

Work as Key to the Social Question

The Great Social and Economic Transformations and the Subjective Dimension of Work



A Court Case on Catholic Labor Doctrine: Subsidiarity vs. Compelled Union Contributions

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PRECIS OF PAPER

This presentation is based on a trial which took place before an Administrative Law Judge of the State of Illinois Educational Labor Relations Board (IELRB) in 1990. The second author was the Objector in the case. The first author acted as the attorney for the Objector and also as an expert witness for the Objector in that trial.

The Objector was a faculty member in a state university where wages and benefits were determined by a negotiated agreement between the university's Board of Governors and a collective bargaining agent, the University Professionals of Illinois (hereafter known as the UPI). Faculty members who were not dues-paying members of the UPI were required by terms of the agreement to pay a "fair share" amount equivalent to union dues to the UPI, since the UPI negotiated on behalf of all faculty members, whether they belonged to the UPI or not.

The agreement allowed conscientious objectors to this provision to apply for an exception to this provision if the conscientious objection was based on religious grounds. The Objector applied as a Catholic and was denied exception. She then appealed to the State of Illinois Educational Labor Relations Board and a trial was held on the merits of the case.

The Objector argued that there is a valid basis in the papal encyclicals and conciliar documents of the Catholic Church for a conscientious objection based on the principle of subsidiarity, even though the Church has historically supported the concept of trade unionism. She contended that the Church defends both the rights of the individual and the

rights of the community.

The paper will present the essential testimony from the trial. In section A, a summary of the case taken from the Objector's post-hearing brief will be given. In section B, an interpretive history of encyclical and conciliar Catholic teaching on trade unionism - including *Rerum Novarum*, *Quadragesimo Anno*, *Mater et Magistra*, *Pacem in Terris*, *Gaudium et Spes*, and *Laborem Exercens* - will be given. Section B concludes with some reflections on conscientious objection by the attorney for the Objector. Finally, in section C, the judgment in the trial - a finding for the Objector - will be given.

A. CASE SUMMARY TAKEN FROM THE OBJECTOR'S POST-HEARING BRIEF

I. STATEMENT OF THE CASE

Case No. 89-FS-0257-S was remanded for hearing by the Illinois Educational Labor Relations Board (IELRB) on issues limited to religious objection in an Order dated April 27, 1990. This case was later consolidated by the IELRB with Case No. 90-FS-0079-S which had been brought by the Objector, Josephine C. Barger, on an identical matter. A pre-hearing conference on the matter was held in Springfield on May 10, 1990. A hearing on the matter was held in Springfield on June 12, 1990.

II. FACTS

The Objector, Josephine C. Barger, has been employed as an Academic Advisor at Eastern Illinois University since 1977. She was educated largely in Catholic schools, including post-graduate education at several Catholic universities. Her post-graduate education included explicit coursework in the social teachings of the Catholic Church. She is presently a Catholic in good standing and serves as an Extraordinary Eucharistic Minister at St. Charles Catholic Church, Charleston, Illinois, as well as at the Catholic Newman Community at Eastern Illinois University.

Mrs. Barger testified at the hearing on June 12 that she holds a religiously based conscientious objection to any and all forms of support for the collective bargaining processes conducted on her behalf by the University Professionals of Illinois (UPI). She based her objection on the teachings of the papal encyclicals and ecumenical council documents of the Catholic Church, which teachings indicate that the rights of the collective must be tempered by the rights of the individual. She particularly made note of Catholic teaching regarding the Principle of Subsidiarity which states that the rights of an individual must not be conceded to a group if these rights can be exercised more effectively by the

individual. She indicated that she believed that such was the situation in her own case.

Dr. Robert N. Barger, who holds a Ph.D. in History and a Masters degree in Theology and has taught courses in Catholic theology, testified as an expert witness in support of Mrs. Barger's theological interpretation. Also, under cross-examination, he testified to the sincerity and authenticity of her belief and religious conscientious objection. He indicated that he was in a position to so testify since he had been her husband for the past thirteen years and he and his wife had often discussed the matter of her objection. He indicated that he himself does not have a similar conscientious objection and is in fact a dues-paying member of the union to which his wife objects. However, he indicated that he respects her belief and is convinced that her belief does have a valid basis in Catholic theology.

Monsignor George Higgins, an expert witness called by the UPI, questioned the theological basis of the Objector's religious conscientious objection - but testified under cross-examination that he would not judge that the Objector was in bad conscience concerning her belief.

III. ARGUMENT

The Illinois Educational Labor Relations Act (IELR Act) states that "Agreements containing a fair share agreement must safeguard the right of non-association of employees based on bona fide religious tenets or teaching of a church or religious body of which such employees are members." Para. 1711.#11.

The Roman Catholic Church has been primarily concerned, in its fundamental social teaching over the past century, with a defense of the right of oppressed laborers to unionize. Given the need to concentrate on the rights of these oppressed laborers, it is understandable that the Church has not at the same time articulated at length the rights of other non-oppressed workers who choose not to be associated with unions and who wish to retain their independent status. Even so, there are still to be found occasional statements in Church teaching defending the rights of such people who do not want to be associated with unions. Although these statements are not the main emphasis of Church teachings, it should be noted that they are official Church teachings. In other words, they are not what a jurist might simply refer to as "dicta." These statements - even though there be few of them - afford the same theological underpinning to those who resist union affiliation as do the more frequent teachings which speak of the right to affiliate with a union.

Given the difficulty of demonstrating the presence of a conscientious objection and an adherence to what might be termed this "less-underscored" or "less-stressed" type of Church teaching, the following Supreme Court citations seem pertinent:

"As Mr. Justice Douglas said in *United States V. Ballard*, 322 U.S. 78, 86 (1944): 'Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious

experiences which are as real as life to some may be incomprehensible to others." Quoted in *United States v. Seeger*, 380 U.S. 163, 184 (1965).

"The determination of what is a 'religious' belief or practice is more often than not a difficult and delicate task, as the division in the Indiana Supreme Court attests. However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 714 (1981).

Even more important is this further citation from Thomas: "The guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect. Particularly in this sensitive area, it is not within the juridical function and juridical competence to inquire whether the petitioner or his fellow worker [who in the Thomas case was also a Jehovah's Witness] more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation." *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 715-716 (1981).

The Hearing Officer made an explicit request at the hearing on June 12 that the following question be addressed in this post-hearing brief: must a religiously based conscientious objection be based on specific bona fide religious tenets or teachings of a church or religious body in order to be protected by the IELR Act? In order to answer that question, the case of *Frazee v. Illinois Department of Employment Security*, 489 U.S. 829, 109 S. Ct. 1514 (1989) must be considered. The following is a quote from the Syllabus of that opinion:

Appellant, who refused a temporary position offered to him by Kelly Services because the job would have required him to work on Sunday, applied for, and was denied, unemployment compensation benefits. The denial was affirmed by an administrative review board, an Illinois Circuit Court, and the State Appellate Court, which found that since appellant was not a member of an established religious sect or church and did not claim that his refusal to work resulted from a tenet, belief, or teaching of an established religious body, his personal professed religious belief, although unquestionably sincere, was not good cause for his refusal to work on Sunday.

Held: The denial of unemployment compensation benefits to appellant on the ground that his refusal to work was not based on tenets or dogma of an established religious sect violated the Free Exercise Clause of the First Amendment as applied to the States through the Fourteenth Amendment. *Sherbert V. Verner*, 374 U.S. 398, *Thomas v. Review Bd. of Indiana Employment Security Div.*,

450 U.S. 707, and *Hobbie V. Unemployment Appeals Comm'n of Florida*, 480 U.S. 136, rested on the fact that each of the claimants had a sincere belief that religion required him or her to refrain from the work in question, not on the consideration that each of them was a member of a particular religious sect or on any tenet of the sect forbidding such work. While membership in a sect would simplify the problem of identifying sincerely held beliefs, the notion that one must be responding to the commands of a particular religious organization to claim the protection of the Free Exercise Clause is rejected. The sincerity or religious nature of appellant's belief was not questioned by the courts below and was conceded by the State, which offered no justification for the burden that the denial of benefits placed on appellant's right to exercise his religion. The fact that Sunday work has become a way of life does not constitute a state interest sufficiently compelling to override a legitimate free exercise claim, since there is no evidence that there will be a mass movement away from Sunday employment if appellant succeeds on his claim. [Slip opinion, pp. 1-2].

It is clear from *Fraze* that the answer to the Hearing Officer's question is that the Objector need not base her objection on a particular religious tenet or teaching in order to receive protection under the Free Exercise Clause. The Illinois Local Labor Relations Board (LLRB) has reached the same conclusion in interpreting language identical to that of the IELR Act which is found in Section 6(g) of the Illinois Public Labor Relations Act, Ill. Rev. Stat. ch. 48, par. 1606(g). *AFSCME, Council 31 (House-Rhodes)*, 5 Pen 3011 (LLRB, March 8, 1989) ("House-Rhodes").

The LLRB established a standard in *House-Rhodes* for determining when an employee should be exempted from the "fair share" requirement based on a religious conscientious objection. The LLRB stated that the right of nonassociation protected by Illinois' Labor Relations statutes "should be limited to employees whose religious beliefs preclude them from supporting activities which are at the core of the collective bargaining process..." 5 PERI 3011 at page 94. Under this standard, the Objector should be exempted from "fair share" contributions since she has testified that "I feel that the UPI collective bargaining processes, the very core of the UPI's activities, are an impingement on my rights. I make this statement in good conscience as a practicing Roman Catholic...." Barger Exhibit #2, page 1. Her husband also testified to the sincerity of this belief.

There would seem to be no compelling state interest sufficient to override this particular free exercise claim. On this question, the UPI cannot be sustained if it attempts to maintain that its right to free speech would be chilled by the success of the Objector's claim. First of all, even the UPI's own counsel, in Respondents' Post-Hearing Brief, Case Nos. 89-FS-0006-C, et al., states that "This state's interest in peaceful labor relations (see S.H.A. ch. 48,j 1701) allows the denial of even a properly founded Free Exercise claim, except one which is diametrically in opposition, as a matter of religious dogma, to the concept of collective representation" (page 61, footnote 37). Secondly, the case at issue is not a class

action suit. If this case is decided in favor of the Objector, Catholics may not be expected to conscientiously object in droves to "fair share" fees. The Objector has not contended here that Roman Catholic theology prohibits association with unions - indeed, she readily concedes that the opposite is the case. She has instead made an argument to the effect that she has found a basis in some less-emphasized teachings of Roman Catholic theology that her particular beliefs and her unique position of conscience are indeed supported by the Catholic Church as valid Catholic beliefs. Thirdly, even if this were a class action suit, it is unlikely that there would be other Catholics in her class so situated in terms of religious training and study to 1) establish the presence of a conscientious objection and 2) make a legitimate showing of the religious basis of that conscientious objection.

IV. CONCLUSION

For the reasons set forth fully above, the Objector urges the Hearing Officer to sustain her objection and to direct that payment of fees held in escrow for her in lieu of "fair share" contributions be made to the Eastern Illinois University Foundation. The EIU Foundation is incorporated in Illinois as a non-religious charitable institution.

Respectfully submitted,

ROBERT N. BARGER
September 19, 1990

B. INTREPRETIVE HISTORY OF ENCYCLICAL AND CONCILIAR TEACHING ON TRADE UNIONISM (from the testimony of Expert Witness Robert N. Barger)

By way of summary, I intend to argue that there is a basis in the fundamental doctrine of the Roman Catholic Church concerning labor matters for the kind of conscientious objection that my wife, the Objector, is claiming. By "fundamental doctrine," I mean the basic official teachings of the Roman Catholic Church which are contained in papal encyclicals and documents of ecumenical councils of bishops. I will readily concede that the Catholic Church has been supportive of the concept of trade unionism in its fundamental doctrine. However, this support does not obviate the possibility of opposition to union membership or to "fair share" deductions from salary in lieu of union dues. I intend to prove that fundamental Church teaching concomitantly stresses, and has always stressed, both the rights of the individual and the rights of the collective or community. Because of the Church's embrace of this full dimension of the spectrum of justice (i.e. justice for the individual and justice for the group), there is room in practice for Catholics to draw differing specific conclusions from the same basic Catholic teaching. The popes, in fact, have said this themselves as I will show below. Thus, the same Catholic doctrine can lead one person

to oppose association with a labor union and another to join it. Such is the case with my wife and myself. After numerous discussions over the years with my wife on this point, I am convinced that her interpretation of Catholic teaching has correctly led her to oppose association in any form with the UPI. On the other hand, that same Catholic social teaching has led me to become a full dues-paying member of the UPI.

I.

I want to do basically one thing in the substantive testimony which follows, and that is to provide a short interpretive history of fundamental Catholic teaching on trade unionism. Trade unions in the United States arose in response to labor problems which resulted from the impact of the industrial revolution. Although recent episcopal teaching has been very supportive of trade unions, such has not always been the case. To illustrate, I quote very briefly from an 1881 published statement of John Lancaster Spalding, Bishop of Peoria, Illinois:

The labor associations and trade unions, in which Catholics are largely represented, generally exert a harmful influence upon their members. They tend to create hatred and envy. They destroy contentment and faith in the power of persevering industry, and fill the minds of the poor with visionary schemes of reform which partake more or less of socialism. The trade union little by little supplants the Church. The periodical strikes, also, together with the enforced idleness and want which accompany them, are occasions of ruin to thousands of Catholics in the manufacturing and mining districts. [John Lancaster Spalding, "The Position of Catholics in the United States," *The Catholic Review*, XIX (March, 1881), 182].

Spalding's attitude toward unions did in fact change in later life, but the above quote from him at least illustrates that all U.S. Catholic bishops have not always viewed unions as salutary institutions.

II.

In the interest of brevity, I will limit my analysis to the fundamental teaching of the Church on labor matters, that is, to the conciliar teachings of the Church (which might be roughly compared to U.S. constitutional law) and encyclical teachings of the Church (which might be roughly compared to U.S. federal law; to further carry out the analogy, national bishops' teachings might be roughly compared to state statutes and individual bishop's teachings to local ordinances).

A note - an extremely important note - should first be made about the nature of Catholic

social teaching. Here I quote from The New Catholic Encyclopedia:

The magisterium [the teaching authority of the Church] has not defined its social teaching in systematic form, once and for all. Instead, especially under Leo XIII and his successors, it has gradually enucleated this teaching from its sources in revelation and tradition, elucidating it in relation to new situations and almost always in the solution of problems emerging from social evolution. On this account, real difficulties can arise in attempts to determine which elements of the teaching are essential and which are only relative to the historical situations in which they are formulated. One possible solution is that of holding as essential only those elements that are frequently repeated and reaffirmed in varying historical situations, but an absolute value cannot be attributed to this criterion. It is more to the point to note that there has always been in the magisterium of the Church a consciousness of the need to distinguish clearly, especially in the social field, between the specific and direct object of its teachings and the motives by which it justifies these teachings. It is, for example, an essential element in the social teaching of the Church that private ownership of goods, productive goods included, is a natural right; but the motives that are cited by the pontiffs [popes] to justify the natural character of this right are not always the same - they have different values and some are mere expressions of opinion. [New Catholic Encyclopedia, "Papal Social Thought," Vol.13, p. 354.]

To begin the analysis: the first major papal statement on unions occurred in 1891 when Pope Leo XIII issued *Rerum Novarum*. In that encyclical he described the miserable conditions of labor at the time, when "very rich men have been able to lay on the masses of the poor a yoke little better than slavery itself" (paragraph 2) and urged that labor associations be formed to correct the situation. Yet even while advocating the establishment of labor associations, Leo XIII added what may be considered a balancing statement:

There are times, no doubt, when it is right that the law should interfere to prevent association; as when men join together for purposes which are evidently bad, unjust, or dangerous to the State. In such cases the public authority may justly forbid the formation of associations, and may dissolve them when they already exist. But every precaution should be taken not to violate the rights of individuals and not to make unreasonable regulations under the pretense of public benefit. For laws only bind when they are in accordance with right reason, and therefore with the eternal law of God. [*Rerum Novarum*, paragraph 38].

Leo XIII also made a statement of what is known as the principle of subsidiarity. The principle is that rights and duties should not be taken away from an individual person (or

from a micro-level) and be relegated to a group (or macro-level) if these rights and duties can be effectively handled by the individual (or at the micro-level). Leo XIII's phrasing of this principle is: "The law must not undertake more, nor go further, than is required for the remedy of the evil or the removal of the danger" [Rerum Novarum, paragraph 29]. This is a principle which has steadfastly been maintained by all subsequent papal encyclicals.

I turn next to *Quadragesimo Anno*, an encyclical written by Pius XI on the fortieth anniversary of *Rerum Novarum*. In this encyclical, Pius reaffirmed Leo's encouragement of the formation of unions. But he also added:

There is, therefore, a double danger to be avoided. On the one hand, if the social and public aspect of ownership be denied or minimized, the logical consequence is Individualism, as it is called; on the other hand, the rejection or diminution of its private and individual character necessarily leads to some form of Collectivism. [Quadragesimo Anno, paragraph 46].

In other words, while supporting the needs of labor, Pius was also concerned to balance the rights of the individual and the rights of the community.

Pope John XXIII wrote two encyclicals touching on labor. *Mater et Magistra* was written in 1961. In it, the Pope continued to provide endorsement for labor unions, but he also said:

Accordingly, as relationships multiply between men, binding them more closely together, commonwealths will more readily and appropriately order their affairs to the extent these two factors are kept in balance: (1) the freedom of individual citizens and groups of citizens to act autonomously, while cooperating one with the other; (2) the activity of the State whereby the undertakings of private individuals and groups are suitably regulated and fostered. [Mater et Magistra, paragraph 66].

Pacem in Terris was written in 1963. Again, after expressing support for unions, John XXIII goes on to add a balancing statement:

Nevertheless, it remains true that precautionary activities of public authorities in the economic field, although widespread and penetrating, should be such that they not only avoid restricting the freedom of private citizens, but also increase it, so long as the basic rights of each individual person are preserved inviolate. [Pacem et Terris, paragraph 65].

Next in my analysis, I consider the teaching of Vatican Council II in the document *Gaudium et Spes*. The Objector has already cited (at length to provide context) four paragraphs of this document in her brief entitled "Establishment of religious Belief and

Showing of Basis Thereof." Without further burdening the record, let me simply state that after the Council fathers had affirmed the right of the human person to freely found labor unions, they went on to state: "Another such right is that of taking part freely in the activity of these unions without risk of reprisal" (Gaudem et Spes paragraph 68). I believe that it is logical that the Objector in this case might interpret these words to mean that she should have the right to be associated, or not be associated, in any way with a union as she should so choose and that she should not suffer any penalizing effects as a result of her choice. If legislative history on this paragraph should indicate that the authors were thinking of a different application, this would still not affect the Objector's formation of conscience on this question. While Supreme court justices might look to legislative history in deciding the application of a law, ordinary people form their consciences on the basis of a straightforward understanding of the words in a document and not on some unwritten nuances which might lie behind those words.

Last in my analysis is the encyclical of Pope John Paul II, *Laborem Exercens*, issued in 1981. John Paul II says: "The experience of history teaches that organizations of this type [unions] are an indispensable element of social life, especially in modern industrialized societies. Obviously this does not mean that only industrial workers can set up associations of this type." Here I would point out that John Paul II is saying that unions have become indispensable in industrialized environments, and further, that they are also an option for other types of workers besides industrial workers. I would point out that in the present case before the Board, the Objector is a faculty member in a university and not an industrial worker. A union may hardly be said to be "indispensable" in her situation. In fact, she worked amicably as a faculty member with the University administration for nine years before she was co-opted into the collective bargaining process.

III.

In the closing section of my testimony, I wish to warn in the strongest possible terms of the danger of an overly narrow or one-sided interpretation of Church teaching on questions which could involve conscientious dissent. I make this warning because of my experience in counseling conscientious objectors at the University of Illinois during the Vietnam War. Over the years when I was at that University (1969-1976) I heard time and again from my counselees that their draft boards would not recognize their objections because they were Catholics, and Catholics - those draft boards said - could not be conscientious objectors to war! They said this because the Roman Catholic Church was not known as a pacifist church. In fact, it was known more for its "just war" theory. Now I would not claim that every Catholic who came to me for advice about his conscientious objector status was in fact a true conscientious objector - such an inner objection of conscience is very difficult to discern and I believe only God knows who truly was and who wasn't - but I do believe that many of those young Catholic men were conscientious objectors...and that their beliefs were formed because of their Catholic faith...even though the history of Catholic doctrine was not totally transparent in its support for a position of pacifism and non-violence. Those people were done an injustice because their Church's theology was able to be categorized as favoring the "just war" theory, even though there was, and is, grounds in Catholic theology

for taking a pacifist view.

I return to my opening point: the teaching of the Church on labor was written largely to address the problems of oppressed workers. It was in that context that the Church recommended the establishment of unions. But, to my knowledge, nowhere in encyclical or conciliar teaching is there a statement that a Catholic has a moral obligation to be associated with a union. On the contrary, while concentrating on the needs of collective labor, the popes have been careful to point out the necessity of preserving both the rights of the individual as well as the rights of the collective, or community. They consistently teach that individual autonomy should not be unduly co-opted, even, as Leo XIII said, "under the pretense of public benefit."

Thus, I submit that while there is room in fundamental Catholic teaching to find support for a person's decision to associate with a union, there is also room in that teaching to find support for the exercise of the individual's option not to be associated in any way with a union. As is the case here today, experts may not agree on this point. But I point out that Pope Pius XI says in his encyclical *Quadragesimo Anno*: "In the course of these years [since *Rerum Novarum* was issued], however, doubts have arisen concerning the correct interpretation of certain passages of the Encyclical or their inferences, and these have led to controversies even among Catholics, not always of a peaceful character" (paragraph 40). Also, John XXIII said in *Mater et Magistra*: "However, when it comes to reducing these teachings to action, it sometimes happens that even sincere Catholic men [sic] have differing views" (paragraph 238). I pray that the Hearing Officer and the Board may be wiser than we expert witnesses here today in sorting out the justice of this matter.

In conclusion, I believe the Objector's conscientious objection to association with the collective bargaining process, conditioned as it is by her unique familial upbringing and her Catholic education, is generally religious in nature and, moreover, has specifically grown out of her understanding of Roman Catholic fundamental doctrine - even if some might view that understanding of doctrine as a minority view. I further believe that because of the Objector's unique religious background - indeed, there are few others likely to be so situated - The IELRB's recognition of her religious dissent would not chill the UPI's right to free speech in arguing its case for others to associate with the union - any more than, as Mr. Justice White said in *Frazee* (109 S. Ct. 1514 [1989]) concerning a man who conscientiously objected on general religious grounds to working on Sunday: "There is nothing before us in this case to suggest that Sunday shopping, or Sunday sporting, for that matter, will grind to a halt as a result of our decision today." Even if The Hearing Officer and/or the Board should find more merit in The UPI expert witness' arguments than in mine, I believe that the nature of the holding in *Frazee* would still support the claim of the Objector in the present case since the *Frazee* opinion states: "We reject the notion that to claim the protection of the free-exercise clause, one must be responding to the commands of a particular religious organization."

C. HEARING OFFICER'S RECOMMENDED DECISION AND ORDER

Mrs. Barger comes from a religious background. Barger did extensive studies in religious education, including advanced studies at Georgetown University, Fordham University and the University of Illinois (Barger Ex. 2). Her religious objection, she claims, is based on the Encyclical and Conciliar teaching of the Catholic Church, which stresses that the rights of the collective or community must be balanced against the rights of the individual (Barger Ex. 2). Barger acknowledges that there is a great deal of support for the trade union as a movement in Catholic teachings (Tr. 462). She points out, however, that within the Encyclicals that support and encourage trade unionism, there is always a certain balance maintained with a concern for the rights of an individual. Her claim is that the religious teachings of Catholicism are always that you must balance the rights of the individual and the rights of the collective (Tr. 477).

Barger views these rights as meaning that she should be able to represent herself and not be forced to support any union that seeks to represent her (Tr. 441, 471). In particular, Barger cites a religious principle of "Subsidiarity," which she testified means that rights should not be conceded to a group which can be effectively exercised by an individual (Tr. 439; Barger Ex. 2).

Barger herself has no objection to any individual being a member of a union if that is what the individual wants (Tr. 444). She believes her religious objection is appropriate for herself and she would not make a judgment on any other individual (Tr. 445). She supports the law that gives employees the right to collectively bargain if they so desire (Tr. 448). Finally, she understands that if she is to prevail on her objections, she will not receive any monetary benefit (Tr. 441).

The Federations [the respondents collectively] presented Reverend Monsignor George G. Higgins as an expert witness. Monsignor Higgins was ordained as a priest in 1940. He has done graduate studies and obtained his PhD in the areas of economics and political science. A good deal of the work and study that he has done has been concerned with the American Labor Movement.

Monsignor Higgins detailed the extensive support within the organized Catholic religion for the trade unionism movement. In fact, according to the Monsignor, Catholic teaching would always encourage unions for the broader purpose of helping organize and equalize society (Tr. 494-95).

Monsignor Higgins acknowledges that there are those that might disagree with a number of his opinions on the Catholic view of the relationship between Catholicism and the Labor Movement (Tr. 498, 503). The Monsignor also states that he would not consider Barger to be in "bad conscience" because she does not agree with the view of trade unionism that is

espoused by most of the organized Catholic religion and by the Monsignor (Tr. 503).

In *Fraze v. Illinois Department of Employment Security*, 109 S. Ct. 1514, 49 FEP Cases 472 (1989), the Supreme Court addressed the issue of whether or not Mr. Frazee had been improperly denied unemployment benefits when he refused to accept a job that would have required him to work on his Sabbath. [In the Triton Hearing Officer's decision, Triton College Faculty Association. et al., 6 PERI 1007, Case No. 89-FS-0006-C, et al., (Hearing Officer's Recommended Decision and Order, October 27, 1989). Hearing Officer Stein wrote in discussing Frazee: "In view of recent decisions of the United States Supreme Court, I conclude that the Act's protection must also be extended to employees who base a religious objection on a bona fide personal religious belief. Triton 6 PERI 1007 at IX-43." In the Board's Triton decision it affirmed the Hearing officer's decision and adopted his underlying rationale with respect to the religious objections in that case. Triton at IX-251.] Mr. Frazee, who simply referred to himself as a Christian, refused to accept a job that would have required him to work on Sunday. He stated that as a Christian he could not work on "the Lord's Day." Because of his refusal to accept the position, Frazee was denied unemployment benefits.

The Supreme Court reversed this decision. In *Fraze* the court set forth the standards to be applied when determining if an individual's alleged religious reasons for refraining from engaging in an obligation that would otherwise be required under the law, are bona fide.

In discussing its rulings on other cases dealing with this issue the Court states, "Our judgments in those cases rested on the fact that each of the claimants had a sincere belief that religion required him or her to refrain from the work in question. Never did we suggest that unless a claimant belongs to a sect that forbids what his job requires, his belief, however sincere, must be deemed a purely personal preference rather than a religious belief." *Fraze* at 1516-17, 471. The Court goes on to point out that in the case of *Thomas v. Review Board of Indiana Employment Security Division*, 450 U.S. 707, 25 FEP Cases 629 (1981), it was considered irrelevant that there was disagreement among members of the claimant's religious sect over whether or not he had to resign his job for religious reasons. The Court instead focused on the fact that Thomas had the sincere belief that his religion prevented him from doing the work required by his job (*Fraze* at 1516-17, 71).

The Court also states in *Fraze* that only beliefs rooted in religion are protected by the free exercise clause and then rejects the notion that to claim protection of the free exercise clause one must be responding to the commands of a particular religious organization. *Fraze* at 1517, 471.

In light of this guidance provided by the Supreme Court in *Fraze* the decision of Barger's objection becomes quite simple. Barger stated that her objection is based on Encyclical and Conciliar teachings of the Catholic Church. Particularly, she points to the principle known as subsidiarity. These are religious teachings and principals [sic] which Barger says are the basis of her objection. Barger's belief is "rooted in religion."

Barger's background, as well as her demeanor on the witness stand, convinces me as to

the sincerity of her belief. Since Barger has a sincerely held belief that is based on her religion it is irrelevant whether or not her belief is "correct" according to the Catholic Church. As Monsignor Higgins himself acknowledged, there are those who would disagree with his views on the relationship between Catholicism and the labor movement. I certainly do not have the capability, nor do I have the legal power, to determine which party holds the "correct" Catholic view. I do find, however, that based solely and specifically on the facts present in this one case concerning Josephine Barger that Barger's objection to the fair share fee is based on a sincerely held religious belief. For this reason I sustain Barger's objection.

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I have sustained the religious based objection of Josephine Barger. Her fees, therefore, are to be paid to a non-religious charity pursuant to Section 11 of the Act.

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Dated: November 26, 1990
Issued at: Chicago, Illinois

Larry Petchenik
Hearing Officer

Illinois Educational Labor Relations Board
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