

No. A09-1155

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State of Minnesota  
In Court of Appeals

SARA K. IRVINE,

*Relator,*

vs.

ST. JOHN'S LUTHERAN CHURCH,

*Respondent,*

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

*Respondent.*

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RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## **Legal Issue**

Under the law, an individual who works in noncovered employment is not eligible to receive unemployment benefits. Sara Irvine worked for St. John's Lutheran Church, which is work defined under the law as “noncovered employment.” Is Irvine entitled to unemployment benefits?

Unemployment Law Judge (“ULJ”) Mark Schwartz held that Irvine was not eligible for unemployment benefits because her work with St. John's Lutheran Church was not covered by the unemployment insurance program.

## **Statement of the Case/Statement of Facts**

The Statement of the Case and the Statement of Facts have been combined for ease of understanding by the reader.

Sara Irvine was employed by St. John's Lutheran Church as a full-time business administrator from September 2006 until February 27, 2009.<sup>1</sup> St. John's Lutheran Church, as Irvine describes it, is “a religious organization,” and as Pastor Ed Treat testified, a “church.”<sup>2</sup> St. John's has not filed an election to have noncovered employment considered covered, nor has the Department received and ruled on such an election.<sup>3</sup>

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<sup>1</sup> T. 8, 9, 10. Exhibits in the record will be “E” for exhibits, with the number following. Transcript references will be indicated at “T,” with the page number following.

<sup>2</sup> T. 9, 15.

<sup>3</sup> T. 11, 14.

Irvine filed an application for unemployment benefits effective March 1, 2009. On March 4, 2009, the Department issued a Determination of Benefit Account, which set out that Irvine was unable to establish a benefit account.<sup>4</sup> On March 16, 2009, the Department issued a Determination of Benefit Account information letter that explained that employment for a church or organization operated primarily for religious purposes cannot be used to establish an unemployment benefit account. Irvine filed an appeal, and an evidentiary hearing was conducted by Unemployment Law Judge Mark Schwartz. The ULJ issued a decision holding that Irvine could not establish a benefit account because she did not work in covered employment.<sup>5</sup> Irvine requested reconsideration, and the ULJ issued an order affirming his decision.<sup>6</sup> Irvine now comes before the Minnesota Court of Appeals on a writ of certiorari obtained under Minn. Stat. § 268.105, subd. 7 and Minn. R. Civ. App. P. 115.

### **Department's Relationship to the Case**

The Department is charged with the responsibility of administering and supervising the unemployment insurance program.<sup>7</sup> As the Supreme Court stated in *Lolling v. Midwest Patrol*, unemployment benefits are paid from state funds, the

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<sup>4</sup> E-1.

<sup>5</sup> Appendix to Department's brief, A5-A8.

<sup>6</sup> Appendix, A1-A4.

<sup>7</sup> Minn. Stat. §116J.401, subd. 1(18).

Minnesota Unemployment Insurance Trust Fund, and not from employer funds, the employer not being the determiner of entitlement.<sup>8</sup> This was later codified.<sup>9</sup>

The Department's interest therefore carries over to the Court of Appeals' interpretation and application of the Minnesota Unemployment Insurance Law. The Department is thus considered the primary responding party to any judicial action involving an Unemployment Law Judge's decision.<sup>10</sup>

The Department does not represent St. John's in this proceeding and this brief should not be considered advocacy for St. John's Lutheran Church.

#### **Standard of Review**

When reviewing an unemployment-benefits decision, the Court of Appeals may affirm the decision, remand for further proceeding, reverse, or modify the decision if Irvine's substantial rights were prejudiced because the decision of the ULJ violated the constitution, was based on an unlawful procedure, was affected by error of law, was unsupported by substantial evidence, or was arbitrary or capricious.<sup>11</sup>

The facts here are undisputed, the only question being one of application of law. And in *Ress v. Abbott Northwestern Hosp., Inc.*, the Supreme Court stated

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<sup>8</sup> 545 N.W.2d 372, 376 (Minn. 1996).

<sup>9</sup> Minn. Stat. § 268.069, subd. 2.

<sup>10</sup> Minn. Stat. § 268.105, subd. 7(e).

<sup>11</sup> Minn. Stat. §268.105, subd. 7(d)(3)-(6) (2008).

that where the facts are undisputed, the issue of whether a statute precludes unemployment benefits is a legal question, which the Court reviews de novo.<sup>12</sup>

### **Argument**

This case is very simple. Irvine contends that unemployment benefits should be paid even though she worked for a church, which is not covered employment under the unemployment insurance system. The law is clear and unambiguous that Irvine is not eligible for unemployment benefits.

Minn. Stat. § 268.069, subd. 1 provides five requirements necessary for benefits to be payable, the first requirement of which is that the individual have “established a benefit account in accordance with Section 268.07.”

Under Minn. Stat. § 268.07, subd. 2, an individual can establish a benefit account only if the individual has a certain amount of “wage credits.” The term “wage credits” is in turn defined under the definition sections of the unemployment insurance law as wages paid within the applicant’s base period “for covered employment.”<sup>13</sup> Covered employment in turn is defined as employment performed in the State of Minnesota unless excluded as “noncovered employment.” The statute specifically defines “noncovered employment” as including employment for a “church.”<sup>14</sup>

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<sup>12</sup> 448 N.W.2d 519, 523 (Minn. 1989).

<sup>13</sup> Minn. Stat. § 268.035, subd. 27.

<sup>14</sup> Minn. Stat. § 268.035, subd. 20.

There is no question that St. John's Lutheran Church is a church. It is therefore noncovered employment, and because it is noncovered employment, the wages paid to Irvine cannot be considered wage credits. Irvine therefore cannot establish a benefit account, and unemployment benefits are not payable. As the Court of Appeals pointed out in *Samuelsson v. Prudential Real Estate*, an individual working in “non-covered employment may not establish a benefit account.”<sup>15</sup> The Court of Appeals has issued numerous decisions on noncovered employment and what that means regarding the collecting of unemployment benefits, most recently on September 1, 2009, in *Truax v. CFT Communications*.<sup>16</sup> The Court held that Truax was not entitled to unemployment benefits because his work was in noncovered employment.

The law does provide that an employer that has employment which is considered noncovered may file an election to have the noncovered employment considered covered employment.<sup>17</sup> Once an election is filed, the Department has the discretion to approve or disapprove the election, and if such an election is approved it commences with the start of the next calendar quarter and is in effect for not less than two years. Here, St. John's has not filed an election, and none has been received and approved by the Department.

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<sup>15</sup> 696 N.W.2d 830, 832 (Minn. App. 2005).

<sup>16</sup> A08-1961, unpublished, decided September 1, 2009 (Appendix, A9-A14).

<sup>17</sup> Minn. Stat. § 268.042, subd. 3.

### **Relator's Arguments**

Irvine argues that nowhere in the unemployment insurance law does it provide that an individual working in noncovered employment is not eligible for unemployment benefits. Irvine is wrong. Again, as stated above, in order to establish a benefit account, an individual must have a certain amount of "wage credits." The definition of "wage credits" lays out the requirement that the wages must be paid in covered employment. Employment for a church is not covered by the unemployment insurance system and therefore Irvine has no wage credits upon which to establish a benefit account.

Irvine argues that the Department must maintain a tax account for St. John's because St. John's pays Medicare and social security taxes. Whether St. John's pays Medicare and social security taxes is irrelevant to the question of whether it is liable for unemployment insurance taxes. Unemployment insurance taxes are due under the law only on the employer's payroll in "covered employment."<sup>18</sup> An unemployment insurance tax account is not required.

Irvine argues that St. John's did not post any notices or otherwise provide her with information that she was not covered by the unemployment insurance program. Even if the requirements of the law could be construed as requiring St. John's to post or otherwise give a notice to Irvine about the fact she is not entitled to collect unemployment benefits, it would not mean she could collect, if St.

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<sup>18</sup> Minn. Stat. § 268.051, subd. 1(a).

John's failed to do so. Unemployment benefits are paid from state funds. As the Supreme Court indicated in *Lolling v. Midwest Patrol*, the fact that an employer fails to do something does not mean that a worker is entitled to benefits.<sup>19</sup> An employer's dilatory action does not entitle an applicant to state funds.

Irvine doesn't argue that she was somehow induced into employment or induced to stay in that employment because she thought she would be entitled to unemployment benefits if unemployed. But even if that were the case, her action would not be for unemployment benefits, but rather for some sort of private civil action against the employer.

The Minnesota Legislature has set up the unemployment insurance system and has decided to provide 34 exclusions to coverage under the program. The Legislature could include churches in coverage, but it has chosen not to. Employment for a church has been excluded from the Minnesota unemployment insurance system since the inception of the program in 1936. The same is true in virtually all the states. The Supreme Court of the United States recognized the exclusion in *St. Martin's Evangelical Lutheran Church v. South Dakota*.<sup>20</sup> The Court there addressed the question of parochial schools operated by churches and held they were considered part of a church and that the workers are exempted from unemployment benefits.

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<sup>19</sup> 545 N.W.2d 372, 376 (Minn. 1996).

<sup>20</sup> 451 U.S. 772 (1981).

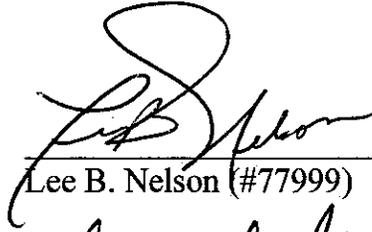
The fact that Irvine may not have been aware of the law does not entitle her to something the law does not provide. She cites some of the recent enactments – effective August 2, 2009 – about the remedial nature of the statute, and she cites to the public purpose. But those provisions of law do not entitle an individual to benefits when the law specifically provides that benefits are not payable. Those provisions deal with how to interpret statutes and apply them. If Irvine has a complaint, it is with the Legislature.

### **Conclusion**

The employment that Sara Irvine performed for St. John's Lutheran Church is not “covered” under the unemployment insurance program. Therefore, Irvine is not entitled to the payment of unemployment benefits from the Minnesota Unemployment Insurance Trust Fund.

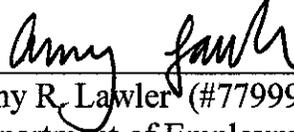
The Department requests the Court affirm the decision of the Unemployment Law Judge Mark Schwartz.

Dated this 19<sup>th</sup> day of October, 2009.



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