

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

Presbytery of New York City,)
Appellant/Counter-Appellee,)
v.)
Cornell A. Edmonds,)
Appellee/Counter-Appellant.)

Decision and Order
Remedial Case 220-09

Arrival Statement

This remedial case comes to the General Assembly Permanent Judicial Commission (GAPJC or this Commission) on an appeal filed by the Appellant, Presbytery of New York City (Presbytery), from a decision of the Permanent Judicial Commission of the Synod of the Northeast (SPJC) on April 1, 2011. A Counter-Appeal was subsequently filed by Counter-Appellant, Cornell A. Edmonds (Edmonds).

Jurisdictional Statement

This Commission finds that it has jurisdiction, that both the Appellant and Counter-Appellant have standing to file the appeals, that the appeals were properly and timely filed, and that both the Appeal and Counter-Appeal state one or more of the grounds for appeal in D-8.0105.

Appearances

At the request of the Appellant/Counter-Appellee with the concurrence of the Appellee/Counter-Appellant and this Commission, oral argument was waived and neither party appeared in person before the GAPJC.

Structure of this Decision

This Decision is structured so as to consider the specifications of error in the Appeal, first, and then the Counter-Appeal, with the overall Decision being applicable to and inclusive of both.

History

Edmonds, then a Ruling Elder, was elected to the office of Stated Clerk of the Presbytery for a four-year term that began on March 1, 2004. In September 2006, Edmonds was then

ordained as a Teaching Elder to the validated ministry position of Stated Clerk. He was elected to a second four-year term as Stated Clerk in September 2008.

On June 30, 2010, the Presbytery adopted recommendations from its Personnel Committee which were developed in response to a substantial financial crisis of the Presbytery. Those recommendations included the declaration that all staff positions would be considered vacant as of July 31, 2010, and that the position of the Stated Clerk would be reduced to 60% of a full-time call, with a commensurate reduction in compensation. Edmonds filed a remedial complaint concerning this action with the Synod of the Northeast on September 28, 2010. The SPJC conducted a trial on March 31 and April 1, 2011.

In a Decision and Order dated April 1, 2011, the SPJC found in Edmonds' favor, ordering that he receive full-time compensation at the terms he had received prior to the Presbytery's action from the date of that action (June 30, 2010) through the conclusion of the term to which he had been elected in 2008 (December 27, 2012). In reaching that decision, however, the SPJC did not sustain Edmonds' claim that the reduction in his terms of call constituted a "constructive discharge." Rather, the SPJC found the Presbytery's action was "irregular." The SPJC subsequently deemed it unnecessary to answer counts Two, Three, and Four of the Complaint. Those counts alleged failure to provide Edmonds with "fundamental fairness" in the process that led to reduced terms of call and failure to abide by the two constitutional questions asked of the calling body during a service of installation (W-4.4006b).

The Presbytery filed a Notice of Appeal from the Decision and Order of the SPJC on May 5, 2011, objecting not only to the SPJC's Decision and Order regarding Edmonds' reduction in employment and compensation, but to the SPJC's failure to rule on the other allegations in Edmonds' Complaint. The Presbytery also requested a Stay of Enforcement which was granted on May 10, 2011, three members of the GAPJC certifying that in their judgment probable grounds existed for finding the decision erroneous and that harm would occur if the decision were not stayed.

On May 12, 2011, Edmonds filed a Counter-Appeal asking that, should this Commission find for the Presbytery in its appeal of the Decision and Order of the SPJC, three procedural decisions of the SPJC and three alleged irregularities in the SPJC's own proceedings should then be addressed by this Commission, or alternatively that a new trial should be ordered on the claims that were not addressed by the SPJC Decision.

An Objection to the Stay of Enforcement was received on June 3, 2011. On August 17, 2011, the Executive Committee of the GAPJC conducted a hearing which resulted in a continuation of the Stay.

On December 21, 2011, this Commission granted the request of the Presbytery, with the concurrence of Edmonds, that the case be decided on the record and briefs submitted to it without oral argument by the parties.

Specifications of Error of Appellant Presbytery

Specification of Error No. 1: *That there was injustice in the process or decision, specifically that the SPJC sustained the alleged irregularity of Count One for a reason not alleged in Count One of the Complaint, while at the same time finding that Presbytery's actions did not constitute a "constructive discharge."*

This specification of error is sustained.

See the following Rationale.

Specification of Error No. 2: *That there was an error in constitutional interpretation, specifically that the SPJC erroneously concluded on Count One that the Presbytery did not have the power and authority to alter the terms of Edmonds' position as Stated Clerk and his call to that office, contrary to the arguments and evidence submitted by Presbytery at trial, instead erroneously finding that an irrevocable contract for a fixed term had been made with him that was breached by Presbytery.*

This specification of error is sustained.

See the following Rationale.

Specification of Error No. 3: *That there was an error in constitutional interpretation, specifically that the SPJC erroneously declined to reach and decide Counts Two, Three and Four of Edmonds' Complaint, as required by D-7.0402a-c, and further failed to find the irregularities alleged in Counts Two, Three and Four NOT sustained for the reasons articulated by Presbytery at Trial.*

This specification of error is sustained.

Rationale: As more fully discussed in the following Decision, this Commission notes that the SPJC entered a specific finding of fact that the Presbytery staff and Stated Clerk reductions in time, job functions, and compensation were the result of a serious financial crisis. The SPJC found that the facts and circumstances did not constitute a constructive discharge. Factual determinations made by a trier of fact are accorded a presumption of correctness. These determinations are not to be disturbed on appeal unless they are “plainly wrong, without supporting evidence or manifestly unjust” (Chesterbrook Taiwanese Presbyterian Church v. National Capital Presbytery, Minutes, 2006, p. 493, and Hardwick v. Permanent Judicial Commission of the Synod of North Carolina, Minutes, 1983, p. 45).

However, based on the record we disagree with the SPJC's conclusion that Edmonds' reduction in terms of call constituted an irregularity. Given its financial crisis, the Presbytery could constitutionally reassess its mission and amend the terms of call of its Stated Clerk (G-6.0201 and G-14.0522), and it afforded Edmonds fundamental fairness in its process. This Commission finds no support for the SPJC's decision that some otherwise undefined irregularity

occurred in the reduction of Edmonds' terms of call, or that the process was fundamentally unfair.

Specifications of Error of the Edmonds' Counter Appeal

Specification of Error No. 1: *It was error for the Complainant's request for production of additional documents to be denied by the Executive Committee on March 25, 2011, and affirmed by the Permanent Judicial Commission on March 31, 2011.*

This Specification of Error is not sustained.

See the following Rationale.

Specification of Error No. 2: *The refusal of a member of the SPJC to recuse herself for conflict of interest, which decision was supported by the SPJC, was in error.*

This Specification of Error is not sustained.

See the following Rationale.

Specification of Error No. 3: *The SPJC refused to grant the motion for a change of venue.*

This Specification of Error is not sustained.

See the following Rationale.

The following irregularities in proceedings by the SPJC are appealed:

Specification of Error No. 4: *The SPJC refused to allow Edmonds to present the case in the sequence and manner he believed necessary to prove it, thereby seriously prejudicing his ability to introduce evidence in a logical and persuasive way (D-8.0105a).*

The Specification of Error is not sustained.

See the following Rationale.

Specification of Error No. 5: *The SPJC refused to receive proper and relevant testimony and evidence, thereby excluding critical evidence (D-8.0105c).*

The Specification of Error is not sustained.

See the following Rationale.

Specification of Error No. 6: *The SPJC hastened to its decision by refusing to allow sufficient time for Edmonds to present his case or to present closing arguments (D-8.0105d).*

The Specification of Error is not sustained.

Rationale: The errors alleged by Edmonds in the Counter-Appeal concern trial procedures and related matters, but whether separately or collectively analyzed they did not prejudice Edmonds because the SPJC found in Edmonds' favor. Within its proper trial discretion, the SPJC ruled on each of these matters, and there is no basis in the record from which to conclude that any such decisions were other than harmless error, if that.

Similarly, given that this Commission reverses the SPJC on the grounds of constitutional misinterpretation, the errors alleged in Edmonds' Counter-Appeal, separately or collectively, could amount to no more than harmless error, and on this record cannot be seen as determinative of any injustice having been experienced.

Decision

As noted above, the SPJC determined that the restructuring of the Presbytery's Stated Clerk position and terms of call was part of a re-evaluation of its mission in response to a serious financial crisis. All existing staff of the Presbytery were affected by the restructuring, which included a number of terminations with severance packages. The SPJC further determined that the Stated Clerk's restructured position and reduced terms of call did not constitute a constructive discharge.

While stated clerks must be elected to specific terms of office in accordance with the *Book of Order*, the GAPJC determines that their elected terms and any agreed-upon remuneration are not irrevocable contracts for those fixed terms, but rather terms of call that may, in the case of a serious financial crisis and/or mission re-evaluation, be adjusted by the employing entity, so long as fundamental fairness is demonstrated (G-6.0201 and G-14.0522). Fundamental fairness was evident through the numerous efforts of the Presbytery's Personnel Committee to meet with all staff members and Edmonds and work with them in the process. It was ultimately demonstrated through Edmonds' opportunity to speak on the floor of the Presbytery to the motion that effected the change to his terms of call.

Edmonds argued that since his term of office was for "a term of years, not for a term of years *or* until a successor is elected," *Robert's Rules of Order Newly Revised, 10th Ed.* (RONR), the parliamentary authority then in effect, prohibits the Presbytery's action without a disciplinary procedure. The Presbytery responded that the provision of RONR relied upon by Edmonds does not apply since the exact wording of G-9.0302 is only that "*meetings of governing bodies, commissions, and committees shall be conducted in accordance with the most recent edition of Robert's Rules of Order except in cases where this Constitution provides otherwise*" (emphasis added), and the rule Edmonds cited does not refer to the conduct of a meeting.

Both the Presbytery and Edmonds are in error. The rules in RONR regarding terms of officers are applied by means of decisions of assemblies rendered in the course of their meetings. RONR's provisions regarding officers clearly do apply in this case. The RONR rule relied upon by Edmonds, however, relates to the *removal* of officers. The Presbytery did not remove Edmonds from office. The directly applicable provision from RONR is not its provision on the

removal of officers, but rather its provision regarding the amendment of a society's own rules relating to its officers:

Amendments to the article on officers may raise difficulties in relation to the time at which adopted changes take effect, unless special care is taken. A society can, for example, amend its bylaws so as to affect the emoluments and duties of the officers already elected, or even to abolish an office; and if it is desired that the amendment should not affect officers already elected, a motion so specifying should be adopted before voting on the amendment, or the motion to amend can have added to it the proviso that it shall not affect officers already elected. There is virtually a contract between a society and its officers, and while to some extent action can be taken by either party to modify or even terminate the contract, such action must be taken with reasonable consideration for the other party (RONR p. 579, ll. 9-21).

In this provision, RONR clearly contemplates the possibility that even a society's currently elected officers can be affected by changes to its own rules -- including both duties and emoluments (compensation) -- even though "there is virtually a contract between a society and its officers." Additionally, this provision establishes the principle that in such cases, "reasonable consideration for the other party" must be demonstrated. The record reflects that such consideration was extended to Edmonds.

While the SPJC did not rule on Counts Two, Three, and Four of the Complaint, it nevertheless would have considered those matters in the overall course of the proceedings. In addition, as previously stated, this Commission concludes that the errors alleged in the Counter-Appeal, if any, are collectively harmless and did not substantially affect the outcome of the case. Thus, the Commission sees nothing to be gained by remanding the case for a new trial.

Order

IT IS THEREFORE ORDERED that the Decision of the Synod of the Northeast is reversed and the case is dismissed.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Northeast report this decision to the Synod of the Northeast at its first meeting after receipt, that the Synod of the Northeast 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.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of New York City report this decision to the Presbytery of New York City, at its first meeting after receipt, that the Synod of the Northeast 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.

Absences and Non-Appearances

Commissioner Margaret MacLeod was absent and did not take part in the deliberations or decision.

Certificate

We certify that the foregoing is a true and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Remedial Case 220-09, Presbytery of New York City, Appellant/Counter Appellee v. Cornell A. Edmonds, Appellee/Counter Appellant, made and announced at San Antonio, TX, this 20th day of February, 2012.

Dated this 20th day of February, 2012.

Susan J. Cornman, Moderator
Permanent Judicial Commission of the General Assembly

Gregory A. Goodwiller, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I did transmit a certified copy of the foregoing to the following persons by Federal Express Next Day Air, directing C. Laurie Griffith to deposit it in the mail at San Antonio, TX, this 20th day of February, 2012.

John M. Griem, Jr., Counsel for Appellant/Counter Appellee
Edward Koster, Counsel for Appellee/Counter Appellant
Stated Clerk, Synod of the Northwest
Stated Clerk, Presbytery of New York City
General Assembly Permanent Judicial Commission

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by delivering it in person to C. Laurie Griffith, on February 20, 2012.

Gregory A. Goodwiller, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the General Assembly, in San Antonio, TX on February 20, 2012, in Remedial Case 220-09, Presbytery of New York City, Appellant/Counter Appellee v. Cornell A. Edmonds, Appellee/Counter Appellant, and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at San Antonio, TX, on February 20, 2012.

C. Laurie Griffith
Manager of Judicial Process and Social Witness