

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LINDA LEBOON : CIVIL ACTION
 :
 v. :
 :
 LANCASTER JEWISH COMMUNITY :
 CENTER ASSOCIATION : NO. 04-430

ORDER AND OPINION

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE

DATE: February 17, 2005

I. Introduction

Plaintiff Linda LeBoon filed this action under Title VII, 42 U.S.C. § 2000(e), claiming that she was terminated by her former employer, the Lancaster Jewish Community Center Association, (“LJCC”) because of her religious beliefs (she is an evangelical Christian), and for opposing race discrimination. On December 16, 2004, after considering cross-motions for summary judgment, I entered judgment in favor of the LJCC on all counts. However, I then granted LeBoon’s motion for reconsideration of my dismissal of the claim for religious discrimination in order to correct a manifest error of fact regarding the source of the LJCC’s funding.

As explained below, having reconsidered the dismissal of LeBoon’s claim of religious discrimination in the light of my new understanding of the facts of this case, I once again conclude that the claim is properly dismissed. Therefore, I will once again order that judgment be entered in favor of the LJCC.

II. Factual Background

In dismissing LeBoon's claim of religious discrimination, I found that the LJCC was entitled to immunity from suit under 42 U.S.C. § 2000-2(a), known as § 702 of Title VII, as a religious organization. I considered a number of factors which the relevant caselaw had indicated were relevant – among them, the source of the LJCC's funding. I wrote that: “75-80% of the funding for the LJCC during the relevant time period came from the Lancaster Jewish Federation campaign.” Opinion of December 16, 2004, at 7.

However, LeBoon pointed out in her motion for reconsideration that the deposition excerpt on which I relied actually stated that the Federation contributed between \$75,000 and \$85,000 to the LJCC each year during the relevant time period, and not 75-85% of the funding. Plaintiff's Motion for Summary Judgment at Exhibit 26. For that reason, I granted LeBoon's motion for reconsideration, and directed the LJCC to “file a supplementary document setting forth the sources for the entirety of LJCC's funding during the years between 1998 and 2002, to the extent possible.” Order of January 14, 2005.¹

The material submitted by the LJCC in response to my Order shows that in the years between 1998 and 2001, the Lancaster Jewish Federation provided between 12.44% and 21.07% of the LJCC's funding. Exhibit A to Exhibit 2 to Supplement. Other income came in the form of contribution, grants, membership dues, rentals, and interest. Exhibit B to Exhibit 2 to

¹ I added, and in capital letters, “NO FURTHER SUPPLEMENTARY FILINGS WILL BE ACCEPTED.” Nevertheless, the LJCC's supplementary financial data was accompanied by a seven-page Memorandum setting forth legal arguments which were not raised in the original motion. LeBoon has since filed two responses to this Memorandum. In line with my prior Order, and with the legal principles pertaining to a motion for reconsideration, I have not considered any of this new material. See Balogun v. Alden Park Management Corp., Civ. A. No. 98-0612, 1998 WL 962956 at *1 (E.D. Pa. Oct. 1, 1998); Vaidya v. Xerox Corporation, Civ. A. No. 97-547, 1997 WL 732464 at *1 (E.D. Pa. Nov. 25, 1997).

Supplement. By far the largest single source of income each year, however, was “program services.” *Id.* As I noted in my original opinion on the motions for summary judgment, some of the LJCC’s programs were specifically Jewish in orientation, but others were not, and they were open to the general public. December 16, 2004, Opinion at 10.

III. Legal Principles

As explained in my original opinion, Section 702 of Title VII exempts religious organizations from suit on the basis of religious discrimination. 42 U.S.C. § 2000-2a. As amended in 1972, it protects all activities of religious organizations, not just religious activities. See Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327 (1987).

In deciding whether an entity is entitled to § 702 immunity, “each case must turn on its own facts ... [a]ll significant religious and secular characteristics must be weighed to determine whether the corporation’s purpose and character are primarily religious.” EEOC v. Townley Engineering & Manufacturing Co., 859 F.2d 610, 619 (9th Cir. 1988).

Amos, *supra*, is useful in understanding what the United States Supreme Court finds an acceptable quotient of secular activity in an exempt entity. There, the Supreme Court found that § 702 immunity was available to a nonprofit gymnasium, the function of which was in no way connected to religion, but which was operated by “entities associated with” the Mormon Church. 438 U.S. at 330. Justice Brennan wrote in his concurrence that permitting courts to decide which activities of a religion are religious and which secular would involve undue governmental entanglement in religious affairs, explaining:

Nonprofit activities ... are most likely to present cases in which characterization of the activity as religious or secular will be a close question. ... This substantial potential for chilling religious activity makes inappropriate a case-by-case determination of the character of a nonprofit organization, and justifies a categorical exemption for nonprofit activities.

483 U.S. at 345 (Concurring opinion).

Also influential in this regard is Feldstein v. The Christian Science Monitor, 555 F. Supp. 974 (D. Mass. 1983). There, the United States District Court for the District of Massachusetts found that the Christian Science Monitor could refuse to hire as reporters individuals who were not members of the Christian Science Church, even though the newspaper was considered a “highly regarded and impartial newspaper” in the general community, and published primarily secular news. 555 F. Supp. at 977.

IV. Discussion

It is unquestionable that courts look at funding sources when they seek to determine whether an entity is primarily religious or primarily secular. Amos, *supra*, at 483 U.S. 332 (where the lower court had found that “the Gymnasium is intimately connected to the Church financially ...”); Feldstein, *supra*, 555 F. Supp. at 977 (“The Church organization is also involved with the operation of the Monitor in a financial capacity”); EEOC v. Townley, *supra*, at 859 F.2d 612 (company not religious where “it is not affiliated with or supported by a church.”).

However, no court has made funding an essential criteria, or even named it as the most important of the many criteria examined.²

²A state court reviewing the relevant law found that federal courts have looked at these factors: (1) whether the entity operates for profit or as a nonprofit organization; (2) whether an administrative agency has determined the entity’s status; (3) whether the entity’s articles of incorporation or other pertinent documents state a religious purpose; (4) whether the entity represents itself to the church, the public, and the government as a secular or sectarian body; (5) whether the church is intimately involved in the management, day-to-day operations and financial affairs of the entity; (6) whether the church supports or is affiliated with the entity; (7) whether the entity adheres to or deviates from an original religious purpose; and (8) whether the entity conducts religious activities, services, or instruction. Speer v. Presbyterian Children’s Home and Services Agency, 847, S.W.2d 227, 235 (Tex. 1993).

I emphasized the Jewish Federation funding in my December 16, 2004, Opinion as showing a link between the LJCC and the greater Jewish community. Nevertheless, it was by no means the only link. In terms of association with Jewish bodies, I noted that, while the LJCC was not connected to or run by one specific synagogue or denomination, rabbis of the three local synagogues were *ex officio* members of the LJCC's board of directors, and they assisted the LJCC in programming and fundraising. Opinion of December 16, 2004, at 10. Additionally, the LJCC's mission statement, activities, board minutes, and publications, reflected LJCC's function in serving and fostering a specifically Jewish community. Id. at 8-10.

The LJCC's mission statement specifies that it seeks to "develop, involve and sustain a cohesive Jewish Community through Identity, Education and Cooperation for all Ages." Exhibit L to Defendant's Motion at Bates Stamp No. 370. Its activities include the celebration of Jewish holidays such as Purim and Chanukah, the attachment to each door in the building of a kosher mezuzah, the maintenance of a kosher kitchen, the holding of a "Melavah Malka" program, and numerous education programs on Jewish themes. Id.

Notes of board meetings also revealed a pervasive Jewish orientation. Aside from planning the Jewish activities described above, the board members discussed other events specifically of interest to Jews, such as a community trip to Israel, and a Jewish Federation program about Jews in the former Soviet Union. Id. at 372, 373, 374. Concepts of relevance only to Jews were also employed, such as using Hebrew terms to refer to donors, and asking for donations in the amount of \$613, where 613 is a number of Jewish significance.

As I also noted in my December 16, 2004, Opinion, the LJCC's membership drive talking points, as set forth in its January, 2000, board meeting notes, reflected its concept of itself as a specifically Jewish organization. For example, one point was that "The LJCC is the best point of positive contact between all segments of the Lancaster Jewish community." Other points included : "The Center produces Jewish education and cultural programming for the whole community", "The LJCC is a meeting ground for our own Jewish youth." "The LJCC is the first point of contact for Jews new to the area." and "The Center is the place for Jewish seniors to meet" and "The LJCC is the community connection to Israel." *Id.* at Bates Stamp 387-388.

Thus, considering the balance of secular and Jewish factors, I once again conclude that, even though Jewish Federation turns out to have been a minor source of income for the LJCC, instead of a major source, the LJCC is primarily a religious institution.³ Taking the picture as a whole, I repeat my former conclusion that:

The LJCC, which regularly holds Jewish education courses and celebrations of Jewish holidays, is therefore far more religious in its daily activities than the gym found to be worthy of § 702 protection in Amos.

Id. at 10.

Cases in which § 702 protection has been denied strengthen my conclusion, since they involve entities very different from the LJCC. In Fike v. United Methodist Children's Home, 547 F. Supp. 286 (E.D. Va. 1982), *aff'd* 709 F.2d 284 (4th Cir. 1983), a nominally Methodist children's home was found not entitled to the § 702 exemption because "as far as the direction

³LeBoon had urged an analysis which would segregate Jewish "cultural" activities from the practice of religion. Clearly, the application of a philosophical distinction such as this would entail exactly the sort of excessive government entanglement in religion warned against by Justice Brennan in his concurring opinion in Amos. And see Lemon v. Kurtzman, 403 U.S. 602, 613 (1971). I am not aware of any court which has subjected Judaism to this analysis.

given the day-to-day life for the children is concerned, it is practically devoid of religious content or training as such.” 709 F.2d at 290. The LJCC offered considerable religious content and training.

The LJCC stands in even sharper contrast to the corporation at issue in EEOC v. Townley Engineering & Manufacturing Co., 859 F.2d 610, 619 (9th Cir. 1988), which was a privately owned, for-profit manufacturer of mining equipment, not affiliated with or supported by a church. 859 F.2d at 619.

On the basis of the foregoing, I once again conclude that LeBoon’s claim for religious discrimination is precluded by § 702, since the LJCC is a religious organization.

ORDER

AND NOW, this 17th day of February, 2005, upon reconsideration of Plaintiff’s Motion for Summary Judgment, Defendant’s Motion for Summary Judgment and the responses thereto, it is hereby ORDERED that:

- a. Plaintiff’s Motion for Summary Judgment is DENIED;
- b. Defendant’s Motion for Summary Judgment is GRANTED with regard to Plaintiff’s claims under 42 U.S.C. § 2000(e);
- c. As previously ordered, this case is ORDERED DISMISSED for lack of federal jurisdiction. JUDGMENT IS ENTERED in favor of Defendant. The Clerk of Court is hereby directed to close this case for statistical purposes.

BY THE COURT:

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE