



COMMONWEALTH OF MASSACHUSETTS
 DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
 BOARD OF REVIEW
 Government Center
 19 Staniford Street
 Boston, MA 02114

Tel. 626-6400
 Office Hours:
 8:45 a.m. to 5:00 p.m.

**DECISION
 OF
 BOARD OF REVIEW**

In the matter of:

Appeal number: **BR-254187**

APPELLANT: (claimant)

[REDACTED]

RESPONDENT: (employer)

Protestant Guild for Human Services, Inc.
 411 Waverly Oaks Road
 Attn: Mary Lussier, Suite 104
 Waltham, MA 02154

Office #22

On July 8, 1999, in Boston, Massachusetts, the Board reviewed the written record and recordings of the testimony presented at the hearings held by the Deputy Director's representative on February 9, 1999, and March 3, 1999.

This case came about as a result of a Remand Order by the Waltham Division of the District Court on September 28, 1998, to conduct a De Novo hearing.

On June 9, 1999, the Board allowed the claimant's application for review of the Deputy Director's decision in accordance with the provisions of section 41 of Chapter 151A of the General Laws, the Massachusetts Employment and Training Law (the Law). The Board remanded the case to the Deputy Director for further review and to make subsidiary findings of fact from the record. The Deputy Director returned the case to the Board on June 25, 1999.

The Board has now reviewed the entire case to determine whether the Deputy Director's decision was founded on the evidence in the record and was free from any error of law affecting substantial rights.

The claimant's appeal is from the Deputy Director's decision which concluded that:

The claimant filed a claim for unemployment benefits on August 11, 1997. The base period of the claimant's claim was determined to be the period from July 1, 1996 through June 30, 1997. During the above-referenced period, the claimant earned wages from his work with one organization, PG. He had no other wages during that period. The wages earned by the claimant from PG are exempt under the Law.

Section 6(r) of the Law provides that an employee's services are exempt from coverage if the services were performed in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

PG has established that the claimant's services are exempt from coverage under the Law.

The Massachusetts Supreme Judicial Court has called for caution "in attempting to define, for tax [and unemployment insurance] purposes, what is or is not a religious activity or organization – for obvious policy and constitutional reasons."

PG has established that it is an association of churches and therefore meets the standard for an exemption under the first prong of Section 6 (r). The Protestant Guild was originally organized by the Episcopal Bishop of the Diocese of Western Massachusetts and the Bishop of the Diocese of Massachusetts, under the auspices of the Massachusetts Council of Churches. PG has been directed by an interfaith Board which historically and currently has been headed by a Protestant Reverend. Throughout its existence, PG has furthered its purposes and continued to exist with financial backing and volunteer support of the Protestant churches and their congregations, with which it is associated.

This examiner has accepted PG's argument that affiliation and a common purpose are two essential characteristics of an association. PG has demonstrated both these characteristics. PG is a cooperative effort by churches of various denominations, affiliated for the common purpose of serving persons with special needs. To further their purpose, PG sponsors a Learning Center, an Adult Services program, a Christmas Stocking Project and other programs to aid persons with special needs.

Associated Protestant churches provide volunteer and financial assistance to the above-named programs. The Christmas Stocking Project and the Friendship program rely solely on the financial and volunteer support of the churches.

PG and the churches which support it are united in their support of PG's mission to serve persons with special needs. Even if certain activities of an organization (here, for example, the Learning Center and Adult Services Program) are secular, if the motivation is religiously based, the organization may be considered a religious organization. PG's Chairman testified that PG's mission is based in [sic] religious principles, and PG's literature supports his testimony.

In addition, PG is operated primarily for religious purposes. As stated above, PG's purposes are based on religious principles and fulfill a religious purpose. In addition, PG is principally supported by an association of churches. That the Learning Center and the Adult Services Program are predominantly funded by government funds does not disqualify PG from the exemption set forth in the Law. Financial support is not the only way in which to support an organization. Moral support is also a consideration. Here, church volunteers from the congregations of the churches with which it is associated perform projects sponsored by PG, including the Christmas Stocking Project and Friendship Program. This support is key to the continuation of PG and its mission.

Based on all of the above, it is concluded that PG has met its burden of proof in qualifying for the exemption set forth in Section 6(r) of the Law.

Since the claimant has no other wages on which to base a claim, he is not monetarily eligible for benefits.

The services performed by the claimant while in the employ of the employing unit ("PG") are exempt from "employment" under Section 6(r). The claimant has not met the requirements of Section 24(a) of the Law.

Sections 6(r) and 24(a) of Chapter 151A of the General Laws are pertinent and provide as follows:

Section 6. The term "employment" shall not include:

- (r) Service performed in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; . . .

Section 24. An individual, in order to be eligible for benefits under this chapter, shall-

- (a) Have been paid wages in the base period amounting to at least thirty times the weekly benefit rate; provided, however, that for the period beginning on January first, nineteen hundred and ninety-five the individual has been paid wages of at least two thousand dollars during said base period; provided, further, that said amount shall be increased annually proportionately, rounding to the nearest one hundred dollars, to any increases which have occurred during the prior calendar year in the minimum wage as set forth in section one of chapter one hundred and fifty-one; and, provided further, that any such increase shall be effective beginning on the first Sunday in January.

The Deputy Director's representative held hearings on February 9, 1999, and March 9, 1999. Both parties appeared with counsel. The Board remanded the case to the Deputy Director for further review and to make additional findings of fact. Whereupon, the Deputy Director's representative consolidated her final findings of fact as follows:

1. The employer is The Protestant Guild for Human Services, Inc. ("PG").
2. The PG is a non-profit Massachusetts corporation.
3. The Protestant Guild for the Blind was founded in 1946 by [sic] as the Protestant Guild for the Blind by William Appleton Lawrence, the Episcopal Bishop of the Episcopal Diocese of Western Massachusetts and Frederic C. Lawrence, Suffragan Bishop of the Diocese of Massachusetts, under the auspices of the Massachusetts Council of Churches, to provide religious education to blind students at the Perkins School for the Blind, Fernald School and other State institutions.
4. In 1952, the Protestant Guild For the Blind, Inc. filed Articles of Organization with the Commonwealth of Massachusetts. The Articles stated, "The purposes for which the corporation is formed are as follows: "The Corporation shall engage in activities that contribute to the spiritual, social, moral, educational and temporal welfare of the blind and visually handicapped, particularly those of the Protestant Faith; and in furtherance of these purposes the Corporation shall cooperate with existing churches, agencies, organizations, including the Massachusetts Council of Churches, a Massachusetts corporation, or organizations which may hereafter be established in promoting all and every interest of the blind and partially blind; and shall provide and supervise a Religious Education program for Protestant children attending Perkins Institution & Massachusetts School for the Blind; and may collect and receive donations for the general purposes of the Corporation and accept donations on conditions designated by the donor and accepted by the Corporation; and shall possess, own, construct, improve, lease, remodel, acquire by purchase, gift, bequest, or otherwise, such real and personal property as may be necessary, proper or convenient for the execution of these purposes."
5. On June 10, 1987, the Protestant Guild for the Blind, Inc. filed Restated Articles of Organization with the Commonwealth of Massachusetts. The Restated Articles stated that the purposes for which the corporation is formed are as follows: The corporation shall engage in activities and programs which contribute to the well-being and the spiritual, social, moral, educational, housing, and health care needs of blind, visually impaired, severely handicapped and older persons".

6. On July 28, 1993, the Protestant Guild for the Blind, Inc. filed Articles of Amendment to change the name of the corporation to The Protestant Guild for Human Services, Inc." Those Articles amended the purposes for which the corporation is formed, to state the following purposes for which the corporation is formed: "To provide high quality human services for persons with special needs".
7. On or about December 15, 1993, the Protestant Guild for Human Services, Inc. filed Articles of Amendment. Those Articles amended the Restated Articles of Organization by deleting Article 3 and substituting the following provision eliminating all members: "The Corporation shall have no members or classes of members. Any action or vote required or permitted...as the same now exists or may hereafter be amended, or by any other law, rule, or regulation, to be taken by members of the corporation shall be taken by action or vote of the same percentage of the Trustees of the corporation...".
8. The employer provides a range of services including The Learning Center, Adult Support Services, Church Liaison, The Christmas Stocking Project and The Friendship Program.
9. The Learning Center is a year-round, approved private school which serves children, adolescents and young adults with a variety of development disabilities.
10. Adult Support Services is a program that provides residential housing support for individuals with developmental disabilities.
11. Church Liaison is an outreach program that encourages area churches to join the PG in its mission.
12. The Christmas Stocking Project is a volunteer program, operated with funding and volunteers from churches, which delivers Christmas stockings to nursing home residents.
13. The Friendship Program is a volunteer program, operated with funding and volunteers from churches, where volunteers provide friendship and guidance to students.
14. The PG does not provide religious instruction in any of its programs.
15. The employer's mission is providing high quality human services to persons with special needs.
16. For the Fiscal Year 1997 (July 1, 1996 – June 30, 1997), the source of the employer's funding was as follows: Massachusetts State Agencies: 45%; Massachusetts Cities and Towns: 26%; Out Of State Agencies: 15%, Subcontract Work & Other: 10%; Government Grants: 1%; and Gifts And Contributions: 3%.
17. The employer has customarily received approximately 90% of its funding from governmental sources.
18. About twenty five or thirty churches provide volunteers and funding to the employer.
19. Admission to the Learning Center is open to individuals on a non-denominational basis. Admission to the Adult Center Programs is open on a non-denominational basis.
20. A Board of Trustees governs the employer. The Board of Trustees provides complete supervision and control over operating the PG. Decisions of the Board about the employer's operation are final.
21. The Board has always had Protestant ministers on its Board, and a majority of Protestants on its Board. The Board is not limited to Protestants. Individuals of other faiths are on the Board. The Chairman of the Board is a Protestant Reverend.
22. The employer does not inquire into the faith of its staff members. Staff members may be of any or no faith to work for the employer.

23. On December 4, 1996, PG completed and filed a "FORM PC – Annual Report" with the Attorney General's Office of Public Charities. On Page [sic] of the form, it states: "If you are claiming an exemption [from the solicitation certificate requirement], please indicate below which exemption applies to your organization". The form lists, "(a) a religious exemption; or (b) an organization which does not raise more than \$5,000 during a calendar year...". On the form, the Treasurer of the PG, indicated that the employer was not claiming an exemption on the basis of being a religious organization.
24. The claimant filed a claim for unemployment benefits on August 11, 1997.
25. The claimant's Primary base period was established as the period from July 1, 1996 through June 30, 1997.
26. The claimant worked for the employer from about September 1994 until April 24, 1997.
27. The claimant did not work for any other employers or in self-employment during the base period of his claim.
28. The claimant's most recent position with the employer was as the Director of Residential Services for the Adult Service Program.
29. The claimant earned wages from the employer as follows:
 - July 1, 1996 through September 30, 1996: \$7752.04
 - October 1, 1996 through December 31, 1996: \$6587.24
 - January 1, 1997 through March 31, 1997: \$7872.27
 - April 1, 1997 through June 30, 1997: \$4801.66

After reviewing the record, the Board adopts the consolidated findings of fact made by the Deputy Director's representative as being supported by substantial evidence. The Board concludes as follows:

Under Massachusetts General Laws, Chapter 151A, section 6(r), the burden of proof is upon the employer to establish that the service performed by the claimant is exempt because it was performed in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches. The question before the Board is whether the wages paid to the claimant are exempt under section 6(r) and whether these wages can be used to establish the claimant's monetary eligibility under section 24(a) of the Law.

The employer, known as the Protestant Guild for the Blind, was originally founded in 1946 by two Episcopal Bishops under the auspices of the Massachusetts Council of Churches to provide religious education to blind students. In 1952, the employer filed Articles of Organization with the Commonwealth of Massachusetts under the name of Protestant Guild for the Blind, Inc. and Restated Articles of Organization in 1987. On July 28, 1993, the employer filed Articles of Amendment changing its name to the Protestant Guild for Human Services, Inc. At that time its stated purpose for forming the corporation was "to provide high quality human services for persons with special needs." Since that time the employer has provided a range of human services that consist of the following programs: The Learning Center, Adult Support Services, Church Liaison, The Christmas Stocking Project and The Friendship Program.

The claimant performed services for the employer as the Director of Residential Services in the Adult Support Services Program from September 1994 until April 24, 1997. This particular program provides residential housing support for individuals with development disabilities.

On August 11, 1997, the claimant filed his claim for unemployment benefits which established his primary base period for monetary eligibility to be from July 1, 1996, through June 30, 1997. During this said period the claimant was paid wages in the amount of \$27,013.21.

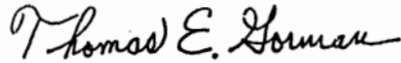
The employer is a non-profit corporation that is controlled by a Board of Trustees. Although the Board of Trustees is comprised of a majority of Protestant ministers, it is not limited to Protestants and there are also individuals of other faiths on the Board. The Board of Trustees provides complete supervision and control over the employer's human services programs. Although the employer receives funding from some churches, its primary funding (90%) is derived from government sources. The employer provides no religious instruction in any of its programs.

The Board concludes that although the employer was originally formed by an association of churches for religious purposes, its purpose and mission was changed to a human service agency that provide services to persons with special needs. Consequently, the employer failed to meet its burden of proof to establish that the claimant was in the employ of a church, a convention of churches or an organization, which is primarily operated for religious purposes. The Board further concludes that the wages paid to the claimant in his base period can be used to establish the claimant's monetary eligibility for benefits under section 24(a) of the Law, as quoted above.

The decision of the Deputy director is modified. The claimant's employment is not exempt under section 6(r) and the claimant's wages can be used to establish a monetary claim for benefits. The Deputy Director shall revise the claimant's monetary determination.

BOSTON, MASSACHUSETTS
DATE OF MAILING -

JUL 28 1999



Thomas E. Gorman
Member

APPELLANT I.D. [REDACTED]
RESPONDENT I.D. # [REDACTED]



Kevin P. Foley
Member

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)

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LAST DAY - AUG 27 1999