



DEPARTMENT OF HUMAN RESOURCES
 EMPLOYMENT SECURITY ADMINISTRATION
 1100 NORTH EUTAW STREET
 BALTIMORE, MARYLAND 21201
 383-5032

BOARD OF APPEALS
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DECISION

IN THE MATTER OF THE APPEAL OF:
 La Reine High School

Decision No.: 6-EA-83
 Date: 2/28/83
 Exec. Determ. No.: 2464
 Emp. Account No.:

ISSUE: Whether services performed for La Reine High School are services in covered employment within the meaning of 26 U.S.C. § 3309(b)(1) and § 20(g) (7)(v)B of Article 95A, the Maryland Unemployment Insurance Law.

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY, IN THE SUPERIOR COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU DO BUSINESS.

PERIOD FOR FILING AN APPEAL TO COURT EXPIRES March 30, 1983

APPEARANCES

For the Appellant:

Paul Interdonanto - Attorney
 Sister Margaret Mary Modde
 Aloysius Galvin, S. J.
 Sister Kateri Peake
 Brother Peter Campbell

For the Executive Director:

John Zell -
 Legal Counsel

INTRODUCTION

This case was remanded to the Board of Appeals from the Court of Appeals of Maryland. In Employment Security Administration v. Baltimore Lutheran High School Association, Inc., et. al., 291 Md. 750 (1981), the Court of Appeals affirmed part and vacated and remanded in part a previous decision of the Board (55-EA-79) which dealt with several church-related schools. The issue in each case was whether the school in question was exempt from unemployment insurance taxes (and, as a corollary, whether the employees of these institutions are covered by unemployment insurance) under § 20(g) (7)(v)B of Article 95A, the Maryland Unemployment Insurance Law, and 26 U.S.C. § 3309(b)(1)(A) and (B), part of the Federal Unemployment Tax Act.

The Court of Appeals has ruled that the Beth Tfiloh Day School, the Liberty Jewish Center and the Catholic Diocesan Schools in the Archdiocese of Washington are exempted from coverage under 26 U.S.C. § 3309 (b) (1) (A). The Court, however, remanded the other cases dealt with in that decision because the facts were insufficiently developed as to each individual school.

On remand, the Board will deal with each school individually, as the nature the remand order from the Court of Appeals, which calls for specific and detailed findings of fact and new conclusions of law concerning each school , requires such individual treatment. This case has therefore been renumbered as Employer Account No. 659030-O(R) as it deals only with La Reine High School.

In making the findings in this case, the Board has considered the record (including the transcript) of the first hearing held before the Board in this case, as well as the record made at the additional hearing held June 29, 1982.

FINDINGS OF FACT

La Reine High School was established by the Bernardine Sisters of Saint Francis (hereinafter "Bernardine Sisters") as a girls Catholic high school in Suitland, Maryland. The Bernardine Sisters were invited into the area by the Roman Catholic Archbishop of Washington, who donated the real property on which the school is built. The school building was planned by the Bernardine Sisters.

The Bernardine Sisters constitute a religious order within the Roman Catholic Church. As a religious order , its members dedicate their lives to religious goals. The order has branches in the United States, Puerto Rico, Africa and Brazil. It is engaged in extensive nursing and teaching activities. The order operates three schools in Maryland, but has no nursing operations in Maryland. Within the Roman Catholic Church. the Bernadine Sisters at La Reine High School are subordinate , first, to the local Bernardine authorities, who report to the Bernardine Provincial Superior in Stamford, Connecticut . This line of authority extends directly to the Roman Catholic Pope in Rome. A parallel line of authority extends from the school to the Roman Catholic Archbishop of Washington to the Pope. As a practical matter, however, the Archbishop of Washington has little or no say over the day-to-day activities of the school.

The Bernadine Sisters in Maryland are not incorporated. They own all of the school buildings and equipment. They directly control school policy and supervise the operations of the schools as an unincorporated association.

La Reine High School derives 95% of its income from tuition and fees and 5% from religious contributions primarily derived from the individual convents of the Benardine Sisters.

The stated purpose of the institution is "to meet the individual needs of the whole person within the framework of Christian principles." The student body consist of approximately 700 girls in grades 9 through 12. About 80% of the students are Catholic. About 80% of the students come from 18 Catholic elementary schools in the metropolitan area. The faculty consists of 21 members of religious orders (18 of whom are Bernadine Sisters) , 38 Catholic men and women who are not members of religious orders and 8 non-Catholics.

The testimony on academic freedom was too vague to substantiate any detailed findings of fact; but academic freedom appears to exist as long as Catholic dogma is not contradicted, and there appears to be little actual effect of Catholic dogma on the non-theological subjects. Religious exercises include voluntary daily Catholic Mass and voluntary retreats (compulsory after September, 1982) and other ceremonies . Religious texts and artifacts , such as the Bible and Advent Wreaths are present at various places around the schools. Charitable community services are also encouraged to a large extent.

One of seven substantive class periods per day is a religion class. These 45-minute classes are compulsory, even for non-Catholic students. The administration encourages but does not require the other six classes per day to begin with a prayer. There is no evidence that the content of or methodology used in the non-religious courses is significantly affected by any religious doctrine.

Approximately 86% of the graduates of La Reine continue their education at college. The second largest group goes into the business world. About one to two percent become Bernadine Sisters or sisters of other religious orders.

CONCLUSIONS OF LAW

The Court of Appeals stated that Catholic private schools which are separately incorporated, "must show that they satisfy both requirements of Section 3309(b) (1)(B)C" 291 Ma. at 766. At the time of the Court of Appeals decision, the record was somewhat unclear as to the corporate status of each of the schools previously dealt with in the Board's decision. The record in this case is clear, however, that La Reine High School is not separately incorporated. Since La Reine High School is not separately incorporated, the first question is whether or not the employees of La Reine are employees of a "church" within the meaning of 26 U.S.C. § 3309(b)(1) (A).

The Supreme Court has held that the word "church" means "the congregation or the hierarchy itself, that is, the church authorities who conduct the business of hiring, discharging, and directing the church employees." Saint Martins Evangelical Church v. South Dakota, 449 U.S. 950 (1981).

La Reine High School is clearly owned and operated, not by any corporation, but by the Bernardine Sisters of Saint Francis. The Board concludes that the Bernardine Sisters are a "church" within the meaning of § 3309(b)(1)(A) of the federal law anti that it is unnecessary, therefore, to determine whether or not La Reine is operated "primarily for religious purposes" within the meaning of § 3309(b)(1)(B). Since the Bernadine Sisters of Saint Francis constitute a "church," their employees-' earnings are clearly exempted from unemployment insurance taxation, and their employees are not covered by unemployment insurance.

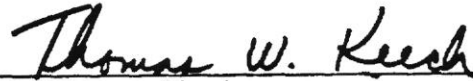
In the case of Christian School Association v. Commonwealth of Pennsylvania 423 A.2d 1340 (1980), the Pennsylvania Commonwealth Court found that an overly restrictive view of the concept of a "church" would lead to discrimination among religions based on the organizational structure of different religions. In that case, the court ruled that a group of parents professing a Christian religious belief was a church within the meaning of the statute, irrespective of the fact that they did not meet together for any common liturgy. A similar ruling on a different set of facts was made by the California Court of Appeals in Young Life Campaign v. Patino 122 Cal. App. 3d 559, 176 Cal. Rptr. 23 (1981). The rulings in both of these cases seem to hinge on the rationale that, when determining whether or not an organization of individuals is a church for the purpose of determining exemption from unemployment insurance law, a liberal interpretation should be given to the word "church" in order to prevent possible discrimination among religious bodies. The Board has found these holdings persuasive in this case on the issue of whether or not the Bernadine Sisters constitute a church.

The Board of Appeals concludes that the Bernadine Sisters of Saint Francis do meet the Supreme Court's definition of a "church." The order is a highly organized body of persons whose entire lives are apparently dedicated to religious purposes with additional "missions" of nursing and teaching. The order has its own organizational hierarchy but considers itself part of the Roman Catholic Church. To deny the order the status as a church within the meaning of 26 U.S.C. § 3309 (b)(1) (A) would be to discriminate' against it, and all orders of the Roman Catholic Church on the basis of the theological organization. Whether considered as part of the Roman Catholic Church or considered alone, the order is a "church" within the meaning of the statute.

DECISION

Employees of La Reine High School are employees of a church within the meaning of 26 U.S.C. § 3309(b)(1)(A) and Section 20(g)(7)(v)B of Article 95A, the Maryland Unemployment Insurance Law. Services performed by employees for La Reine High School are thereby excluded from unemployment insurance coverage under these statutes.

The previous decision of the Board, Decision No. 55-EA-79, is affirmed insofar as it relates to La Reine High School.



Chairman



Associate Member



Associate Member

K:W:D
dp

DATE OF HEARING: June 29, 1982
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EMPLOYER

James J. Traglia - Executive Director
M. C. Ashley - U. I. Director
John Zell - Legal Counsel
D. J. Wajer - Employer Status
M. Scheeler - 207 Section
Anthony Monaco - Field Investigation
Jack Hand - Chief of Contributions
Veronica Miller - Experience Rating