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# The Code of Canon Law on Labour Relations

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# THE CODE OF CANON LAW ON LABOUR RELATIONS \*

DONALD H. J. HERMANN

**T**HE new Code of Canon Law codifies the modern teaching of the Roman Catholic Church on labour relations which was first addressed by Pope Leo XIII in 1891 in the encyclical letter *Rerum Novarum*, re-iterated by every successor pope, and most recently extended by Pope John Paul II in his encyclical letter *laborem Exercens* (On Human Work) in 1981. This teaching has also been reflected in the work of the Second Vatican Council, in particular in *Gaudium et Spes* (Pastoral Constitution on the Church in the Modern World) and in Synodal documents such as 'Justice in the World'.

In this article, two lines of development will be underscored. The first provides recognition of the rights of workers to associate for the purpose of obtaining recognition and protection of employment rights; the second provides authority for religious to assert claims to rights for compensation and general working conditions. Attention will then be directed to developments in labour law in the United States which have increasingly addressed efforts of workers in church-related institutions to unionize and efforts of religious to inclusion in unions of their co-workers.

## **Canon Law Provisions on Labour Relations** *Provisions on Workers' Right of Association*

The Code of Canon Law provides recognition for a general right of association which provides a basis for concerted action for common goals. It is through the exercise of this right of association in the formation of a union or workers' organizations and in the development of associations of workers and employers/managers that the goals of social justice and the realization of workers' rights can be achieved. Indeed, Canon 215 provides:

The Christian Faithful are at liberty to found and to govern associations for charitable and religious purposes or for the promotion of the Christian vocation in the world; they are free to hold meetings to pursue these purposes in common.

Beyond recognition of this general right of association, the Code provides for the development of associations within the Church separate from the consecrated life which may involve clerics and laity in common activity in pursuit of social justice and in the realization of the Christian spirit in the temporal order. The Code further mandates that the faithful join those associations where membership is encouraged by ecclesiastical authority (Canon 298). This provision pro-

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vides firm authority for Church-established associations which will seek justice in the economic sphere and will carry out the Church's teachings in the field of labour relations.

Associations formed within the Church to pursue these aims of social justice in the temporal order can be established by private agreement after review by a competent authority (Canon 299) or by ecclesiastical authority alone (Canon 301). The Code provides for a form of incorporation of these associations within the Church (Canon 304). The provision suggests that the form of associations should meet the needs of a particular profession or trade rather than mandating a uniform organizational structure or a specified form of activity.

The Code provides authority for associations to adopt the equivalent of by-laws which can establish criteria for membership, rules for meetings, and provision for officers. Canon 309 provides:

Legitimately constituted associations have the right, in accord with the law and the statutes, to issue particular norms respecting the association itself to hold meetings, to designate moderators, officials, other officers and administrators of goods.

In Canon 310, the Code enumerates authority for members of associations which are not constituted as juridical persons jointly to contract obligations, as in the form of partnership, and to acquire property. In addition, members are given the opportunity to exercise these rights directly or by proxy.

The Code provides that public associations established by ecclesiastical authority have the status of juridical persons (Canon 313). The Code establishes independent authority in public associations to undertake activities appropriate to their chartered purpose; Canon 315 provides:

Public associations . . . can begin undertakings in keeping with their character projects which are appropriate to their character, and they can direct them in accordance with their statutes, but under the further direction of the ecclesiastical authority . . .

The Code provides that private associations can acquire juridical personality by a formal decree of the competent ecclesiastical authority (Canon 322). The Code recognizes authority in the membership of a private association to designate its officers in accordance with the statutes of the association (Canon 324). A private association is free to administer its property in accordance with its statutes (Canon 325). Finally, the Code provides for the dissolution of associations in accordance with the rules of the association or by competent authority where there is serious abuse (Canon 326).

This general framework for public and private associations and for secular and Church-related associations is complemented by a series of provisions which direct that the members of these associations work for the promotion of social

justice and for the common good rather than for mere private or group advancement. The mandate to pursue social justice is laid down in Canon 222(2), which provides: 'They are also obliged to promote social justice and, mindful of the precept of the Lord, to assist the poor from their own resources'. In pursuing the ends of social justice, the Council specifies that appropriate attention be given to the common good and concerns of others; Canon 223(1) provides that: 'In exercising their rights, the Christian faithful, both as individuals and when gathered in associations, must take account of the common good of the Church, and of the rights of others as well as their own duties to others'. The goals of social justice and the common good are to be pursued within a context of perfecting the temporal order (Canon 225). Finally, the Code makes clear that the quest for economic and social justice pursued by individual and collective activity is to occur without discrimination on the basis of sex, race, religion, or nationality (Canon 208).

By these various provisions, the Code of Canon Law provides a structural framework which can permit the realization of the Church's teaching on labour relations. Through both secular and Church affiliated organizations, workers may collectively assert their rights to just compensation, social protection, and participation while attending to the general demands of social justice and the requirements of the common good.

#### *Provisions on Clerics' Work Rights*

The new Code of Canon Law directs special attention to the rights and obligations of clerics in the context of their work activity. The Code, in a sense, provides a model formulation for proper labour relations as developed in the Church's teachings and decrees since the promulgation of *Rerum Novarum*. The Code recognizes the clerics' right of association, to just compensation, and to social services. Nevertheless, certain limitations are placed on clerics' assumption of leadership roles in unions which parallel the limitation on clerical political activity.

A recognition of the right of the secular clergy to freely associate, thereby supporting a right to an appropriate form for unionization, is provided in Canon 278(1): 'Secular clerics have the right to associate with others for the purpose of pursuing ends which benefit the clerical state'. The Code recognizes specific claims to compensation and welfare reflecting the traditional teaching of Church on the just claims of labour. A right to just compensation is established by Canon 282(1). Further, the Code recognizes a claim to the provision of adequate social welfare to meet the needs of clerics. The Canon mandates that the clerics should be provided with sufficient social assistance so that they are

'suitably provided for if they suffer from illness, incapacity or old age' (Canon 283). In the development of the Church's teaching on just labour relations, increasing recognition has been given to the need for regular periods of rest for workers and for vacations. In accordance with this teaching, provisions for rest periods and vacations are made in the new Code; Canon 283(2) recognizes that: 'Clerics are entitled to a due and sufficient period of vacation each year to be determined by universal or by particular law'. Special provision is made for specific vacation periods for parish priests in Canon 533(2), which states: 'Unless there is a serious reason to the contrary, the pastor may be absent each year from the parish on vacation for a period at most one continuous or uninterrupted month; days or weeks that the pastor spends once a year in spiritual retreat are not counted in his vacation days . . . '.

In order to meet the financial requirements established by the above provisions on just wage and social welfare, the Code provides for the establishment of a special fund (Canon 1274). Canon 1274(5) further provides that: 'If it is possible, these institutes are to be established that they are also recognized as effective under the civil law'.

Among the general provisions of the Code is one which proscribes the holding of public office by clerics; specifically Canon 285(3) states: 'Clerics are forbidden to assume public offices which entail a participation in the exercise of civil power'. This general provision is extended to union organizations in a Code provision which places limits on the ability of clerics to assume leadership roles in unions, although it in no way limits the ability of clerics to be members or to participate in union activity (Canon 287).

The Code of Canon Law provides authority for claims to a just wage and to social welfare by lay people who are employed in Church enterprises in accordance with the Church's teaching on labour relations most clearly stated in the Synodal Document on Justice in the World. Canon 231(2) provides that lay workers: 'have the right to a decent remuneration suited to their condition, by such remuneration they should be able to provide decently for their own needs and the needs and for those of their family with due regard for the prescription of civil law; they likewise have a right that their pension, social security, and health benefits be safe-guarded' (Canon 231). In order to ensure the fulfillment of the right of lay employees to claims to compensation and welfare, the Code places an obligation on the administrators of temporal goods of the Church contractually to provide for payment of such claims and to pay employees according to their just wage (Canon 1286).

In addition to applying the principles of labour relations developed in the Church's teaching, the Code lays down principles for clerics' dealings with property and the obligation placed on them to engage in charitable works. Canon 282(1) mandates that:

After they [clerics] have provided for their own decent support and for the fulfillment of all the duties of their state of life from the goods which they receive on the occasion of exercising ecclesiastical office, clerics should want to use any superfluous goods for the good of the church and for works of charity.

It is evident how various provisions of the Code of Canon Law closely conform to the traditional teaching of the Church on the conditions of just labour relations. The recognition of a right of association is central to the vindication of the primary claims to just compensation, participation, and social welfare provision. An important feature of the Code is the model it provides for just labour relations in its special provision for compensation and provision of welfare for clerics and lay employees of Church enterprises.

The remainder of this article will consider two areas of legal development in the United States which address the issues of inclusion of religious in bargaining units and the effort to apply national labour law requirements to labour organizations formed by workers in Church enterprises. Finally, an effort will be made to determine whether the practice in the United States conforms to the standards and spirit of just labour relations as set out in the Code of Canon Law.

### **Labour Organizations and Collective Bargaining: Clerical Employees and Religious Enterprises**

#### *Clerical Employees and Appropriate Bargaining Units*

A series of cases has arisen before the National Labor Relations Board and the federal courts involving clerical and religious employees of enterprises owned, controlled, or sponsored by religious communities. A central issue in these cases has been whether the vows of poverty and obedience should result in the exclusion of the clerical and religious employees from a bargaining unit established by representation elections. These cases have involved Church-affiliated colleges, hospitals, and nursing homes.

In 1971, the N.L.R.B. decided *Fordham University*, which considered a number of issues regarding appropriate bargaining units.<sup>1</sup> One issue presented was the appropriateness of the inclusion of a number of clerics in the bargaining unit. Approximately seventy of the full-time university faculty members

1. *Fordham University and American Association of University Professors, Fordham University Chapter; Fordham University and Law School Bargaining Committee*, 193 N.L.R.B. 134 (1971).

were members of the Society of Jesus.<sup>2</sup> The union moved to exclude the clerics from the bargaining unit while the university took no position on the question. The findings of fact included that:

Most Jesuits live in a separate building, and their salaries are paid to the Jesuit community, an incorporated body, which houses and feeds them. The Jesuits may, with the permission of their religious superior, live away from this building and receive their own salaries; such permission has never been refused, but only 2 of the 70 Jesuits on the full-time faculty presently live away from the community. The Jesuits are hired in the same manner as other faculty members, and their salaries and other terms and conditions of employment are determined in the same manner. A Jesuit who leaves the Order may remain a faculty member and receive the same salary formerly paid to the community on his behalf. He may remain at Fordham and accept tenure despite the objection of the Order.<sup>3</sup>

The Board concluded: 'There is no evidence that membership in the Order is in any way inconsistent with collective bargaining with respect to a Jesuit's salary or other terms and conditions of employment. Accordingly, we shall include the Jesuits in the unit'.<sup>4</sup>

A contrary result was reached by the N.L.R.B. in *Seton Hill College*.<sup>5</sup> In *Seton Hill*, the union moved to exclude from the bargaining unit those faculty who were members of the religious community which operated the college because they lacked a community of interest with the lay faculty. Among the bases for the asserted lack of a community interest, the union argued that the sisters were not interested in wages since they took a vow of poverty, returned part of their wages to the college under a contractual agreement, would not strike the college, and managed the college.<sup>6</sup> The employer argued that the vow of poverty did not preclude an interest of religious employees in their wage, that the religious employees receive the same monetary wage as lay faculty, that these employees are hired on the same basis as lay faculty, that they work the same hours and perform similar assignments in all departments, that religious employees sign employment contracts identical to those signed by lay faculty, and that they have the same supervision and enjoy the same conditions of employment as other workers.<sup>7</sup>

The Board concluded that the religious order held title to the buildings and grounds of the college, and that governmental power over the college was vested in a board of which fifty per cent of the membership were required to be members of the Order. The Board further stressed that the Superior of the Order

2. *Ibid.*, p. 139.

3. *Ibid.*

4. *Ibid.*

5. *Seton Hill College and Seton Hill Professional Association, Pennsylvania State Education Association*, 201 N.L.R.B. 1026 (1973).

6. *Ibid.*, p. 1027.

7. *Ibid.*

referred nuns to the president of the college for assignment to the college faculty, and that the college had a uniform salary scale, used a standard form employment contract, and provided similar teaching assignments to all faculty.<sup>8</sup> A crucial finding in the Board's decision was the fact that the religious members took vows of poverty and obedience which required the nuns to relinquish a right to ownership of temporal goods and to submit to the Order's Superior in the case of assignment.<sup>9</sup> Further, the Board found that the religious faculty did not receive remuneration directly from the college, but instead the nun's wages were paid directly to the Order which returned the balance of salaries to the college in the form of an annual gift after deducting a living allowance.<sup>10</sup>

The Board ruled that the members of the Order should not be included in the same bargaining unit as the lay faculty. Reasoning that, although the work and working conditions of the two groups were identical, their interests were divergent; the lay faculty members worked in an employer-employee relationship while the religious employees were viewed as quasi-employers who were subject to a vow of obedience to their Superior who served on the Board of Trustees. Moreover, the Board determined that the economic interests of the religious and lay employees did not coincide because the lay employees had a particular interest in their wage, while the religious employees were obligated by their vow of poverty and a contractual duty to return a substantial portion of their wages to the college. Recognizing that the college paid into the pension and insurance programmes for the lay faculty while the Order made separate payments for its religious members, the Board observed: 'The fact that the college had unilaterally established separate programmes of fringe benefits for lay faculty and sisters indicates recognition on its part that the two groups have different interests'.<sup>11</sup> The Board observed in a footnote to its opinion: 'To the extent that [the opinion in] *Fordham University* may be deemed inconsistent with this decision, it is hereby overruled'.<sup>12</sup>

The *Seton Hill* decision was quickly followed by another 1973 decision in *Carroll Manor Nursing Home*<sup>13</sup> which reached a similar result. The employing nursing home was maintained and operated by the Carmelite Order. The Board found the home to be 'religiously associated' rather than a religious

8. *Ibid.*, p. 1026.

9. *Ibid.*, pp. 1026-27.

10. *Ibid.*, p. 1027.

11. *Ibid.*

12. *Ibid.*

13. *Carroll Nursing Home and Service Employees International Union, Local 82 AFL-CIO*, 202 N.L.R.B. 67 (1973).

operation.<sup>14</sup> The employer contended that non-administrative employees who were members of the Order should be included in the bargaining unit. The Board found that, although all employees worked the same hours and shifts, the nuns were on a separate monthly rather than biweekly or hourly basis. Further, the Board determined that the nuns' salaries were bookkeeping entries with a deduction and payment made to cover incidental expenses, with the remainder transferred to the Order's Mother house. The Board also noted that the nuns were subject to vows of poverty and obedience. The N.L.R.B. held that the religious employees had particular interests resulting in an employment relationship different from the other employees and were properly excluded from the bargaining unit.

In 1975, in *Saint Anthony Center*,<sup>15</sup> the Board followed the general principles set out in *Seton Hill* and *Carroll Manor Nursing Home* but specifically distinguished employees who were members of the religious order that operated the employing nursing home from employees who were members of religious orders unrelated to the home. As to the employees who were affiliated with the Order operating the home, the Board found that their terms and conditions of employment differed substantially from those of their lay counterparts.<sup>16</sup> It noted that the members of the Order took vows of poverty, chastity, and obedience to God and the superior of the Order, that the members of the Order did not receive direct remuneration from the employer, that they lived within the facility, and that they were subject to different disciplinary procedures.<sup>17</sup> The Board held that members of the Order were properly excluded from the bargaining unit on the ground that their economic interests do not coincide with those of the lay employees because they were subject to different terms and conditions of employment, and because there were possible conflicts of loyalty resulting from their membership in the Order which controlled the home.<sup>18</sup>

The Board distinguished other religious employees who were members of orders other than that which operated the home. It found that these religious employees were treated just like any other member of the lay staff. Such employees received direct remuneration from the employer, received the same amount of compensation as other employees, and were on the same payroll.<sup>19</sup> The Board also noted that these employees were not bound by a vow of

14. *Ibid.*

15. *St. Anthony Center*, 220 N.L.R.B. 1009 (1975).

16. *Ibid.*, pp. 1011-12.

17. *Ibid.*, p. 1011.

18. *Ibid.*, pp. 1011-12.

19. *Ibid.*, p. 1012.

obedience to anyone operating the home. Thus, the Board found that despite membership in a religious order, these non-affiliated employees shared a community of interest and working conditions and were properly included in the bargaining unit.

In *St. Rose de Lima Hospital, Inc.*,<sup>20</sup> the Board decided to exclude from a bargaining unit members of a religious order which owned and operated an employing facility. The Board, without analysis, decided the case on the authority of *Saint Anthony Center* and *Seton Hill*.

However, in *D'Youville College*,<sup>21</sup> decided the same year as *St. Rose*, the Board explicitly distinguished *Seton Hill College*. First, the order which was associated with D'Youville College, and which the religious employees were members of, did not own or control the College. Instead, an independent board of trustees had control over the property and policy of the College. No more than one third of the trustees were members of the Order. The Board concluded that there was no basis for holding that the religious employees were anything other than regular employees. Second, the Board noted that, in *Seton Hill*, the union objected to the inclusion of the religious employees, but no similar objection was voiced here. Thus, although the religious employees had taken vows of poverty and only retained from their salaries amounts sufficient to cover their living expenses, there was a sufficient community of interest to permit their inclusion in the bargaining unit.

In 1977, three cases were decided by United States Court of Appeals, two by the Second Circuit<sup>22</sup> and one by the Third Circuit,<sup>23</sup> which considered the propriety of the Board's determination to exclude employees who were members of religious orders from bargaining units. In *Nazareth Regional High School v N.L.R.B.*, the Second Circuit upheld an order of the N.L.R.B. based on a finding of a number of unfair bargaining practices. The employer school defended that the bargaining unit was inappropriate because it improperly excluded religious faculty. The Court dismissed this argument in a footnote with the observation that:

[A]lthough subject to the same conditions of employment and holding positions of equal responsibility, the members of the religious faculty are paid substantially less than the lay faculty. The N.L.R.B. has wide discretion in determining the appropriate bargaining unit, . . . and the exclusion of a group of employees because

20. *St. Rose de Lima Hospital, Inc.*, 223 N.L.R.B. 1511 (1976).

21. *D'Youville College*, 225 N.L.R.B. 792 (1976).

22. *Niagara University v. N.L.R.B.*, 558 F.2d 1116 (2d Cir. 1977); *Nazareth Regional High School v. N.L.R.B.*, 549 F.2d 873 (2d Cir. 1977).

23. *N.L.R.B. v. St. Francis College*, 562 F.2d 246 (3rd Cir. 1977).

of substantial variance in pay scale was a proper exercise of discretion. The unit of non-supervisory, full-time, lay faculty is appropriate.<sup>24</sup>

In *Niagara University v. N.L.R.B.*, the Court of Appeals reached a significantly different result. The opinion devoted extensive consideration to the propriety of excluding religious employees from a bargaining unit. Niagara University appealed an N.L.R.B. establishment of a bargaining unit excluding seventeen Eastern Province Vincentians who were members of the Order that founded and that was associated with the University. Niagara contended that the appropriate unit included all full-time faculty. The court conceded that the determination of the appropriate bargaining unit involved the informed discretion of the Board. Nevertheless, it found the exclusion of religious employees to be arbitrary and inconsistent with prior decisions.

The Board had found that the Eastern Province Vincentians did not share a community of interest with lay employees. This determination rested on the finding that the priests were subject to a vow of poverty, lived communally, did not have written contracts, were not eligible for tenure, and were subject to reassignment.

The court first determined that the Board had mistakenly relied on *Seton Hill*, which was distinguishable on the grounds that the university rather than the particular Order held title to university property, and that no more than one third of the board could be Vincentians. The court recognized *D'Youville College* as proper authority with respect to the ownership and constitution of the board. The court stressed the fact that the board controlled the university, thus the identification of the religious faculty with the employer found in *Seton Hill* and related cases was absent. Second, the court found that the Board erroneously found a lack of community interest on the basis that the religious faculty was subject to a vow of poverty. The court noted the Board's inconsistency in the determination to include non-Vincentian religious employees who were subject to a vow of poverty and excluding the Vincentians on the basis of their vow of poverty. It cited the Board's analysis of the vow of poverty and the unproven assumption that a desire for income is somehow related to the particular way in which money is spent. That the Order made a gift of funds to the university was irrelevant; the court distinguished *Seton Hill* on the basis that the Order in that case was contractually bound to return wage funds to the college, and the court cited approvingly *D'Youville College*, where the nuns made a gift to the college without any effect on the employment status of the nuns. Both religious and lay faculty in the instant case had the same wage scale, same working conditions, same personal policies, and were eligible for the same

24. *Nazareth*, p. 879, n. 3 (citations omitted).

insurance and retirement plan. The court observed that: 'The differences that do exist, such as the religious faculty not being tenured and not actually participating in the employer's retirement plan, were found by the Board in the unit clarification proceeding to be "hardly the whole or even an overwhelmingly large part of the employment situation"', and they indicate little more than a diversity of immediate interests that would be found in any unit, such as one combining young and old employees'.<sup>25</sup> The court concluded that there was a sufficient community of interest between lay and religious faculty so that exclusion of the Vincentians was arbitrary.

In *N.L.R.B. v. Saint Francis College*, the Third Circuit followed the decision in *Niagara University* and distinguished *Nazareth Regional High School*. The only issue before the court was the appropriateness of the Board's determination of the faculty bargaining unit and the exclusion of the Franciscan faculty whose order was associated with the college.

The court's findings of fact included that: lay members were elected to the board of trustees, the order had released the college from its debts in exchange for a tract of land, and the Franciscans were under contractual agreements largely identical to the lay faculty. The court noted two special features of the Franciscans' activity: they donated approximately 50% of their salary to the college as an unrestricted gift, and their checks were sent directly to their monastery, although they had a right to receive them directly. The Franciscans participated in the short-run disability plan but not the pension or insurance programme.

The court distinguished *Seton Hill* on several grounds. There was no evidence that the Franciscan Order controlled the college. Rather, the college was owned and administered by a board of trustees which included lay members; the Franciscans applied independently for teaching positions; gifts to the college by the Order were voluntary and not contractually required. Moreover, the court observed that *D'Youville* and *Niagara* had seriously eroded *Seton Hill*. *D'Youville* stressed that the corporate ownership of an enterprise governed by an independent board eliminated any basis for holding religious employees to be identified with the employer. Further, the court interpreted *Niagara* as stressing that vows of obedience were too indirect a link to establish an identity of interest between employee and employer, and that the vow of poverty did not eliminate an interest in salary since the recipients had an interest in sums being available to support the Order and to support charitable work. *Nazareth Regional High School* was distinguished by the court on the ground that the

25. *Niagara*, p. 1121.

fact that the Franciscans chose to donate 50% of their salary to the college could not be held equivalent to a situation where religious faculty were paid substantially less than lay faculty.

The court found that the vow of obedience referred to religious matters and not to the employee-employer relationship. As a result, the court ruled: '[T]here is nothing in the record to support a finding that the Franciscan faculty, through vows of obedience or shared commitment, differ from lay faculty in terms of their employment relationship'.<sup>26</sup> As to compensation, the court found no difference in salaries. The difference in fringe benefits were minimal and not sufficient to differentiate the Franciscans from other employees. The court held that the exclusion of the Franciscan faculty was unreasonable and arbitrary and constituted an abuse of discretion by the Board.

The concurring opinion in *Saint Francis* identified two reasons why the exclusion of the religious faculty was improper.<sup>27</sup> With respect to salary and fringe benefits, the concurrence maintained that it was unreasonable to assume that religious persons who spend less money on themselves are therefore less interested in their incomes. Second, nothing in the record supported the inference that a shared religious identity between religious faculty members and individuals in college administration would result in a consolidation of views that would compromise the employer-employee relationship.

The National Labor Relations Board has continued to give close scrutiny to situations involving religious employees of church-affiliated enterprises. In *Mercy Hospital of Buffalo*,<sup>28</sup> the Board excluded a religious employee from the bargaining unit on the ground that the employer's by-laws required more than one-half of the members of the board of trustees to be members of the religious order with which the employee was affiliated. It concluded that the religious employees were related to the employer. The N.L.R.B. distinguished *Niagara* on the ground that there the Order did not have legal title to university property, and no more than one third of the trustees could be members of the Order. *Saint Francis* was distinguished on the ground that the decision turned on the inadequacy of the vows of obedience and poverty to establish a lack of community interest. In *Mercy Hospital*, the control of the board of trustees by the Order of which the religious faculty was a member created sufficient identity between the employer and employee, and the religious employee was properly excluded from the bargaining unit.

26. *St. Francis*, p. 253.

27. *Ibid.*, pp. 255-57.

28. *Mercy Hospital of Buffalo*, 250 N.L.R.B. 949 (1980).

In *Catholic Community Services*,<sup>29</sup> the Board held that employees of religious orders shared a sufficient community of interest with other employees that they should be included in the bargaining unit. It found that the employees who were members of the religious orders were subject to the same terms and conditions of employment as lay employees receiving the same rates of pay, performing the same job functions, and subject to the same personnel policies. The fact that some religious employees lived in facilities owned by the employer, and the fact that there were different tax withholding rules for members of religious orders were deemed irrelevant. The Board concluded: 'There is no special relationship between the employer and the orders to which certain employees belong, although at least one of the orders involved voluntarily makes charitable contributions to Catholic Community Services'.<sup>30</sup> It therefore determined that all employees shared a community of interest and were to be included in the bargaining unit.

The development of case law which views religious employees as sharing a community of interest with other employees so that they should be included in collective bargaining units is consistent with the provisions of the Canon Law and church policy. The consistency of a religious vocation and union membership is reflected in a recent statement of the Sacred Congregation for Religious and Secular Institutes entitled *Religious Life and Human Promotion* which states:

In principle, there does not seem to be any intrinsic incompatibility between religious life and social involvement even at the trade-union level. At times, according to different laws, involvement in trade union activity might be a necessary part of participation in the world of labor; on the other hand, such involvement might be prompted by solidarity in the legitimate defense of human rights.<sup>31</sup>

This principle is codified in the new Code of Canon Law which recognizes the religious employee's rights of association and rights to just compensation, participation, and social welfare.

#### *Church-Affiliated Institutions and National Labor Relations Board Jurisdiction*

In 1970, the N.L.R.B. began to assert jurisdiction over labour disputes in nonprofit colleges and universities.<sup>32</sup> The Board extended its jurisdiction in 1971 to include private, nonprofit, secondary and elementary schools,<sup>33</sup> and

29. *Catholic Community Services*, 254 N.L.R.B. 763 (1981).

30. *Ibid.*, p. 765.

31. 'Religious Life and Human Promotion' in Sacred Congregation for Religious and the Secular Institutes, *Religious Life and Human Protection (April 25-28, 1978) and the Contemplative Dimensions of Religious Life (March 1980)* (St. Paul ed.) (n.a.), p. 15.

32. *Cornell University*, 183 N.L.R.B. 329 (1970).

33. *Shattuck School*, 189 N.L.R.B. 329 (1970); *The Judson School*, 209 N.L.R.B. 677 (1974).

subsequently sought to assume jurisdiction over all private 'religiously associated' elementary and secondary schools that were not 'completely religious'.<sup>34</sup>

In 1976, the National Labor Relations Board ordered two groups of Catholic high schools, that had allegedly violated provisions of the National Labor Relations Act,<sup>35</sup> to negotiate with N.L.R.B. certified unions wishing to represent the lay members of their facilities.<sup>36</sup> The church-affiliated schools maintained that the Board lacked jurisdiction over them, in that they did not fall within the jurisdictional authority granted to the Board, and that the exercise of such jurisdiction would violate the First Amendment.

The Seventh Circuit Court of Appeals declined to enforce the N.L.R.B. order.<sup>37</sup> The court ruled that the assertion of jurisdiction over all non-secular organizations, except those which were 'completely religious' was improper since the distinction between 'completely religious' and 'religiously associated' did not entail sufficient limits for exercise of Board discretion. The court further concluded that subjecting church-affiliated schools to Board authority would violate the First Amendment through interference with the school's right to manage its own affairs in accordance with religious tenets.

In *N.L.R.B. v. Catholic Bishop of Chicago*,<sup>38</sup> the Supreme Court held that the N.L.R.B. had no jurisdiction over a union of lay teachers in 'church-operated' secondary schools. The holding was based on a narrow construction of the National Labor Relations Act because of the 'difficult and sensitive' constitutional questions which the Court felt it would otherwise have had to face. The Court applied the rule of statutory construction that no act of Congress should be construed as violating the Constitution if a constitutional construction is possible. The Court suggested that a reading of the Act as authorizing the Board to exercise jurisdiction over religious schools would involve a violation of the free exercise clause of the Constitution.

The Court failed to find any clear congressional intent that the Act encompass church-operated schools. The Court noted that there was 'no clear expression of an affirmative intention by Congress that teachers in church-operated schools should be covered by the Act' since Congress never considered religious schools in relation to the Act. Moreover, the Court concluded after examining

34. *Henry M. Hald High School Association*, 213 N.L.R.B. 415 (1974).

35. *Catholic Bishop of Chicago*, 224 N.L.R.B. 1221 (1976); *Diocese of Fort Wayne-South Bend, Ind.*, 224 N.L.R.B. 1226 (1976).

36. 29 U.S.C., secs. 151-69.

37. *Catholic Bishop of Chicago v. N.L.R.B.*, 559 F.2d 1112, 1131 (7th Cir. 1977).

38. *N.L.R.B. v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979).

the church-teacher relationship in a church-operated school, that the exercise of Board jurisdiction would present a 'significant risk' that the First Amendment would be infringed.

In a dissenting opinion, Justice Brennan argued that the majority incorrectly read the language and history of the Act and was not consistent with the Court's own precedents.<sup>39</sup> The dissent maintained that the Act on its face covered all employers with sufficient impact on interstate commerce, except for those falling within the Act's eight express exceptions. Justice Brennan contended that none of the express exceptions pertained to schools, and that there was no showing of Congressional intent to exclude church-operated schools from Board jurisdiction. Moreover, the Court's own precedents were said to apply the Act to all employers who met the interstate commerce requirements.

The decision in *Catholic Bishop of Chicago* has been the subject of much commentary and criticism. While much of this analysis must remain beyond the scope of this article, the question does arise whether or not this decision and the initial action of Church authorities in resisting certification can be reconciled with the Church's teaching on labour relations and its support of unionization. This case can be reconciled with the Code of Canon Law and the Church's traditional teaching on labour relations. It does not deny the right of school employees or lay employees to unionize or form associations for collective action. It merely establishes that the form, structure, and rules governing collective bargaining and employer-employee relations established by the National Labor Relations Act are not binding on church-operated enterprises. Forms of worker association other than those based on the industrial model are thus made available to church-operated institutions.

The Church's teaching as reflected in papal encyclicals, conciliar and synodal documents, as well as the provisions of the Code of Canon Law, make it clear that there is not one unique form of association appropriate to achieve employee rights and social justice. As the Church's teaching on labour relations has broadened beyond industrial workers to include agricultural workers, craftsmen, and professionals, it increasingly has been stressed that organizational arrangements should be developed that would be appropriate to this form of activity and the needs of the workers. Whether or not a church affiliated enterprise submits to the jurisdiction of the National Labor Relations Board, the new Code of Canon Law and the tradition of the Church on the matter of labour relations make it clear that lay people working in Church enterprises have a right freely to associate to vindicate their rights, and that they 'have

39. *Ibid.*, p. 508.

a right to a decent remuneration suited their condition; by such remuneration they should be able to provide decently for their own needs and for those of their family with due regard for the prescriptions of civil law; they, likewise, have the right that their pension, social security and health benefits be provided' (Canon 231).