LAW OFFICES

OXFELD COHEN, P.C.

60 PARK PLACE, SUITE 600
NEWARK, NEW JERSEY 07102

SANFORD R. OXFELD **
ARNOLD SHEP COHEN **
NANCY I. OXFELD *
DENZIL R. DUNKLEY ***
GAIL OXFELD KANEF **

TEL (973) 642-0161
FAX (973) 802-1055
OXFELDCOHEN.COM

1881 BROADWAY
4TH FLOOR
NEW YORK, NEW YORK 10023
(212) 452-1215

BENJAMIN A. SPIVACK *
RANDI DONER APRIL *
WILLIAM P. HANNAN **

* MEMBER OF NJ BAR
** MEMBER OF NJ & NY BAR
*** MEMBER OF NJ, PA & FL BAR

PLEASE REPLY TO NEWARK

December 14, 2011

VIA OVERNIGHT MAIL (UPS)
Hon. Lester A. Heltzer
Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570-0001

RE: Employer's Request for Review of the Regional Director's Decision and Direction of Election: Volunteers of America Greater New York, Inc., Field House and District 1199J, NUHHCE, AFSCME, AFL-CIO
Case No.: 22-RC-067527

Dear Judge Heltzer:

This law firm represents the union, District 1199J, NUHHCE, AFSCME, AFL-CIO in the above matter.

Enclosed herewith please find an original and eight (8) copies of District 1199J's Opposition to Employer's Request for Review of the Regional Director's Decision and Direction of Election.

By copy of this letter, I am simultaneously serving a copy of District 1199J's Opposition to Employer's Request for Review of the Regional Director's Decision and Direction of Election on Shelly Sanders Kehl, Esq., counsel for the Employer.

Thank you for your attention to the above.

Very truly yours,

ARNOLD SHEP COHEN, ESQ.

ASC:elj
Enclosure(s)
Cc: J. Michael Lightner, Regional Director
Susan Cleary, President, District 1199J
Anthony Williams, Organizer, District 1199J
Shelly Sanders Kehl, Esq.

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OXFELD COHEN, P.C.
60 Park Place, 6th Floor
Newark, New Jersey 07102
(973) 642-0161
Attorneys for Petitioner, District 1199J, NUHHCE, AFSCME, AFL-CIO

DISTRICT 1199J, NUHHCE, AFSCME, AFL-CIO,	)	
	)	**UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD**
Petitioner,	)	**REGION 22**
~and~	)	**CASE NO.: 22-RC-067527**
	)	
VOLUNTEERS OF AMERICA GREATER NEW YORK, INC.,	)	
Employer.	)	
	)	

DISTRICT 1199J's OPPOSITION TO EMPLOYER'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

INTRODUCTION

This Brief is filed on behalf of District 1199J NUHHCE, AFSCME, AFL-CIO ("District 1199J" or "the Union") in opposition to the employer's Request for Review of the Regional Director's Decision and Direction of Election. On October 20, 2011, District 1199J filed an RC Petition with Region 22. Through

that Petition, District 1199J seeks to represent all full-time, regular part-time and per diem Case Aides, Drivers, Secretaries, Cooks and Case Managers at Volunteers Of America Greater New York, Inc.'s ("Employer") facility at 45 Lenox Avenue, East Orange, NJ 07018.

A hearing was held on November 7, 2011. At the hearing the Employer argued that it is not covered under the Act, because the Board lacks jurisdiction since it is a Church. District 1199J disagrees. The consistent case law supports the argument of District 11999J. It is the position of the Union that although the Employer is a Church, in this case the petitioned for unit is a social service organization operated by the Church. Accordingly, the Board has jurisdiction. There were no other issues raised by the parties. The parties stipulated to the bargaining unit and the commerce questions. On November 28, 2011, the Regional Director of Region 22 directed an election.

The sole question addressed in this brief is whether the Board has jurisdiction under the Act. It is submitted that it has jurisdiction. The exact jurisdiction issue raised by the Employer was previously raised and resolved by the Board through RC Petitions in Region 2 and other regions. In the instant case, the Employer submitted five documents. Exhibit E1 is a letter of the legal position by the Respondent. Exhibits E2A, B, C and D are the same four documents that were submitted in

the RC Petition that was litigated and resolved by Region 2 in Volunteers of America Greater New York, Inc., Case Nos. 2RC-23489, 2RC-23490, and 2RC-23491 (Board Exhibit 2).

In the Region 22 case, Volunteers of America Greater New York, Inc. made the exact same legal argument that it is making in the instant case. Moreover, in the instant case, it stipulated that it was not introducing evidence substantially new or different from that which was presented in the Region 2 case. Accordingly, it is rehashing the same arguments that were made and rejected by Region 2. Exhibit E2A is the Internal Revenue Service Section 501(c)(3) determination, classifying the Respondent as a public charity, a church. According to Exhibit E2D, the Certificate of Incorporation, it was "formed to conduct activities which are exclusively charitable and religious." Exhibit E2C "Shared Values," and Exhibit E2D, "The Cardinal Doctrines," were presented in evidence before Region 2.

In this connection, Region 2 found that it had jurisdiction under the Act. It cited to the facts presented in that case and to prior RC Petitions from other regions, all of which found that the Board had jurisdiction. Region 2's reasoning was valid and should be adopted here. It reasoned as follow:

> "Under these principles, the Board has jurisdiction over the Employer in this matter. The Crossroads, Grasslands, and Valhalla facilities may be religiously affiliated, but they are essentially social

service organizations and are not schools. They are not intended to propagate religious faith and an employee who attempted to do so was instructed to stop. These facilities have primarily secular function that is, to help alcoholics, the homeless, sex offenders, and adults with special needs get the services they need to return to a life of independence.

"The Board has asserted jurisdiction over three other Volunteers of America affiliates engaged in similar work. These are Volunteers of America, Los Angeles, which provides shelter and counseling to alcoholics;[1] Volunteers of America – Minnesota, Bar None Boys Ranch, which is a residential treatment facility for children with emotional problems; [2] and Denver Post of the National Society of the Volunteers of America, which provides services to, among others, the homeless and elderly.[3] The Courts of Appeals have enforced the Board's decisions in each of these cases.[4] As the Ninth Circuit noted in *Volunteers of America, Los Angeles,* "VOA's social programs are expressive of a religious philosophy but are carried out in a secular fashion. That distinction has led courts to hold that the Board's assertion of jurisdiction over VOA's programs (and other similar church's programs) does not pose a significant risk of entanglement with religion." [5]

"While the Employer states that it is a church, it does not appear the Employer is arguing that the facilities at issue here – Crossroads, Grassland, and Valhalla – are

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[1] *Volunteers of America, Los Angeles,* 272 NLRB 173 (1984).

[2] *Volunteers of America — Minnesota Bar None Ranch,* 269 NLRB 1049 (1984);

[3] *Denver Post of the National Society of the Volunteers of America,* 259 NLRB 1308 (1982).

[4] *Volunteers of America, Los Angeles v. NLRB,* 777 F.2d 1386 (9th Cir. 1985), *Volunteers of Am -Minn Bar None Boys Ranch v. NLRB,* 752 F.2d 345 (8th Cir. 1985); *Denver Post of the Nat'l Soc'y of the Volunteers of Am. v. NLRB,* 732 F.2d 769 (10th Cir. 1984), *overruled on other grounds by Aramark Corp. v. NLRB,* 179 F 3d 872 (10th Cir. 1999)

[5] *Volunteers of America, Los Angeles, 777* F.2d at 1390.

> churches. If they were churches, an establishment clause problem might be present as they are substantially funded by a county government. Indeed, Grasslands is completely funded by Westchester County, and the First Amendment "forbids Congress (and, by interpretation of the Fourteenth Amendment, state and local governments as well) to establish a church."[6] As noted above, the Board has many times, with court approval, asserted jurisdiction over social services organizations operated by churches.[7] The Employer's objection to jurisdiction has no merit, and the Board has jurisdiction in this case."

In the Region 2 RC Petition, the Board issued an Order on August 12, 2010 (Board Exhibit 3), denying the Employer's Request for Review of the Regional Director's Decision and Direction of Election, as no substantial issues warranting review were raised.

In the instant case, the Employer presented exactly the same facts and issues decided in Region 2. The Employer presented no facts or documents in addition to those presented in Region 2. Rather, it reiterated the arguments that it made before Region 2. In denying review, the Board found that "the

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[6] *Sts. Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin,* 396 F 3d 895, 900 (7th Cir 2005); *see also Americans United for Separation of Church and State v. Prison Fellowship Ministries,* 509 F.3d 406 (8th Cir. 2007) (stating government may not fund religious organizations in a way that has the effect of advancing or inhibiting religion).

[7] *NLRB v Hanna Boys Center,* 940 F.2d 1295 (9th Cir. 1991) (owned by Roman Catholic Church); *NLRB v Kemmerer Village, Inc.,* 907 F.2d 661 (7th Cir. 1990) (owned by Presbyterian Church); *St Elizabeth Hosp v. NLRB,* 715 F.2d 1193 (7th Cir 1983) (owned by Order of Franciscan Sisters of the Sacred Heart); *Tressler Lutheran Home for Children v. NLRB,* 677 F.2d 302 (3d Cir. 1982) (owned by Lutheran Church); *NLRB v. St. Louis Christian Home,* 663 F.2d 60 (8th Cir. 1981) (owned by Christian Church Disciples of Christ).

function involved in this case, providing social services to clients at transitional residencies, is not religious education, and the Petitioned for employees are not teachers. We find that the sensitive issues raised by the Board's assertion of jurisdiction over religiously affiliated educational institutions are not present in this case."

It is clear that Volunteers of America Greater New York, Inc. is a social service organization operated by a church. The East Orange facility was not distinguished in any way from the facility in New York, or the facilities in other parts of the country. It is a social service organization. As such, the Board has jurisdiction under the Act. Thus, an election should be directed for the stipulated unit.

The Regional Director of Region 22 correctly reasoned as follows:

> "I note that the jurisdictional issue in dispute in this case, involving the same Employer, was fully addressed in a July 16, 2010 Decision issued by the Regional Director of Region 2. (Board Exhibit 2). In that Decision, the Employer operated three facilities in Westchester County, New York, one facility serving men recovering from alcoholism, a second facility that provided food and shelter to the homeless and a third facility that served as a residence for substance abusers in recovery and people living with AIDS or other serious health conditions. The Regional Director concluded that the Board has consistently asserted jurisdiction over religiously affiliated institutions that have as their primary purpose social or other commercial functions, rather than the propagation of

sectarian values. Accordingly, the Regional Director concluded that the Supreme Court's *Catholic Bishop* Decision does not apply to religiously affiliated social service organizations and ordered elections in the appropriate collective bargaining units. On August 12, 2010, the Board issued an Order in which it denied the Employer's request for review of the Regional Director's Decision and Direction of Election. (Board Exhibit 3). In its Order, the Board noted that "The function involved in this case, providing social services to clients at traditional residencies, is not religious education, and the petitioned-for employees are not teachers. We find that the sensitive issues raised by the Board's assertion of jurisdiction over religiously affiliated educational institutions are not present in this case. See *Salvation Army*, 345 NLRB 550 (2005)." (Footnote 1, Board Exhibit 3).

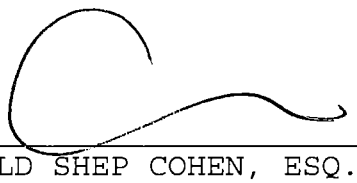
At the hearing in this case, the Employer introduced four documents into the record: 1) an August 15, 2002 letter from the Internal Revenue Service stating that the Volunteers of America operates as a church pursuant to IRS guidelines (Employer Exhibit 2a), 2) the Employer's Certificate of Incorporation papers which state that it is incorporated in the State of New York to operate a religious missionary and welfare society (Employer's Exhibit 2b), 3) a one page document titled "Shared Values" which describes the Employer's commitment and mission to the people and communities which it serves (Employer's Exhibit 2c), and 4) a one page document titled "The Cardinal Doctrines" which states that "Commissioned ministers affirm that their personal Christian faith is in harmony with the cardinal doctrines of Volunteers of America." (Employer Exhibit 2d). However, at the hearing, counsel for the Employer acknowledged that all four documents had also been placed into evidence at the Region 2 proceeding. Moreover, at this hearing, the

Employer did not present any additional documentation that had not been considered by the Regional Director of Region 2.[8]

It is clear that the Employer introduced this documentation in an attempt to revisit the Board's previous determination in this matter. Given that this documentation has been fully considered by the Board prior to the issuance of its Order, I must conclude that the Employer has failed to present any new factual or legal argument for my consideration. As a consequence, I also conclude that the Board's August 12, 2010 Order must serve as controlling legal authority for my determination to assert jurisdiction and I shall direct an election in the petitioned-for unit as set forth below."

Accordingly, the Request for Review of the Regional Director's Decision and Direction of Election must be denied.

Respectfully Submitted,
OXFELD COHEN, P.C.
Attorney for District 1199J,
Petitioner



ARNOLD SHEP COHEN, ESQ.

Dated: 12/14/11

[8] The Employer did not call any witnesses at the hearing.

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CERTIFICATION OF SERVICE

I, Arnold Shep Cohen, the undersigned attorney hereby certifies that she caused a copy of the foregoing District 1199J's Opposition to Employer's Request for Review of the Regional Director's Decision and Direction of Election to be served upon the following, via OVERNIGHT MAIL (UPS), on this 15th day of December 2011:

Shelly Sanders Kehl, Esq.
Kehl, Katzive & Simon, LLP
317 Madison Avenue, 21st Floor
New York, NY 10017

J. Michael Lightner, Regional Director
National Labor Relations Board
Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102-3115

Dated: 12/14/11

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