

Gospel Outreach

COVERAGE AND EXCLUSIONS

Religious or charitable organizations

Church members engaged in a church tree-planting operation and receiving only a small personal stipend in addition to the basic necessities of food, clothing and shelter, are not engaged in employment subject to the mandatory coverage of the Act and are specifically excluded from coverage by RCW 51.12.020(4). ...*In re Gospel Outreach*, BIIA Dec., 45,742 (1977) [dissent]

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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: GOSPEL OUTREACH**) **DOCKET NO. 45,742**
2)
3 **FIRM NO. 292,408**) **DECISION AND ORDER**
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5 APPEARANCES:

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7 Petitioner, Gospel Outreach, by
8 Perkins, Coie, Stone, Olsen and Williams, per
9 Calhoun Dickinson

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11 Department of Labor and Industries, by
12 The Attorney General, per
13 John Aaby and Robert G. Swenson, Assistants
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15 This is an appeal filed by the petitioner on June 30, 1975, from a determination of the
16 Department of Labor and Industries in letter form dated May 6, 1975, that the tree planting
17 operations of Gospel Outreach are covered under the mandatory provisions of the Workmen's
18 Compensation Act. **REVERSED.**
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21 **DECISION**

22 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
23 and decision on a timely Petition for Review filed by the petitioner, Gospel Outreach, to a Proposed
24 Decision and Order issued by a hearing examiner for this Board on August 30, 1976, in which the
25 determination of the Department as set forth in its letter of May 6, 1975, was sustained.
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28 Broadly stated, the issue presented is whether or not Gospel Outreach of Humboldt County,
29 California, must pay premiums under the Workmen's Compensation Act on its tree planting
30 operations conducted in the State of Washington.
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33 Gospel Outreach of Humboldt County, California (hereinafter referred to alternatively as
34 Gospel Outreach, or the Church) is an ecclesiastical society made up of individuals who have
35 committed all aspects of their lives to the principles and teachings of the Lord, Jesus Christ. Its
36 members live together in communal style as one apostolic family of brothers and sisters. The aim
37 of the Church is to propagate the gospel and achieve spiritual growth, not just through word of
38 mouth, but also by living example. One of the basic tenets of the Church is that work itself has
39 spiritual value, and that people are enjoined by the Bible and Christ's teachings to work quietly with
40 the hands, and this itself will promote spiritual growth as well as being a means of "witnessing" the
41 gospel to others. To this end, the Church established "Living Waters Reforestation" as a specific
42 project and entity of the church corporation, through which the contracts for tree planting operations
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1 are performed. These operations have been conducted in several western states for the federal
2 government as well as for private timber companies, such as the Weyerhaeuser Company. The
3 work of tree planting is performed by church members exclusively; and up to three groups of about
4 fifteen people each may be doing these projects at any one time. They receive no pay for their
5 labors. On the contrary, under the express provisions of the Church's by-laws, the members
6 donate all their services to the Church as "gifts, absolute and complete," and "there shall never be
7 any compensation or other remuneration" therefor. Exhibit 2, Church Laws 12 and 19.
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11 The basic necessities of life of each member -- i.e., food, clothing, medicine, shelter -- are
12 supplied by the Church. In addition, each member is given a weekly stipend of between \$3 and
13 \$10 to purchase personal items. In short, each member is supported by the Church solely in
14 accordance with his or her particular and essential needs. This support, however, is in no way
15 related to, or given in exchange for, the members' work. Church membership is a voluntary matter
16 and carries no legal obligation for work. Those members who, because of handicap, disability, or
17 whatever reason, are unable to work receive the same level of essential necessities and stipend as
18 those who do work.
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22 The income received by the Church from its tree planting operations and from other
23 operations (the Church has chartered some other ongoing work projects or undertakings) over and
24 above that which is necessary to meet its subsistence requirements, is devoted completely to
25 charitable purposes, such as giving economic assistance to the poor. Church Laws provide that no
26 member may in any way profit financially through his services or Church association. See Church
27 Laws 10 and 20. It is noted that the Federal Internal Revenue Service has conferred exempt status
28 upon the Church as a charitable organization under federal law.
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32 Given this factual situation, Gospel Outreach takes the position that it is not subject to the
33 mandatory provisions of our Workmen's Compensation Act because, as a charitable institution, it is
34 not an "employer" as that term is defined by the Act, and further, that its working members are not
35 employees because they receive no remuneration for their services. In addition, Gospel Outreach
36 contends that its working members are expressly excluded from mandatory coverage by statute,
37 RCW 51.12.020(4).
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41 Under the Workmen's Compensation Act as it existed prior to 1971, charitable institutions
42 were held to be outside the mandatory coverage provisions of the statute. Spokane Meth. Homes
43 v. Department of Labor and Industries, 81 Wn. 2d 283 (1972); Thurston County Chapter American
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1 Nat'l. Red Cross v. Department of Labor and Industries, 166 Wash. 488 (1932). The rationale of
2 those decisions was that the work of charitable institutions did not constitute work "by way of trade
3 or business" as that phrase is used in RCW 51.08.070, defining the term "employer", inasmuch as
4 charitable undertakings are not operated for pecuniary gain and it was the legislative intent to cover
5 only profit making businesses and industries. In 1971, however, the Legislature dramatically
6 increased the mandatory coverage of workmen's compensation to encompass "all
7 employments...within the legislative jurisdiction of the state". Laws of 1971, 1st Ex. Sess., ch. 289,
8 sec.2; RCW 51.12.010. Obviously, this increased coverage encompasses the work operations of
9 religious and charitable institutions, as such and all persons engaged in an employee-employer
10 relationship for such institutions. See Spokane Meth. Homes, supra, at p. 285.

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12 The 1971 enactment, however, went on to expressly exclude from mandatory coverage
13 certain types of workers, including unpaid workers of a religious or charitable organization.
14 Specifically, RCW 51.12.020 (4) (Laws of 1971, 1st Ex. Sess., ch. 289, sec. 3(4) excludes from
15 mandatory coverage:

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17 "Any person performing services in return for aid or sustenance only,
18 received from any religious or charitable organization."
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21 This exclusion and the language thereof is a verbatim copy of the so- called "model act" proposed
22 by the Council of State Governments (1965). The Special Advisory Committee which drafted the
23 model act was chaired by Professor Arthur Larson of the Duke University School of Law. The
24 published booklet of the model act contains a section-by-section commentary by Professor Larson
25 explaining the reasons underlying each provision. The commentary relating to the exclusion from
26 mandatory coverage of unpaid workers of a religious or charitable organization reads, in part, as
27 follows:
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29 "This exemption applies to persons working in return for aid and
30 sustenance only for a religious or charitable organization. The reason
31 for this provision is obvious. The entire structure of workmen's
32 compensation is built around the concept of income protection, and the
33 restoration of a portion of lost income as a result of injury or death. It
34 would be paradoxical to take a person who is earning no income at all,
35 and, because of an industrial injury, improve his income position by
36 proceeding to pay him the minimum cash weekly benefit. Moreover, if a
37 person is in the support of a charitable institution before he is injured,
38 presumably he would continue to be so afterwards...."
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41 This reasoning is quite appropriate to the instant case, in light of the facts shown herein.
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1 The church members performing the tasks in question have no contractual understanding or
2 relationship, express or implied, involving the rendition of work or services in return for
3 compensation or remuneration for such services, whether in cash or in kind. There is no mutual
4 agreement creating an employer-employee relationship. See Clausen v. Department of Labor and
5 Industries, 15 Wn. 2d 62 (1942); and Fisher v. Seattle, 62 Wn. 2d 800 (1963). The work of the
6 church members, such as tree-planting services involved here, is simply part of their gifts and
7 commitment to the Church, and is in effect religious activity pursuant to one of the tenets of their
8 religious faith. According to the testimony of the only witness herein, a minister for the Church,
9 members are not kept on work projects based on their efficiency or skill in doing the tasks, but
10 based on whether their religious mentors feel the activity is promoting their spiritual growth and
11 witnessing of the gospel. The aid and sustenance received by the members, in the form of "in kind"
12 supplying of the basic necessities of food, clothing, and shelter, is provided regardless of what kind
13 of tasks they may be doing and regardless of whether or not they are working at all. This is simply
14 not remuneration, wages, or income for services performed; and therefore we see no employer-
15 employee relation within the contemplation of the mandatory coverage of the Act.

16 Further, it seems clear that the intent of RCW 51.12.020(4) is to exclude from coverage
17 those persons performing services for a religious or charitable organization, who are simply
18 receiving support or sustenance in kind from such organization. This, we must find, is the case
19 here.

20 The statutory exclusion does not apply, of course, to persons working as employees for
21 religious or charitable institutions. We recognize that many such institutions engage in diverse
22 operations and enterprises, in which many people work and receive wages or remuneration for
23 such work; and they are of course covered. It appears that this was the Department's original
24 understanding of the factual situation here, for it was stated in its coverage decision of May 6, 1975
25 that the Act applies to "a person's means of livelihood that is derived by employment for an
26 organization that is conducting a business entirely unrelated to the anticipated functions commonly
27 known to be performed by a religious or charitable organization." This same understanding was
28 expressed by Department's counsel in a brief filed herein, stating that "...members' are dispatched
29 in work crews to far-distant locations under the control of appellant to perform tasks totally
30 unrelated to the maintenance of such an organization...."

1 We must conclude, however, that the Department had a misunderstanding of the factual
2 situation. Based on all the evidence before us, the work projects and tasks done by the Church
3 members are not employments and business operations unrelated to the Church's religious
4 purpose; on the contrary, they are related to this Church's beliefs and part of the direct religious
5 activity of this Church. The members have apparently committed themselves to an apostolic mode
6 of communal religious living and are assigned to these work projects for purposes of spiritual
7 growth and "witnessing" to their sincere views of gospel teachings. They feel no apparent need for
8 a "means of livelihood" in the more conventional employer-employee context.
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13 We are not unmindful of the possibility that profit-making arrangements or employment
14 relationships may be set up under the guise of a religious or charitable organization, to attempt to
15 avoid laws and regulations which normally govern such relationships. However, the factual
16 evidence in this record is that the situation here is truly what it purports to be and not any disguised
17 employment relationship. The Department's investigation of the matter presumably turned up
18 nothing to the contrary, since no testimony was produced to rebut the evidence presented by the
19 petitioner..
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24 All told, we must conclude that the Department's determination, that the tree planting
25 operations of Gospel Outreach fall within the mandatory coverage provisions of the Workmen's
26 Compensation Act, is in error and must be reversed.
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28 FINDINGS OF FACT

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30 Based upon the record, the Board makes the following findings:

- 31 1. By letter dated May 6, 1975, the Department of Labor and Industries
32 advised Gospel Outreach of Humboldt County, California, that its tree
33 planting operations in the State of Washington were under the
34 mandatory coverage provisions of the Washington Workmen's
35 Compensation Act, and that premiums would have to be paid on those
36 persons working in these operations. On June 30, 1975, Gospel
37 Outreach filed a notice of appeal to this Board, and on July 18, 1975, the
38 Board issued an order granting the appeal.
- 39 2. Gospel Outreach is an ecclesiastical society which was formed for
40 religious and charitable purposes, and is a church organization which
41 has been granted an exempt status by the federal Internal Revenue
42 Service as a charitable institution. Its members are associated together
43 in an apostolic mode of communal religious living.
- 44 3. Gospel Outreach conducts certain tree planting operations in the State
45 of Washington under the name "Living Waters Reforestation," pursuant
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1 to contracts with the federal government and some private forest-
2 products companies.

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4 4. The work of tree planting is performed by church members only, who
5 receive no wages or salary for such services, and said work is part of
6 the members' spiritual activity pursuant to tenets of the Church's
7 religious belief.
- 8 5. Each member of the Church is provided with essential necessities of life
9 (food, clothing, medicine, shelter) and receives a weekly stipend of \$3 to
10 \$10 for personal items. Those church members who do not work, for
11 whatever reason, are provided with the same essentials of livelihood
12 and level of support as those who do work.

13 **CONCLUSIONS OF LAW**

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15 Based upon the foregoing findings, the Board makes the following conclusions:

- 16 1. The Board has jurisdiction of the parties and the subject matter of this
17 appeal.
- 18 2. The members of Gospel Outreach engaged in tree planting operations in
19 this state are not engaged in an employer-employee relationship, and
20 fall within the exclusion prescribed by RCW 51.12.020(4), and are
21 therefore not covered under the mandatory provisions of the Workmen's
22 Compensation Act.
- 23 3. The Department's determination as set forth in its letter of May 6, 1975,
24 to the effect that the tree planting operations of Gospel Outreach in this
25 state fall under the mandatory coverage provisions of the Workmen's
26 Compensation Act, is incorrect, and should be reversed.

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29 It is so ORDERED.

30 Dated this 18th day of April, 1977.

31 BOARD OF INDUSTRIAL INSURANCE APPEALS

32
33 /s/ _____
34 PHILLIP T. BORK Chairman

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36 /s/ _____
37 WILLIAM C. JACOBS Member

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40 **DISSENTING OPINION**

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42 The majority in their Decision and Order state that the issue in this appeal should be decided
43 by the interpretation given to RCW 51.12.020 - Employments excluded (4):

44 "Any person performing services in return for aid or sustenance only,
45 received from any religious or charitable organization."
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I disagree that this is controlling language that should decide this appeal.

"Gospel Outreach" may be many things but in my view it is not a person performing a service for aid or sustenance only. Granted, "Gospel outreach" may be a bonafide religious or charitable organization, but frankly I find no provision in the law that says a religious or charitable organization is excluded from mandatory coverage by virtue of being a religious or charitable organization.

In my opinion, this appeal can better be resolved by the language in RCW 51.12.070:

"The provisions of this title shall apply to all work done by contract;..."

"Gospel Outreach" has a contract for certain services, namely, tree planting. Neither it nor the enterprises letting such contracts should be allowed to evade the mandatory coverage of Industrial Insurance by utilizing so-called church "members" in lieu of "workers". Their church members are not gardening and planting trees on church-owned property. They are engaged in effect in a commercial enterprise for which "Gospel Outreach" enters in binding contracts with various other entities.

In my opinion, the "tree planting" that is contracted by "Gospel Outreach" is the kind of "work done by contract" that is referred to in RCW 51.12.070 and therefore "Gospel Outreach" is not excluded from mandatory coverage of Industrial Insurance and the Department's determination on the issue is correct.

Dated this 18th day of April, 1977.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/
SAM KINVILLE Member