

CORNERSTONE CHRISTIAN ACADEMY
OF VERNON COUNTY,

Plaintiff,

vs.

DECISION & ORDER

Case No. 14 CV 44

Code No. 30607

STATE OF WISCONSIN, LABOR AND INDUSTRY
REVIEW COMMISSION

-AND-

STATE OF WISCONSIN, DEPARTMENT OF
WORKFORCE DEVELOPMENT,

Defendants.

COUNTY OF VERNON
FILED

DEC 17 2014

KATHY BUROS
CLERK OF COURT

The novel, close and difficult question presented by this case is whether Cornerstone Christian Academy of Vernon County, Inc. is subject to the Wisconsin Unemployment Insurance law. For the reasons hereafter given this court finds and concludes that Cornerstone is entitled to the benefit of a statutory exclusion and therefore is not subject to the unemployment insurance requirements in question.

INTRODUCTION AND BACKGROUND

On September 12, 2012, the State of Wisconsin, Department of Workforce Development issued an initial determination that Cornerstone is a nonprofit organization subject to the unemployment insurance law, effective January 1, 2008. Cornerstone appealed asserting that it is entitled to the benefit of a statutory exclusion. The appeal tribunal (an administrative law judge) held a hearing where Cornerstone presented evidence to support its claim. The appeal tribunal issued a decision affirming the department's initial determination. That decision was upheld by the Labor and Industry Review Commission and Cornerstone has now appealed to this court.

The exclusion upon which Cornerstone relies provides (in relevant part) that: "Employment" as applied to work for a nonprofit organization ... does not include service ... [i]n the employ of an organization operated primarily for religious purposes and ... *principally supported* by a[n]... *association of churches*. Wis. Stats. §108.02(15)(h)2 (emphasis added). While the commission agreed with Cornerstone that it is operated primarily for religious purposes, it determined that Cornerstone had failed to prove that it was principally supported by an association of churches.

In so holding the commission observed that Cornerstone derived support from certain churches in the Vernon County area with four commonalities: (1) they are located within a close 30-mile geographic area; (2) they are small churches that could not support their own schools; (3) they are not part of an organized faith group and lack a hierarchical structure; and (4) they share a common statement of belief. The commission also found that Cornerstone's main expense is staff salaries and its main source of income is tuition paid by families of students; that no more than 30% of Cornerstone's income came from donations and scholarships from the churches. The churches also provided some nonfinancial support such as 10% of the volunteers to assist with a spring fundraiser; however, the remainder of the volunteers were the families of students.

The commission concluded that while the church support—both financial and nonfinancial—is “significant and needed” it is not Cornerstone's principal support within the meaning of the exclusion. Furthermore, the churches in question were not an association in that they merely shared beliefs and goals and were not part of some type of organization or shared governance, represented a variety of denominations, and provided their support in their individual capacities. “Multiple churches, each individually supporting the same school, is not what was envisioned by the legislature and does not satisfy the requirements of the statute.”

STANDARD OF REVIEW

Judicial review by the circuit court is a curious undertaking in that the decision of the circuit judge is merely acknowledged and given no weight by any reviewing court. In the likely event that this case is appealed to the court of appeals, that court will review the department's decision and not the decision of this court. *See e.g., Liberty Trucking Co. v. Dep't of Indus. Labor & Human Relations*, 57 Wis.2d 331 (1973). Although I have spent hours reading and reviewing the record, the briefs and the authorities cited therein and have given careful thought and due consideration to my decision, my explanation of that decision will be only sufficient and not extensive.

DECISION

This case presents a question of statutory interpretation—the application of a statute to an undisputed set of facts. Therefore, the court is not bound by the commission's determination of law. *DILHR v. LIRC* 155 Wis. 2d 256, 262 (Ct. App. 1990). However, the commission's determination may be entitled to great or due weight deference (as opposed to no deference) if certain conditions are present. *See Harnischfeger Corp. v. LIRC*, 196 Wis. 2d 650,660 (1995). The department argues for at least due weight deference primarily because the commission has had occasion to interpret and apply this same statute on five occasions over the last 39 years.

This argument is not persuasive. Five decisions over 39 years is a paltry number considering the likely volume of decisions issued by the commission over that span of time. Furthermore, except for *Kube v. Peniel Christian School*, Hearing No. 95002070MD (LIRC, 4/7/98), none of the decisions have much to do with the issues presented by this case; and even *Kube's* relevance is a bit of a stretch. I give no deference to the commission's decision in making my decision.

"principally supported"

In deciding that Cornerstone was not "principally supported" by the churches in question, the commission conceded that the phrase was not further defined in the statute or by Wisconsin case law. It interpreted the phrase to include both financial and nonfinancial support. It concluded that Cornerstone had failed to prove that it was principally supported by the churches, because Cornerstone's evidence established that no more than 30% of its financial support (in the form of scholarships and donations) came from the churches and the rest came from tuition payments by the families of students; and that only about 10% of volunteer assistance for events such as the spring fundraiser came from church members who were not family members of students. In other words, the commission found that Cornerstone was not principally supported by the churches because most of its "support" came from the families of the students.

Exhibit 12 contains a list of Cornerstone's students and their church affiliations, if any. Almost all of the students are affiliated with churches supporting Cornerstone. The only reasonable inference is that the families of these students are also church members. Cornerstone is, therefore, principally supported by the churches in the form of donations, scholarships and volunteers from the congregation as a whole, from individual congregants who do not have students attending Cornerstone, and, most importantly, from congregants who pay tuition to and volunteer at Cornerstone. I find and conclude that Cornerstone's undisputed evidence satisfies the "principally supported" requirement of the exclusion.

"association of churches"

In finding and concluding that Cornerstone was not supported by an "association of churches" the commission observed that Cornerstone had presented no evidence of some type of organization or shared governance; that multiple churches, each individually supporting the same school, was not envisioned by the legislature. We are for the most part writing on the proverbial "clean slate", and I find no reason to agree with the commission's restrictive definition of an "association of churches"; and I find good reasons to conclude otherwise. The *Kube* precedent cited by the commission to support its position is distinguishable and not persuasive.

The commission is, in effect, writing language into the statute that is not there. Cornerstone asserted before the ALJ that Vernon County is a poor, rural county with many small churches such as those that support Cornerstone. That assertion is consistent with the evidence offered at the hearing. Why should a more formally organized group of larger churches in a wealthier, more populous part of the state have the benefit of the exclusion and not Cornerstone? Why would (or how could) the legislature so intend? An "association" can be "loose" and even temporary. The commission's interpretation of what must be proved to establish an "association of churches" as applied to Cornerstone is not a defensible interpretation of the statute and it is not supported by the record.

CONCLUSION

In therefore finding and concluding that Cornerstone has met its burden and established that it is entitled to the benefit of the exclusion, I would also note that the decisions from other states cited by Cornerstone tend to support my decision. Those decisions dealt with very similar or identical statutory provisions.


And finally, while it is not necessary to address Cornerstone's constitutional challenge, I have read *Coulee Catholic Schools v. LIRC* 2009 WI 88. While the facts and issues presented by that decision are much different, Cornerstone must certainly find solace in the approach there taken by the majority of the Wisconsin Supreme Court.

ORDER

For the reasons given the court finds and concludes that Cornerstone Christian Academy of Vernon County, Inc. is exempt from unemployment insurance obligations under state statute. The decision of the Labor and Industry Review Commission is hereby reversed.

Dated this 17th day of December, 2014.

BY THE COURT:


Honorable Michael J. Rosborough
Circuit Court Judge

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