

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:

THE SALVATION ARMY,

Employer,

And

Case No. 7-RC-175722

LOCAL 876, UNITED FOOD AND  
COMMERCIAL WORKERS  
INTERNATIONAL UNION, AFL-CIO, CLC,

Petitioner.

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**BRIEF IN SUPPORT OF  
THE SALVATION ARMY'S REQUEST FOR REVIEW  
OF THE REGIONAL DIRECTOR'S DECISION  
AND DIRECTION OF ELECTION**

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### **A. PRELIMINARY STATEMENT**

This is a representation case, initiated by an election petition filed by Petitioner, United Food and Commercial Workers Union, Local 876 (“Union”). After discussion between the parties concerning the scope of the petitioned-for unit, the Union now seeks a unit of Production Assistants, Duty Drivers, Assistant Cook/Kitchen Drivers, Maintenance Drivers and Mechanic Drivers at The Salvation Army’s Southeast Michigan Adult Rehabilitation Center (“Southeast Michigan ARC”). These employees are employed at three warehouse locations, in Detroit, Pontiac and Romulus, Michigan.

The Salvation Army responded to the petition by asserting that it should be dismissed for lack of jurisdiction because of the status of the Southeast Michigan ARC as an exempt religious institution under the NLRA. This position was asserted on two legal theories which have been adopted by the Board and federal appellate courts in prior cases. A pre-election hearing was conducted on May 18, 2016, at which time The Salvation Army presented substantial evidence in support of its assertion of exempt status.

The Salvation Army initially maintained to the Regional Director that The Salvation Army, and specifically its ARCs, should be deemed exempt religious organizations based on the fact that they are functioning Christian churches, specifically performing a religious and evangelical mission. That mission is to assist recovering alcohol and drug addicts (referred to by the Church as “beneficiaries”) to achieve a love of God and acceptance of Jesus Christ as their savior in conformity with express religious tenets and the ecclesiastical focus of the Church.

As further discussed below, the hearing evidence established that the treatment program of the Southeast Michigan ARC, as well as the Center itself, is in no way secular or merely a charitable exercise. Rather, it was established that treatment is implemented through ministerial

governance, mandatory attendance at Church services, bible study, spiritual religious counseling, prayer, mandatory observance of the Church's Christian lifestyle, and "work therapy" based upon the teachings of Jesus Christ. Because the ARCs represent nothing less than a Christian church ministering to beneficiaries in furtherance of its religious tenets and sacraments, The Salvation Army maintained that a religious exemption should be found under Board policy expressed in cases such as *St. Edmunds Roman Catholic Church*, 337 NLRB 1620 (2002); *Faith Center – WHCI Channel 18*, 261 NLRB 106 (1982); *Lutheran Church, Missouri Synod*, 109 NLRB 859 (1954). These cases hold that the Board will decline jurisdiction over secular employees of a functioning church engaged in ministry or evangelical activities.

The Salvation Army additionally asserted in the pre-election hearing that jurisdiction over the Southeast Michigan ARC was precluded on constitutional grounds; under principles adopted by the Supreme Court in *National Labor Relations Board v The Catholic Bishop of Chicago*, 440 US. 490 (1979); by the D.C. Circuit in *University of Great Falls v NLRB*, 278 F3d 1335 (DC Cir, 2002); and by the Board in *Pacific Lutheran University*, 361 NLRB No. 157 (2014). With regard to the *Pacific Lutheran* standards for religious exemption, extensive evidence was presented establishing the critical role, and direct involvement of the petitioned-for driving employees in fulfilling the religious and evangelical mission of the Southeast Michigan ARC. As discussed below, this included unrebutted sworn testimony and documentary evidence that the driving employees supervise beneficiaries on a daily basis in their mandatory religious-based "work therapy"; are directly responsible for a beneficiary's adherence to the drug/alcohol abstinence requirement of the religious rehabilitation program; provide lay spiritual support and counseling to beneficiaries on virtually a daily basis; and must conduct themselves on the job as role models to the beneficiaries in accordance with and in sympathy with the Christian standards of behavior embodied in The Salvation Army Church's religious tenets.

As discussed below, the hearing evidence further established a close nexus between an individual's status as a beneficiary and potential progression to a status as a paid driver of the Southeast Michigan ARC, thereby further establishing a direct connection between driving employees and the religious rehabilitation program. A substantial percentage of driving employees are former beneficiaries who must adhere to the precepts of The Salvation Army's religious rehabilitation program in order to avoid a relapse into substance addiction.

On June 10, 2016, the Regional Director issued her Decision and Direction of Election, rejecting the Employer's position that it was an exempt religious entity. That decision was in error, thereby necessitating review of the jurisdictional issue by the National Labor Relations Board.

As a threshold error, the Regional Director ignored clear hearing evidence and extensive federal case law cited in The Salvation Army's Post-hearing Memorandum of Law, establishing the ARCs as functioning Churches with a direct religious and evangelical mission and purpose. Despite un rebutted hearing evidence and federal precedent establishing that The Salvation Army's ARCs are religiously ministering to its beneficiaries and fostering the Army's religious tenets through operation of the religious rehabilitation program, the Regional Director erroneously concluded that the Southeast Michigan ARC "does not have a religious purpose". (Decision at p. 8) In addition, the Regional Director erroneously found that *St. Edmunds Roman Catholic Church* and *Faith-Center-WHCI Channel 18, supra* were distinguishable because their "primary mission was education and proselytizing." (Decision at p. 7-8) As discussed below, the Board's reasoning for adopting a religious exemption in these cases was, in fact, the employers' status as functioning churches, no different in concept or actual application from The Salvation Army's ARCs.

The Regional Director's Decision is additionally in error in rejecting The Salvation Army's position that NLRA jurisdiction would contravene the First Amendment. The Decision erroneously concludes that The Salvation Army's reliance on *Catholic Bishop* and *Great Falls* is "unpersuasive", and suggests such cases must be strictly limited to religious educational institutions. (Decision at p. 7) A similar conclusion is made with regard to *Pacific Lutheran University*, and the Decision additionally ignores substantial and unrebutted hearing evidence in concluding that the petitioned-for driving employees "are not engaged in effectuating a religious purpose". (Decision at p. 8) To the contrary, the hearing evidence firmly established that the Southeast Michigan ARC has no purpose at all except to foster and promote the religious mission of The Salvation Army, and the driving employees play a critical role in fulfilling that mission.

Pursuant to Section 102.67(d) of the Board's Rules and Regulations, The Salvation Army hereby requests review of the Regional Director's Decision and Direction of Election. Contrary to her conclusions, the Southeast Michigan ARC is not subject to NLRA jurisdiction, both as a matter of Board policy and based upon constitutional prohibitions. The Board should accept review of this case and dismiss the representation petition for lack of jurisdiction.

**B. THE REGIONAL DIRECTOR ERRED IN CONCLUDING  
THAT THE SOUTHEAST MICHIGAN ARC WAS NOT A  
RELIGIOUS "CHURCH" AND HAD NO RELIGIOUS PURPOSE**

The Board does not assert jurisdiction over religious organizations "which operate in a conventional sense using conventional means" or which are performing a direct religious or evangelical function. *St. Edmunds Roman Catholic Church*, 337 NLRB 1260, 1261 (2002) (jurisdiction declined over Catholic Church); *Faith Center – WHCI Channel 18*, 261 NLRB 106 (1982) (jurisdiction declined over church run radio station broadcasting the church's evangelical message), *Motherhouse of the Sisters of Charity*, 232 NLRB 318 (1977); *Lutheran Church*,

*Missouri Synod*, 109 NLRB 859 (1954), *Nativity Preparatory School*, 2015 WL 7732613 (NLRB G.C.). This standard is clearly met in the instant case (based upon substantial hearing evidence) and the Regional Director was in clear error in concluding that the ARC was not a church and has no “religious purpose.”) (Decision at p. 5)

As a threshold factor, the Southeast Michigan ARC is not a social service or charitable organization; it is a “church” unto itself and part of a larger church, The Salvation Army. This is prominently declared in the Mission Statement, which proclaims:

**“The Salvation Army, an international movement, is an evangelical part of the Universal Christian Church. It is based on the Bible. The ministry is motivated by the love of God. Its mission is to preach the gospel of Jesus Christ to meet human needs in His name without discrimination.”** (Exhibits A, B, C, D, E entered in evidence at the hearing as Employer’s Exhibits 1, 2, 4, 13, 14).

The “Eleven Articles of Faith” represent the religious foundation of The Salvation Army. (Exhibit F, entered in evidence at the hearing as Employer’s Exhibit 3) As the Regional Director can see, these articles establish the Army’s firm belief in traditional Christian tenets of faith such as an adherence to the Old and New Testament, a belief in the Holy Trinity, a striving towards repentance from sin by accepting God and Jesus Christ, and achieving salvation through “continued obedient faith in Christ”. Jacquelin Idzior, the ARC’s Director of Operations, testified that the Eleven Articles were the religious framework of The Salvation Army Church, and passed out to worshippers at every Sunday service. (TR 17) Ms. Idzior also explained that The Salvation Army is, in fact, “a church unto itself” and not affiliated with any Christian denomination such as the Catholic Church, Methodist Church, etc. (TR 16)

The Southeast Michigan ARC is governed by Salvation Army “officers”, who are ordained ministers in the Church. (TR 22) The governance structure includes Salvation Army officers in the Central Territory, as well as Envoy Merle Miller locally, who is a Pastor in the church and

essentially the ARC's "CEO". (TR 22) Envoy Miller is retiring soon, and will be replaced by a Salvation Army officer, Major Larry Manzella (also an ordained minister).

The Southeast Michigan ARC has many features of a traditional church or religious house of worship. In its Detroit facility, there is a large chapel seating approximately 1,000 worshippers. (TR 18) Approximately 800 worshippers attend church services every Sunday, likely making it one of the largest regular services in the Detroit metropolitan area. (TR 18) The Southeast Michigan ARC has a choir, which sings gospel music at church services, which feature scripture readings and sermons. (TR 120)

As a fundamentally spiritually based program, the religious rehabilitation program for the Southeast Michigan ARC's beneficiaries has many mandatory religious components. Beneficiaries must attend church services at least twice a week, on Sunday and Wednesday. (TR 39) They must attend bible study classes on Sunday. (TR 39) Beneficiaries are required to attend at least one religious and spiritual counseling session each week. (TR 39) These sessions are conducted by Salvation Army soldiers or officers, and not secular certified addiction counselors who provide separate addiction counseling to the beneficiaries. (TR 39-40)

Required participation in prayer is also a component of the religious rehabilitation program provided to the beneficiaries at the ARC. They are woken up every morning at 5:00 a.m. for devotions, and prayer is had at every meal. (TR 41) Devotions include prayer, blessings and scripture. (TR 41) During work therapy, both employees and beneficiaries attend staff meetings. It was undisputed at the hearing that a prayer is said at every staff meeting which is conducted. (TR 49, 96, 119)

Abstinence from alcohol and illegal drugs and non-use of illegal drugs or controlled substances without a prescription are religious tenets of The Salvation Army Church for its adherents, soldiers and officers (TR 41-42; [www.salvationarmy.org](http://www.salvationarmy.org) – International Position

Statement “Alcohol in Society”) As a result both beneficiaries and employees undergo daily breathalyzer testing and random drug screens. Any detectible measurement of alcohol or illegal/non-prescribed drug use will result in the immediate discharge of the beneficiary from the program, or the employee from employment. (TR 42)

The union asserts that The Salvation Army is merely performing a charitable or social service activity. Such a characterization, however, ignores the actual ecclesiastical and evangelical mission and focus of the church which is, as Ms. Idzior explained, to “teach beneficiaries about the love of Christ” and “preach the good news of Jesus Christ”. (TR 17-18)

The operation of the ARC by The Salvation Army is not merely a performance of “good deeds”, but the actual fulfillment of an evangelical religious mission. The Centers are, in fact, “churches” of The Salvation Army, and their operation a religious observance. As The Salvation Army states in its ARC Handbook:

**“Participants in the program are exposed, gently, but firmly, to opportunities for regeneration based upon a personal relationship with God. The [ARC] is a true expression of the ministry of The Salvation Army – love of God and practical concern for the needs of humanity. (Employer’s Ex. G, p. 575 entered into evidence at the hearing as Employer’s Exhibit 11)**

\* \* \*

**“An adult rehabilitation center offers an excellent opportunity for the presentation of the gospel, Christian lifestyle and spiritual values. Every beneficiary should be exposed to a direct spiritual approach reflecting the Army’s firm belief that human regeneration is found only through Jesus Christ. For this to be effective, the Spirit of God should pervade every aspect of the center program.” (Employer’s Ex. G, p. 615)**

Ms. Idzior aptly testified that the ARCs **“are our religious mission. This is why we exist. It is for the Adult Rehabilitation Center. . .We would be nothing without the center, without the men and women. There would be no need for us.”** (referring to The Salvation Army itself) (TR 28)

Ms. Idzior further explained that the work therapy performed by beneficiaries at the ARCs was not focused as a means to secure funding for the center operations; but rather a means of fulfillment of the organization's religious and evangelical mission, and the religious tenets of The Salvation Army Church. Work therapy, she explained, not only assists beneficiaries in achieving necessary discipline over their lives, but is also a religious observance:

**“It’s also important because that’s what Jesus teaches us. That’s what He taught His disciples is that when you’re in a town, you have to work for the people you’re staying with. You have to do something to earn your keep, and that’s an important principle as well. They need to learn that they have to do something in order to earn their keep.”** (TR 34).

The U.S. Treasury Department has long recognized the status of The Salvation Army and its affiliated entities as a tax-exempt, functioning “church” under federal tax laws, and not simply a non-profit charitable organization. Employer’s Exhibit H (entered into evidence at the hearing as Employer Exhibit 8) is a formal ruling of the Treasury Department issued in 1955, holding that:

**“It is the opinion of this office that the National Headquarters of The Salvation Army and its various components throughout the United States constitute a church or convention or association of churches as that term is used [in the IRS Code].”**

The status of The Salvation Army’s ARCs as a functioning church, as well as the fact that their operation represents the direct fulfillment of the church’s religious and evangelical mission, has been recognized repeatedly in federal case law. In *Schleicher v The Salvation Army*, 518 F3d 472 (7<sup>th</sup> Cir 2008), Circuit Judge Richard Posner wrote that the ARCs were appropriately characterized as indisputably religious institutions with a religious mission and purpose:

**“. . . a Salvation Army Rehabilitation Center is a church and like a church, it is administered by church officials. . . The Salvation Army’s Adult Rehabilitation Centers are functional equivalents of cathedrals or monasteries, and the ministers who administer them are engaged in**

**ecclesiastical administration. . . The thrift shops . . . have a religious function; salvation through work.”** *Id* at p 477.

In *Salvation Army v Department of Community Affairs of the State of New Jersey*, 919 F2d 183 (3<sup>rd</sup> Cir 1990), the Third Circuit observed that the rehabilitation mission of the ARCs represented the very fulfillment of the Church’s religious tenets and teachings, and had neither a social or secular purpose:

**“It is important to understand the role that Adult Rehabilitation Centers play in the scheme [of The Salvation Army’s] faith. Many religions, of course, engage in social welfare activities. . . For the most part, however, these demonstrations of good will, while religiously motivated, do not have particular religious significance; rather, they are secular activities performed out of a religious desire to do good deeds. . . For [The Salvation Army] operating the Patterson [ARC] is a sacrament. The Salvation Army’s [ARC] is neither social nor secular in its purpose. Rather, the operation of the Centers is central to the religious mission of The Salvation Army.”** *Id* at p 188 (emphasis added)

See also: *McClure v The Salvation Army*, 460 F2d 553 (5<sup>th</sup> Cir 1972) (“The Salvation Army is a church”); *Rogers v The Salvation Army*, 2015 WL 2186007 (ED MI 2015) (“There is little doubt that The Salvation Army is a religious institution” under Title VII); *Clark v Salvation Army*, 2009 WL 179614 (11<sup>th</sup> Cir 2009) (unpublished) (Salvation Army is a statutory “religious organization” under Title VII); *Morton v The Salvation Army*, 2005 WL 2234003 (SDNY 2005) (Salvation Army’s Eastern Territory was “a branch of the Christian Church [who] operates ARC’s throughout the United States”); *McClure v The Salvation Army*, 323 F Supp 1100 (ND GA 1971).

Despite the extensive hearing evidence and federal case law cited above conclusively demonstrating that The Salvation Army’s ARCs are functioning churches engaged in a religious and evangelical mission, the Regional Director somehow concludes that the ARCs “do not have a religious purpose”. This conclusion is clearly erroneous on the record, thereby justifying Board review under Section 102.67(d)(2) of the Regulations. The Regional Director’s decision

also concludes that *St. Edmunds Roman Catholic Church and Faith Center - WHCI Channel 18* are somehow distinguishable and inapplicable because the religious organizations in those cases had the “primary mission [of] education and proselytizing.” This is an inaccurate conclusion and undue limitation of Board policy. Rather, as the Board declared in *St. Edmunds Roman Catholic Church*, the National Labor Relations Board will not “assert jurisdiction over secular employees of religious institutions without whom the employers could not accomplish their religious missions.” 337 NLRB at 1261. The petitioned-for employees in *St. Edmunds* were custodial maintenance employees, who played a significantly lesser role in the religious mission of that Catholic church than the driving employees play in the religious and evangelical mission of the Southeast Michigan ARC.

While, as cited by the Regional Director in her decision, the NLRB has previously asserted jurisdiction over certain Salvation Army facilities in prior cases, the Board has not, in such cases, squarely faced the jurisdictional issue under the analysis developed in *St. Edmunds Roman Catholic Church and Faith Center – WHCI Channel 18*, *supra* concerning the religious and evangelical mission of its ARCs. In *The Salvation Army (Kalveeta Dean)*, 345 NLRB 550 (2005), jurisdiction was assumed over a community correctional center operated by The Salvation Army under contract with the Federal Bureau of Prisons. Obviously, there were no mandatory religious observances or required Christian counseling administered in that facility, and it was not “conducted as a church” like the ARCs. In contrast to the federally funded center in *Kalveeta Dean*, the ARCs receive no federal or government funding at all, and all sales of donated goods are applicable only to ARC-related costs. (TR 36)

In *The Salvation Army Williams Memorial Residence*, 293 NLRB 944 (1989), the facility involved was not an ARC, but a non-sectarian senior housing center. There were no mandatory religious services or counseling for neither the residents, nor any addiction rehabilitation

activities conducted which fell in The Salvation Army's religious mission. Thus, that decision also involved a facility which was not "conducted as a church", within the ambit of the Board cases cited above.

In *The Salvation Army of Massachusetts Dorchester Day Care*, 271 NLRB 195 (1984), the facility involved was a government funded children's day care center. In enforcing the Board's unfair labor practice order in *NLRB v The Salvation Army of Massachusetts Dorchester Day Care*, 736 F2d 1 (1<sup>st</sup> Cir 1985), the First Circuit observed there were "no religious instruction or activities for the children" (which would have been precluded by the government funding contract), and no requirement that the center's director even be a member of The Salvation Army. In *The Salvation Army, Inc*, 225 NLRB 406 (1976), the religious aspects of the petitioned-for facility (a "social service center") were not specifically examined by the Board. There was not even a characterization in the decision of The Salvation Army as an actual Christian Church; it was simply described as a "nonprofit religious and charitable organization". *Id.* at 406. The primary area of inquiry was whether the NLRB should accept jurisdiction over a non-profit entity with a charitable purpose, which otherwise met the dollar volume requirements for jurisdiction.

There is no indication in these prior Board decisions that the NLRB considered the precise facts presented in the instant case, where a Christian church, engaging in its stated and avowed religious and ecclesiastical mission, promotes the achievement of salvation for its beneficiaries through mandatory religious observance, "work therapy" in accordance with the teachings of Jesus Christ, prayer, spiritual counseling and required adherence to a Christian lifestyle. The instant case falls squarely within the Board precedent declining jurisdiction over churches engaging in their religious and evangelical missions. The Regional Director was in clear error in

concluding that the Southeast Michigan ARC “does not have a religious purpose”, and in failing to find a lack of jurisdiction based upon well settled Board policy.

**C. THE REGIONAL DIRECTOR ERRED IN CONCLUDING  
THAT THE FIRST AMENDMENT DID NOT COMPEL THE BOARD  
TO DECLINE JURISDICTION OVER THE SOUTHEAST MICHIGAN ARC**

In *National Labor Relations Board v The Catholic Bishop of Chicago*, 440 US 490 (1979), the United States Supreme Court held that the National Labor Relations Board was constitutionally prohibited from assuming jurisdiction over lay faculty members at church-operated schools. In *University of Great Falls v NLRB*, 278 F3d 1335 (DC Cir 2002), the DC Circuit held that in applying *Catholic Bishop*, the only inquiry into religious status which was permitted under the First Amendment was whether:

- a) the employer held itself out to the public as a religious institution;
- b) the employer was non-profit; and
- c) the employer was affiliated with a religious order.

(*Id* at p 1344)

Finding that the university employer satisfied these criteria, the D.C. Circuit refused to enforce a Board order of jurisdiction over the institution. The Court in *Great Falls* rejected the Board’s requirement that an institution have a “substantial religious character”, concluding that the NLRB was constitutionally prohibited from examining whether or not an employer was “religious enough” for an NLRA exemption.

The Salvation Army, and specifically its ARCs, are non-profit and not only “affiliated with a religious order”, but are, in fact, Christian churches holding themselves out to the public as such. (**Exhibit I entered into evidence at the hearing as Employer’s Exhibit 5**) The three part *Great Falls* test is therefore clearly satisfied in this case. However, in asserting jurisdiction and directing an election, the Regional Director concludes that the religious exemption analysis

of *Catholic Bishop and Great Falls* is limited solely to religious educational institutions. That conclusion is in error and needs to be rejected by the Board in review of this case.

The Southeast Michigan ARC is a functioning church engaging in a religious and evangelical mission. Its religious purpose and focus is at least as great, if not greater, than a religiously-affiliated university conferring undergraduate or graduate degrees in secular subjects such as mathematics, economics or political science. While the *Catholic Bishop and Great Falls* decisions arose in the context of educational institutions, the focus of those decisions is constitutional protection under the Free Exercise Clause of the First Amendment. That protection is not unique only to educational institutions, but to all religious organizations generally. The Courts' concern in *Catholic Bishop and Great Falls* was that religious institutions should not be required to compromise their constitutional free exercise of religion through collective bargaining. That concern is evident when the Board assumes jurisdiction over any religious institution, not just religious schools.

Indeed, the Regional Director's decision does not cite or discuss *Catholic Social Services, Diocese of Belleville*, 355 NLRB 929 (2000), where the Board analyzed the *Great Falls* factors in deciding the jurisdictional issue concerning a religiously-affiliated residential child care facility. Because there was no evidence that the facility "held itself out" to the public as a religious institution, the Board concluded that the *Great Falls* test for a religious exemption was not met. However, because *Catholic Social Services* did not involve an employer providing religious education, The Salvation Army submits that the Regional Director unduly limited the scope of *Catholic Bishop and Great Falls* and Board review is necessary to clarify the proper scope and effect of those decisions with regard to non-scholastic religious organizations.

In *Pacific Lutheran University*, 361 NLRB No. 157 (2014), the Board attempted to accommodate the DC Circuit's concerns in *Great Falls* by adopting the first three components of

the Court's jurisdictional test, with the addition of a fourth area of inquiry. Under the fourth factor, the Board examines whether the employer "holds the petitioned for [employees] out as performing a specific role in creating or maintaining the school's religious educational environment". *Slip Op* at p. 5. Where, as in the instant case, the employer is not an educational institution, The Salvation Army submits that an alternative inquiry is the extent to which the employees in question participate in "creating or maintaining" the religious mission of the religious institution. Where a direct involvement in the religious mission exists, the First Amendment precludes the Board from asserting NLRA jurisdiction over the employment of such employees. Contrary to the Regional Director's conclusions, such direct involvement in the religious mission is clearly evident in the work activities of the petitioned-for driving employees.

Production Assistants provide direct supervision in the work therapy of the beneficiaries who act as their helpers every day. (TR 34) There is no one else to prevent the beneficiary from drinking alcohol in a bar, or purchasing illegal drugs from a drug dealer when they are on the road. (TR 63) Ms. Idzior explained that a Production Assistant could be disciplined if he failed to meet this responsibility. (TR 63) The supervision of beneficiaries is expressly referenced in the Production Assistant's job description, as is his/her required support of the religious Mission Statement of The Salvation Army. (Employer Exhibit J, TR 61) The Production Assistant is required to sign the job description to affirm his/her understanding as to this responsibility. (TR 62, 100) Production Assistants are presented with a copy of The Salvation Army's religious Mission Statement at orientation, and shown a video concerning their involvement in the religious mission. (TR 62)

Production Assistants commonly discuss faith-based religious issues while on the road with beneficiaries. (TR 95, 116) David Pascoe testified that when he was a Production Assistant, such religious-based discussions occurred at least every other day. (TR 96).

Production Assistants and beneficiaries join in prayer at staff meetings. (TR 96, 119). Production Assistants are expected to nurture the religious rehabilitation of the beneficiaries, and support the religious mission of The Salvation Army in their interactions with beneficiaries. (TR 48) Other driving employees, who also interact with the beneficiaries daily, have the same responsibilities. (TR 65) Indeed, the ARC Handbook affirms the critical role of all employees in promoting and achieving the ARC's religious mission:

**“It is essential for all personnel in an adult rehabilitation center to be sympathetic to the Army’s Christian beliefs and, ideally, each should have a personal, dynamic relationship with God so they can both appreciate and work in harmony with The Salvation Army’s acceptance of the power of God to change completely and permanently the lives, personalities and behavior of beneficiaries and others.”** (Employer’s Ex. G, p 597)

Where a beneficiary expresses doubts about their faith or expresses struggling with their religious rehabilitation, Production Assistants are expected to report the issues to their supervisor or a spiritual counselor. (TR 64, 96) A failure to do so could result in discipline. (TR 96)

At the Southeast Michigan ARC, there is a close nexus between former beneficiary status and employee status. The ARC provides hiring preference for driving positions to beneficiaries who have successfully completed the program and, hopefully, who have achieved a “personal relationship” with God and Jesus Christ. (TR 71) Such individuals thereby become effective advocates of the program for the beneficiaries they serve. Approximately 30% of the current driving employees are former beneficiaries at the ARC. (TR 71) Given the nature of addiction, unfortunately it is common for ARC employees to return to beneficiary status. (TR 71, 112) This affirms the necessity of former beneficiaries in employee status to remain committed to the religious rehabilitation mission of the ARC while employed, and to assist beneficiaries in the program as part of the employee’s continued efforts of maintaining rehabilitation and salvation.

Employees are expected to serve as role models, living a Christian lifestyle in accord with the religious tenets of The Salvation Army. (TR 35, 47-48, 61) As Ms. Idzior explained, employees must “model a lifestyle that is in line” with the religious mission. **“It’s important that we model the Christian lifestyle so the beneficiaries can see how important it is to accept Jesus Christ.”** (TR 35)

In furtherance of that objective, employees are breathalyzed daily, and any detectable blood alcohol reading of alcohol will result in their discharge. (TR 41-42) Drug testing is conducted on a random basis, with any positive reading for illegal drugs or non-prescription controlled substances resulting in discharge, whatever the concentration. (TR 43) This is in accordance with The Salvation Army’s zero tolerance policy, based upon its religious teachings. (TR 43; [www.salvationarmy.org](http://www.salvationarmy.org) – International Position Statement “Alcohol in Society”). Employees are strongly encouraged to attend church services with the beneficiaries and to be church members, and have spiritual counseling available to them if it is requested. (TR 47, 54, 72, 112)

Contrary to the Regional Director’s conclusion that Board jurisdiction would result in no “entanglement in religious matters”, The Salvation Army submits that NLRA jurisdiction in this case would create patently prohibited First Amendment entanglement and infringement of the Free Exercise Clause, given the direct participation of the driving employees in the religious mission of the ARC. Alcohol and drug testing, for example, are mandatory subjects of bargaining under the NLRA, requiring an employer to fairly consider and bargain in good faith concerning limitations on a “zero tolerance” policy. Such bargaining, however, would force The Salvation Army to debate its religious principles prohibiting all detectable alcohol and illegal drug use. Similarly, work preservation and jurisdiction is another mandatory subject of bargaining under the NLRA. However, given the religious mission of the ARCs to spiritually

rehabilitate beneficiaries through work therapy, how could The Salvation Army be expected to fairly consider and bargain in good faith over proposals with respect to the number and job descriptions of employees overseeing the rehabilitation of the beneficiaries? Such issues pose a direct potential conflict between an employer's collective bargaining obligations under the NLRA and The Salvation Army's established religious beliefs, thereby creating an infringement on religious beliefs and observances violative of the First Amendment.

In sum, the Regional Director's decision not only unduly limits the proper scope of the constitutional analysis in *Catholic Bishop*, *Great Falls* and *Pacific Lutheran*, but also erroneously disregards clear, unrebutted and substantial hearing evidence establishing the critical role of the petitioned-for driving employees in achieving the religious and evangelical mission of the Southeast Michigan ARC. Accordingly, the National Labor Relations Board should grant The Salvation Army's Request for Review, and decline jurisdiction in this case.

#### **D. CONCLUSION**

For all of the above and foregoing reasons, the National Labor Relations Board should grant The Salvation Army's Request for Review in this case and dismiss the representation petition for lack of jurisdiction.

BUTZEL LONG

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