STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
4 P STREET, SACRAMENTO 95814

NOTICE

Attached is Precedent Tax Decision No. P-T-335-A. After an unfavorable decision of the court, and pursuant to the provisions of section 409.1 of the Unemployment Insurance Code, the Board has overruled and set aside P-T-335. That decision is no longer of any force or effect.

It is appropriate that this new precedent tax decision (P-T-335-A) be filed in a manner that will clearly indicate that P-T-335 has been overruled, and an annotation to that effect should be entered on P-T-335 itself.

Lionel L. Riave
Chief Counsel

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

MOUNT HERMON ASSOCIATION, INC.
(Petitioner)
Mount Herman, California 95041

Employer Account No. 219-8215

DEPARTMENT OF BENEFIT PAYMENTS

Referee's Decision No. SJ-T-6715

PRECEDENT
TAX DECISION

No. P-T-335-A
Case No. T-75-26-A

On March 31, 1977 pursuant to the provisions of section 409 of the Unemployment Insurance Code this Board promulgated and issued Precedent Tax Decision No. P-T-335 (Case No. T-75-26). In that decision the Board reversed the findings of the referee in Case No. SJ-T-6715 and held that the petition for review was denied.

Thereafter the petitioner filed a complaint for refund of taxes in the Superior Court of the State of California, in the County of Sacramento, No. 267679, requesting the court to require that the Board vacate and set aside its precedent decision. On September 24, 1979 the Honorable Irving H. Perluss, Judge of the Superior Court, reversed the decision of the Appeals Board and entered judgment in favor of the petitioner. An appeal was taken by the Employment Development Department to the Court of Appeal, Second Appellate District

Date Mailed: DEC 03 1981

(3 CIVIL No. 19409). That court affirmed the superior court and held that the petitioner was entitled to a refund of unemployment insurance taxes paid in the instant matter.

Accordingly, pursuant to the decision of the court, and in conformance with the provisions of section 409.1 of the Unemployment Insurance Code, this Board overrules and declares invalid for all purposes its decision in P-T-335 (Case No. T-75-26). Additionally, we now hold, as ordered, that the decision of the referee in SJ-T-6715 is affirmed. The petition for refund is granted.

DON BLEWETT

MARILYN H. GRACE

HERBERT RHODES

LORETTA A. WALKER

JAMES H. HAGARTY

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

MOUNT HERMON ASSOCIATION, INC.
(Petitioner)
Mount Hermon, California

PRECEDENT
TAX DECISION
No. P-T-335
Case No. T-75-26

Employer Account No. 219-8215

DEPARTMENT OF BENEFIT PAYMENTS

Referee's Decision No. SJ-T-6715

The Department of Benefit Payments has appealed the decision of the referee granting the petitioner's petition for review of a claim for refund.

STATEMENT OF FACTS

The petitioner is a nonprofit organization which was originally founded in 1906 as a Christian conference center. It is located in the Santa Cruz mountains. In 1929 the petitioner incorporated under the general nonprofit corporation law. In its articles of incorporation the purpose of the corporation was stated as follows:

> "(1) To organize, promote, maintain and control the Mount Hermon Summer Assembly and other meetings and conventions for biblical, missionary, evangelistic, and educational purposes;
>
> "(2) To organize, promote, maintain and control missionary and evangelistic enterprises, schools, colleges, hospitals, and other Christian agencies of similar character for the public spiritual and moral good."

The petitioner has a board of trustees, currently composed of seven members, who are responsible for the spiritual aspects of its operation; a board of directors, elected by the board of trustees, is responsible for the financial activities of its operation. To be eligible for the board

of trustees, members are required to be of legal age and communicants in good standing of the evangelical denominations of the Christian faith in California. There are no membership dues or fees.

Originally Mount Hermon presented a summer meeting type of a program which has now evolved into a full year-round activity. In the pamphlet relating to morning worship at Mount Hermon Christian Conference Center for Sunday, July 20, 1975 the following appears:

"THIS IS MOUNT HERMON

"After much prayer and evidence of God's clear leading, Mount Hermon was founded in April, 1906. Today it comprises 440 acres. From its founding, Mount Hermon has held to the purpose of building lives for Christ. Operating year-round, Mount Hermon carries on a four-faceted ministry: 1) Providing an interdenominational summer camp and conference ministry for youth, adults, and families; 2) Specialized weekend and midweek camps and conferences in the winter for pastors, families, couples, Christian writers, single career adults, youth, etc.; 3) Three separate facilities for evangelical groups wishing to do their own programming, September-June; and 4) An auxiliary ministry to churches -- pulpit supply, youth retreats, banquets, etc. -- through its own staff members and visiting speakers. Redwood Camp for juniors and junior highs provides a thrilling experience under careful supervision of trained counselors and leaders. Ponderosa Lodge, Mount Hermon's youth resort, greatly enhances senior high programming. The adult and family conferences at the Conference Center feature resource leaders of international stature. A day camping program and nursery facilities keep the children of conference guests purposefully busy and happy under excellent supervision. Sunday School and Church are provided on Sundays through the summer.

"From simple beginnings, Mount Hermon has grown to a thriving community. Over 450 privately owned cottages nestle in the hills, and 150 families make this their year-round home. Mount Hermon maintains 15 miles of

surfaced roads and a complete water system for its property owners and conference guests, as well as a bookstore, real estate office, and post office.

"YOU ARE INVITED

"You are invited to enjoy all that Mount Hermon has to offer: trails among the Redwoods, the view from Inspiration Point, Ferndell Falls, and the Memorial Chapel. There are a variety of recreation activities available -- swimming, boating, tennis, volleyball, horseshoes, softball, shuffleboard, croquet, football, badminton, or basketball.

"You are also welcome to worship at the daily conference sessions under the ministry of leading Bible teachers. Counsel regarding your personal relationship to Jesus Christ or life problems is always available."

In the hymnal booklet for Mount Hermon morning worship on Sunday, August 30, 1970 the following appears:

"WELCOME TO MOUNT HERMON

"We are glad to have you and your family come to enjoy the beauty of Mount Hermon and the physical and spiritual refreshment available here.

"Mount Hermon, founded in 1906, is thoroughly committed to the inspiration and authority of Scripture and the Christ revealed therein. Statements of Belief (see inside of hymnal cover) are available on request at the office. Operating year-round, Mount Hermon carries on a four-faceted ministry: 1) as a summer resort for youth, adults, and families; 2) specialized weekend and midweek camps and conferences in the winter for pastors, families, couples, single career adults, youth, etc.; 3) September-June facilities for evangelical groups wishing to do their own programming; and 4) an auxiliary ministry to churches -- pulpit supply, youth retreats, banquets, etc. -- through its own staff members and visiting speakers.

"Consisting of 440 acres, Mount Hermon has three year-round facilities -- the Conference Center (500 capacity), Redwood Camp (200 capacity),

and our exciting new Ponderosa Lodge (200 capacity).

"Guided tours of Mount Hermon Park are scheduled each week of the summer. Maps are available at the office for self-guided tours. We especially encourage you to enjoy our three-mile streamside trail system and to visit the Sequoia Trail Meditation Chapel.

"Mount Hermon's ministry is carried on through the faithful giving of thousands of Christian friends who are convinced of the effectiveness of the camp and conference ministry. We invite you to share as God may direct.

"Our Executive Director and the Bible teachers of each week's conference will welcome the privilege to counsel with you regarding your own personal relationship to Christ. Please express your interest directly to them or contact the office."

Redwood Camp, which is mentioned in the booklet, consists of facilities designed primarily for elementary-junior high school youngsters and has its own dining facilities, own cabins, and basically its own recreation area. It is situated on 50 to 75 acres of land. Redwood Camp was originally constructed about the time that Mount Hermon was founded, and does not have adequate heating facilities for winter usage.

Ponderosa Lodge, also alluded to in the booklet, is a high school-college facility and is a fairly new and modern structure. It has a lodge, dining facilities, and a series of cabins. It is smaller than Redwood Camp.

The third facility mentioned is called the Mount Hermon Center. It is built around an auditorium and is described as a sanctuary. It has four other meeting places of smaller size. It has a chapel, a dining facility, and an administration unit. There are also approximately 200 rental units for families and individuals in the center. The estimated value of the physical assets at Mount Hermon is $3,000,000 and the operating budget exceeds well over $1,000,000. Mount Hermon has also established and sold from a part of its acreage a residential subdivision of privately owned cottages.

Each summer Mount Hermon employs approximately 200 counselors to man the programs and operational aspects at Redwood Camp and Ponderosa Lodge. This staff must adhere to Mount Hermon's statement of belief. The students are hired for the specific purpose of working with and counseling the young people. There is one counselor for each seven youths in attendance and the counselor leads group discussions and Bible studies, as well as the physical activities.

In the Mount Hermon Log, a publication of the Mount Hermon Christian Conference Center for February 1973 the following summer schedules for Redwood Camp and Ponderosa Lodge are set forth and are listed here as an illustration of the program at those two facilities:

"1973 SUMMER SCHEDULE

"Redwood Camp

"June 24-30 - Junior High Camp I (Grades 7-8)
July 1-7 - Junior Camp I (Grades 4-6)
July 8-14 - Music Camp (Grades 5-8)
July 15-21 - Evangelical Free Church
July 22-28 - Junior High Camp II
July 29-August 4 - Junior Camp II
August 5-11 - Junior Camp III
August 12-24 - Junior Camp IV, Junior High Camp IV, CILT Program (12 days)
August 26-September 1 - Junior High Camp III

"Ponderosa Lodge

"June 17-23 - Young Life Campaigners
June 23-30 - Christian Reformed Churches
July 1-7 - Cathedral at the Crossroads
July 8-14 - Senior High Week I
July 15-21 - Senior High Week II
July 22-28 - Senior High Week III (Discipling Week)
July 29-August 4 - Frosh Week I (Grade 9)
August 5-11 - Senior High Week IV
August 12-18 - Senior High Week V (Football and Lifesaving Sections)
August 19-25 - Frosh Week II
August 26-September 1 - Senior High Week VI (Scuba Section)
September 1-3 - College Rookie Weekend
September 3-7 - College Conference"

There are approximately 12,000 people who use Mount Hermon facilities during the summer months from June to September and approximately 30,000 persons who use the facilities during the entire year.

Mount Hermon employs four ordained ministers. During the summer months there are worship services on every Sunday and some 800 to 900 persons attend such services. Approximately half this number are in attendance at Mount Hermon to participate in various conferences and the other half come from families who generally reside in the area.

During the week, there are regularly scheduled Mount Hermon conferences, but there are also guest conferences during this period. Following is a schedule at the Conference Center for 1973 as set out in the Mount Hermon Log for February 1973:

"Conference Center

"June 17-July 14 - Mount Hermon Senior High Men's Ecology Corps
June 17-23 - JEMS
June 23-30 - Christian Reformed Churches
July 1-7 - Mount Hermon Family I
July 8-14 - Mount Hermon Church Music and Discipleship Week
July 15-21 - Evangelical Free Churches
July 22-28 - Overseas Crusades
July 29-August 4 - Dallas Seminary
August 5-11 - Biola
August 12-18 - Mount Hermon Family II
August 19-25 - Mount Hermon Family III
August 26-September 1 - Mount Hermon Family Vacation Special
September 1-3 - Mount Hermon Labor Day Weekend
September 3-7 - Mount Hermon Family IV

"Guest Conferences

"June 17-23 - Japanese Evangelical Missionary Society - Mr. John Hoagland, Bible Teacher and Director of the Missionary Literature Foundation, Burbank; Mr. Ken Kudo, Campus Minister, Twin Lakes Baptist Church, Santa Cruz; Mr. Sam Tonamura, Executive Director of the JEMS, Los Angeles.

"June 23-30 - Christian Reformed Family (Saturday dinner through Saturday breakfast). Dr. Mark Lee, author, and President of Simpson College, San Francisco; Dr. John Primus, faculty of Calvin College, Grand Rapids, Michigan.

"July 15-21 - Evangelical Free Churches of Northern California Family Conference - Dr. Mark Lee, author and President of Simpson College, San Francisco; Mr. Ken Poure, Director of Extension Ministries, Hume Lake Christian Conference Center, Fresno.

"July 22-28 - Overseas Crusades Family Vacation Conference - Dr. Dick Hillis, Founder and General Director of Overseas Crusades, Palo Alto; Dr. Howard Hendricks, Professor of Christian Education at Dallas Theological Seminary, Dallas, Texas; Mr. Hans Wilhelm, Overseas Crusades Administrative staff, Palo Alto.

"Plus, meet families from Overseas Crusades' various fields around the world.

"July 29-August 4 - Dallas Theological Seminary Conference - Dr. Howard Hendricks, Mr. George Rutenbar, Dr. Richard Seume, Dr. Merrill Unger, and Dr. John Walvoord of the Dallas Faculty and staff share in this week of Biblical teaching.

"August 5-11 - Biola Conference - Dr. Richard Chase, President of Biola College; Dr. Charles Feinberg, Dean of Talbot Theological Seminary; Dr. Curtis Mitchell, Professor of Biblical Survey at Biola College; Mr. Ray Schmautz, Student Body President at Talbot Seminary; and Dr. Sam Sutherland, President Emeritus of Biola College."

The family-type conference is under the direction and control of Mount Hermon and the other conferences are put on by outside organizations. During the other eight months of the year Mount Hermon calendars guest conferences and on occasion, if no such conference has been calendared, Mount Hermon will conduct a conference of its own. In the Mount Hermon Log the goals of the family conferences are set forth as follows:

"HERE'S WHAT TO EXPECT AT A FAMILY CONFERENCE

"Every week in Mount Hermon's Conference Center summer schedule provides for all ages of the family through Nurseries (ages 0-5) and Day Camp (grades 1-6) morning and evening, and free swimming instruction for children; plus youth activities for Junior Highs and Senior Highs.

"Family Conferences include all this and more, with the family eating, sleeping, playing, praying, and thinking together.

Family campfires.
Family field day and picnic at the recreation field.
Family swim carnival.
Family beach feed, followed by the annual tradition of sand sculpture on a selected theme.
A night out at the Fountain - popcorn, banana splits, you name it.
Prizes for family competition - gift certificates at Fountain or Bookstore.
Special treats - "smores," watermelon, or whatever.
Pancake breakfast on the ridge near summit of Mount Hermon.
Creek walks, moonlight hikes, antiphonal sings, talent times, sleep-outs, star talks.
Moonlight train ride on Roaring Camp steam engine railroad.
Sack lunches for extra outings of your own.
Special seminar(s) for "Parents w/o Partners."
The goals of our family conferences are:

-- to give families an unforgettable vacation together, at rates within reach.
-- to deepen each family member's love for and submission to the Lord Jesus Christ.
-- to increase the love and regard for one another within the family unit.
-- to become more comfortable in communication and doing things together.
-- to make possible new friendships between families from various geographical, denominational, and racial backgrounds."

The source of the funds for the operation of Mount Hermon comes from the rentals of the cabins and payment for food, together with contributions from individuals, churches, and foundations. Seventy percent of the petitioner's income is derived from the operation of its facilities and 30 percent from contributions. The bulk of the contributions is from individuals and individual churches. The petitioner has a permanent staff of approximately 35 persons including maintenance and housekeeping personnel, cooks, secretaries and four ordained ministers. The ministers are not ordained by the petitioner but by Protestant denominations. All employees must make a commitment to Christ, as must the sponsors of guest conferences. However, nonbelievers are permitted and invited to attend such conferences and services.

During periods of the year other than the summer months, services are conducted by the religious groups which hold conferences at Mount Hermon. During the year, approximately 50 percent of the services are conducted by ministers on Mount Hermon's staff. The other half of the time the services would be conducted by other religious organizations.

In addition to worship services the petitioner has recreational activities such as swimming, boating, tennis, volleyball, horseshoes, softball, shuffleboard, croquet, football, badminton, basketball, and hiking. Its facilities are used for conferences concerning family matters, Bible studies, and general Christian activities. There are conferences at which noted evangelists and theologians speak. The recreational activities are not considered to be an end in themselves but are conducted with the purpose of strengthening and inculcating Christian principles.

The petitioner stipulated to the following statement:

> "The organization is not operated, supervised, controlled, or principally supported by a church or convention or association of churches. Financial support comes from a variety of protestant churches, individuals, and organizations on a contribution basis."

The petitioner itself does not ordain ministers and considers that its entire staff ministers to the religious needs of the participants in the camp. Baptisms, weddings, and communion services are performed throughout the year.

REASONS FOR DECISION

Prior to January 1, 1972, the petitioner was exempted from the payment of unemployment insurance taxes under the provisions of Unemployment Insurance Code section 634. That section excluded from the statutory definition of "employment," service performed in the employ of most nonprofit organizations that were organized and operated exclusively for religious, charitable, and other similar eleemosynary purposes. The petitioner is a religious organization of the type that qualified for that exemption.

Effective as of January 1, 1972, code section 634 was repealed. In its place the legislature enacted code section 608 extending coverage to services in the employ of most organizations formerly exempted by code section 634. It also enacted code section 634.5 which continues to grant exemption to a few such organizations.

Petitioner's claim of continued exemption from the payment of unemployment insurance taxes after January 1, 1972, is based upon either of two provisions of code section 634.5. Primarily, petitioner contends that it is a "church" within the meaning of that particular provision of code section 634.5(a)(1) which excludes from the code's definition of "employment," service that is performed in the employ of:

> ". . . a church or convention or association of churches . . ."

Alternatively, the petitioner contends that it is one of the other special types of religious organizations that come within the provisions of code section 634.5(a)(2) which excludes from the code's definition of "employment," service that is performed in the employ of:

> ". . . an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches."

Here the petitioner is primarily supported by donations from individuals, is responsible for its own supervision, and has stipulated that it is not subject to the control of a church or convention or association of churches. Clearly

then the petitioner may not qualify for an exemption as a religious organization within the meaning of section 634.5(a)(2).

In our view the question that must be resolved in this case is whether or not the petitioner is exempt from taxation as a church or convention or association of churches within the meaning of section 634.5 of the Unemployment Insurance Code.

In order to assess the meaning of the term "church or convention or association of churches," it is appropriate that we determine how that phrase was introduced into California law. Research reveals that our legislature was motivated to enact section 634.5 of the Unemployment Insurance Code, which contains the cited wording, in order to remain in conformity with the national plan that governs the unemployment insurance program as prescribed in section 101 of the Unemployment Insurance Code. The California legislature did not define "church or convention or association of churches" but rather adopted the precise language that appears in the Federal Unemployment Tax Act (FUTA). It is clear that our legislature intended the provisions of section 634.5 to mean just what Congress intended the corresponding FUTA sections to mean. As the federal legislature did not expressly define the above-quoted term within FUTA, it is necessary to look beyond that legislation.

The phrase "church or convention or association of churches" was first used by Congress in the Unrelated Business Income Tax Law which it enacted in 1950. Research reveals that there were three congressional committee reports that accompanied the legislation (H.R. 8920) which was ultimately enacted as the Unrelated Business Income Tax Law. Of these, of particular interest to us is Senate Report No. 2375 (81st Congress, 2d Session) issued by the Senate Committee on Finance on August 22, 1950.

On pages 27 and 28 of this report the Committee stated that:

> "The House bill imposes the regular corporate income tax on certain tax-exempt organizations which are in the nature of corporations, and the individual income tax on tax-exempt trust, with respect to so much of their income as arises from active business enterprises which are unrelated to the exempt purposes of

> the organizations. . . . The tax does not apply to income of this type received by a church even though the church is held in the name of a bishop or other church official. However, the tax does apply to other exempt institutions under the auspices of the churches.
>
> "The tax on unrelated business income under your committee's bill is imposed in the same manner and applies to the same organization as under the House bill except that it is made clear that associations or conventions of churches also are excluded from the tax. It was pointed out to your committee that in the case of some denominations each local church is autonomous and that as a result the central association or convention might not be exempted from tax in these cases under the House bill."

The only reported judicial decision interpretative of the issue under the provisions of the Unrelated Business Income Tax Act is found in DeLaSalle Institute v. United States (1961), 195 Fed Supp 891. The court traced enactment into federal tax legislation of the phrase "a church or convention or association of churches." It concluded that the income from the winery of the Christian Brothers, a Catholic religious order, was not exempt from taxation as income of a "church or convention or association of churches" despite the fact that under Roman Catholic Canon Law, the revenue from the winery was considered the income of the Roman Catholic Church itself.

At page 899, the federal court noted that the Senate Finance Committee added the phrase "or convention or association of churches" in response to a request from a spokesman for the Southern Baptist Convention as being a convention of churches rather than a church. At page 901, the court said:

> "Plaintiff obviously is not a convention or association of churches, nor is the Christian Brothers Order a convention or association of churches. Plaintiff is an integral organization, as is the Christian Brothers Order. The Roman Catholic Church is a 'church.' Consequently, if plaintiff's income would not have been exempt under the original wording of the statute, exempting 'churches,' it was not made exempt by the Senate Amendment, adding 'conventions or associations of churches.' In fact, I regard the Senate Amendment as merely clarifying language, and making no substantial change whatever."

Further, the court pointed out in DeLaSalle at page 903,

> "To exempt churches, one must know what a church is. Congress must either define 'church' or leave the definition to the common meaning and usage of the word; otherwise, Congress would be unable to exempt churches. It would be impractical to accord an exemption to every corporation which asserted itself to be a church. Obviously, Congress did not intend to do this."

What then is a church? From these various Congressional Committee reports it is apparent that nowhere did Congress attempt to explain any precise sense in which it intended to use the word "church" in these laws. It tried to explain the outer limits of its ideas, but not the core which it apparently assumed was a matter of general understanding. In DeLaSalle, again at page 903, the court stated,

> "What is a 'church' for purposes of the statute must be interpreted in the light of the common understanding of the word. An organization established to carry out 'church' functions, under the general understanding of the term, is a 'church.'"

Historically and in modern times, a "church" has been defined in two ways: First, a temple or building consecrated to the honor of God and religion; or second, an assembly of persons united by the profession of the same Christian faith, met together for religious worship (Robertson v. Bullions (1850), New York Supreme Court, Fourth Judicial District, 9 Barbour (N.Y.) 64 at 95; Jacobs Law Dictionary (1811) "Church"; Tomlins Law Dictionary (1836) "Church"; Town of Pawlet v. Clark (1815) U.S. Supreme Court, 9 Cranch (13 U.S.) 292 at page 326). Although historically the derivation of the word "church" for the most part came through the Christian religion, in our decision we do not intend to restrict the meaning of the word to any particular faith or denomination.

While these definitions are of interest, they do not provide sufficient guidance upon which we can base a decision of the meaning of "church" as utilized in section 634.5 of the code. Rather, it is necessary to examine such judicial interpretation as is available.

We return then to a definitive analysis of DeLaSalle Institute v. United States (1961) (supra), as in our opinion it is factually akin and legally determinative of the issue of whether the petitioner qualifies for an exemption as a church. There the plaintiff owned and operated the following:

(1) A novitiate at which postulants and novices of the Christian Brothers Order were trained to play their part in the Order;

(2) Certain Catholic schools, at or below high school level;

(3) Homes for the Brothers, including a home for retired Brothers; and

(4) A winery and distillery.

The court stated:

"The chapels at plaintiff's parochial schools and novitiate are 'churches.' A corporation which did no more than operate one or more of these would obviously be a 'church' within the meaning of the statutes being interpreted. But plaintiff does much more than this. The operation of the chapels is incidental to plaintiff's principal activities, although very important to plaintiff's members. The tail cannot be permitted to wag the dog. The incidental activities of plaintiff cannot make plaintiff a church.

"Plaintiff's winery may have a chapel for the use of the workers there. Nevertheless, the winery is a winery, not a church. If plaintiff ran the winery only, with an attached and subsidiary chapel, plaintiff would not be a 'church' within the meaning of the statutes here involved.

"If a giant money-making corporation, such as General Motors, owned a company town, complete with churches, which the company owned and operated, the company would not be a 'church,' If, in its defense operations, the United States owns a town (as it does at Herlong, California) complete with churches, that does not make the United States a church.

"The parochial schools operated by plaintiff are not churches. The chapels at the schools are mere adjuncts of such schools. The religious activities [including dogmatic teaching, moral teaching, etc.] which take place at the schools are not sufficient to work a change of kind, turning the schools into churches. Anyone talking about the schools [plaintiff's witnesses, for example] would refer to them as 'schools' rather than as 'churches.'

"One can conceive of a winery, in which religiously habited monks would be among the workers. These monks might pray frequently, retire to an attached chapel for prayers and meditation according to a regular schedule, seek to convert or enlighten their fellow-workers at every opportunity, and endeavor to think religious thoughts and live by their religious creed at all times. The winery would nonetheless be a winery, and this would be true regardless of the conduct of certain of its employees. By the same token, a school, which has teachers similar to the monks in our hypothetical winery, remains a school.

"The principal activities in the schools operated by plaintiff are scholastic. Even when one considers the religious activities, it should be remembered that they are not necessarily 'church' activities. The legislative history of the statutes under consideration constantly draws the distinction between 'churches' and 'religious organizations under church auspices.' Not all religious activities tend to make an organization a 'church.'

"Mr. Lynch's statement to Mr. Johnson on the floor of the House of Representatives is revealing. Mr. Lynch clearly implied that Saint Mary's University, run by Christian Brothers [which, as we have seen, has a chapel and required religion courses], is not a 'church.' The regulations under § 421 of the 1939 Internal Revenue Code state that an incorporated university organized under the auspices of a church (or a convention, etc.) is not exempt. These regulations are reasonable and consistent with

> the language of the statute and with the legislative history, and should therefore be upheld (C.I.R. v. South Texas Lumber Co. 333 U.S. 496, 68 S.Ct. 695, 92 L.Ed. 831).
>
> "Common sense, besides the legislative history and the regulations, makes it apparent that a university is not a church, even though it may have a chapel and a required religion course three hours a week. What then is the difference between such a university and a parochial school with a chapel and five hours a week required religion course? It is a difference of degree, not sufficiently great to rise to a difference of kind. A school such as plaintiff maintains and operates is not a church, any more than a university is a church."

Applying the sense of the court's decision to the facts of this case, we find that the activities of operating Redwood Camp and Ponderosa Lodge wherein youngsters of elementary, high school, and college age are on a campout, do not make the petitioner a church. A counselor who may conduct a few hours of Bible studies with his group is not performing a church function and does not make the camp and lodge a church.

With respect to the Conference Center there is no question that for three or four months in the summer, church services are performed by the petitioner. However, during the balance of the year services are performed by other organizations. The extent to which family conferences and other conferences are held at the Conference Center, together with the operation of Redwood Camp and Ponderosa Lodge, and also considering the establishment and sale of a subdivision on part of the petitioner's land, leads us to the conclusion that the major functions of the petitioner are not church functions. Hence, the petitioner is not a church within the meaning of section 634.5 of the Unemployment Insurance Code.

DECISION

The decision of the referee is reversed. The petition for a review of the claim for refund is denied.

Sacramento, California, March 22, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

CARL A. BRITSCHGI

DISSENTING OPINION

I respectfully dissent from the decision of my colleagues.

In this case we are required to define what the term "church" means; a task for which we have received no assistance from either Congress or the Legislature, or the Departments of Labor or Benefit Payments. Neither do we have the alternative that one District Court took of declaring the term too vague to be defined (Guam Power Authority v. Bishop of Guam, 383 Fed. Sup. 476).

I agree with my colleagues that the Legislature had the traditional meaning of the term in mind when it enacted section 634.5. As the majority decision points out on page 13 of its decision, the term has been usually defined in one of two ways: as either a building or an organization. Section 634.5 refers to service in the employ of a church. Therefore, it is obvious, despite the contentions of the Department to the contrary, that the second traditional meaning was contemplated. Thus, a church is an assembly of persons united by the same faith who meet together for religious worship.

The majority decision relies heavily upon the DeLaSalle Institute v. United States, 195 Fed. Sup. 891. In that case the taxpayer conducted extensive and profitable business ventures, and the religious aspects of its work were clearly of secondary importance to the more commercial aspects of its work, particularly the operation of a winery. Here the petitioner does not offer a mere vacation for the public. It provides a place where Christian families can meet to study and understand their religion. Besides Christian fellowship the petitioner offers an ambitious counseling program, devotional activities, and a Sunday School. The sole purpose of the petitioner's existence is to strengthen the participants in their relationship to God and their understanding of Christianity. The secular use of its facilities is strictly prohibited.

Moreover, all who work for the petitioner are required to subscribe to a doctrinal statement of principles, akin to the doctrinal statements of other evangelical churches. Ordained ministers conduct services of various types and celebrate the sacraments of baptism, communion, and marriage. It is a member of the Northern Association of Evangelical Churches, and its executive director is a member of the Santa Cruz Church Association.

There is a definable congregation. Many families who live in the area attend devotional services every Sunday and regard Mount Hermon as their church. Furthermore, families attend the camp year after year in order to partake of the religious programs offered.

In conclusion, the petitioner is, in my view, an association of persons who meet for the sole purpose of religious worship.

I would affirm the Administrative Law Judge and grant the petition for review.

CARL A. BRITSCHGI