



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
HARRY HUGHES

BOARD OF APPEALS
1100 NORTH EUTAW STREET
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— DECISION —

Decision No.: 878-BR-84
Date: November 2, 1984
Appeal No.: 11763
S. S. No.:
L.O. No.: 45
Appellant: CLAIMANT

Claimant: Joel Feldman

Employer: Yeshiva High School of
Greater Washington, Inc.

Issue:

Whether the claimant is eligible for benefits within the meaning of §3(b) of the Law; and whether the services performed by the claimant for Yeshiva High School of Greater Washington, Inc. were services in covered employment within the meaning of §20(g)(7)(v)(B) of the 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 MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON December 2, 1984

— APPEARANCES —

FOR THE CLAIMANT:

Joel Feldman
Frances Kanterman, Atty.

FOR THE EMPLOYER:

Ellen Scalettar,
Atty.;
Ronald Lipman,
President

Department of Employment & Training
John Roberts, Legal Counsel

EVALUATION OF EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Employment and Training's documents in the appeal file.

The Board of Appeals notes that in the decision in Employment Security Administration v. Baltimore Lutheran High School Association Inc., et. al., 291 Md. 750 (1981), the Court of Appeals set forth specific and detailed findings of fact to be made by the Board and upon which the Board was to formulate conclusions of law regarding whether each school was exempt from or covered by §20(g)(7)(v)(B). Since the issue in this case is identical, the Board has adopted the guidelines of the Court of Appeals in evaluating the evidence in this case.

FINDINGS OF FACT

The claimant, Joel Feldman, was employed by Yeshiva High School of Greater Washington, Inc. (hereinafter referred to as Yeshiva High School) as the principal, from August 1, 1980 until July 31, 1983. The claimant is an ordained rabbi as well as state certified to be a secondary school principal.

Yeshiva High School is a private, sectarian secondary school for Jewish students from the sixth through the twelfth grades. Under its bylaws, it also operates as an Orthodox Synagogue to provide for and conduct religious services.

The school is run strictly pursuant to the tenets of Orthodox Judaism. Consequently, although the student body is co-ed, the boys and girls attend separate schools, attendance at daily religious services is required of all students, and a dress code is enforced that includes the wearing of yamalkas and prayer shawls for boys and the prohibition of slacks or shirts and other clothing for girls which Orthodox Judaism considers immodest.

All members of the corporation must be of the Jewish religion. The ultimate responsibility for management and operation of the school is with the Board of Directors, who all must be members of the corporation and therefore must be Jewish. All officers of the corporation must also be of the Jewish faith.

The Board of Directors appoints the following committees to oversee the operation of the school: the Board of Secular Education, the Board of Religious Education, Budget and Finance Committee, and the Personnel Committee. Under the bylaws, the Board of Religious Education must be composed entirely of Orthodox Jews, and two of the members must be members of the Rabbinical Council of Greater Washington. The chairman of the Board of

Religious Education is appointed by the president of the corporation, after consultation with the Rabbinical Council. Both the dean of the school (who also serves as head of the Religious Studies Department) and the principal of the school must be Orthodox rabbis. The principal reports to the president of the corporation. All the decisions by the Board of Directors are made on religious grounds and any disputes are referred to a "Beth Din" (arbitration board) of the Rabbinical Council of America, an arbitration board made up of rabbis.

Financial support for the school is derived from tuition, an annual banquet, and general fund raising in the local Jewish community and synagogues, and approximately 10% of the budget is from the United Jewish Appeal.

The purpose of the school, as stated in its bylaws, is to be:

. . . a religious educational institution where young men and women receive both an Orthodox Jewish and secular high school education.

Another stated purpose in the bylaws is to "operate an Orthodox Synagogue and provide for and conduct religious services."

The philosophy of the school is to provide a:

. . . program . . . directed toward the development of individuals whose commitment to life will be enriched by devotion to learning and to the spiritual and moral values of Judaism.

(See, Claimant's Exhibit No. B1.)

Particularly, the school tries to imbue its students with a sense of how to live their lives as Orthodox Jews.

One of the goals of the school is for its graduates to attend a Jewish institute of higher learning, and approximately 40-60% do so at some time after graduation; 99% of the students go on to attend a secular college as well.

The school (whose secular studies department is State certified) does try to maintain excellence in its secular departments but it does not see that as its most important goal.

The school is very much involved with encouraging the spiritual development of its students and, in fact, this is one of its stated purposes. Religious subjects encompass fully 50% of a student's day. Although prayer in the classroom is not required, attendance at daily religious services is required of all students. The school also offers its students religious study on Sundays and on Thursday evenings. As stated above, male students are required to wear yamalkas and prayer shawls for all classes, secular as well as religious.

The student body, which is composed of approximately 42 boys and 23 girls, is 100% Jewish. In its by-laws the school sets forth that it will not discriminate in admitting students on the basis of race, color, or national origin, but religion is specifically excluded from this list.

There are approximately 15 teachers of secular subjects. They are not all Jewish, nor are they required to be. However, all teachers in the religious studies department (approximately 4 full-time and 4-5 part-time) must be Orthodox Jews.

Secular courses are taught using the same books as Montgomery County public schools. Non-Jewish teachers of secular subjects do not receive any special religious training. Advanced placement courses such as calculus and advanced English are available in a student's senior year, and there are electives and extra-curricular activities. The separation of the sexes applies to both secular and religious courses.

CONCLUSIONS OF LAW

Under §20(g)(7)(v)(B), services performed by an individual for an employer may be exempt from the statute if either one of two tests are met: the service is performed in the employ of a church or convention or association of churches, or the services are performed for an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches.

As to the first part of the test, the Supreme Court held that the word "church" means "the congregation of the hierarchy itself, that is, the church authorities who conduct the business of hiring, discharging, and directing the church employees." St. Martin's Evangelical Church v. South Dakota, 449 U.S. 950 (1981)

The corporation for establishing and operating the school for which the claimant worked is clearly not a church.

The real question here is whether Yeshiva High School meets the second statutory test. In order to meet the requirements of that section, Yeshiva High School must show that it is, (1) an organization operated primarily for religious purposes; and (2) that it is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

With regard to the first part of the test, after careful consideration of all the factors set forth by the Court of Appeals in E.S.A. v. Baltimore Lutheran High School Association, Inc., et. al., supra, the Board concludes that the Yeshiva High School is operated primarily for religious purposes. In reaching this conclusion the Board has been particularly influenced by the fact that fully one-half of each student's day is taken up with

religious courses, in addition to the required attendance at daily services, and the abundance of after-school and weekend religious activities. Further, the organization of the school in terms of its separation of the sexes, its strict dress requirements, which include for boys the wearing of religious garments in all classes, its stated purpose, the religious composition of the student body (100% Jewish) and the percentage of students who attend religious institutions of higher learning after graduation, convinced this Board that this school is operated primarily (although not solely) for religious purposes. This conclusion is further supported by the school's bylaws, which contain an exception for religion under the non-discrimination in admissions section (Article II, Section 6) and also contain a section (Article II, Section 8) that states that the corporation shall also operate as an Orthodox Synagogue, and by the requirement (not in the bylaws, but decided by the Board of Directors at a later time) that the principal of the school, who oversees the entire school, including the secular studies department, must be a rabbi.

All these factors, but most especially the dominance of religious studies in the curriculum, set this school apart from other schools whose purposes this Board has had to wrestle with in other cases. See, e.g., Georgetown Preparatory School, Bd. Dec. No. 10 - EA - 82.

In order to be exempt from the unemployment insurance law, the employer must also meet the second part of the test, namely that it is operated, supervised, controlled or principally supported by a church or convention or association of churches.

The question of what is meant by a "church" is a difficult one. In the case 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 were 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 both these cases seem to hinge on the rationale that, when determining whether or not an organization of individuals is a church for the purposes 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 finds these holdings persuasive on this particular issue. (See also, the Board's discussion of this issue in the Georgetown case.)

Yeshiva High School is run by a Board of Directors made up entirely of Orthodox Jews and who act in consultation with the Rabbinical Council. The Rabbinical Council, in addition to contributing members to the Board of Religious Education, is the body that resolves any dispute involved in the Board's decision-making regarding the running of the school. Further, the school also operates a synagogue, and the dean of the school and principal are required to be rabbis. Therefore, the Board concludes that, in keeping with the liberal standards set out in the Christian School Association and Young Life Campaign cases cited above, Yeshiva High School is supervised and principally supported by a church within the meaning of §20(g)(7)(v)(B).

The issue of whether the claimant is disqualified under §6(a) or §6(d) of the law was also raised on appeal. However, since the Board concludes that the claimant's employment with Yeshiva High School was not "covered" employment under the unemployment insurance statute and since the claimant, by his own testimony, admitted that he had no other earnings during his base period, it is unnecessary for the Board to reach these issues.

DECISION

The employer is an organization which is operated primarily for religious purposes and is operated, supervised, controlled or principally supported by a church, within the meaning of §20(g)(7)(v)(B). Therefore the claimant's services performed for the employer were not employment within the meaning of the law.

The claimant does not have sufficient earnings under §3(b) of the law.

The decision of the Appeals Referee is affirmed.


 Associate Member


 Chairman

Associate Member Maurice E. Dill participated in the hearing, but not in the decision.



Associate Member

D

kbm

Date of Hearing: June 5, 1984

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Frances Kantermann, Esq.

Ellen Scalettar, Esq.

UNEMPLOYMENT INSURANCE - PIMLICO



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- DECISION -

CLAIMANT: Joel Feldman
 PLOYER: Yeshiva High School of Greater Washington, Inc. -
 DATE: Nov. 14, 1983
 APPEAL NO.: 11763
 S.S. NO.:
 LO. NO.: 45
 APPELLANT: Claimant
 ISSUE: Whether the claimant is eligible for benefits within the meaning of Section 3(b) of the Law.

NOTICE OF RIGHT TO PETITION FOR REVIEW

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON November 29, 1983

-APPEARANCES-

FOR THE CLAIMANT: Joel Feldman - Claimant
 FOR THE EMPLOYER: Submitted information

FINDINGS OF FACT

The claimant has a benefit year effective August 7, 1983. He has no weekly benefit amount established. The claimant was employed by Yeshiva High School of Greater Washington, Inc. of Silver Spring, Maryland on August 1, 1980. He was performing duties as a principal at \$442.30 per week at the time of his separation on July 31, 1983.

The testimony reveals that the employer is a non-profit corporation, designed to provide a comprehensive Jewish education to its students within a religious environment. The majority of its educational programs are religious in nature.

On July 23, 1980, the claimant signed a three year contract to become the principal of this high school. His functions were both religious and secular in nature. He was responsible for the entire educational process and the organization of the educational year, including the arrangement of the scheduling of classes and other activities.

The high school, itself, is divided into boys and girls division. The contract specifically required that the principal of these two schools be a rabbi. In addition to being a rabbi, however, the claimant is also a certified secondary principal. As a rabbi, he has never had a congregation.

Fifty percent of the the curriculum is religious in nature, including Bible study, Hebrew law and custom, Hebrew language, and Hebrew philosophy. In addition to these religious subjects, there are also the secondary subjects, including math, science, English, history and other secular courses.

The school is basically for those of the Jewish faith. Non-Jews could possibly go there, but they have never had a non-Jew apply.

The claimant's contract and evaluation were under the supervision of the Board of Directors and the Board of Education. The Board of Directors was under the control of the Yeshiva Synagogue and any dispute, whether or not the claimant has complied with the obligations of his contract, would be referred to the Beth Din of the Rabbinical Council of America.

At the expiration of the contract, the claimant was offered a renewal of the contract, but declined because of the distance involved from his home in Baltimore to his place of employment in Silver Spring, Maryland. The claimant has remained unemployed from July 31, 1983 to the present.

CONCLUSIONS OF LAW

Section 20(g)(7)(V)(b) of the Maryland Unemployment Insurance Law reads: "Service by an individual in the employ of a church convention or association of churches or an organization which is operated principally for religious purposes and which is operated, supervised, controlled, or principally supported by

a church or convention or association of churches" is not covered employment within the meaning of the Law. It is concluded from the testimony that this claimant was in the employ of a church controlled and operated school which was operated principally for religious purposes and sponsored by the Yeshiva Synagogue. The contract itself requires that the principal be a rabbi. The claimant contends that he actually wears two hats, but it is the hat of the rabbi which was required under the contract which designates a religious function.

In Board decision number 899-BH-83, the Board concluded that a lay person working in a religious atmosphere could be considered under covered employment. This distinction was also applied in the Georgetown School case, 10-EA-82.

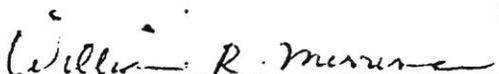
However, in the Baltimore Lutheran High School case, 5-EA-83, the Board concluded that installed ministers of religious education are exempt from Maryland Unemployment Insurance coverage.

However, in the Salem College and Academy vs. Employment Division, 659 P.2nd 415 (1983) the Courts conclude that It is unfair to make a distinction between religious leaders and lay leaders. The Court in that case stated that independent, religious schools must be exempt under Unemployment Compensation Act and, thus, are not considered in covered employment. The determination of the Claims Examiner under Section 3(b) and 4(d) of the Law is affirmed.

DECISION

The claimant is an employee of the church within the meaning of Section 20(g)(7)(V)(b) of Article 95 of the Maryland Unemployment Insurance Law. Services performed by the claimant for the Yeshiva High School of Greater Washington, Inc. is thereby excluded from unemployment insurance coverage under this Statute.

The determination of the Claims Examiner is affirmed.


William R. Merriman
William R. Merriman
Appeals Referee

Date of hearing: 11/8/83
amp/0130
(Hampton)
7882

Copies mailed to:

Claimant
Employer