Church Settles Court Cases

Recently, the Seventh-day Adventist Church has settled out of court the two cases involving employment and pay practices and charges of discrimination on the basis of sex. The following articles summarize the settlements and the church's rationale for settling, as explained by Neal Wilson.

The Editors

Department of Labor — Pacific Union Case

At the end of September 1977, the United States Department of Labor, the Pacific Union Conference and its codefendants entered into stipulations for settlement and future compliance. It was stipulated that the case against Loma Linda University would be settled, without admitting any violations of the F.L.S.A., for the sum of $6,737.60.

As part of the settlement, LLU represented and affirmed that it was its policy "to pay all of its teachers and administrative personnel and all of its housekeepers, janitorial or custodian personnel in accordance with the provisions" of the F.L.S.A. and further represented that it intended "in the future to continue to pay such employees in accordance with said provisions of the Act."

In the stipulated settlement with the remaining defendants, again without admitting any violations of the F.L.S.A., it was agreed that the defendants would pay to the Department of Labor the sum of $650,000. The settlement check to be made payable to "Wage and Hour Labor," the Department was to distribute these monies to defendants' teachers and school administrative employees. If any of these individuals should refuse to accept such sums or were incapable of being located, those funds were to be paid by the Clerk of the Court to the Treasurer of the United States.

They further agreed to conform their pay practices, with respect to their teachers and school administrative employees employed in the State of California, to the F.L.S.A.; specifically, they agreed not to:

> discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at rate less than the rate at which [he] pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort and responsibility and which are performed under similar working conditions, except where such payment is made pursual to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

Upon the receipt of the settlement funds and upon the filing of the stipulations, the case was dismissed with prejudice (i.e., without the possibility to refile an action based on the same alleged violations) and with both parties to bear their own costs.

Douglas Welebir

Wilson's Response to Pacific Union Settlement

Roy Branson interviewed Neal Wilson at the General Conference, November 1977.

Branson: Why did the denomination, after continuing the *Labor Department* v. *Pacific Union* case for such a long while, decide to settle out of court, rather than pursue the case further?

Wilson: There are a good many reasons why this seemed the prudent thing to do. First, we had no real contention over equal pay for equal work. This was something the Church, in its general policies, had already settled. Our continuing the case would have led some to think that we wanted to suppress women in some way or that we must be reluctant to admit that women should have equality. Second, continuing the case would have misled some into concluding that we considered the Church clearly and definitely above law, and that we were fully exempt from all civil law as a Church, because of the first amendment. In fact, this view became rather widespread in some circles because of certain statements that actually did appear in the documentation of other cases, such as in the Merikay Silver and *EEOC* v. *Pacific Press* cases, where we indicated that, in our opinion, laws enacted to regulate and protect interstate commerce and trade and nonreligious enterprizes do not apply to the internal operations of the Church, as we are wholly exempt from such laws. Third, prolonging the case would have led others to believe that we objected to government agents coming onto our campuses asking questions or inspecting our records. It is true that basically we don't believe that that's a very good role for government. But we were quite aware that if the case had gone to trial, there would have been individuals, voluntarily or under subpoena, who would testify that agents of government have already come onto campuses for any one of a dozen reasons: to inspect farms, to look at fire hazards, to even ask questions about finances or pursue questions of fairness and equity raised by students. We've never considered these governmental activities any particular threat to the Church, and continuing the case would have allowed some to think that we had changed our position. Frankly, it was just a combination of a lot of things that would probably have been misunderstood had the case been carried on. Reviewing the whole matter, we determined that for the sake of harmony within the Church, the case was not worth pursuing. It is unlikely that we would have had the opportunity of explaining our position to the Church at large, and to our members, in a way that would have been totally understood without printing a book on it, and certainly the issue was not worth that.

Branson: By settling out of court, what has the Church conceded, or does it stand by everything it said in its briefs?

Wilson: Before answering, I must say that, in my judgment, the government (and I'm speaking of the Department of Labor) has exceeded the expectations of many in its desire to settle with the Church in the most amiable way consistent with what it considered to be its responsibility to protect civil rights and to enforce equal pay for equal work. I really feel that the Department of Labor has shown that it had no intention to hurt the Church. In the settlement negotiations, it showed a sensitivity which I think was most commendable and ought to be cited. Now, as to your question specifically, the only thing that the government asked us to concede was that we did agree to equal pay for equal work as outlined in the Fair Labor Standards Act.

Branson: So that paying a penalty was a way that the Church publicly acknowledged that it was willing to obey the law with respect to equal pay for equal work?

Wilson: Right. Actually, the sum which the government asked for did not represent the total amount that might have been involved during 1972 to 1974, the period the Department of Labor considered us in violation. The payment was a way for the government to be able to say to the Church, "We

know that you recognize that it would have been better if you had been in harmony with the law from the time that it was implemented; that you now believe, for whatever reason, that it is a good law, and that you recognize and admit that equal pay for equal work is not immoral and that this is not a violation of your free exercise of your faith."

Branson: What was the total amount that the Church agreed to pay?

Wilson: $650,000.

Branson: How has the settlement affected the Church's statements in its briefs concerning entanglement of government in affairs of the Church?

Wilson: The settlement was not a consent decree ordered by the court. The court has simply dismissed the case. If we were to go into court on a similar case, we would have to develop new briefs, although we might take over some of the things that were in these briefs into the new ones, because we still hold many of the principles that appear in the briefs for this case.

Branson: So the Church stands behind the statements that it made on what it considered to be the basic issue, namely, the extent to which the government could involve itself in the workings of church-related institutions?

Wilson: I think that we might rephrase some things a little differently; we might get at it from a little different perspective. Also, there are still unresolved areas in church-government relationships, and we hope that somewhere down the road there will be a clarification of some of these, so that we will all know our relationships better than we presently do.

Branson: Does your settlement with the Department of Labor set any precedent for settling similar suits that might arise from claims of women in other parts of the country?

Wilson: No. The two-year statute of limitations has run out. As of 1976 no one could appeal what happened between 1972 and 1974, and at that time (July 1974) we began to come into compliance with the law. By the middle of 1975 we were in full compliance. So time has run out for filing complaints for the period when we were not in compliance. Only those women who are covered by the present settlement covering the Pacific Union will be paid as a result of this settlement. Of course, anyone today might appeal to a goverment agency or bring into court what he considers a case of discrimination, violating some existing regulation or statute, but I doubt that it would be in the area of equal pay.

Branson: Despite the action taken at the General Conference session in Vienna, it is not automatically the case that a member who went to the courts after going through all the new conciliation procedures within the Church would be disfellowshipped?

Wilson: No. The member might have a very valid case and it might be over a point where the Church did not really have jurisdiction, and only the courts could ultimately rule. Or, it might be that justice had not been administered through the Church. We cannot deprive a member nor would we want to deprive a member, from exercising his or her civil right and acting in harmony with conscience by taking a case to the courts.

Branson: Is there any prospect of the denomination settling out of court the other outstanding court cases involving the church in governmental regulations requiring equal pay for equal work — the suits of Merikay Silver, Lorna Tobler and the *EEOC* v. *the Pacific Press*.

Wilson: We would be happy to settle every case out of court. We have attempted to settle these specific ones out of court on the basis of back wages, but there are other aspects that become more difficult. One would be reinstatement of individuals in their work roles. Second would be agreeing that this would affect a class of women, not just Merikay and Lorna. Third, there is the demand for a monitoring system which would not be a Church monitoring system but a quasi-government or quasi-public monitoring system installed at the Pacific Press. The court has clearly indicated that the Pacific Press is a religious organization. For the Church to accept a quasi-public or quasi-governmental monitoring system to assure that the affirmative action provisions of the law are carried out by the Pacific Press would

be entirely unacceptable to the Church. Fourth, it would be unacceptable to us to pay heavy punitive damages, legal costs or fees. It is my opinion that such a settlement would also be very objectionable to a large segment of the Seventh-day Adventist Church. For these reasons, we think now that it probably will not be possible to settle out of courts, but we will continue to negotiate.

Merikay Silver — Pacific Press Cases

The cases commonly called the "Merikay Silver" or "Pacific Press" cases were settled out of court in February when attorneys representing the interested parties signed a stipulation agreement that the Federal District Court for the Northern District of California should dismiss the cases. The stipulation said "The parties have settled their differences amicably in accordance with the terms of . . . a settlement agreement," which was attached to the stipulation and submitted to the court.

According to the major points of the agreement, Merikay Silver will receive a gross settlement amount of $30,000. An agreed-upon reference letter will be placed in her personnel file at the Press. And Mrs. Silver's attorneys will receive $30,000, though they had asked at one point for about $150,000.

Lorna Tobler will receive a gross settlement sum of $15,000. An agreed-upon reference letter also will be placed in her file.

Under the agreement, Pacific Press will post a notice for one month stating it will not discriminate on the basis of sex and that it will "continue to conform its pay practices" to Title VII of the Civil Rights Act, though, technically, it "does not believe it is subject to the provisions of Title VII." In addition, the Press and the General Conference agreed to dismiss their motion to assess the plaintiffs for court costs and attorneys' fees.

The women agreed to sign general release agreements and to withdraw all but one of the discrimination charges they filed with the Equal Employment Opportunity Commission (a Tobler charge of October 20, 1972). And, further, they agreed that the cases will be dismissed with prejudice (that they cannot be reopened).

Neal C. Wilson, vice president of the General Conference for North America, said the settlement was considered justified on three grounds: "(1) The legitimate remuneration adjustment needed to meet the provisions of equal pay for equal work during 1971-1973; (2) the anticipated future legal expenses necessary for the denomination to perfect its constitutional argument if the cases continued; and (3) the counsel of Ellen White that we should make every possible effort to reconcile and settle such matters in the church rather than in the court."

Robert Nixon