

**Dickson v. Synod of the Southwest,  
Remedial Case 210-10,**

**Josephine DICKSON  
Complainant**

**v.**

**Synod of the SOUTHWEST  
Respondent**

This is a remedial case of original jurisdiction that has come before this Commission on a complaint by Josephine Dickson, a minister commissioner of the Synod of the Southwest (the Synod), against the Synod. The original complaint was filed by Josephine Dickson and Floyd Hart. Upon examination of the jurisdictional questions it was found that Hart did not have standing to file (D-6.0202a(1--5)).<sup>1</sup> Therefore, Dickson is the sole complainant.

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*1 This Commission notes that while the Rules of Discipline grant standing to an employee of the General Assembly Council or an entity of the General Assembly to complain against the General Assembly Council or General Assembly entity with the General Assembly, claiming to have sustained injury or damage, there is no provision for an employee of a synod to complain against the synod for similar reasons. Neither is there recourse for an employee of a session who is not a member of that church (D-6.0202b(1-3)) or an employee of a presbytery who is not a member of the presbytery (D-6.0202a(1-5)).*

Pursuant to D-6.0307, this Commission finds that it has jurisdiction, that the complainant has standing to file the case, that the complaint was timely filed, and that the complaint states a claim upon which relief can be granted.

A pre-trial conference was held pursuant to D-6.0309 [now found at D-6.0310].

The complaint cites as an irregularity that the Synod acted to approve the Synod Personnel Committee report calling for approval of the resignation of Floyd Hart, minister, the Associate Synod Executive for Native American Ministries.

**a. History**

Certain facts are not in dispute. Hart was hired in the Spring of 1992 and commenced work in September of 1992. The Synod personnel policy called for annual reviews and Hart's position description called for a comprehensive review at four year intervals. His first comprehensive review was held in 1997. Hart was not asked to perform a self-evaluation or to be present. The review process culminated in the following resolution by the Personnel Committee at its August 5 meeting:

That Floyd be asked to resign effective January 1, 1998. If he chooses to do so, he is to be given use of his Synod office and the resources of that office to search for a new position, but he is under no circumstances to continue to function in his role as Associate.

The request that he resign was communicated to Hart by way of a letter presented to him on August 8. The letter reported the Personnel Committee's action of August 5 and also set forth the grounds upon which the action was taken. The letter did not specify any additional conditions to the resignation. Hart was informed that he would be provided with other papers to sign, but was not informed of their content. Hart responded with a "letter of intent to resign" dated August 14. The moderator of the Personnel Committee, by letter of August 15, acknowledged receipt of Hart's resignation and provided him with a three-page agreement confirming terms of his resignation and setting forth numerous waivers of rights and an indemnification. On August 18, Hart responded, stating "now that I have tendered my resignation from Synod employment effective December 31, 1997, I do not feel that a legal disclaimer is necessary for the Synod to accept my resignation and request for paid leave." Hart returned the August 15 draft agreement unsigned. On August 21, the moderator of the Personnel Committee advised Hart in writing of the withdrawal of the use of an office and support staff services, suspension of voice mail and prohibition against using the stationery of the Synod in his communications. On August 26, the Interim Synod Executive wrote to Hart, setting forth certain conditions and prohibitions related to conditions of Hart's administrative leave.

On September 10, the Presbytery of Grand Canyon received various overtures and correspondence from sessions of Native American churches, expressing concern over the lack of due process afforded Hart, the failure to consult with standing committees for Native American Ministries, the negative impacts on such ministries which the Synod's action would produce, and the absence of steps to ensure ongoing staff support for Native American ministries. By a vote of 124 to 8, the Presbytery forwarded these overtures and correspondence to the Synod. Following receipt, the Synod Executive Committee decided not to make the overtures available at the October 11 Synod meeting. At that meeting the Synod voted to approve the report of the Personnel Committee accepting Hart's resignation.

## **b. Findings**

Notwithstanding the efforts of the Synod to create and follow a reliable personnel process, this Commission finds that, on the basis of the evidence presented, the process resulting in Hart's resignation was flawed (G-9.0705).

Three evaluations were held within nine months. The Commission finds it inappropriate that the person evaluated was not invited to attend two of these evaluations or requested to submit a self-evaluation or offer names for contact. That other associate synod executives were not required to undergo comprehensive reviews may be perceived as unfair.

Clearly there was insufficient participation in the review process by the community which Hart was called to serve. The absence of responses from Native American churches at the February 7, 1997, annual review should have alerted the Personnel Committee to the need for extensive consultation with those churches.

Following the publication of the Personnel Committee decision the Synod Executive Committee was insensitive to the concerns of the churches offended by what they understood had happened. The decision to block the circulation of overtures and correspondence from Native American churches by the Synod Executive Committee is without constitutional authority.

We further find that the provision of the parties' agreement whereby Hart was to have administrative leave with pay was inextricably connected to the provision that he was to enjoy the benefits of office space, support staff, and voice mail at the same time. In order for Hart to receive the full and fair benefit of the agreement which Synod offered and Hart accepted, it will be necessary for Synod to do precisely what it proposed.

The terms of Hart's resignation are as set forth in the Personnel Committee's resolution of August 5 and communicated to Hart in the moderator's letter of August 8. The attempts by the Personnel Committee and the Interim Synod Executive to impose additional terms in the letters of August 15 and August 26 have no effect, in that they were not agreed to by Hart.

### **c. Decision**

The Synod violated its agreement with Hart by withdrawing use of the office space and support.

The Synod Executive Committee's decision to withhold from the Synod commissioners the overtures from the Native American churches transmitted through the Presbytery of Grand Canyon was without constitutional authority.

### **d. Order**

It is therefore ordered that the administrative leave of Hart with pay and benefits, including an office, support staff, and voice mail, or a mutually agreed upon equivalent, be extended for 4½ months, beginning with receipt of this decision.

It is further ordered that, in the process of filling the position of Associate Executive for Native American Ministries, the Synod must fully and adequately consult with a broad cross section of the Native American Presbyterians within the Synod on all aspects of the search, formulation of job description, interviewing and selection of a candidate.

It is further ordered that the overtures and correspondence from the Native American churches forwarded by the Presbytery of Grand Canyon be distributed to all commissioners to the October 11, 1997, meeting of Synod.

It is further ordered that the Stated Clerk of the Synod of the Southwest report this decision to the Synod at its first meeting after receipt, that the Synod enter the full decision upon its minutes, and that an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of the General Assembly (D-7.0701).

And it is further ordered that this order be printed and read to the Synod and to the constituent presbyteries and sessions of the Synod.

Patricia Norris and Ferdinand Pharr, members of the Commission, were not present for the meeting of the Commission and, accordingly, took no part in the deliberations or decision of the case. Ruby Rodriguez, member of the Commission, was present for the trial and took part in the deliberations, but did not vote on the decision.

Dated this 15th day of February, 1998.