

**THE PERMANENT JUDICIAL COMMISSION
OF THE GENERAL ASSEMBLY
OF THE PRESBYTERIAN CHURCH (U.S.A.)**

David E. Fernandez)
 Ruth Brown)
 Karen O'Neill)
 Walter Caddow)
 William Hutchins)
 Louis Brehmer)
 Complainants/Appellees)
 v.)
 THE PRESBYTERY OF GRAND CANYON)
 Respondent/Appellant)

Remedial Case 204-1

This is a remedial case which has come before this Commission on appeal by the Presbytery of Grand Canyon from a decision by the Permanent Judicial Commission of the Synod of the Southwest.

Pursuant to Book of Order, D-13.1200(a), this Commission finds it has jurisdiction, the Appellant has standing to appeal, the appeal was properly and timely filed, and is in order.

History

In 1989, three elders of the Emmanuel Presbyterian Church, Phoenix, Arizona, asked the Executive Presbyter of the Presbytery of Grand Canyon to intervene in what they considered to be difficulties in the Church. The matter was brought before the Committee on Ministry (COM) which appointed a conflict resolution team (CRT) to assist in resolving conflicts at the Church. It met with the Session and heard from individual members of the church either in person or by letter.

On December 5, 1989, the CRT made a confidential report to the Session of Emmanuel Presbyterian Church. The CRT outlined clear options for the leadership of Emmanuel Church to choose:

- 1) For the pastor to resign and request the Presbytery to dissolve the relationship.
- 2) For the members of the CRT to recommend to the COM that the COM request the Presbytery to grant authority to the COM to correct the difficulties "including authority to dissolve the pastoral relationship, and if necessary, set aside the session, name a stated supply pastor, and name a committee to administer the church, ... reporting back to the Presbytery the result of its action."
- 3) For the Presbytery to establish an administrative commission to inquire into and settle the difficulties including the authority cited in (2) above.
- 4) That a meeting of the congregation be called to act upon a proposal that "the congregation request the Presbytery to dissolve the pastoral relation...."

On December 17, 1989, using the fourth option of the CRT, but against their advice, a special meeting was held by the Emmanuel congregation to vote on the dissolution of the pastoral relationship with the Rev. David E. Fernandez. By secret vote of the active members present, 73% voted against dissolving the pastoral relationship.

In January, 1990, the Presbytery granted authority to the Committee on Ministry

"to seek reconciliation, and to correct the difficulties at Emmanuel Presbyterian Church, Phoenix, including authority to dissolve the pastoral relationship and if necessary set aside the Session, name a Stated Supply pastor, and name a committee to administer the church (G-11.0502(J)) reporting back to the Presbytery the result of its action."

On January 9, 1990, the Presbytery COM appointed a special task force to review the analysis of the CRT and to evaluate the church's present and future potential for effective ministry with the existing leadership.

After an investigation, the Task Force on May 8, 1990, filed a report with the COM in which it found extensive tensions and conflict in Emmanuel Church and that the pastor and the Session were unable to "lead the congregation in participation in the mission of the whole church in the world." It recommended to the COM that the pastoral relationship between Mr. Fernandez and Emmanuel Church be dissolved and further that the Session be set aside and that the COM name a committee to administer the church.

On June 5, 1990, the COM met with the task force and with the pastor and certain members of the Session. The COM received the Task Force report and voted unanimously to adopt its recommendations effective immediately. It named an interim committee to administer the affairs of Emmanuel Church.

The COM filed its report with the stated clerk of the Presbytery.

On July 5, 1990, the pastor and five members of the Session, later joined by two others, filed complaints with the stated clerk of the Synod, seeking relief from the decision of the COM.

On November 1, 1990, a joint amended complaint was filed. A pre-trial meeting with the parties was held on November 17, 1990.

In December, 1990, the parties were advised " ... that the PJC should only review the actions of the Presbytery and not grant the Complainants a new trial on all matters complained of (Trial De Novo),"

and " ... that the trial will not be a Trial De Novo."

On January 25, 1991, the complaint, as further amended, was filed.

On March 9, 1991, the matter came before the Synod Permanent Judicial Commission (PJC). The PJC then recessed and met for deliberation on March 22, 1991. It unanimously found in favor of the complainants.

In its written decision, the Synod PJC made, in substance, the following findings:

- 1) There was no reasonable factual basis shown for dissolution of the pastoral relationship of Mr. Fernandez.
- 2) The Presbytery acted contrary to the Book of Order in delegating authority to the Committee on Ministry to dissolve the pastoral relationship. The findings of the Task Force should have been referred to an administrative commission to provide due process as required by the Book of Order. Thus the pastor was wrongfully discharged.
- 3) The Presbytery acted contrary to the Book of Order in delegating to the Committee on Ministry the authority to remove the Session. To remove the Session, the appointment and action of an administrative commission was required by the Book of Order. Thus the Committee on Ministry acted outside its authority.

The Synod PJC ordered the Presbytery to clear Mr. Fernandez of any allegations of misbehavior and to pay him compensation and further ordered that members of the Session who were removed be reinstated if they so desire.

The Presbytery then filed a timely appeal to this Commission and sought a stay of enforcement. There being no objection, the stay was granted.

Specifications of Error

In its brief, the Appellant (Presbytery) has submitted the following specifications of error:

- 1) The proceedings before the [Synod] Permanent Judicial Commission were themselves flawed and irregular.

Specification of error number 1 is sustained.

The Synod Permanent Judicial Commission erred at least in these particulars:

- a. By treating the matter before it as an appeal of a decision rendered in a presbytery trial. There had been, in fact, no previous trial, and the Synod PJC was the court of original jurisdiction.
- b. By advising counsel on February 8, 1991, that only the record of the proceedings at the Presbytery level would be considered by the Synod

PJC and not the testimony of witnesses who may have testified at Presbytery meetings or hearings, thus limiting the right of Appellant to call its witnesses and then permitting the Appellees at the hearing to call their witnesses.

- c. By failing to have the full Synod PJC rule to resolve the objection of the Presbytery concerning the threshold questions (D-6.1200b).
- 2) The Synod PJC erred in holding that the Presbytery should have appointed an administrative commission and that the Committee on Ministry did not have the power or authority to dissolve the pastoral relationship and remove the Session.
- 3) The Synod PJC erred in holding that there was no reasonable evidentiary basis for dissolving the pastoral relationship or removing the session.

Because Appellant was denied a trial before the Synod PJC, we do not consider specifications of error 2 and 3 at this time.

In addition, the Permanent Judicial Commission of the General Assembly finds that the undue delay after the time of filing the original complaints denied both parties the right of a prompt hearing.

Order

The decision of the Synod of the Southwest is without force because no trial was conducted. The stay of enforcement is lifted and is moot.

The case is remanded for trial by the Synod Permanent Judicial Commission. Such trial should take particular care to afford all procedural safeguards provided in the Book of Order.

Upon conclusion of the trial, should the Synod PJC determine that Mr. Fernandez' relationship to Emmanuel Church was rightfully dissolved, the Synod PJC may direct the Presbytery to negotiate an acceptable severance package. However, should the Synod PJC determine that Mr. Fernandez' relationship was improperly dissolved, the Synod PJC may direct the Presbytery to provide compensation to Mr. Fernandez for the period during which he was wrongfully deprived of his pastorate, less any income earned in the interim.

Milton S. Carothers and Charles L. Weltner, members of the Commission, were not present and took no part in the proceedings.

Alberta Mercado, General Assembly Permanent Judicial Commission representative from the Synod of the Southwest and member of the Presbytery of Grand Canyon, was present for the hearing, but did not take part in the deliberations or decisions.

Dissenting Opinion of David Prager,
Judith Lynn Rehak and Marcos Feliciano

We respectfully dissent by reason of the refusal of the Commission to determine those specifications of error involving the jurisdiction and powers of a committee on ministry to dissolve a pastoral relationship and to remove a session.