

**Pby of San Gabriel v. Jewett, et al,
Remedial Case No. 198-4,**

**PRESBYTERY OF SAN GABRIEL
Appellant
vs.
THE REV. PAUL K. JEWETT, et al,
Appellees**

This is a remedial case on appeal to this Permanent Judicial Commission by the Presbytery of San Gabriel (hereinafter called Presbytery) from a decision of the Permanent Judicial Commission of the Synod of Southern California and Hawaii.

No issue raised by either party concerning timeliness, standing, jurisdiction, or other procedural prerequisites to hearing. The record of the case supports these elements, and it appears that the appeal is timely, the appellant has standing, and this Commission has jurisdiction to hear the appeal.

On September 13, 1983, Presbytery voted to receive Dr. John Hick as a member by a vote of 98 to 92. He had previously been examined by the Presbytery's Committee on Ministry and received a favorable recommendation from the committee.

Appeal was taken to Synod's Permanent Judicial Commission from the action of the presbytery in receiving Dr. Hick as a member of Presbytery on two general grounds:

A. That there was procedural irregularity in curtailing debate and denying right of commissioners to examine Dr. Hick before Presbytery.

B. That the theological views of Dr. Hick, as expressed in his writings do not comport with those tenets of the Reformed faith to which the Presbyterian church adheres.

On February 29, 1984, the Synod's Permanent Judicial Commission decided the appeal against Presbytery on the first ground and returned the matter to Presbytery, instructing it to conduct a further examination of Dr. Hick.

By reason of the decision to remand for further examination, Synod's Permanent Judicial Commission did not regard it as necessary to decide the second issue raised in the complaint.

Prior appeal was taken to the General Assembly's Permanent Judicial Commission from this decision on ground that the decision was made at pretrial without hearing. In response to this appeal, the Permanent Judicial Commission on September 4, 1984, remanded the matter to Synod's Permanent Judicial Commission for a full hearing.

The present appeal to this Permanent Judicial Commission is by Presbytery from the latest decision of Synod's Permanent Judicial Commission.

Presbytery states the following errors as a ground for the appeal from Synod's Permanent Judicial Commission.

- (1) The composition of the Synod Commission was improper in that the membership was totally white male, hence not inclusive, and further that one of the members should have disqualified himself.
- (2) The Synod Commission did not vote separately upon each specification of error in

the complaint.

- (3) The Synod Commission failed to delineate its process.
- (4) The decision exceeds the complaint.
- (5) the Synod Commission was prejudiced against Presbytery in the following respects:
 - (a) Bias resulting from the earlier reversal by the General Assembly's Permanent Judicial Commission of the first decision of the Synod Commission.
 - (b) The Synod Commission had prejudged the case.
 - (c) The Synod Commission was hostile to Presbytery.
- (6) Objections to evidence were not properly treated.
- (7) The Synod Commission badgered Presbytery's witnesses.

We have examined the record of proceedings before Synod's Permanent Judicial Commission, and our review of the record fails to disclose any substantial error in the proceedings. Strictly speaking, disposition of the charged errors against Synod's Permanent Judicial Commission could be said to dispose of the case before us. However, we believe it helpful and appropriate to deal with the underlying problem, which we perceive to be the nature of the examination required of a minister coming from another denomination.

G-11.0404 provides in part:

Ministers of other denominations may be received by the presbytery as follows:
a. Ministers of Reformed churches holding the Presbyterian Order in correspondence with the General Assembly shall, when applying for membership in a presbytery, furnish satisfactory credentials of (1) ordination by a presbytery or or classis, (2) present good standing, and (3) dismissal to the particular presbytery. They shall also submit satisfactory evidence of possessing the qualifications of character and scholarship required of candidates of this church and shall be examined in theology, and at the discretion of the presbytery in other subjects, and shall answer in the affirmative questions a to i contained in G-14.0405.

This Commission interprets the language quoted above as requiring that a minister coming to this church from another denomination be submitted in person for examination before presbytery as a whole in theology, and at the discretion of presbytery in other subjects.

In light of this interpretation, we affirm the decision of Synod's Permanent Judicial Commission and remand the case to Presbytery for the purpose of conducting an an examination before Presbytery which comports with the *Book of Order* and this decision.

Upon individual vote taken on the specifications of error set out above, all were found to be not sustained with the exception of the specification numbered (2) above, that the Synod's Permanent Judicial Commission did not vote separately upon each specification of the complaint. We find that no substantial prejudice resulted to presbytery from this irregularity.

The Reverend James E. Angell did not participate in the decision because of D-4.0400 and Elder Frances L. Hollis was absent (D-8.1300c).

**Dissenting Opinion of
Robert L. Craghead, William F. Fratcher, Wallace N.
Jamison, Justin M. Johnson, Ward A. McKeithen,
Margaret J. Thomas, and Clyde M. Weaver**

We agree that only one of the specifications of error urged upon this Commission by the presbytery of San Gabriel (herein called Presbytery) can be sustained. The presbytery invites us to find irregularities in the proceeding before the Synod's Permanent Judicial Commission or to find that the Synod's Permanent Judicial Commission is incapable of conducting a fair trial by reasoning of prejudice in the conduct of the case before it. We join with the majority in declining

to reach this conclusion.

However, since our responsibility requires us to review the entire record and only affirm the judgement of the lower governing body where no other error is found, D-13.1300b, we must dissent from that decision of the majority which would remand this matter to the Presbytery for the purpose of the reconsideration of Dr. Hick's reception into the membership of the Presbytery.

We find on our review of the entire record that the proceedings before the Presbytery on September 13, 1983, were free of constitutional infirmity. We also find that it was error for the Synod's Permanent Judicial Commission to conclude that any irregularities occurred of sufficient nature to invalidate the vote of the Presbytery to receive Dr. Hick. We would, therefore, vacate the decision of the Synod, find that the complaint has not been sustained, and direct that the Reverend Dr. John Hick be continued on the rolls of Presbytery, effective from the date of his original enrollment, September 13, 1983.

Certain facts are not in dispute. The committee on ministry, through its subcommittee on membership, did examine Dr. Hick. The subcommittee on membership, composed of three ministers and three ruling elders, reported to full Committee on Ministry on the examination and recommended that the applicant be received. Upon the adoption of the subcommittee's report, the recommendation that Dr. Hick be received was presented to Presbytery on September 13, 1983.

As the matter came to the floor, the moderator asked of the presbyters if there were any questions on procedure. Hearing none, he then recognized the representative of the Committee on Ministry who moved to sustain the examination of Dr. Hick. The dissent of one member of the Committee on Ministry was noted as the motion was placed before the Presbytery. The first presbyter recognized by the moderator spoke against the motion. The moderator then recognized a member of the committee who spoke in support of the motion.

The moderator, upon seeing that a number of presbyters desired to speak to the motion, then asked for those presbyters who wished to address the Presbytery stand momentarily. He counted nine who stood indicating a desire to participate. After determining the number on each side of the motion, he requested a motion from the floor to suspend the docket and establish a time limit for debate. The Presbytery then voted to extend debate on the motion for an additional twenty minutes, with each speaker being limited to two minutes.

Thereafter, the moderator recognized nine members of Presbytery, each of whom spoke either for or against the motion to admit Dr. Hick. He then, on request from the floor, recognized another presbyter who was permitted to speak. When a question from the floor suggested that the moderator had decided that presbyters could not question the applicant directly, the moderator expressly denied having stated such a decision, indicated that examination of the applicant had merely been postponed, and invited any motion from the floor that would recognize the need to break for dinner while addressing the question of whether the body desired to extend discussion to secure more information and debate.

When a presbytery, in response to the moderator's call for the guidance from the body, moved the previous question on the reception of the applicant, there was a call for the division of the house. The vote to end the debate was declared as 130 in favor and 57 opposed. On the vote on the principal motion, 98 presbyters were recorded as voting in favor of reception of the applicant, and 92 were recorded as voting against reception. The stated clerk recorded the individual negative votes of three persons and the abstention of another four persons, upon each individual's request.

Following approval of the motion which had been presented by the Committee on

Ministry, the applicant, Dr. Hick, was called forward and responded affirmatively to the constitutional questions set forth in G-14.0405, in compliance with G-11.0404. On basis of the above, the Reverend John Hick was received and enrolled as a member of the presbytery, effective September 13, 1983.

Immediately following the action on the committee's recommendation regarding Dr. Hick, Presbytery acted upon four additional recommendations to sustain the examination of three other ministers and one applicant without any questions, discussion, or debate from the floor. The Presbytery proceeded to approve an additional nine action items upon the recommendation of the Committee on Ministry before recessing for dinner.

A written protest was filed with the stated clerk before adjournment of the meeting held September 13, 1983 (D-2.0200), signed by four of the five complainants on this appeal along with twenty-nine others, but the protest only attacked the action of the presbytery on the basis of the theological views of the applicant and not upon any alleged procedural irregularities.

It is clear from the complaint filed with the Synod that the complainants seek reconsideration of the question of receiving Dr. Hick to membership, and that the reconsideration, if granted, includes direct examination of Dr. Hick on the floor of the Presbytery. Complainants contend that Presbytery violated the Form of Government both in "not allowing" the presbyters to examine the applicant and in the manner in which the discussion proceeded at the presbytery meeting.

Our careful review of the partial transcript of the Presbytery meeting, together with the transcript of proceedings held before the Synod's Permanent Judicial Commission, leads us to the conclusion that complainants cannot be sustained. We find no constitutional irregularities in the manner in which the Presbytery conducted its examination, its several votes on the extension of time for debates, suspension of the docket, the call for the question, or the principal motion.

Moreover, we find nothing in the Minutes of the Presbytery meeting nor have the complainants referred us to anything, which would suggest that timely objection was made to any of the actions of the moderator or the actions of the Presbytery, in connection with the vote(s) or the procedure. The complainants concede, as they must, that there was no irregularity in the discharge of the duties of either the committee on ministry or its subcommittee on membership.

The examination of Dr. Hick was accomplished through Presbytery's committee. It is clear that the presbytery, in receiving the report of its committee, maintained the right to such further examination as Presbytery desired. The moderator did not rule at any time during the meeting of Presbytery that such questioning was forbidden. We are unable to agree with the principal contention of complainants that they were "not allowed" to question Dr. Hick during the meeting of Presbytery. We believe strongly that a presbytery retains the power to receive a recommendation from one of its duly constituted committees, to rely thereon, and to exercise its responsibility based upon that recommendation.

Since we find no procedural irregularities of sufficient weight to sustain the complaint and since the record is clear that the respondent Presbytery complied with the minimum requirements of the Form of Government in all matters under our review, we conclude that it was error on the part of the Synod's Permanent Judicial Commission to sustain the complaint based upon unspecified irregularities. We conclude Presbytery was acting within its powers in sustaining the examination of Dr. Hick. (*Anderson vs. Synod of New Jersey*, The United Presbyterian Church in the United States of America, Permanent Judicial Commission, Administrative Case No. 4, May 22, 1962.)

We would vacate the stay of enforcement heretofore entered and direct that the Reverend Dr. John Hick be continued on the rolls of the Presbytery, effective September 13, 1983.