

Casa Italiana Language School and Washington Italian Teachers Association, Petitioner. Case 5-RC-14348.

August 11, 1998

DECISION ON REVIEW AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND LIEBMAN

On July 15, 1996, the Regional Director for Region 5 issued his Decision and Order in which he dismissed the petition in the above-captioned proceeding. The Regional Director found that under *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), asserting jurisdiction over the Employer (or the School) would inextricably intertwine the Board in church matters that do not impact commerce within the meaning of the Act. The Regional Director found that the service provided by the School, while commercial in the generally accepted sense, is nevertheless an integral part of the mission of the Church. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Petitioner filed a timely request for review of the Regional Director's Decision and Order, asserting that the Board was not precluded from asserting jurisdiction under *Catholic Bishop*. The Employer filed a brief in opposition. By Order dated September 10, 1996, the Board granted the Petitioner's request for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the entire record, including the Employer's brief on review, we conclude, contrary to the Regional Director, that jurisdiction is properly asserted in this matter.

The material facts in this case are not in dispute. The Petitioner seeks to represent all of the Employer's approximately 14 Italian language teachers. The School is located within the Casa Italiana Social and Cultural Center (the Center), which is adjacent to Holy Rosary Roman Catholic Church (the Church) in Washington, D.C. Holy Rosary Church is part of the Catholic Archdiocese of Washington, D.C., and is under the jurisdiction of the Cardinal of the Archdiocese of Washington. The Scalabrini Order, established at the end of the last century for the purpose of assisting Italian immigrants to the United States, established the Holy Rosary Church in order to serve the Italian-American religious community and to perpetuate Italian culture and traditions. In accordance with its mission, Sunday Mass at Holy Rosary Church is regularly conducted in Italian.

As the community surrounding the Church changed from an Italian enclave to a multicultural community, the Church, recognizing the need to attract people from

greater distances, created the Center.¹ The activities at the Center consist of coffee after Mass, cultural events, lectures, dinners, dances, receptions after baptisms and weddings, and catechism classes.

In 1981, the parishioners of the Church established the School as a lessee of the Center. As such, the Employer is physically located on Church property. The Employer offers instruction in the Italian language to the general public through the School. Indeed, the majority of its students come from the surrounding suburbs in Southern Maryland and Northern Virginia who cross into the District of Columbia to attend the School.

The constitution of the School provides that it shall be an integral part of Holy Rosary Church and its goal is to preserve and enhance the spiritual and cultural values of Italian-Americans, mainly through offering courses on the Italian language. The constitution also provides that responsibility for the School shall be vested in the pastor of the Holy Rosary Church, who will be assisted by an executive committee comprising persons who have experience in teaching the Italian language and who are steeped in the history and culture of Italy.

The Employer makes no inquiry regarding the applicants' or teachers' religious affiliations and does not require attendance at the Church or practice of the Catholic religion by the teachers or the students. Indeed, the School's recruiting brochures contain no reference to the Church. A lay coordinator hired by the pastor runs the day-to-day administration, management and supervision of the teachers at the School. The teachers are selected by the coordinator and approved by the pastor. Prospective teachers are not questioned about their religious beliefs or practices, and they provide instruction only in the Italian language. The coordinator explicitly told the teachers that their conversation classes should avoid any discussion of religion. None of the priests or nuns assigned to the Church has ever taught at the School and teachers of the School are not required to participate in any religious services or training. All teachers are part-time employees, and they work less than 20 hours per week.

The School's bank account and records, as well as its computers, are kept separate from both Church and Cultural Center records and accounts. The Pastor signs the teachers' paychecks but the funds for the teacher's pay come out of the School's budget, which is separate from the Church's and Center's budgets. The School is funded through tuition paid by its 300-350 students, which in 1995-1996 came to approximately \$145,000, and a subsidy of approximately \$70,000, which it receives from the Italian government as part of that country's efforts to promote the study of Italian language and culture. The Italian government requires that 90 percent

¹ The Center was established in 1981 on property owned by the Archdiocese and its deed is held by the Archdiocese of Washington.

of its subsidy, which constitutes 30 percent of the School's funding, must be spent on teaching and educational equipment. The School is not accredited by any governmental or educational accrediting body.

In determining whether to decline jurisdiction under *Catholic Bishop*, the Board has considered whether a school's purpose and function in substantial part are to propagate a religious faith. *Jewish Day School of Greater Washington*, 283 NLRB 757, 761 (1987). In analyzing a "religious purpose," in a school setting, the Board considers whether religious principles are effectuated by the "substantial suffusion of religion into the curriculum."² We find, given the evidence described above, that the School's mission is to teach Italian. There is no evidence that the School proselytizes, or inculcates by instruction, any religious doctrine or belief. Thus, the sensitive First Amendment issues surrounding the dispute over Board jurisdiction in *Catholic Bishop* are not present in the assertion of jurisdiction over the teachers in the instant case.

The instant issue, however, falls more appropriately under the line of cases where the Board has historically and routinely asserted jurisdiction over retail operations operated by religious institutions. See, e.g., *First Church of Christ, Scientist*, 194 NLRB 1006 (1972); *World Evangelism*, 248 NLRB 909 (1980), *enfd.* 656 F.2d 1349 (9th Cir. 1981).³ The purpose of the school is not the promulgation of the Roman Catholic faith but the provision of Italian language instruction on a nondenominational and commercial basis. The Employer's staff at issue here consists of Italian language teachers who are not required to have any particular religious background or training. There is no showing that any employee is directly or indirectly involved in the teaching of a religious philosophy. Accordingly, we conclude that the Employer is engaged in commerce within the meaning of the Act and that assertion of jurisdiction, if otherwise appropriate, is not foreclosed by religious considerations.

The Employer here contends that this case is controlled by the Board's decisions in *Motherhouse of the Sisters of Charity*, 232 NLRB 318 (1977), and *Riverside Church*, 309 NLRB 806 (1992). However, contrary to the Employer, these cases do not support its contention that jurisdiction should be denied.

In *Motherhouse*, the Board found that a nursing home run by the Sisters of Charity, a religious Order, would not have existed but for the fact that its sole occupants were sisters belonging to the Order. The nursing home's mission was to enable sisters of the Order in need of nursing home facilities the use of such facilities in close proximity to their church, and thereby enabling them to

continue to attend to their religious duties. The Board found the purpose of the nursing home was thus religious in nature and asserting jurisdiction would inextricably intertwine the Board in the religious matters of the Church.

The Employer argues that learning the Italian language enhances a parishioner's religious participation in Italian language-led Masses and attracts members to the Church. Thus, as in *Motherhouse*, the Employer argues that the Board's asserting jurisdiction over the School would interfere with the Church's religious purpose.

There is, however, no indication that enhancing parishioners' participation in Italian language-led Masses or attracting membership to the Church are missions of the School. No evidence was presented that students or teachers are asked or encouraged to participate in the Church's religious affairs; indeed, the school's brochure does not even mention the Church. Furthermore, the employer does not exist for the purpose of enabling the students to participate in or practice their religion. The evidence presented shows that the students come from many religious backgrounds and that they typically have secular rather than religious reasons for wanting to take courses in the Italian language, e.g., they are planning to travel to Italy.⁴ The School's activity is thus not a religious activity to which the Board would deny jurisdiction. Instead, the School is more in line with commercial activity in the generally accepted sense as found by the Regional Director.

In *Riverside*, the Regional Director reasoned, and the Board agreed, that jurisdiction over maintenance employees was warranted only if the unit employees contributed a substantial amount of their time performing the Church's commercial activities compared to their time spent on the Church's noncommercial activities. In the instant case, the teachers spend 100 percent of their time in the Employer's employ performing the Employer's commercial work—teaching Italian. Their performance is thereby substantial.⁵

Based on the above, we therefore find, contrary to the Regional Director, that the Employer is not an exempt religious entity, and that Board jurisdiction need not be declined on that basis.⁶ We further find that assertion of jurisdiction over the School is warranted. The Board has

⁴ The Employer also argues that the Italian Language classes allow the Church and the Order to continue their religious mission of caring for the spiritual, cultural, and social needs of the parishioners by providing them with classes in the Italian language. However, the Board has found such facts are not enough to preclude jurisdiction. See *Harborcreek School for Boys*, 249 NLRB 1226 (1980) ("Thus, while the work of the school is in accord with the charitable aims and purposes of the diocese, the school is not a religious institution with a sectarian philosophy or mission").

⁵ Chairman Gould and Member Fox agree that *Riverside* is distinguishable from this case, but note that they would overrule it. See *Ecclesiastical Maintenance Services*, 325 NLRB 629 (1998).

⁶ We take judicial notice that the Employer is listed among "language schools" in the *Bell Atlantic Yellow Pages*.

² *Id.* at 761 (fn. omitted).

³ The Board has not applied its jurisdictional standards for educational institutions over schools without accreditation or generally recognized diplomas, as is the case here. See *College of English Language*, 277 NLRB 1065, 1068 (1985).

plenary jurisdiction over employers engaged in commerce in the District of Columbia under Section 2(6) of the Act, and we assert such jurisdiction in this case. See *M.S. Ginn & Co.*, 114 NLRB 112 (1956). Accordingly,

the Regional Director's decision is reversed, the petition is reinstated, and the case is remanded to the Regional Director for further appropriate action consistent with the findings here.