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Food, Faith, and Fair Labor Standards: An Update

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Last year, in *Food, Faith, and Fair Labor Standards*, we reported on a wage-and-hour lawsuit involving a church's battle with the U.S. Department of Labor.

Ohio's Grace Cathedral had been pummeled with huge penalties for allegedly violating minimum wage and overtime rules under the federal Fair Labor Standards Act. In March 2017, a federal district court upheld these FLSA penalties and awarded back wages, too, in connection with Grace Cathedral's operation of a restaurant with what the church termed "volunteers."

Grace Cathedral appealed to the Sixth Circuit – and won. The court's ruling, issued on April 16, 2018, turned the tables; this time, the pummeling was directed at the district judge for poking his nose into the internal – spiritual – affairs of the church.

The Fair Labor Standards Lawsuit

Grace Cathedral is a Cleveland-based megachurch; its spiritual leader is the Rev. Ernest Angley. The Cathedral Buffet is a for-profit restaurant owned by Grace Cathedral, Inc.; "(f)or most of its existence, the Cathedral Buffet…

relied on church 'volunteers' to operate the restaurant. Angley, as president of Cathedral Buffet, was heavily involved in the management and operations, and actively recruited volunteers from the church. The restaurant maintained two classes of workers: employees who were paid an hourly wage and unpaid "volunteers." The volunteers constituted the bulk of the restaurant's workforce and performed virtually all the same jobs as the paid workforce."

In 2015, the federal Department of Labor, which has jurisdiction over FLSA issues, filed a lawsuit against Grace Cathedral, including a request for liquidated damages, back wages for the workers, and a permanent injunction. The monetary demands were for hundreds of thousands of dollars.

The lawsuit was heard by a federal judge instead of a jury. "Testimony at trial suggested that Angley would personally exert pressure and influence upon would-be volunteers by threatening spiritual harm and God's displeasure if they did not work at the restaurant when asked." Although the Church supplied over 100 affidavits from the "volunteers," the DOL successfully impeached the credibility of some of them.

Grace Cathedral argued at trial that the "volunteers" are "doing the Lord's work" and so should be exempt from the minimum wage and overtime protections of the Fair Labor Standards Act.

In ruling for the Department of Labor, however, the district court relied on a landmark FLSA case from a few decades ago: Tony & Susan Alamo Foundation v. Secretary of Labor (1985) 471 U.S. 290. That case, too, involved a charismatic religious leader and the use of "volunteers" in various business enterprises. The Alamo Supreme Court described the activities as deriving "income largely from –

the operation of commercial businesses staffed by the Foundation's 'associates,' most of whom were drug addicts, derelicts, or criminals before their rehabilitation by the Foundation. These workers receive no cash salaries, but the Foundation provides them with food, clothing, shelter, and other benefits."

In Alamo, the government's reliance on the worker protections of the Fair Labor Standards Act won the day. The Supreme Court ruled that: "(1) the Foundation was an "enterprise" within the definition of the FLSA, (2) "the Foundation's businesses serve the general public in competition with ordinary commercial enterprises, and (3) under the "economic reality" test of employment, the associates were "employees" of the Foundation protected by the Act."

Notably, the high court rejected Alamo's defenses under the Free Exercise and Establishment Clauses of the First Amendment, ruling that there is "no express or implied exception for commercial activities conducted by religious or other nonprofit organizations," adding that the FLSA has been "consistently construed … liberally in recognition that broad coverage is essential to accomplish the goal of outlawing from interstate commerce goods produced under conditions that fall below minimum standards of decency."

The Appellate Ruling

In its appeal to the Sixth Circuit, Grace Cathedral argued that the FLSA should not apply because the restaurant is owned and operated by a church, doesn't make a profit, operates with "charitable intent" and "'volunteers' didn't expect to get paid and didn't feel coerced to volunteer." In support of this argument, the Church supplied 134 affidavits of church volunteers. The text of the opening brief is here.

In its response brief (here), the Department of Labor disagreed, arguing that the "FLSA prohibits the use of volunteer labor at for-profit businesses" adding that the agency "disapproves of the use of 'coercion or pressure to procure volunteers,' including the threat of divine retribution."

The Sixth Circuit appellate panel ruled 3-0 (here) in favor of the Church, reversing the almost $400,000 verdict from the trial court.

At the outset, the Sixth Circuit made a finding different than the district judge; that is, that the volunteers at Cathedral Buffet "did not expect to receive compensation." The judges ruled that the volunteers were not dependent on this work for their economic survival, unlike the "drug addicts,

derelicts, and criminals" in the Alamo case. The Sixth Circuit judges were emphatic on this point: "It is undisputed that the volunteers who worked at Cathedral Buffet had no such expectation." Generally, under the Fair Labor Standards Act, one of the key inquiries is the "economic realities" test; but the law – according to the appellate court – "plainly requires us to first ask whether Cathedral Buffet's volunteers worked in 'expectation of compensation.' They did not."

In addition, the appeals court found that there was an insufficient showing of "economic coercion" emphasizing that "spiritual coercion" was not enough – and was plainly beyond the scope of what a court of law should be deciding. The "type of coercion with which the FLSA is concerned is economic in nature, not societal or spiritual."

[A]lthough the FLSA might aim to curb the societal ills caused by low wages, it does so through a comprehensive system of economic regulations. The Act does not go so far as to regulate when, where, and how a person may volunteer her time to her church. After all, the giving of one's time and money through religious obligation is a common tenet of many faiths.

Conclusion

The writer of the Sixth Circuit concurring opinion leaves no doubt about his feelings on the matter; he opens with –

One hopes that the Department of Labor simply failed to think through its decision in this case…; [that is,] the premise … that the Labor Act authorizes the Department to regulate the spiritual dialogue between pastor and congregation—assumes a power whose use would violate the Free Exercise Clause of the First Amendment.

And his final thoughts in that opinion are:

What is perhaps most troubling about the Department's position in this case, however, is the conceit of unlimited agency power that lies behind it. The power of a federal agency is no more than worldly. The Department should tend to what is Caesar's, and leave the rest alone.

A quick reminder: The Sixth Circuit's opinion is binding only on states within its jurisdiction; that is, Ohio, Kentucky, Michigan, and Tennessee.