

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

SISTERS' CAMELOT

and

CHRISTOPHER ALLISON, AN INDIVIDUAL

Case 18-CA-100514

SISTERS' CAMELOT

and

IWW SISTERS' CAMELOT CANVASSERS'
UNION

Case 18-CA-105462

Tyler J. Wiese and James L. Fox, Esqs., for the General Counsel.
John C. Hauge and Adam B. Klarfeld, Esqs., (*Ford & Harrison, LLP*)
Minneapolis, Minnesota, for Respondent.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Minneapolis, Minnesota on June 6 and 7, 2013. Christopher Allison, aka Shuge Mississippi, filed the charge in docket 18-CA-100514 on March 18, 2013. The IWW Sisters' Camelot Canvassers' Union filed the charge in docket 18-CA-105462 on May 20, 2013. The General Counsel issued a consolidated complaint on May 21, 2013.

The General Counsel alleges that Respondent violated Section 8(a)(3) and (1) in discharging Christopher Allison on March 4, 2013. He also alleges that Respondent violated

Section 8(a)(1) in granting benefits to employees to dissuade them from engaging in union or other protected activities and in conveying the impression to its canvassers that it would be futile to organize.

5 On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

10 I. JURISDICTION

Respondent is a non-profit organization that collects edible food, which cannot be sold, and distributes it in low-income areas of Minneapolis-St. Paul. It also operates a community garden. Sister's Camelot does not sell food. It distributes food either as groceries or meals prepared in its kitchen busses. Respondent operates as a collective in which decisions are made by unanimous consent of the members of the collective.

The General Counsel alleges that it has jurisdiction over Respondent by a most slender thread. Respondent's gross revenue for calendar year 2012 was \$271,705.82. This exceeds the jurisdictional standard established by the Board in 1987 for social service organizations by \$21,705.82, *Hispanic Federation for Social Development*, 284 NLRB 500 (1987). The General Counsel alleges that Respondent is engaged in commerce within the meaning of the Act solely on the fact that Sister's Camelot purchased in excess of \$5,000 of insurance for its vehicles (2 kitchen busses and one van used to transport canvassers) from a broker located in Minnesota.¹ This vehicle insurance was issued by Progressive Insurance Corp. Progressive, which is based in Ohio, receives revenues in excess of \$50,000 from states other than Minnesota.

Respondent does not cite any Board precedent in support of its contention that it does not have more than a *de minimis* impact on commerce. Board precedent, by which I am bound, supports that contrary position of the General Counsel, *A. W. Washington Service Station*, 258 NLRB 164, 167-68 (1981). While Respondent may wish to argue to the Board that it should re-examine the jurisdictional standards set in 1987, I must adhere to current Board precedent, such as the case cited above and *Senior Citizens Coordinating Council*, 330 NLRB 1100, 1110-1111 (2000). Thus, I find, that Sister's Camelot is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. However, whether the Union, the IWW Sister's Camelot Canvassers' Union, is a labor organization within the meaning of Section 2(5) of the Act, depends upon whether Respondent's canvassers are "employees" as defined in Section 2(3) of the Act, as the General Counsel alleges. Respondent asserts that the canvassers are "independent contractors," who are excluded from the definition of "employee" in Section 2(3). This is the most difficult issue in this case.

¹ According to G.C. Exh. 4, Respondent's profit and loss statement for 2012, it spent \$6,627 on vehicle insurance in 2012.

The Independent Contractor/Employee Issue

5 The Board’s general principles for determining whether an individual is an “employee”
or “independent contractor” are set forth in *Roadway Express System*, 342 NLRB 842 (1998) and
Dial-A-Mattress Operating Corp., 326 NLRB 884 (1998). These principles are stated in
summary form in *BKN, Inc.*, 333 NLRB 143 (2001).

10 Respondent, as the party asserting that its canvassers are independent contractors, has the
burden of establishing that status. The Board applies the common-law agency test which
includes examination of the 10 factors, “among others,” no one of which is controlling. Not
surprisingly, the parties have very different perspectives as to how these factors should be
evaluated. Rather than summarizing the facts regarding canvassing work at Sister’s Camelot, I
15 will discuss these facts in conjunction with the relevant factors, in order to avoid undue
repetition. Generally the canvassers go door to door soliciting donations. Some of the more
salient aspects of their job are that they are not required to work at any time they do not wish to
do so, they are generally paid 40% of the donations they collect and that they are totally
unsupervised when they are canvassing.

20 My analysis of each of these factors is as follows:

Factor 1: The control that the entity exercises over the details of the work. The General
Counsel emphasizes that canvassers are required to solicit territory assigned to them by Sister’s
Camelot. This is true in the sense that canvassers who show up on a particular afternoon must
25 only canvass in the area depicted on a map that they select randomly from maps which are
presented to them face-down by a canvass coordinator.² It is obviously counter-productive to
have more than one canvasser solicit donations at the same residence on the same day.

30 However, canvassers also have an opportunity to select an area in which to solicit. They
can ask permission from the canvass coordinator to canvass an area previously canvassed with a
call-back sheet. This is a list of residences in a previously canvassed area. With the aid of the
call-back sheet, the canvassers can knock on doors which were not answered during the prior
canvassing.

35 Respondent requires canvassers to complete a legible call back sheet. This includes the
name of the canvasser, total amount of money collected, whether the donation was made by cash
or check, and a record of the doors each canvasser knocked on. These sheets are used when re-
canvassing an area recently canvassed. They are also used to determine which canvasser gets
credit and a commission on checks that are mailed into Sister’s Camelot.

40

² The general issue of what areas Sister’s Camelot may canvass and on what dates is set in a meeting
with other organizations that canvass for donations. Obviously, it is not in the interest of any of the
organizations to be soliciting on the same block the same day. A donor is far less likely to donate to one
organization if he or she donated to another similar organization very recently.

The General Counsel argues that employees can be disciplined for canvassing outside their assigned area. However, such discipline is not a reprimand, a suspension or termination, but rather turning over any donations to the canvasser who was assigned the area.

5

While Sister's Camelot sets the starting time for a canvass, nobody is required to work on any particular day. Showing up for work is completely at the discretion of each canvasser.³ There is no requirement that a canvasser inform Respondent whether or not they plan to show up for work. Also, what the canvasser does during the canvassing period is entirely up to the individual, i.e., whether to work during that period or goof-off. With the exception of their first day on the job, there is no supervision of how a canvasser performs his or her job. Respondent also does not have a dress code, or production quota. These factors strongly indicate independent contractor status.

10

Respondent has a few rules that its canvassers are required to follow: 1) don't lie; 2) tell donors for whom they are soliciting; 3) describe what Respondent does; and 4) leave a residence as soon as a resident indicates an unwillingness to donate. Beyond observance of these rules, a canvasser is free to make whatever presentation (or "rap") he or she wishes to a prospective donor.⁴ Moreover, Respondent makes no attempt to check to see if canvassers are following its rules.

15

20

While Sister's Camelot generally sets the time at which canvassing must cease, this is often determined by local ordinance.

25

30

The General Counsel also relies on less than a dozen instances in which Respondent has disciplined canvassers. Many of these instances involve inter-personal relationships with other canvassers. Most of the evidence regarding discipline concerns incidents prior to 2009 when Christopher Allison was a canvass coordinator. Since canvassers generally work an area in pairs there have been several instances in which canvassers have been orally reprimanded for hostile

³ Obviously, reasonable people can disagree as to how these factors are to be applied. I would note that the freedom to show up whenever one pleases appears in some cases to be an extremely important factor in distinguishing an employee from an independent contractor, compare *Pennsylvania Academy of the Fine Arts*, 343NLRB 846, 847 (2004) [freedom to control their own schedules and thus control their earnings strongly supports independent contractor status] with *Lancaster Symphony Orchestra*, 357 NLRB No. 152 (2011).

Contrary to the argument at pages 55-56 of the General Counsel's brief, the fact that canvassers cannot subcontract is irrelevant to this case. Virtually anybody who wants to canvass can show up at Respondent's office and sign an independent contractor agreement. This record reflects only one recent instance in which somebody who wanted to canvass was denied the opportunity, Tr. 238. This involved a person known to Aaron Barck, a collective member and canvass coordinator, to have a history of violent and abusive behavior, Tr. 369. There is no need for a prospective canvasser to subcontract from another canvasser.

⁴ Respondent contrasts this from other canvassing organizations that require canvassers to follow a script.

and otherwise inappropriate interactions with other canvassers.⁵ There have been other situations in which canvassers have not been allowed to canvas anymore, or for a certain period of time. One of these involved a canvasser who was suspended for a month for sleeping in Respondent's van with a friend in 2012. No person has ever been disciplined for inadequate or poor performance of their canvassing functions.

There is no indication in this record that Respondent maintains personnel files for the canvassers or that discipline is documented in any formal way.⁶ There is no evidence that canvassers are given performance evaluations or that Respondent monitors their job performance in any way other than paying them 40% of the donations they receive.

Factor 2: Whether the individual is engaged in a distinct occupation or work. The General Counsel contends that the fact that canvassers must tell prospective donors that they are canvassing for Sister's Camelot is an indication that they are employees. Respondent argues that the fact that canvassers may canvas for other organizations is a factor weighing towards deeming them independent contractors. While one cannot solicit for another organization during a Sister's Camelot canvas, there is nothing that prohibits a canvasser from soliciting for another organization the next day, or even the same day during a different time period. Moreover, a person is free to canvas for another organization on any given day rather than Sister's Camelot. Generally, employees are not free to work for a competitor during their regular workshift at their employer's facility.

Factor 3: The kind of occupation, including whether in the locality in question, the work is usually done under the employer's direction or by a specialist without supervision. This factor cuts in favor of independent contractor status. The canvassers work with virtually no supervision. While one might call an experienced canvasser a specialist, the job requires minimal training. Success as a canvasser appears to depend on certain personality traits; i.e., persistence, a gift for gab and a thick skin.

Factor 4: The skill required in the particular occupation. Canvassing requires little training. As discussed above, the skills necessary to be a successful canvasser appear to be largely personality traits as opposed to knowledge one acquires through education. Experience in canvassing may also be of assistance. Moreover, it is likely that one without the necessary personality traits will quickly give up on canvassing due to the lack of positive reinforcement,

⁵ I would include in this category the instance(s) in which a canvasser was verbally reprimanded for neglecting to show up at the van pick-up point the end of a shift without notice, thus leaving everyone else waiting indefinitely to return to Respondent's offices.

Not all the General Counsel's testimony regarding discipline is credible. Witness Bobby Becker testified that Tracy Steidl was suspended for a month in the summer of 2012, Tr. 231. Respondent's financial records, R-9, contradict his testimony. On the other hand, these records do indicate a one-month gap in Alex Forsey's canvassing activities during October 2012. That is consistent with Becker's testimony that Forsey was suspended for sleeping in Respondent's van. I decline to take Becker's testimony at face value generally. At Tr. 238, he testified that he declined to hire 5-10% of the individuals who wanted to canvass. Shortly thereafter Becker testified that he had never turned anyone down.

⁶ In fact the only documentation of discipline is a one month suspension in 2001 or 2002 which is contained in the minutes of a collective meeting, G.C. Exh. 14.

i.e., cash. Unskilled work weighs in favor of employee status, *St. Joseph News Press*, 345 NLRB 474, 479 (2005).

5 Factor 5: Whether the employer or the individual supplies the instrumentalities, tools and the place of work. Respondent supplies the place of work for its canvassers, i.e., the territory that it plans to canvas on a particular day. There is little in the way of tools or supplies for this job. Respondent makes various flyers available to the canvassers, which they can choose to use or not use, Tr. 359. It also supplies maps of the canvassers' assigned "turf," whatever permits are required and generally supplies a clipboard and possibly a piece of paper or call-back sheet
10 on which to document the results of the canvass. Respondent also, with few exceptions, provides transportation to and from the canvassing area with its van.

15 Factor 6: The length of time the individual is employed. Unlike some independent contractor situations, the canvassers are not retained for a limited amount of time, or to perform a task with specified duration. Canvassers may continue to canvas for Respondent for as long as they wish and a number of these individuals have been canvassing for Sister's Camelot for years. Respondent's financial records, R Exh. 9, indicate that approximately 40 individuals canvassed for it in 2012; some on a regular basis, others only on a few occasions.

20 Factor 7: The method of payment, whether by time or by the job: Canvassers are paid neither by the time they spend canvassing or a lump sum for a particular task. They are paid a percentage (generally 40%) of the donations they obtain from going door to door. I find that the method of payment strongly indicates independent contractor status.⁷ How much a canvasser earns depends largely on how often he or she chooses to canvass and how hard and how
25 efficiently they work while canvassing.

30 Factor 8: Whether the work in question is part of the employer's regular business. Contrary to the contention of the General Counsel, I find that the canvassers' job is not part of Sister's Camelot's regular business. Respondent's regular business is distributing free food. The canvassers do not participate in obtaining the food to donate or in its distribution. Their job is to raise money for functions that support Respondent's regular business, such as licensing and maintenance of its vehicles, wages for office staff, solicitor permits, etc., G.C. Exh. 4.

35 Factor 9. Whether the parties believe they are creating an employment relationship. Canvassers sign an independent contractor's agreement. They receive a Form 1099, rather than a W-2 tax form and are told that they are independent contractors, Tr. 154. 158.

40 Factor 10: Whether the principal is in the business. Respondent does not have individuals who are clearly employees whose sole function is to canvas. For example, David Senn, who works in the community garden, appears to be an employee and is paid a wage, R Exh. 9. No person who only canvasses is compensated in the same manner as Senn.

⁷ In the summer of 2012, the collective approved a canvasser pay scale, G.C. Exh. 17, Tr. 62-63. Besides the commissions set forth in the pay scale, the collective provided for a \$40 stipend for canvassers who have been approved by a canvass coordinator to train new canvassers. I am unaware of evidence that Respondent ever paid this stipend to any canvasser.

Considering all these factors, particularly the fact that canvassers are free to work on any given day or not; the method of compensation; that their compensation depends largely on the time and effort put into their work; and the lack of supervision while canvassing, I conclude the canvassers are independent contractors. I therefore will dismiss the complaint in its entirety.

5 However, given the possibility that a reviewing body may conclude otherwise, I will address the merits as if the canvassers are ultimately found to be employees.

II. ALLEGED UNFAIR LABOR PRACTICES

10 *The Chronology of the alleged unfair labor practices*

On February 25, 2013, a group of canvassers attended the regular Monday morning meeting of the governing body of Sister's Camelot, its collective. Six of the seven members of the collective, Eric Gooden, Clay Hansen, Aaron Barck (aka Muskrat), David Senn, Lisabeth Forster-Bayless and Bobby Becker were present. One collective member, Laurel Hendershot (aka Clive North) was absent.

The canvassers read and distributed a statement to the collective. The statement informed the collective that the canvassers had formed the IWW Sister's Camelot Canvassers Union and that the Union was demanding that the collective start negotiating with it on Friday, March 1. Christopher Allison was among the canvassers attending the meeting.

A group of about 12 canvassers met with all 7 members of the collective on Friday, March 1 at 10:00. A list of 18 demands was read and distributed to the collective by the representatives of the Canvassers' Union, G.C. Exh. 10. Christopher Allison was one of three canvassers who read the demands. Some of the demands that were ultimately related to Allison's termination was 1) A system to take credit card donations at the door; 6) Union chooses two co-canvass coordinators via democratic election; 13) Canvass credit card only to be used for office supplies, gas and canvasser appreciation; 14) Canvass coordinators have full access to online donations, mail in contributions, and the ability to pay canvassers out weekly.

The canvassers then announced that they were leaving the meeting and would return in an hour. The canvassers stated that after that hour they expected the collective to bargain in good faith with the Union. An IWW representative called collective member Clive North (Laurel Hendershot) and asked if the collective would meet several of the Union demands to prevent a strike, Tr. 55.⁸ When the canvassers returned, Lisa Foster-Bayless stated either that the collective would not bargain with the Union or would not do so at that time.⁹ The Union then announced it was going on strike. As of June 7, 2013, there had not been any canvassing performed for Respondent since March 1.

40 Later on March 1, John Snortum, who had acted as spokesperson for the canvassers at the meeting, called collective member Clay Hansen. Snortum asked if the collective could meet 3-4

⁸ The IWW representative, Kevin, who was not a canvasser, did not testify. Thus North/Hendershot's testimony on this point is uncontradicted. Therefore, I credit this testimony.

⁹ I find it unnecessary to resolve the differences in the witnesses' testimony on this point.

of the Union's demands as a way of demonstrating the collective's good faith.¹⁰ The collective met over the weekend to discuss whether it could meet any of the Union's demands.¹¹

5 There was another collective meeting on Monday, March 4. Canvasser John Snortum read and distributed a prepared statement to the collective, G.C. Exh. 11. Collective member Lisa Foster-Bayless read and distributed 2 statements. In the first, G.C. Exh. 12, the collective declared that, "we cannot accept any terms which forces us into the role of bosses."

10 The collective also announced several changes to Respondent's policies: one member from the canvasser union, chosen by the Union, could become a member of the collective immediately. In addition, other canvassers could apply to become collective members if they fulfilled the following requirements for three months: 8 volunteer hours or 12 paid canvas shifts per calendar month; participation at least once each year in each current program area; attendance and participation at all weekly meetings, maintenance of a weekly time card for
15 hours worked or volunteered.¹²

The second statement, G.C. Exh. 13, stated that the collective was terminating Christopher Allison's contract immediately and that he would not be allowed to work, volunteer or be associated in any way with Respondent.

20

Christopher Allison had been associated with Sister's Camelot on and off since 2001. At times he had been a member of the collective. In about 2006 or 2007, he stole a mailed-in donation that belonged to another canvasser. He apparently self-reported this theft and returned the check.¹³

25

In 2009 there were additional allegations of theft against Allison, Tr. 77. The collective discussed these allegations in one of its meetings. Afterwards Allison resigned and had no involvement with the organization for two years.

30

In 2011, apparently without the knowledge of some or all the members of the collective, Allison signed a new independent contractor agreement with Respondent and began canvassing again for Sister's Camelot. Although some members of the collective wanted to terminate this agreement, they were unable to do so because the collective decides by unanimous vote. Hardy Coleman, then a member of the collective, blocked the termination of Allison's contract.¹⁴

35

In 2012 Allison acted as a field manager for one shift. Hardy Coleman, then a canvass coordinator, delegated his functions for some shifts to Allison and others, Tr. 304. However, the

¹⁰ Snortum did not testify. Hansen's testimony regarding this conversation is uncontradicted and credited.

¹¹ Collective member Bobby Becker was excluded from these deliberations due to his sympathy for the Union's demands.

¹² On March 6, in an online newsletter, the collective agreed to four more of the Union's demands; a system to take credit card donations at the door; professional van maintenance; coverage of medical bills for work-related injuries and more paid training of up to three days, G.C. Exh. 5, p. 14.

¹³ Members of the collective in March 2013 apparently believed Allison stole checks on at least 2 occasions, G.C. Exh. 13.

¹⁴ Coleman ceased to be a member of the collective in 2012.

collective prohibited Allison from running a shift after that one occasion. Allison also unsuccessfully sought readmission to the collective in 2012. One member of the collective told Allison that he would prevent Allison from joining the collective because Allison was a thief.

5 Allison canvassed 4-6 times a week and earned almost \$10,000 canvassing for Respondent in 2012, R. Exh. 9.

10 The collective's March 4, 2013 statement recounted Allison's history with Sister's Camelot and then stated, "In his time back at the canvass, Chris has continued to be the same manipulative and disruptive presence that he was before, and has demonstrated no willingness to be accountable for his past actions or transform his future behavior." With one very minor exception, there is no evidence in this record of misconduct by Allison between the time he resumed canvassing in 2011 and his termination in 2013. He received one verbal warning during this period for publicly chastising another canvasser for displaying drug paraphernalia.

15 The collective stated it could not negotiate in good faith with the Union as long as Allison had any connection to Respondent. A Union representative informed the collective that it would not negotiate with Respondent in view of the termination and the union canvassers walked out of the building.

20

Analysis

25 Respondent has essentially conceded that Christopher Allison's contract or employment was terminated in part because of the Union's demands between February 25 and March 4, 2013, Tr. 301-02 [testimony of collective member Aaron Barck]. But for these demands and Allison's role with respect to these demands, he would not have been terminated. Thus, if he was an employee, his termination clearly violated Section 8(a)(3) and (1), *Phoenix Transit System*, 337 NLRB 510 (2002).¹⁵

30 Respondent's concerns regarding Allison are not a valid defense to the complaint. It could have negotiated with the Union, for instance, to bar Allison from becoming a collective member or canvass coordinator. Respondent did not have to terminate Allison as a result of the Union's demands. I would note that a remedy for Christopher Allison, if his termination is found to violate Section 8(a)(3) and (1), would be reinstatement to his position as a canvasser and backpay. It would not require giving him access to the financial information demanded by the Union in March.

35
40 With regard to the Section 8(a)(1) allegations, if the canvassers are employees I would find that Respondent violated the Act by indicating it would never accept an employer-employee relationship with the canvassers. This I take is an indication that organizing would be futile because Respondent would never bargain with the Union as the representative of the canvassers. As a remedy Respondent would be required to post the traditional Board notice.

¹⁵ An analysis under the *Wright Line* (251 NLRB 1083 (1980)) doctrine is inappropriate in this case. The timing of Allison's termination clearly establishes that he would not have been terminated but for his union activities and that of other canvassers.

On the other hand, I would dismiss the allegations that Respondent violated the Act in granting benefits to discourage employees' union activities. The benefits offered were offered in direct response to requests from the Union and John Snortum's requests for such action.

5 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁶

ORDER

The complaint is dismissed.

10

Dated, Washington, D.C., August 7, 2013.

15

Arthur J. Amchan
Administrative Law Judge

¹⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.