

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: January 22, 2009

TO : Alvin P. Blyer, Regional Director
Region 29

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Catholic Cemeteries
29-CA-29180

280-8660

This Section 8(a)(1) case was submitted for advice on whether the Board has statutory jurisdiction over salespeople at a religious cemetery owned by a church. We agree with the Region that the Board does not have jurisdiction because the cemetery is a religious organization, which could not accomplish its religious mission without its salespeople.

FACTS

The Charging Party worked as a salesperson, selling cemetery plots and mausoleums, for the Saint Charles Cemetery (the Employer) in Farmingdale, New York. In August 2008, the Employer terminated him. The Charging Party filed a Section 8(a)(1) charge alleging that he was terminated for complaining about the Employer's method of calculating sales commissions. The Region is not submitting the underlying Section 8(a)(1) to Advice.

Saint John's Cemetery Corporation owns Saint Charles Cemetery and four other Catholic cemeteries in New York. The Roman Catholic Diocese of Brooklyn created the corporation in 1879 to own and operate Roman Catholic cemeteries for the Diocese. St. John's corporate bylaws state that the Corporation "shall operate a Roman Catholic cemetery in accordance with the norms and laws of the Roman Catholic Faith" and to support the work of the Roman Catholic Diocese of Brooklyn. The bylaws provide for three members of the Corporation, consisting of the Bishop and two clergy members, all from the Roman Catholic Diocese of Brooklyn.

St. John's also has an Executive Director, responsible for the operation of all five cemeteries, including personnel decisions. The current Executive Director is a

priest. The cemetery also employs secular employees, including a manager, supervisor, salespeople, maintenance employees, and grave diggers.

Only Roman Catholics or other Catholics who are "in Communion" with the Roman Catholic Faith may purchase lots. Non-Catholic spouses of a Catholic are not permitted to purchase a grave. Only Catholics in good standing with the Church can be buried in the cemeteries, but a surviving non-Catholic spouse may be buried with permission from the Church.

Each of the cemeteries has a Catholic chapel on site. As part of the Catholic funeral, a priest or deacon gives an interment prayer. St. John's pays the priest or deacon for his services.

ACTION

The charge should be dismissed because the Board lacks jurisdiction over the Employer, which is a religious organization.

The Board will generally not assert jurisdiction over noncommercial, nonprofit religious organizations.¹ This is true even if the employees at issue are secular, so long as they are employees without whom the employer could not accomplish its religious mission. Following this principle, the Board has declined to assert jurisdiction over custodians employed by a Catholic school and church;² maintenance workers employed by a church;³ nursing home workers employed by a religious order that serviced only Order members;⁴ and broadcast engineers employed by a

¹ Faith Center - WHCT Channel 18, 261 NLRB 106, 107 (1982); St. Edmund's Roman Catholic Church, Brooklyn, 337 NLRB 1260, 1260-1261 (2002).

² St. Edmund's High School, at 1260-1261.

³ Riverside Church, 309 NLRB 806, 806 (1992).

⁴ Motherhouse of the Sisters of Charity, 232 NLRB 318, 319 (1977).

noncommercial, religious radio station.⁵ The Board has reasoned that to assert jurisdiction could potentially raise constitutional questions.⁶

On the other hand, where the organization involved is not a religious organization itself, but a commercial or otherwise secular organization with a religious component, the Board will exercise jurisdiction over the employer if the specific employees at issue do not further the organization's religious mission.⁷ In Hannah Boys Center,⁸ the Board asserted jurisdiction over child care workers at a nonprofit boys' home founded by priests. The Board reasoned that the home did not require staff or enrollees to be Roman Catholic; that it provided minimal religious instruction; and that the child care workers at issue were not involved in the boys' religious or secular teachings.⁹

Here, we conclude that the Board does not have jurisdiction. The St. Charles Cemetery is a part of St. John's Cemetery Corporation, an organization created by the Roman Catholic Diocese of Brooklyn for completely religious purposes - namely, providing Catholic burial services and furthering the Church's mission. It is run by a Church, limits burial plot sales to Catholics, performs a Catholic person's final religious sacrament, and contains chapels where priests recite interment prayers. St. John's is therefore a religious organization, not secular or

⁵ Faith Center - WHCT Channel 18, 261 NLRB at 107.

⁶ Id. at 107.

⁷ St. Edmund's Roman Catholic Church, 337 NLRB 1260-1261.

⁸ 284 NLRB 1080, 1080-1082 (1987), *enfd.* 940 F.2d 1295 (9th Cir. 1991).

⁹ See also Ecclesiastical Maintenance Services, 325 NLRB 629, 630 (1998) (Board asserted jurisdiction over nonprofit maintenance corporation founded by a church; cleaning company did not have a religious mission and employees performed secular tasks).

commercial, even though it provides services that secular institutions also provide.¹⁰ While the salespeople are secular workers, the religious organization could not accomplish its mission without them.

Accordingly, the Region should dismiss the complaint, absent withdrawal.

B.J.K.

¹⁰ See Faith Center, 261 NLRB at 107.