

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

CHARLES FRASER and : CIVIL ACTION  
JENNIE FRASER, h/w, :  
Plaintiffs, : NO. 96-8691  
 :  
v. :  
 :  
THE SALVATION ARMY :  
Defendant. :

M E M O R A N D U M

BUCKWALTER, J

January 14, 1998

This diversity action stems from a dispute over the conditions under which Plaintiffs, Charles and Jennie Fraser (collectively the "Fraseres") ended their employment with Defendant, the Salvation Army (the "Army").<sup>1</sup> Essentially, the Fraseres claim that the Army unjustly terminated them and have filed a complaint containing a variety of contract and tort claims. Presently, before the court is the Army's motion for summary judgment (Docket No. 15) and the Fraseres' answer thereto (Docket No. 17). Because, the underlying controversy is of an

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1. The Salvation Army, founded by English evangelist, William Booth in the late 1800's, is an international evangelistic Christian organization. The Army's primary mission is to bring the church to less fortunate segments of society and therefore it is extremely involved in establishing and running social service programs. The Army steadfastly maintains that social and spiritual healing are inextricably intertwined.

The Army uses military terminology in connection with its organization and work. Lay members of the denomination are described as "soldiers" and ministers are described as "officers." The congregations and churches are referred to as "corps." Each member is required to sign articles of faith, otherwise know as "Articles of War."

ecclesiastical nature this court lacks jurisdiction to review this action. Accordingly, the Army's motion for summary judgment is granted.

## **I. BACKGROUND**

In 1991 the Frasers lived in Maine where Charles Fraser was employed in construction and, as an ordained minister<sup>2</sup> in the Assembly of God, supplemented his family's income by giving evangelistic sermons at various churches on the weekends. In February 1991 Charles Fraser was laid off and by the end of the month the family relocated to York, Pennsylvania where he began working for the Army in maintenance. Although Charles Fraser's job with the Army entailed no religious duties, the Frasers spent much of their free time counseling, singing and performing spiritual music and helping with Bible study. Neither Charles nor Jennie Fraser was compensated for these extracurricular religious activities. In May 1994, becoming more immersed in Army culture, the Frasers decided to sign Articles of War, declarations memorializing their desire to become soldiers in the Army and thereby agreeing to devote their lives to the Army's causes. In March 1995, pursuant to the urging of Lieutenant/Colonel W. Todd Bassett, ("Colonel Bassett")

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2. For purposes of this opinion only the terms minister, priest, chaplain, parson, clergy and evangelist are used interchangeably with the implicit understanding that all refer to one who leads group spiritual meetings and spreads the religious message of his or her parent organization.

divisional commander for the Eastern Pennsylvania and Delaware Division (the "Pendel division")<sup>3</sup> the Frasers applied for and were granted envoy status within the Army<sup>4</sup>, accepted positions as Inner-City Chaplains/Evangelists for the Pendel division and relocated, with their two children, to Philadelphia, Pennsylvania. In addition to their salary, the Frasers received free housing and a car allowance. Colonel Bassett and Captain Anita Brown supervised the Frasers in their new position.

According to Colonel Bassett, the most important aspect of the Inner City Chaplain/Evangelist position was to link clients of Salvation Army's social services, rehabilitation programs and homeless shelters to Army churches within Philadelphia. As the Army spent over \$10 million on its various programs within the city and the success of such programs depended heavily on the motivation of the participants, Colonel Bassett felt it was imperative that the Inner-City Chaplain/Evangelist be committed to persuading participants to join one of the Army's various Philadelphia churches to get additional and ongoing help and support. (Colonel Bassett's Deposition 25-27).

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3. In his deposition Colonel Bassett testified that the Pendel division "goes as far west as Chambersburg, Lewistown, Lock Haven, all the way east to New Jersey border and encompasses the Delaware region as well." (Colonel Bassett's deposition at 28).

4. Envoy is a designation that is given to lay people who are in a ministerial ecclesiastical position within the Army. Although envoys are not officers they perform many duties and functions traditionally associated with officers. (Colonel Bassett's deposition at 11).

In a letter dated January 2, 1996, the Frasers informed Colonel Bassett of their desire to "expand our ministry by doing evangelistic work throughout the Eastern Territory."<sup>5</sup> Colonel Bassett responded by a letter dated January 10, 1996, informing the Frasers that he would support them in their endeavors, however, if they chose to pursue such a path they would have to resign their position with the Pendel division and relocate. By a letter dated January 26, 1996, the Frasers confirmed their desire and thereafter applied for the positions of Eastern Territorial Evangelists.<sup>6</sup> In early March 1996, Colonel Bassett, Captain Anita Brown and the Frasers had a meeting regarding the consequences of the Frasers' decision to pursue full-time evangelism. This conversation was confirmed by a letter dated March 8, 1996, in which Colonel Bassett wrote:

"Realizing your continued interest in securing a position in full-time evangelism it is necessary for me to inform you that the Divisional Administration has already begun to make arrangements for your replacement effective June of this year.

You will know that this position was created, even though there was no budget provision available, and since your employment we have continued to struggle with fiscal difficulties.

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5. The Eastern Territory encompasses eleven eastern states and is headquartered in Nyack, New York. (Colonel Bassett's deposition at 34).

6. Territorial Evangelists are married couples who travel throughout the eastern territory conducting evangelistic campaigns. They are usually away from home three weeks out of every month and therefore the Army prefers to hire couples who do not have children living at home. (Captain Anita Brown's deposition at 105).

There is a possibility that the position may not be available after June even if we are able to find someone to fill the position.

In any regard, I want to be sure that there is no misunderstanding or ill feelings regarding this matter.

We are supportive of your desire to find a position as a full-time evangelist.

This will of course mean that effective June 30, 1996 you will no longer be employed by the Pendel Division and accordingly your apartment will be available for the reassignment of personnel."

For reasons that are irrelevant to the issues at hand, the Frasers ultimately were not appointed as Territorial Evangelists. Despite, the clear intent of Colonel Bassett's March 8, 1996 letter, the Frasers refused to give up their Salvation Army accommodations and remained in the Army's apartment. It appears from the record that in December 1996, after the Army initiated removal proceedings, the Frasers finally agreed to vacate.

## **II. JURISDICTION**

The Army contends that the issues raised in the Frasers' complaint "deal exclusively with matters of church governance and discipline" and therefore are not reviewable by this court. Specifically, the Army argues that the decision by Colonel Bassett to require the Frasers to give up their positions as Inner-City Chaplains/Evangelists if they desired to pursue full-time evangelism was ministerial in nature and pertained directly to the operation of the Church. (Army's brief at 28-29). The Frasers counter that their dispute with the Army is

purely secular. They argue that the Army is a quasi-military not a religious organization and that although their job duties consisted of evangelistic work their termination was not related to such work -- "The Salvation Army cannot point to any reason it gave for the Frasers['] termination other than the fact that they 'terminated themselves.'" (Frasers' brief at 12-13).

The Frasers' first argument is without merit. It is well settled that the Salvation Army is a Church and not a military organization. See, e.g., McClure v. Salvation Army, 460 F.2d 553, 556 n.5 (5th Cir. 1972) (Listing court decisions recognizing the Salvation Army's status as a religious organization).

The Frasers' second argument is also unsupported by the record and prevailing case law. The record reveals that the nature of the Frasers' roles within the Army and the Army's reasons for ending their employment involve matters of church government which this court must abstain from reviewing.

The Supreme Court has long held that the First Amendment requires civil courts to refrain from interfering with matters of church discipline, faith, practice and religious law. Watson v. Jones, 80 U.S. (13 Wall) 679, 727 (1871). Thus civil courts are precluded from resolving disputes involving churches if "resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity . . . ."

Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 709 (1976). Consequently, the First Amendment proscribes intervention by secular courts into many employment decisions made by religious organizations based on religious doctrines or beliefs. Accordingly, personnel decisions are protected from civil court interference where review by civil courts would require the courts to interpret and apply religious doctrine or ecclesiastical law. See Milivojevich, 426 U.S. at 717-20 (review of church decision to defrock Bishop impermissible where resolution required interpretation of internal church procedures).

Characterizing a church's relationship with its ministers as its "lifeblood" several courts of appeals have concluded that civil court jurisdiction over a minister's employment, contractual or common law dispute is per se impermissible because such state intervention would excessively inhibit religious liberty. See Lewis v. Seventh-Day Adventists Lake Region Conference, 978 F.2d 940, 942-43 (6th Cir. 1992)(affirming dismissal of minister's breach of contract and promissory estoppel claim against the Seventh Day Adventist Church); Natal v. Christian and Missionary Alliance, 878 F.2d 1575 (1st Cir. 1989)(affirming dismissal of clergyman's wrongful termination suit against religious corporation); Hutchison v. Thomas, 789 F.2d 392 (6th Cir. 1986) (affirming dismissal of

minister's breach of contract claim against church); But c.f. Drevlow v. Lutheran Church, Missouri Synod, 991 F.2d 468 (8th Cir. 1993)(reversed district court's dismissal of minister's claims of libel, negligence and intentional interference with legitimate expectation of employment where church offered no religious explanation for its actions, but cautioned that "if further proceedings reveal that this matter cannot be resolved without interpreting religious procedures or beliefs, the district court should reconsider the [defendant's] motion to dismiss.") As the court in Lewis noted a minister's employment relationship with his church implicates internal church discipline, faith and organization, all of which are governed by ecclesiastical rule, custom and law, therefore civil court jurisdiction over a ministerial employment dispute is impermissible because such intervention would excessively inhibit religious liberty. Lewis 978 F.2d at 942 (citations omitted).

Similarly, although differing in their reasoning, federal appellate courts have declined to review clergy members' claims of civil rights violations by their religious organization. See Young v. Northern Illinois Conference of United Methodist Church, 21 F.3d 184, 188 (7th Cir. 1994)(affirming the dismissal of sex and race discrimination suit by minister against his church); Scharon v. St. Luke's Episcopal Presbyterian Hospitals, 929 F.2d 360, 363 (8th Cir.

1991)(upholding the dismissal of an age and sex discrimination action by a priest against a church-affiliated hospital); Minker v. Baltimore Annual Conference of United Methodist Church, 894 F.2d 1354, 1358 (D.C. 1990)(affirming the dismissal of a minister's age discrimination suit against his church); Rayburn v. General Conference of Seventh-Day Adventists, 772 F.2d 1164 (4th Cir. 1985)(upholding the dismissal of a sex and race discrimination suit by a pastor against his church); Kaufmann v. Sheehan, 707 F.2d 355 (8th Cir. 1983)(affirming district court's denial of priest's motion to amend his complaint against the Archdiocese to add claims of denial of due process); McClure, 460 F.2d 560-1 (affirming dismissal of a sex discrimination suit by a minister against religious organization).

Without definitively expressing agreement or disagreement, the Court of Appeals for the Third Circuit has relied on the distinction between the First Amendment ramifications of employment decisions involving secular employees and those involving clergy. In Geary v. Visitation of the Blessed Virgin Mary, 7 F.3d 324 (3d Cir. 1993) the court was asked to decide whether application of the ADEA to lay faculty member of a religious school violated the First Amendment. In concluding that it did not, the court was careful to distinguish Geary's position as a teacher from that of a clergy member. The court acknowledged that courts of appeals have drawn an express

distinction between cases involving clergy and those involving employees who do not have duties of a religious nature. Geary 7 F.3d at 331 relying on Scharon, 929 F.2d at 363 and Minker, 894 F.2d at 1356-57. The court then concluded that "notwithstanding, Geary's apparent general employment obligation to be a visible witness to the Catholic Church's philosophy and principles, a court could adjudicate Geary's claims without the entanglement that would follow were employment of clergy or religious leader involved." Id.

Thus, based on the forgoing, it is apparent that my jurisdictional analysis is inextricably linked to my determination as to the exact nature of the Frasers' positions within the Army. Although the Frasers were not officers and therefore not ordained ministers within the Army their responsibilities were akin to those of a minister -- their primary duty was to spread the message of the Army. When their relationship with the Army ended the Frasers were employed as Inner-City Chaplains/Evangelists. In his deposition Charles Fraser acknowledged that the written job description they received upon arrival in Philadelphia was accurate insofar as it described the function of a Chaplain/Evangelist as "to provide spiritual counseling and ministry to the Social Service Programs of Philadelphia and to conduct evangelistic services as assigned throughout the Division." (C. Fraser's deposition at 76-93). He

independently described their positions as ministerial and evangelistic in nature. (C. Fraser's deposition at 74, 75). Colonel Bassett similarly described the Frasers' role as ministerial and the Frasers' responsibilities as ecclesiastical or spiritual. (Colonel Bassett's deposition at 11, 12). Captain Anita Brown confirmed this description. (Captain Anita Brown's deposition at 45).

Furthermore, the Frasers' role while in Philadelphia did in fact require them to conduct corps evangelistic meetings, home visitations, pastoral counseling, establish and conduct bible study meetings and make weekly pilgrimages to Army institutions. The Frasers do not refute that they satisfactorily performed these duties.

Additionally, the Frasers, by virtue of their positions as envoys were called upon to perform many of the duties and responsibilities generally reserved for officers. The agreements Charles and Jennie Fraser signed upon becoming envoys specifically state "Although as an Envoy I am not a commissioned officer of the Salvation Army, I understand that I may be required from time to time to perform duties which are usually performed by a commissioned officer to the extent that they can be performed by a lay person." Therefore, based upon the my review of the record before me it is clear that the Frasers' role within the Army was ministerial. Accordingly, as prevailing case

law dictates, this court must abstain from reviewing the Frasers' employment dispute with the Army as such an inquiry would interfere with the Army's religious freedom to choose who is best suited to carry its message to the public.

Furthermore, I note that the record reveals that Colonel Bassett expressed, orally and in writing, his concern that the Frasers' strong desire to do traveling evangelistic work was indicative of a lack of spiritual commitment to the Army's needs in its Philadelphia churches. (Colonel Bassett's deposition at 25-27 and Colonel Bassett's Letter to the Frasers dated 1/10/96). These concerns were also held by the Frasers' more immediate supervisor, Captain Anita Brown, who noted that "Charles felt a [sic] impulse in his heart that God wanted him to be a territorial evangelist" and consequently she felt he had less enthusiasm for his ministerial duties in Philadelphia. (Captain Anita Brown's deposition at 108-110). Thus, the Army's actions regarding the Frasers' employment stemmed, in large part, from an assessment that they lacked the requisite spiritual commitment to run an inner-city ministry, a determination that, under the First Amendment, this court is clearly unfit to review.

Accordingly, based on the foregoing, I grant the Army's motion for summary judgment. An appropriate order follows.

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THE SALVATION ARMY	:	
Defendant.	:	

O R D E R

AND NOW this 14th day of January 1998, upon consideration of Defendant's motion for summary judgment (Docket No. 15) and Plaintiffs' answer thereto (Docket No. 17) it is hereby **ORDERED** that Defendant's motion is **GRANTED**. Accordingly, the complaint of plaintiffs Charles Fraser and Jennie Fraser against the Salvation Army is **DISMISSED**. The Clerk shall mark this action **CLOSED**.

BY THE COURT:

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RONALD L. BUCKWALTER, J.