

Archdiocese of Philadelphia or, in the alternative, Archdiocese of Philadelphia and each of 273 Parishes as Joint or Coemployers¹ and Association of Catholic Teachers Local Union No. 1776, American Federation of Teachers, AFL-CIO, Petitioner. Case 4-RC-11987

January 17, 1977

DECISION AND DIRECTION OF
ELECTION

BY CHAIRMAN MURPHY AND MEMBERS
FANNING AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Donald M. Spooner. After the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, this proceeding was transferred to the Board for decision. Thereafter, the Archdiocese² and the Petitioner filed briefs in support of their respective positions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board finds:

1. The Petitioner seeks to represent full-time lay teachers at the 273 parish elementary schools within the Archdiocese of Philadelphia,³ which comprises five counties in southeastern Pennsylvania. The Petitioner contends that we should assert jurisdiction because the Archdiocese is the Employer and receives gross revenues in excess of \$1 million or, in the alternative, because the Archdiocese and each parish are joint or coemployers of the lay teachers at each such school, and the combined gross revenue and expenditures of the schools together exceeds \$1 million. The parties stipulated that the schools together purchase goods valued in excess of \$50,000 which originate either directly or indirectly from points outside the Commonwealth of Pennsylvania.

The Employer contends that the parish elementary schools located within the Archdiocese of Philadel-

phia are "completely religious" and beyond the Board's purview. We find no merit in this contention.

The Board's policy is to decline jurisdiction over religiously sponsored organizations "only when they are completely religious, not just religiously associated." *Roman Catholic Archdiocese of Baltimore, Archdiocesan High Schools*, 216 NLRB 249 (1975). The record shows that the major part of the elementary school curriculum is devoted to the same kinds of nonreligious subjects as are taught in public schools, and that the subject of religion accounts for less than 15 percent of the schools' weekly schedule. Furthermore, the parishes comply with the Commonwealth requirements regarding curriculum and number of schooldays per year. The schools offer various activities, including sports and field trips, similar to those available to students attending public schools. In these circumstances, we find that the elementary schools of the Archdiocese of Philadelphia, while religiously associated, are not completely religious and are of the type over which the Board has asserted jurisdiction.⁴

The Employer contends that the Board should decline to assert jurisdiction because the schools do not engage in any purely commercial activity and none of the schools has an impact on interstate commerce. We disagree with this contention. As held in *Cornell University*, 183 NLRB 329 (1970), the Board asserts jurisdiction over nonprofit educational institutions where their operations have a substantial impact on interstate commerce, despite the fact that such institutions do not engage in purely commercial activities. The parish elementary schools of the Archdiocese have combined gross receipts and expenditures in excess of \$11 million and therefore do have a substantial impact on interstate commerce.

However, the Employer contends that each parish elementary school is an autonomous entity, that each parish school is the employer of the lay teachers, and, therefore, since none of the parishes meets the Board's discretionary jurisdictional standard, jurisdiction should not be asserted herein. We find no merit in this position.

Each parish elementary school is under the immediate direction of a parish pastor appointed by and responsible to the archbishop. The archbishop, who holds the supreme legislative, judicial, and persuasive authority in the Archdiocese, has delegated the responsibility for the supervision of the schools to the archdiocesan superintendent of schools.

¹ The name of the Employer appears as amended at the hearing. Only the Archdiocese of Philadelphia participated throughout the hearing, although 116 pastors entered appearances, were present at various times, and stipulated to some of the basic facts.

² The Archdiocese of Philadelphia, herein referred to as the Archdiocese or the Employer, filed a motion for oral argument which is hereby denied, as the record and briefs adequately present the issues and positions of the parties.

³ There are other parishes within the Archdiocese which operate no elementary schools. The term "parishes" is used herein to refer to the 273 having such schools.

⁴ See *Roman Catholic Diocese of Brooklyn and St. Leo's Parish, as Joint Operators of St. Leo's School*, 221 NLRB 831 (1975).

The office of the superintendent of schools (hereafter OSS) has a professional staff of 19 persons, 16 of whom devote as much as 50 percent of their time to elementary school matters such as curriculum and instruction, administration, personnel, and staff relations. Each of the schools is visited and evaluated at least annually by a representative of the OSS. The OSS publishes a handbook, distributed to each parish elementary school (and in some schools, to each teacher), outlining "Parish Elementary School Policies and Procedures" and covering virtually every aspect of the operation of the schools. The purpose of these "Policies and Procedures" is the encouragement of "good administration" and "harmony" among the schools. Some of the "policies," especially those regarding religious matters and compliance with governmental regulation, are clearly mandatory; others, while worded in mandatory terms, were characterized by witnesses for the Archdiocese as advisory. In any event, as Monsignor Francis B. Schulte, the superintendent of schools, testified, there is "substantial compliance" with these guidelines throughout the Archdiocese.

The department of personnel of the OSS sets guidelines for the employment of elementary lay teachers; for the most part, however, the parishes do their own hiring without using the Archdiocese's processes. The OSS maintains personnel files on the lay elementary teachers and receives copies of the annual teacher evaluations from the parish schools. The OSS holds various institutes and workshops to orient new teachers and to keep experienced teachers up to date on various teaching methods and materials.

The OSS also functions as a clearinghouse for information regarding the availability of government funding programs, and its department of business management represents the superintendent's office and the schools "in fiscal and business matters to . . . Government and the public."

In the area of labor relations, the Archdiocese exercises considerable influence or control. The Archdiocese promulgates a salary scale for lay elementary teachers which is mandatory for nondegreed teachers and recommended for others; the record shows that most parishes try to pay at least the scale amounts as a minimum. A single archdiocesan pension plan covers all lay employees; the parishes are obliged to send in payments for their lay teachers. While a pastor may dismiss a teacher, there is a single review committee to which any such teacher may appeal. It is significant that, in response to inquiries from pastors regarding the Petitioner's organizational campaign, Archbishop Krol sent each pastor a letter, dated May 9, 1975, stating (1) that he had asked the pastors from the archdiocesan board of education "to

serve as a source of information and counsel," and (2) that "the common good compels me to insist that, before taking any action regarding the unionization question, each pastor must be guided by competent advice from experts in the field of labor relations. A counselling service will be provided to which all questions regarding unionization must be directed."

The Archdiocese is significantly involved in the financial affairs of the parish elementary schools, and each parish elementary school sends an annual financial report to the Archdiocese. The Archdiocesan Interparochial Cooperation Commission administers a fund to help especially needy parishes; monies for the fund come from voluntary contributions of various parishes and from assessments levied on the parishes by way of the archbishop's assessment power. The "Policies and Procedures" manual indicates that there is a single Federal excise tax exemption number for the parish elementary schools. Title to the school premises is in the parish, but the pastor purchases real estate for the parish only with the authorization of the archbishop. Capital improvements to such property in excess of \$5,000 require approval by the Archdiocese; the parishes may secure loans, at low interest, from the Archdiocese.

The Archdiocese holds itself out, with the parish elementary schools, as an integrated enterprise in its relationships with government agencies and the public schools, as well as in some of its own publications. As discussed above, the OSS business department represents the schools to government agencies, and the OSS serves as clearinghouse for government funding information. The elementary schools of the Archdiocese are also represented on the Joint Planning Council composed of public and archdiocesan superintendents of schools and the presidents and vice presidents of the respective boards of education.

In one booklet published by the Archdiocese, funds were solicited for the "Archdiocese's schools," encouraging contributions to specific schools or "to the Archdiocese specifying 'School Support.'" Furthermore, the "Policies and Procedures" manual for elementary schools sets forth the hierarchy of school administration from archbishop to principal, emphasizing the interrelation of responsibilities throughout the hierarchy. The manual summarizes the Archdiocese's recommended approach to the "good administration" of the parish elementary schools.

Although, as discussed below, the individual parishes operate the schools on a day-to-day basis with a degree of autonomy, it is clear from all of the foregoing that the Archdiocese of Philadelphia exercises a significant degree of control and influence over the schools, including the terms and conditions of employment of the teachers, and that it functions

and represents itself, with the parish schools, as an integrated enterprise. We therefore find that the Archdiocese and the parishes are joint employers of the lay teachers at each of the 273 parish elementary schools of the Archdiocese of Philadelphia. Accordingly, since the elementary schools collectively have revenues in excess of \$1 million, and since out-of-state purchases are in excess of \$50,000, we find that it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organization involved claims to represent certain employees of the Employer.

The Employer contends that the Association of Catholic Teachers (hereafter ACT) should be disqualified from representing the lay teachers on the grounds that there is an inherent conflict of interest between ACT, as an affiliate of the American Federation of Teachers (hereafter AFT), and the religious education purpose of the parish elementary schools. The Employer bases this contention of a provision of the AFT constitution opposing "all forms of bias in education due to race, creed, sex . . ." and on an AFT resolution to encourage the dissemination of information regarding birth control, venereal disease prevention, and abortion. We find no merit in this contention. The record shows that the constitutional provision is in the nature of a "civil rights" position and is not antithetical to religious education. The resolution regarding sex education was passed with regard to high school students; language on the face of the resolution indicates that its authors may have intended it to apply only to public high schools. At any rate, it is clearly not intended to have any applicability to the kinds of schools in question here. Furthermore, the ACT opposed the resolution, and the president of Local 1776 indicated that his local would "in no way" promulgate anything like this. Finally, in evident disregard of the moral qualms raised here, the Archdiocese negotiated a contract with Local 1776 covering lay teachers in the archdiocesan high schools. We therefore find that, if any conflict of interest exists, it clearly does not disqualify ACT from representing the lay teachers in the parish schools of the Archdiocese.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 2(6) and (7) and Section 9(c)(1) of the Act.

4. The Petitioner seeks an election in a single unit of full-time lay elementary teachers employed at 273⁵

parish elementary schools of the Archdiocese asserting that the Employer's organizational structure and the substantial identity and community of interests of such teachers warrant our finding such an appropriate unit.

The Employer contends that the facts demonstrating the degree of parish autonomy in the day-to-day operation of the schools make it clear that each parish school must constitute the only appropriate unit.

The Archdiocese of Philadelphia encompasses Philadelphia, Bucks, Chester, Delaware, and Montgomery Counties in southeastern Pennsylvania. John Cardinal Krol is the current archbishop of the Archdiocese.

As described fully above, the 273 elementary schools sought by Petitioner operate within the Archdiocese under the supervision of the superintendent of schools, Monsignor Francis B. Schulte. It is clear from those facts, and we have found, that the Archdiocese and the schools function and hold themselves out as an integrated enterprise with significant participation by the Archdiocese.

The Employer argues, and the record shows, that the parishes have considerable autonomy. Thus, with the authorization of the archbishop, they own their real estate, including the schools; they finance and maintain the schools with money raised, for the most part, at the parish level; the pastors of the parishes, along with their principals, run the schools on a day-to-day basis. Further, the pastor hires, fires, and disciplines the teachers, and he handles their grievances; salaries and fringe benefits, other than the archdiocesan pension plan, are paid by the parishes and vary from parish to parish, although the salary scale promulgated by the Archdiocese is used at least as a minimum. Employment contracts for lay teachers vary from parish to parish; some are oral and some are written. Some schools publish their own report cards, calendars, and policies and procedures manuals, while others use those published by the office of the superintendent of schools.

While these facts might support a finding that single-parish units may be appropriate, they do not establish that such units are alone appropriate or that the petitioned-for overall unit is inappropriate. The only unit sought is archdiocesewide, and it is presumptively appropriate as an employerwide unit.⁶ Furthermore, the record clearly supports the finding that the archdiocesewide unit is an appropriate unit,

⁵ As noted previously, these were all such schools in existence in the Archdiocese at the time of the hearing.

⁶ "There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or *ultimate* unit, or the *most* appropriate unit, the Act requires only that the unit be 'appropriate' "

Morand Brothers Beverage Co, 91 NLRB 409, 418 (1950), enf'd 190 F.2d 576 (CA 7, 1951) There may be more than one way in which employees may be grouped for collective-bargaining purposes *General Instrument Corporation v NLRB*, 319 F.2d 420, 422 (C.A. 4, 1963), cert denied 375 US 966 (1964)

just as the single-parish school units are also appropriate units.⁷ While the reasons for finding the archdiocesewide unit appropriate are set forth in our joint employer finding, we will note a few of them to clearly establish that the unit finding is based on more than a presumption.

To begin with, the parish pastors who have immediate direction of the schools are appointed by and are responsible to the archbishop. The archbishop has delegated the responsibility for the supervision of the parish schools to the archdiocesan superintendent of schools. The office of the superintendent of schools (OSS) has 16 employees who devote as much as 50 percent of their time to elementary school matters such as curriculum and instruction, administration, personnel, and staff relations. In addition, OSS evaluates the schools and publishes a handbook, outlining policies and procedures, which covers every aspect of the operation of the schools. Whether these policies which are all worded as being mandatory are in fact all mandatory is disputed but in any event there is admittedly "substantial compliance" with these policies.

While the parish schools do hire their own teachers, such hiring is done under OSS guidelines and OSS keeps personnel files on the lay teachers and receives annual evaluations of them. It also holds workshops and institutes for both new and experienced teachers. In addition OSS sets salary scales which are mandatory at least as minimums. There is one pension plan for all archdiocesan teachers. If a pastor fires a teacher there is a single archdiocesan review committee to which the teacher can appeal. Significantly, when the question of unionization arose, the archbishop set up a counseling service to which "all questions . . . must be directed."

OSS also functions as a clearinghouse for government funding programs and represents the schools in the fiscal and business matters related to the public and the government. In short, the Archdiocese holds itself out with the schools as an integrated enterprise in its relationships with government agencies and the public schools. The Archdiocese also is involved in the financial affairs of each school and receives annual financial reports from them. It also administers a fund for needy parishes. There is a single tax exempt number for all schools. Capital improvements in any parish of over \$5,000 require Archdiocese approval.

In conclusion, it is clear that the Archdiocese exercises a substantial degree of control over the parish schools, including the terms and conditions of employment of the teachers. So much so in fact that it would be difficult to imagine any degree of stability in labor relations if we were to find appropriate 273 single parish school units. Accordingly, we find that the archdiocesewide unit of 273 parish elementary schools is appropriate for the purposes of collective bargaining.

Unit Composition

The Petitioner seeks an election in a unit of all full-time lay elementary school teachers, teaching kindergarten through the eighth grade, but excluding regular part-time lay teachers, librarians, volunteers, casual employees, substitute teachers, coaches, all religious faculty, guards, and supervisors as defined in the Act, and all other employees of the Employer at the 273 parish elementary schools of the Archdiocese listed in the Appendix [omitted from publication].

There was no dispute as to the composition of any unit or units should the Board direct any election.⁸ However, the Union sought to exclude the regular part-time lay teachers, and the Employer took no position on their unit placement. The record does not contain extensive information concerning that group. It does appear that they work a set number of hours weekly, which varies from teacher to teacher, and they are paid on an hourly rather than annual basis, but they do not share any of the benefits accorded to full-time teachers. They perform the same teaching functions as full-time teachers but do not report to school at the same time and have no extracurricular duties.

In view of the above facts, it appears that the regular part-time lay teachers do not share a sufficient mutuality of interest with the full-time teachers to warrant inclusion in the petitioned-for unit. Their situation is more akin to that of adjunct university professors⁹ than to usual part-time employees in commercial establishments. Accordingly, we find that the following employees of the Employer have a community of interest sufficient to constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time lay elementary school teachers, teaching kindergarten through the eighth grade,

⁹ *New York University* 205 NLRB 4, 6-8 (1973) (Member Fanning dissenting in pertinent part). Member Fanning discerns no basis on this record for comparing the part-time teachers to adjunct university professors such as those excluded in *New York University*. He would exclude them herein, however, since neither party seeks their inclusion and on the basis of the meager record, at least with regard to part-time teachers, finds no apparent community of interest which would warrant their inclusion.

⁷ Single-location units where a degree of day-to-day autonomy or control is exercised are usually presumptively appropriate no matter what industry is involved, as we have frequently stated in the past.

⁸ Although the Employer took no firm position on the appropriate unit, its basic conception of composition was in agreement with that proposed by Petitioner. It is noted that Petitioner sought to exclude the teaching staff of the Montessori school; the Employer took no position as to this. Inasmuch as that school is not a parish elementary school, it is not a part of the unit found appropriate herein.

but excluding regular part-time lay teachers, librarians, volunteers, casual employees, substitute teachers, coaches, all religious faculty, guards, and supervisors as defined in the Act, and all other employees of the Employer at the 273 parish elementary schools of the Archdiocese of Phila-

delphia named in the Appendix [omitted from publication].

[Direction of Election¹⁰ and *Excelsior* footnote omitted from publication.]

¹⁰ We leave the setting of the date for the election to the discretion of the Regional Director in consultation with the parties in view of the special

considerations involved in conducting elections at educational institutions and particularly the large number of schools involved herein