

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SUNDAY BREAKFAST MISSION, :
INC., :
 :
Appellant, :
 : C. A. No. 08A-08-015 (CHT)
v. :
 :
UNEMPLOYMENT INSURANCE :
APPEAL BOARD, :
 :
Appellee. :

OPINION AND ORDER

**On the Appeal from the Decision of the
Unemployment Insurance Appeal Board**

Submitted: February 3, 2009
Decided: June 5, 2009

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TOLIVER, JUDGE

Before the Court is an appeal by Sunday Breakfast Mission, Incorporated (hereinafter "SBM") from an Unemployment Insurance Appeal Board decision which denied SBM an exemption from unemployment insurance assessments under 19 Del. C. §3302(10)(D). That which follows is the Court's response to the issues so presented.

**STATEMENT OF FACTS AND
NATURE OF THE PROCEEDINGS**

Background

SBM is an organization that was established in 1893 for the purpose of feeding homeless men and promoting church attendance. SBM has expanded its activities to include job training, education, and rehabilitation of alcoholics and drug addicts. According to SBM's mission statement, its primary goal is "to restore people to right relationships with God, their families and society."¹ SBM's services are provided through paid staff

¹ Record at 104. (References to the official record certified to the Prothonotary by the Secretary of the Unemployment Insurance Appeal Board are designated by "Record at" and the page number of the record.)

and volunteers.

SBM holds optional nondenominational religious services twice a day in a chapel and holds special services during some holidays. Worship is led by an ordained minister and includes prayer, songs, collection of an offering and a sermon.

SBM is run by a board of directors. Board appointments are not controlled by any church or church group or ministry. The board is composed of both clerical and lay members. There is no sectarian religious affiliation requirement to serve as a director on the board. However, members are required to be a part of an evangelical Christian church and must ascribe to the SBM statement of faith.

Until November 2007, SBM had been considered exempt from payment of an employment assessment under Delaware unemployment compensation law. Through an internal audit, the Department of Labor determined that SBM was required to pay the assessment so that its employees would be entitled to unemployment insurance payments. SBM appealed this determination and a hearing was heard

before a Department of Labor Appeals Referee on April 29, 2008. The Referee found that SBM is a rescue mission with the purpose of feeding, clothing, and temporarily housing the impoverished. The Referee went on to state that SBM holds religious services daily but is not affiliated with any church and attendance is not required. In addition, it has not been classified as a church for tax purposes and is not exempt from unemployment assessments. SBM filed a timely appeal of the Referee's decision.

The Board's Decision

In a decision dated August 12, 2008, the Board affirmed the decision of the Appeals Referee determining that SBM did not qualify for an exemption from the assessment. The Board concluded that SBM is an independent entity with a religious inspiration serving a secular purpose within the community and cannot claim an exemption from the unemployment assessment.

The Board rejected the notion that SBM is a "church or convention or association of churches." The Board did

so based in part upon SBM's corporate charter.²

Additionally, the Board found that SBM failed to prove that it is "operated primarily for religious purposes" and is "operated, supervised, controlled, or principally supported" by an association of churches, and as such, is exempt from the assessment paid by other non-profit entities in the community. The Board went on to state that despite its religious inspiration, SBM performs a secular function in the community. Based on the strong public policy of the unemployment insurance system, SBM employees should not be denied benefits.

The Board focused on the type of activity actually engaged in by the paid staff, rather than the optional religious services. SBM also was found not to be controlled, operated, or supervised by an association of

² That charter states, in relevant part, that SBM: "is organized exclusively for charitable purposes including, but not limited to, serving the needs of the poor and distressed by providing emergency shelter, clothing, and food through various Christian programs, providing the operation of shelter and Christian-based homeless recovery programs. While nondenominational, the Sunday Breakfast Mission is dedicated to carrying out its mission in accordance with the teachings of Jesus Christ. The Corporation expressly recognizes in its purpose that spiritual rehabilitation is an important part of 'physical rehabilitation'". Record at 159.

churches because it is directed by a board of individuals that includes clerical and lay members.

DISCUSSION

Standard of Review

On appeal from a decision of the Unemployment Insurance Appeal Board, this Court's review is limited to determining whether there is substantial evidence to support the Board's decision, and whether it is free from legal error.³ Substantial evidence is such evidence a reasonable mind might accept as adequate to support a conclusion.⁴ The Court's role is merely to determine if the evidence is legally adequate to support the agency's factual findings.⁵

The parties agree that resolution of this matter

³ *City of Newark v. U.I.A.B.*, 802 A.2d 318, 323 (Del. Super. 2002).

⁴ *Id.*

⁵ *Brooks v. Swales & Associates, Inc.*, 1997 WL 717775, at *1 (Del. Super. Oct. 24, 1997).

depends upon the application of 19 *Del. C.* §3302(10)(D)(i)(I) and (II). If SBM falls under either provision of this statute, then it is exempt from the employment assessment.⁶ This court must therefore make two factual inquiries. The first is whether there was substantial evidence to support the Board's decision that SBM is not a "church or convention or association of churches" as provided in 19 *Del. C.* §3302(10)(D)(i)(I). The second requires the Court to determine whether there was substantial evidence to support the Board's decision that SBM is not 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 provided in 19 *Del. C.* §3302(10)(D)(i)(II). Additionally, the Board's application of this authority must be free from legal error.

⁶ 19 *Del. C.* §3302 (10)(D).

Sunday Breakfast Mission Is Not A Church

The Board determined that SBM's corporate charter negates the argument that it is a church.⁷ That document establishes SBM as a non-profit entity tasked with providing social services for the homeless, displaced, hungry, and jobless in the community.

SBM takes issue with what it perceives to be an overly restrictive view of the term "church" by the Board. According to SBM, the term "church" is not defined in the unemployment compensation statute nor has a Delaware court interpreted the term as used in that statute. SBM goes on to state that courts in other jurisdictions have looked to the factors developed by the Internal Revenue Service for determining whether an organization is a "church" under the Federal Internal Revenue Code.⁸ These factors include a distinct legal existence, a recognized creed and form of worship, a

⁷ See Note 2 *supra*.

⁸ See e.g., *Nampa Christian Schools Foundation, Inc. v. Dep't of Employment*, 719 P.2d 1178, 1182 (Id. 1986); *Campus Crusade for Christ v. Unemployment Appeals Comm'n*, 702 So.2d 572, 577 (Fla. App. 1997); *Young Life Campaign v. Patino*, 176 Cal. Rptr. 23, 32-33 (Cal. App. 3d Dist. 1981).

complete organization of ordained ministers ministering to their congregations, established places of worship, regular congregations, and regular religious services.⁹

SBM argues that, under these factors, SBM is a church. SBM conducts religious services twice per day in a chapel and those services are led by an ordained minister. The SBM board members, employees and volunteers are required to sign a statement of faith. Furthermore, SBM's services are attended by members of the community and men participating in the mission's programs. SBM has a chapel dedicated for religious services. It also holds Bible study classes for women which demonstrates its efforts to evangelize populations outside those served by its other programs.

The term "church" is not defined in Section 3302 or elsewhere in the Delaware Code. Thus, the Court must construe this term as used in the statute. Words in a statute that are undefined should be given their

⁹ *Campus Crusade for Christ*, 702 So.2d at 577 (citing *Foundation of Human Understanding v. Commissioner of Internal Revenue*, 88 T.C. 1341 (1987)); *Nampa Christian*, 719 P.2d at 1182.

ordinary, common meaning.¹⁰ Church has been defined as a "place where persons regularly assemble for worship" and a "religious society or body."¹¹ This suggests a place which holds regular worship services. In cases cited by SBM, courts have examined the functions of organizations in order to determine whether they are churches or not.¹²

SBM holds regular worship services in addition to its services toward helping the homeless in the community. As noted by the Board, however, those worship services appear to be secondary in importance to the assistance provided to the impoverished members of the community. In effect, they serve as a means to an end rather than an end in themselves. Worship services are not mandatory and help is provided regardless of one's participation in religious activities. Based on this record it appears that there is substantial evidence in support of the Board's ruling in this regard and that said ruling was

¹⁰ *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1245 (Del. 1985) (citations omitted).

¹¹ *Black's Law Dictionary* 242 (6th ed. 1990).

¹² See, *Nampa Christian Schools Foundation, Inc.* 719 P.2d at 1182; *Young Life Campaign*, 176 Cal. Rptr. at 33.

without legal error.

To the extent that SBM raises constitutional concerns as to the Board's application of the term "church", SBM's fears are misplaced. The Board does not appear to have made its decision based on the nondenominational nature of SBM. Instead, the Board based its judgment on SBM's secular functions. Those functions, and not the religious activities of SBM, are SBM's primary purpose and support the Board's determination that SBM is not a church.

Primary Purpose is not Religious

The Board held that SBM's primary purpose was secular in nature. To be specific, it is to help the homeless in the community. Additionally, the Board found that SBM is not operated, supervised, controlled or principally supported by a church or convention or association of churches.

SBM contends that the Board committed legal error by substituting a decisional standard focusing on the services performed by specific, unspecified, hypothetical

workers for the clear statutory language contained in Section 3302(D)(10) which focuses upon an organization's purpose. As a consequence, the Board committed legal error. Additionally, SBM claims that the Board's decision is unsupported by substantial evidence.

According to SBM, the evidence suggests that its primary purpose is to convert the impoverished to Christianity. The SBM certificate of incorporation supports this argument. It indicates, for example, that SBM is organized for charitable purposes such as serving the poor "through various Christian programs, providing for the operation of shelter and Christian based homeless recovery programs. While nondenominational, the Sunday Breakfast Mission is dedicated to carrying out its mission in accordance with the teachings of Jesus Christ."¹³ Indeed, SBM's mission statement states that the "primary goal is to restore people to right relationships with God, their families and society."¹⁴ The focus on the evangelical mission is reflected in the

¹³ Record at 17.

¹⁴ Record at 104.

composition of SBM's staff and the structure of its programs. SBM employs several ministers in various positions. This determination, argues SBM, turns upon the purpose of SBM as a whole.

SBM's contention that the Court must look solely to its stated purpose is incorrect. Such an approach would allow an organization to determine its own status without regard to its actual function. The Court is persuaded by the cases referenced in the Board's decision that SBM is not operated primarily for a religious purpose.

The following passage from the Board's decision is helpful:

A Christian organization that sponsored counseling for troubled youths, prisoners, addicts, and abuse victims, which did not require its employees to be members of the clergy, was not exempt from the Pennsylvania statute, which is identical to §3301(10)(D). *Pittsburgh Leadership Foundation v. Unemployment Compensation Bd. of Review*, 654 A.2d 224, 226 (Pa. Cmwlth. 1995). In the case of *In Re Conde*, 580 N.Y.S.2d 511 (N.Y. App. 1992), the Court recognized that a campus facility for troubled teenagers operated by a Christian Church served a religious purpose. However, the Claimant's duties, to develop and repair the campus facility and to raise funds, were secular in nature. Thus, the employer was not exempt from making unemployment insurance contributions.

Id. at 512. A worker who performed various clerical and secretarial tasks at Hebrew Union College was denied unemployment benefits under Ohio law, but only because the College was a "pervasively religious institution" connected to the Union of American Hebrew Congregations, and operated primarily to train rabbis. *Bach v. Steinbacher*, 609 N.E.2d 607, 609 (Ohio App. 1992). A social service agency organized by the Catholic Diocese of Camden, that operated a nondenominational community assistance project for senior citizens, and employed the Claimant as a community worker, was not exempt under the New Jersey statute. *DeSantis v. Bd. of Review*, 372 A.2d 1362 (N.J. Super. A.D. 1977). "It is clear that the undertakings of the Center are eleemosynary and not religious. The Center is, therefore, not only not itself a church but it is also not an organization operated by a church primarily for religious purposes." *Id.* at 1364.¹⁵

As in the above-referenced decisions, SBM's primary function is not a religious one. SBM's employees work to provide food, shelter, employment, and substance abuse rehabilitation for the impoverished. Simply stated, the Board's determination that SBM is not operated primarily for religious purposes is supported by substantial evidence and free from legal error.

¹⁵ Record at 160.

Not Operated, Supervised, Controlled or Principally Supported by a Church or Convention or Association of Churches

In addition to finding a lack of a primary religious purpose, the Board also determined that SBM is not operated, supervised, controlled or principally supported by a Church or Convention or Association of Churches.

SBM argues that this ruling was erroneous because the Board failed to explain its definition of the term "association" as used in Section 3302(10)(D)(i)(II) or provide a standard governing the inquiry into whether an "association" exists. SBM claims that a definition or interpretation that favors hierarchically organized denominations could violate the establishment and free exercise clauses of the First Amendment to the United States Constitution and various provisions of the Delaware Constitution.

SBM points to evidence of support from churches. These churches provide SBM's financial support and volunteer base. Those churches are not formally associated, but what matters is that they support SBM in diverse ways. SBM contends that this is sufficient to

meet the language of the statute. The Court disagrees.

The evidence before the Board is clear. SBM is not operated, supervised, controlled or principally supported by a church or convention or association of churches. It may have been assisted by other religious institutions or their members through contributions of money, services and/or resources. Here, such activity appears not to have been the principal support of SBM or determined how it was operated or by whom. There was no formal group or collective which determined what SBM did or did not do. Lastly, the word "association" implies a grouping of individuals working together for a common purpose.¹⁶ A number of individuals who might share common beliefs or goals helping a separate organization is not an association for purposes of the present statute. In sum the Court must conclude again that the Board's decision in this regard is supported by substantial evidence in the record and free from legal error.

¹⁶ *Black's Law Dictionary* 121 (6th ed. 1990).

CONCLUSION

____In light of the foregoing, the Court must conclude that there was substantial evidence in favor of the decision of the Unemployment Insurance Appeal Board and that it was free from any errors of law. Accordingly, it must be, and hereby is, **affirmed**.

IT IS SO ORDERED.

TOLIVER, JUDGE