

SOLDIERS OF JESUS CHRIST, INC.,

Plaintiff,

vs.

MEMORANDUM DECISION

LABOR AND INDUSTRY REVIEW
COMMISSION, DEPARTMENT OF
WORKFORCE DEVELOPMENT,
KENNETH H. KUBE,

Case No. 98-CV 187

Defendants.

INTRODUCTION

This is an unemployment compensation appeal. The plaintiff, Soldiers of Jesus Christ, Inc., seeks judicial review of the April 7, 1998, decision of the Labor and Industry Review Commission (LIRC), which determined that it is not exempt under §108.02(15)(h), Stats., and that its former employee, Kenneth H. Kube, is therefore eligible for unemployment compensation benefits.

FACTS

The following facts were made by the LIRC in its April 7th decision and are largely undisputed. From November 23, 1993 until August of 1994, Kube worked for the plaintiff and performed telemarketing, fund-raising and construction work. See June 5, 1997, Transcript at p. 4. As payment for his services, Kube sometimes received checks drawn on the personal checking account of the plaintiff's director and his wife, and sometimes checks were from Soldiers of Jesus Christ Peniel Christian Church. Transcript at p. 27.

The plaintiff's founder, director and pastor for 25 years has been Kenneth Sortedahl. Transcript at p. 9. Mr. Sortedahl described his organization as follows:

[I]t's a Christian boarding school. We take in students that have got life control problems. Children that have been in trouble with the law and trouble in—trouble at their homes or in trouble in the community in general and they come and they stay for one year. We have a Christian school there. That's so they go right to our school right on the grounds. We have Christian service twice a day. We have devotions in the morning and evening after each meal and the children have a Christian curriculum, called Accelerated Christian Education curriculum. And it's like an ongoing bible camp is really what it is. And we really are able to help a lot of students and they—they turn out really well. In all the years we've had the home we've only had one boy ever go in the penitentiary and we got a lot of them out of jail. We've never had one go in a mental institution that I know of. We've never had one commit suicide that stayed the full year. We have a very effective program.

Transcript at pp. 9-10.

As testified to by Mr. Sortedahl and noted by the LIRC in its decision, there is no dispute that:

The school consists of 150 acres with 3 houses, one for a school, one for a boy's dorm, and one for a girl's dorm. There are three trailer houses for staff. There is also a barn. At the time of the hearing the employer had 18 students and 7 people performing services for the school. The employer operates mainly on donations. It is supported by churches of all denominations. It does charge tuition but students are not required to pay a certain amount. It costs up to \$1,000 per month, but not all the students pay that much.

Christian services occur twice a day including devotions in the morning and evening. Christian services are conducted in the school itself. The employer holds Christian services in the meal area after the tables are cleared. The employer uses a "Christian" curriculum. Mr. Sortedahl is a Lutheran pastor but does not preach Lutheran doctrine. If he did that, Jewish people would not send their children because the employer would make Christians out of them. The employer just preaches the Bible in its services. The employer does not follow any doctrine nor does it criticize any doctrines. The employer considers the school to be "cross-denominational." It takes students of any denomination or no denomination. The employer has baptism services on the ground and is open to having visitors come to services.

See Record at pp. 5-6.

After his employment with the plaintiff was terminated, Kube filed a claim for unemployment compensation. The plaintiff objected on the grounds that it was exempt pursuant to §108.02(15)(h), Stats.

On April 25, 1995, a deputy of defendant LIRC issued an initial determination finding that Kube was not eligible for unemployment benefits based on the exempt status of the plaintiff. The deputy concluded that the plaintiff was an organization “operated primarily for religious purpose” and that it was specifically excluded from coverage under §108.02(15)(h). As a result, Kube’s claim for unemployment compensation benefits was denied.

Kube appealed this determination and a hearing was held before Administrative Law Judge (ALJ) David C. Wagner on June 5, 1997. On June 27, 1997, the ALJ issued his decision, reversed the deputy’s initial determination and found that Kube’s employment with the plaintiff was not subject to the coverage exclusion of §108.02(15)(h). Specifically, the ALJ found that Kube:

was not in the employ of a church or convention or association of churches as denoted in the above statutory citation. The school is not operated primarily for religious purposes, nor is it principally supported by a church, convention or association of churches.

See June 27, 1997, Appeal Tribunal Decision. Based on this decision, Kube was eligible for unemployment compensation benefits vis-à-vis his employment with the plaintiff.

The plaintiff appealed and on April 7, 1998, the LIRC issued a decision that modified the ALJ’s decision by amplifying his findings, but ultimately affirmed the finding that Kube was eligible for unemployment compensation benefits as the plaintiff was not “operated primarily for religious purpose” and excluded from coverage under §108.02(15)(h). The LIRC specifically found that the plaintiff was not a church, was not

an organization operated primarily for religious purposes, and was not supported by a church or convention or association of churches within the meaning of §108.02(15)(h):

From the evidence presented at the hearing [the plaintiff] is first and foremost a school. Again, there is a lack of testimony about the precise role of religion in the school's curriculum. The lack of testimony establishing that religion pervades the operation of the school makes it difficult to find that the school operates **primarily** for religious purposes. In fact, it seems that primarily [sic] objective of the employer is keeping kids out of trouble while providing an education and room and board.

Record at p. 12. The plaintiff now seeks judicial review of that decision.

STATUTE INVOLVED

CHAPTER 108. UNEMPLOYMENT INSURANCE AND RESERVES

108.02. Definitions. As used in this chapter...

- 15... (h) "Employment" as applied to work for a nonprofit organization, except as such organization duly elects otherwise with the department's approval, does not include service:
1. In the employ of a church or convention or association of churches;
 2. In the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches; or
 3. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

STANDARD OF REVIEW

102.23. Judicial review

(1)(a) The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive.

...

(6) If the commission's order or award depends on any fact found by the commission, the court shall not substitute its judgment for that of the commission as to the weight or credibility of the evidence on any finding of fact. The court may, however, set aside the commission's order or award and remand the case to the commission if the commission's order or award depends on any material and

controverted finding of fact that is not supported by credible and substantial evidence.

ANALYSIS

A. Findings of Fact

Historically, the LIRC has been the ultimate finder of fact and law. DILHR v. LIRC, 161 Wis.2d 231, 244, 467 N.W.2d 545 (1991). It is the factual and legal findings of the LIRC that are scrutinized by an appellate court and not those of the appeal tribunal. Id. at 242. A reviewing court's role is to search the record to locate credible evidence which supports the LIRC's determination. Farmer's Mill of Athens, Inc. v. ILHR Dept., 97 Wis.2d 576, 579-80, 294 N.W.2d 39 (1980).

B. Does the Record Support the LIRC's Decision?

The LIRC's factual findings must be upheld by the Court if they are supported by substantial and credible evidence in the record. Cornwell Personnel Assocs. v. LIRC, 175 Wis.2d 537, 544, 499 N.W.2d 795 (Ct. App. 1993). Substantial evidence is evidence that is relevant, credible, probative, and of a quantum upon which a reasonable fact finder could base a conclusion. Id.

In the present case, the Court is of the opinion that there is substantial evidence in the record that supports the LIRC's conclusion that the plaintiff is not "operated primarily for religious purpose" and is therefore not exempt under §108.02(15)(h). The record is replete with evidence that the plaintiff is operated primarily for the purpose of providing limited-term assistance, including education, room and board, to children who have been in trouble with the law. Transcript at pp. 9-10.

In order to be exempt, the statute requires that the plaintiff either be a church, be operated primarily for religious purposes or be principally supported by a church or

convention or association of churches. Here, the evidence presented supports the conclusion that, though there is certainly a religious component to the organization and purpose of the plaintiff, its primary objective is to help troubled children and provide them, on a short-term basis, with an education, room and board. Record at pp. 5-6.

Though professing to be operated primarily for religious purposes, the plaintiff is unable to identify with any specificity the precise role of religion in its "Christian curriculum" and, in fact, undercuts its position elsewhere by referring to itself as "cross-denominational" and not supported by "any one certain denomination." Transcript at p. 16. As stated by Mr. Sortedahl, the plaintiff is not specifically affiliated with one specific denomination because it wishes to provide services to as many children in need as possible, regardless of their religion. Transcript at p. 16. Though clearly praiseworthy, such evidence undercuts the plaintiff's position that it is operated primarily for religious purposes.

Other evidence in the record that is relevant, credible, probative, and of a quantum upon which the LIRC could base its conclusion is that the plaintiff sought and received financial assistance from outside sources and was not principally supported by an identifiable church or association of churches. Transcript at p. 4, 11, 16. It is undisputed that the plaintiff operates mainly on donations, received from a variety of sources, and that Kube was engaged in fundraising and telemarketing in his job. Transcript at p. 4. Further undisputed is that Kube received checks drawn on both personal and organizational checking accounts during the course of his employment and that the students were charged tuition. Again, this evidence supports the LIRC's conclusion that the plaintiff is not an organization operated primarily for religious purposes within the


meaning of §108.02(15)(h). Based on its review, the Court finds ample support for that conclusion.

CONCLUSION

Given the deference that the Court must give to the factual findings made by the LIRC and given that those findings are supported by credible and substantial evidence, the decision of the LIRC is hereby affirmed.

BY THE COURT:

Dated this 12th day
of February, 1999.



Honorable C.A. Richards
Circuit Court Judge
Branch II