THE SCHOOL RULE:

Supreme Court Recognizes and Applies "Ministerial Exception" to Parochial School Teacher Dismissal

by David R. Hostetler, Esq.

This article represents a break in our current School Contracts series. We will resume the series next month.

On January 11, 2012, the United State Supreme Court issued a unanimous decision of great importance to parochial schools. In *Hosanna-Tabor Evangelical Lutheran Church and School* (the "School") v. *Equal Opportunity Employment Commission* (the "EEOC"),[1] the Court, in an opinion written by Chief Justice John Roberts, unanimously ruled in favor of a Michigan church-related school that dismissed one of its teachers.

The legal question addressed by the Court was "whether the Establishment and Free Exercise Clauses of the First Amendment bar [a lawsuit against a school employer] when the employer is a religious group and the employee is one of the group's ministers?" The Court answered "yes" based on on the circumstances of the case.

The School, located in Redford, Michigan, is part of the Lutheran Church-Missouri Synod. It first employed the plaintiff teacher, Cheryl Perich, in 1999 as a "lay teacher." Later that year she received a "diploma of vocation" from the denomination, which had designated her a "commissioned minister" and a "called teacher." Many of her responsibilities involved regular teaching duties of the kind performed by lay and called teachers. In addition, she taught a religion class four days a week, led students in prayer and devotions each day, and attended weekly chapel services (two of which she organized).

In 2004, Perich was diagnosed with narcolepsy. She began the 2004–05 school year on disability leave. The School contracted with a lay substitute teacher for the school year. In January 2005, Perich notified the school principal that she planned to return to her regular teaching position in February. The principal notified her that the school had a substitute for the remainder of the year and also expressed concern about Perich's ability to fulfill her duties.

At a congregational meeting, parishioners voted to offer Perich a "peaceful release" from her call by which she would voluntarily resign as a called teacher in exchange for payment of some of her ongoing health insurance premiums. Perich refused the offer and tendered a doctor's note indicating that she was able to teach. Eventually, she appeared at the School on February 22 to resume her teaching. Her appearance caused a contentious interchange with school officials, during which she threatened to "assert her legal rights."

Consequently, the School formally dismissed Perich for "insubordination and disruptive behavior," and for undermining her working relationship by "threatening to take legal action." The congregation also voted later in the semester to rescind Perich's "call."

Perich filed an EEOC administrative charge. The EEOC ruled in her favor and, subsequently, the EEOC sued the School in federal court on her behalf under the Americans with Disabilities Act (the "ADA"), alleging the School discriminated against her because of her disability and also retaliated against for pursuing her rights thereunder.[2]

The School contended it was legally protected from being sued by the "ministerial exception" under the First Amendment, asserting that Perich was a "minister," dismissed for religious reasons. The district court agreed with the School and granted summary judgment on its behalf.[3] The United States Sixth Circuit Court of Appeals reversed the trial court, in favor of the teacher. The School then appealed to the Supreme Court.

The Supreme Court's analysis begins by reviewing First Amendment principles and precedents, primarily to address two related questions: (1) should the Court recognize the existence of a "ministerial exception" in employment discrimination cases, and (2) if so, does that exception apply to the present case to protect the School?

The First Amendment provides (in part), "Congress shall make no law respecting an **establishment of religion** or prohibiting the **free exercise** thereof." (Emphasis added).

The Court, for the first time in its history, recognized the ministerial exception in employment discrimination cases.

> We agree that there is such a ministerial exception. . . . By imposing an unwanted minister, the state infringes the **Free Exercise Clause**. . . . According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause. . . .
>
> We cannot accept the remarkable view that the Religion Clauses have nothing to say about a religious organization's freedom to select its own ministers. (Emphasis added.)

Having addressed and recognized the ministerial exception, the Court addressed the second question: whether the exception applied to protect the School from suit.

*The "**School Rule**" column is designed to offer legal updates and practical legal recommendations. Mr. Hostetler, legal consultant for ACCS, specializes in education law, is founder and director of Lex-is School Law Services (Chapel Hill, NC), and is an associate professor of education law, policy, and ethics at Appalachian State University (Boone, NC). He may be contacted at hos@Lex-is.com or (919) 308-4652. More information is available at www.Lex-is.com.*

Supreme Court Recognizes . . .

The Court first determined that the exception can apply to more than just the "head of a religious congregation," but avoided adopting "a rigid formula for deciding when an employee qualifies as a minister."[4] It proceeded to address "all the circumstances of [the teacher's] employment." The Court determined that, based on a multitude of factors taken together, Perich was a "minister." The School held her out as a minister, she had distinct ministerial roles, and had received a "diploma of vocation" and the title of "Minister of Religion," and was tasked with duties "according to the Word of God" and of "confessional standards." Furthermore, the congregation periodically reviewed her "skills of ministry" and "ministerial responsibilities," and provided for her "continuing education . . . in the ministry of the Gospel." She received a "significant degree of religious training followed by a formal process of commissioning" that required six years to complete. She received a housing allowance on her taxes, available to those who are compensated "in the exercise of the ministry." Furthermore, her duties included "lead[ing] others toward Christian maturity" and "teach[ing] faithfully the word of God. . . ." These were in addition to her devotional and religious instructional duties for the School (discussed above). The Court summarized its findings, stating,

> In light of these considerations—the formal title given Perich by the Church, the substance reflected in that title, her own use of that title, and the important religious functions she performed for the Church—we conclude that Perich was a minister covered by the ministerial exception.

Importantly, the Court also clarified that a "minister" does not necessarily have to spend a dominant or extensive amount of time in "ministry" duties, as long as those duties are a substantive part of the job title and functions.

> The issue before us, however, is not one that can be resolved by a stopwatch. The amount of time an employee spends on particular activities is relevant in assessing that employee's status, but that factor cannot be considered in isolation, without regard to the nature of the religious functions performed and the other considerations discussed above.

This case provides some relief to parochial school officials by demonstrating the Courts' "hands off" approach to church-related employment decisions involving its "ministers." It also offers very specific legal authority and lessons regarding employment decisions and job descriptions. School officials in parochial schools should consult with legal counsel in establishing and defining positions that involve or may involve "ministerial" employees, especially now that the Court has ruled.

The Court's final words offer an apt conclusion to this article and a reminder of the ruling's religious and legal significance:

> The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission. . . . First Amendment has struck the balance for us. The church must be free to choose those who will guide it on its way.

NOTES

1. 132 S. Ct. 694 (2012), U.S. LEXIS 578 (2012).

2. Anti-discrimination statutes normally require that complainants first file an administrative charge with the EEOC, the agency assigned to investigate and enforce most anti-discrimination statutes. Only after the EEOC process and final determination may complainants file suit in federal court. In some instances the EEOC decides to file suit, itself, against the employer. In such instances the employee can join the suit as a separate party. This is what happened in this case.

3. Summary judgment is a ruling by the trial court, upon motion of a party without a trial. The court applies the law to the facts as alleged by the non-moving party (the teacher in this case) and issues a judgment regarding the legal outcome.

4. Courts typically avoid establishing rigid rules for future cases. They prefer, instead, to issue rulings based on the unique facts of a case. This further explains why law is very much "case specific" and also why the answer to questions about the legality of a matter usually is "it depends." A good example of judicial reticence to creating rules is articulated by the Court near the end of its opinion:

> We express no view on whether the [ministerial] exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers. There will be time enough to address the applicability of the exception to other circumstances if and when they arise.

This column is for information only and not offered as formal legal advice. Readers are urged to consult a school law attorney to address specific legal questions.

New Member

Member School

Seattle Classical Christian School
Seattle, Washington