digest: A "long-standing moral and philosophical objection" to membership in a labor organization does not, by itself, constitute a *bona fide* religious conviction supporting a religious exemption under AS 23.40.225.

DECISION

Statement of the Case

On May 6, 1998, John Egenolf, Ph.D., filed a claim for exemption from membership in United Academics AAUP/AFT, AFL-CIO (United Academics), the union authorized to represent his bargaining unit at the University of Alaska. United Academics objected to Egenolf's request on May 8, 1998. This matter was set for decision on the written record. The record closed on December 4, 1998 after the parties were given the opportunity to file documents and written arguments.¹

Panel: Alfred L. Tamagni, Sr., Chair, and Karen Mahurin and Robert A. Doyle, Members, participating after review of the record.

Appearances: John Egenolf represented himself in this petition. Attorney James A. Gasper represented United Academics.

Procedure in this case is governed by 8 AAC 97.350. Hearing examiner Mark Torgerson presided.

ISSUE

Does a personal, moral philosophical objection to participation in a labor organization constitute evidence sufficient to obtain a religious exemption from the requirement of membership in the organization?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

We find United Academics, AAUP/AFT, AFL-CIO (United Academics) is the recognized bargaining representative of a faculty bargaining unit at the University of Alaska. We further find Associate Professor Egenolf belongs in that unit. However, Egenolf asserts he should not be required to pay dues to United Academics. Along with his claim for exemption, he filed a notarized statement that said in relevant part:

"I, John J. Egenolf, Associate Professor of Mathematics in the Department of Mathematical Sciences at the University of Alaska, Anchorage do testify that I have a long-standing moral and philosophical objections to participating in any union, including the newly formed United Academics Union at the University of Alaska, and am not in good conscience able to pay any union dues, agency fees, initiation fees, assessments, or any other financial contributions to such an organizations." [sic]

Egenolf proposed making a once-per-year payment to the Anchorage Rescue Mission. He did not provide any other information supporting his claim for exemption.

In its "Motion to Dismiss Petition" filed September 30, 1998, United Academics asserts that Professor Egenolf's sworn statement does not contain "a single profession of religious preference. There is, in fact, a complete absence of any reference to any 'bona fide religious' conviction that would support his petition." (United Academics motion at 2).

AS 23.40.225 provides in relevant part:

Notwithstanding the provisions of AS 23.40.220, a collective bargaining settlement reached, or agreement entered into, under AS 23.40.210 that incorporates union security provisions, including but not limited to a union shop or agency shop provision or agreement, shall safeguard the rights of nonassociation of employees having bona fide religious convictions based on tenets or teachings of a church or religious body of which an employee is a member. Upon submission of proper proof of religious conviction to the labor relations agency, the agency shall declare the employee exempt from becoming a member of a labor organization or employee association.

In *Evelyn M. Barefoot vs. Northwest Arctic Education Association*, Case No. 94-254-RE, Decision and Order No. 171 (February 8, 1994), a Northwest Arctic School District teacher requested an exemption under section 225. She was a 15-year member of the Alaska Yearly Meeting of Friends Church. The church did not have a tenet addressing union membership, nor did its principles specifically prohibit association with or membership in a labor organization. Barefoot, the teacher, based her objection on her personal opposition to the principles and causes of the labor organization, not on specific tenets or teachings of her church.

The *Barefoot* panel denied her claim. The panel pointed out that Alaska's exemption statute is similar to section 19 of the Taft-Hartley Act, 29 U.S.C.A. § 169. The panel stated: "Section 19 has been strictly construed by the National Labor Relations Board and does not include an exemption for personal religious beliefs. *See generally* 2 Patrick Hardin, *The Developing Labor Law* 1499-1500 (3d ed. 1993)."²

Like our finding regarding the petitioner in *Barefoot*, we find Professor Egenolf bases his claim on personal opposition rather than tenets or teachings of a church of which he is a member. Based on the record before us, we find Associate Professor Egenolf did not claim or submit proof that he is a member of a church or religious body. We find he also did not mention or provide any evidence supporting "bona fide religious convictions based on tenets or teachings of a church or religious body . . ." Therefore, we find no evidence supporting his claim for an exemption under AS 23.40.225. We find that as a threshold matter, a petitioner triggers the applicability of AS 23.40.225 by providing evidence of "bona fide religious convictions." A "moral and philosophical" opposition to union membership does not equate to an objection based on religious convictions.

Without any such supporting evidence, we cannot grant an exemption under AS 23.40.225. We conclude Associate Professor Egenolf has failed to prove his claim by a preponderance of the evidence. Accordingly, his claim for the religious exemption must be denied.³

ORDER

1. John J. Egenolf's claim for a religious exemption under AS 23.40.225 is denied and dismissed.
2. The University of Alaska is ordered to post a notice of this decision and order at all work sites where members of the bargaining unit affected by the decision and order are employed or, alternatively, serve each employee affected personally. 8 AAC 97.460.

ALASKA LABOR RELATIONS AGENCY

Alfred L. Tamagni Sr., Chair

Robert A. Doyle, Board Member

Karen Mahurin, Board Member

APPEAL PROCEDURES

This order is the final decision of this Agency. Judicial review may be obtained by filing an appeal under Appellate Rule 602(a)(2). Any appeal must be taken within 30 days from the date of filing or distribution of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the order in the matter of JOHN J. EGENOLF vs. UNITED ACADEMICS, AAUP/AFT, AFL-CIO, and UNIVERSITY OF ALASKA, Case No. 98-888-RE, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 15th day of December, 1998.

Margie Yadlosky

Personnel Specialist I

This is to certify that on the 15th day of December, 1998, a true and correct copy of the foregoing was mailed, postage prepaid to

John Egenolf, Ph.D. Larry Weiss, United Academics James A. Gasper, attorney Mike Hostina, University of Alaska

Signature

¹The record originally closed on October 2, 1998. However, due to an oversight, the University of Alaska was not included as intervenor in the case. The University was sent notice and opportunity to respond on November 23, 1998. In the event the University filed a response, Dr. Egenolf and United Academics were given a brief reply period.

²*But see Wilson v. NLRB*, 920 F.2d 1282, 135 L.R.R.M. (BNA) 3177 (6th Cir. 1990). There the United States Court of Appeals for the Sixth Circuit declared section 19 unconstitutional for confining the exemption to members of particular religious organizations. Associate Professor Egenolf did not contend our statute was unconstitutional. Even if he did, constitutional challenges to statutes are reserved for the judicial branch, not an executive branch agency. "Administrative agencies are not in the business of deciding challenges to the constitutionality of statutes that govern their proceedings." *Murdock v. Anchorage School District*, 3 AN-91-9238 CI at 5 (Alaska Super. Ct. November 20, 1992). As further noted above, we find Egenolf has not requested an exemption based on religious grounds.

³The United States Supreme Court has held that nonunion members, through the payment of agency fees, may not be required to fund union expenses that are not related to collective bargaining. *Abood v. Detroit Board of Education*, 431 U.S. 209, 234-235, 95 L.R.R.M. (BNA) 2411 (1977). Another court stated: "[T]he First Amendment protects people from having to put their money where their mouth isn't." *Grunwald v. San Bernardino City Unified School District*, 994 F.2d 1370, 1373, 143 L.R.R.M. (BNA) 2305, 2306 (9th Cir. 1993). In other words, the law allows an employee to be a service fee payer rather than pay full membership fees.