

IN THE NATION

LABOR

Religious care home invokes church-state split to halt union

By Drew Mendelson

KANSAS CITY, KN

AN ISSUE THAT BEGAN AS A labor dispute at a small Catholic nursing home here has received international attention and has raised the constitutional issue of union organizing rights at church-run health care institutions.

The most recent development came March 19 when two members of Service Employees International Union (SEIU) Local 96 of Kansas City traveled to Rome in a futile attempt to have Pope John Paul II intercede in the dispute, which has now dragged on for two years. The women were denied an audience with the Pope and were also rebuffed in their request to meet with papal staff to explain the situation in Kansas City.

Ultimately, they were able to contact the union that represents workers at the Vatican. One official agreed to write an article to be printed in the union's newspaper, which, he assured them, the Pope reads regularly. The union also promised to bring up the issue at its next executive board meeting.

What is the issue that galvanized these Kansas City union members so much that

they sought papal help in resolving it? And what did they hope the Pope could do?

The story revolves around St. Joseph Home operated by the Catholic Archdiocese of Kansas City. On May 27, 1982, the 125 employees of the home voted nearly unanimously to have Local 96 as their bargaining representative. Over the objections of the archdiocese and the home's management, the National Labor Relations Board (NLRB) certified the election and directed the home to begin negotiating a contract with Local 96. The management refused, claiming that in ordering the negotiations the NLRB was violating First Amendment guarantees of separation of church and state.

In December of that year the general counsel of the NLRB ruled that St. Joseph Home had no legal or constitutional ground for refusing to negotiate. General Counsel William Lubbers observed that the home was stalling in hopes of forcing a court test. He asked the labor board to issue a summary judgment directing negotiations. The judgment was issued and the home still refused. Subsequently, the NLRB issued an enforcement order and Lubbers filed suit in the U.S. 10th Circuit Court asking that the enforcement order be upheld. This court action has now been withdrawn by the NLRB.

Local 96 officials, including Executive Director Walter Pearson, believe no constitutional issue is involved here. Pearson charged that the court action is a clear attempt to bust the union. The case could have gone all the way to the U.S. Supreme Court and would have taken up five years or more in getting there.

Meanwhile, the workers would have no contract with the home and no protection for their union activity. Kansas is a right-to-work state where workers do not have to belong to the union that represents them. Pearson has expressed fears that a five-year delay in obtaining a contract will result in the loss of all the union's membership at the home.

Pearson has also pointed out that the home is hardly a religious institution. "Half of their budget comes from the state of Kansas and from the Veterans' Administration," he noted, adding that the city paid for the rehabilitation of the building the home occupies in Kansas City. "Ye who live by the secular dollar," Pearson said, "should abide by the secular law."

Still, Archbishop Ignatius Strecker, who heads the archdiocese, adamantly states that the workers there are doing a religious mission and that the state should have no authority over them. Pearson points out that workers there make barely

more than the minimum wage. And long-time workers make only about \$3.70 an hour for doing patient care, 20 percent less than the wages paid to workers at union homes in the area.

The issue has been raised before. The right of workers to form unions was affirmed by Pope John Paul II in a 1981 encyclical on work stating that "unions are indispensable." The American Catholic bishops—a liberal group—issued a pastoral letter shortly thereafter saying that workers in Catholic health-care institutions have the right to form unions.

Msgr. Francis Lally, secretary of the United States Catholic Conference, wrote, "It's interesting how some orders of nuns have a keen social conscience when working with people in Appalachia or in urban missions, but then take a hard line when it comes to unions at their own hospitals."

Archbishop Strecker offered a different view, writing, "A union designed for our commercial-industrial society can only do irreparable harm to a St. Joseph Home and to all Church-affiliated service institutions.... Labor Union 96, in a St. Joseph Home, would not be in the best interest of our American citizens...."

How will the courts deal with the issue? The closest the Supreme Court has

The Pope has affirmed a worker's right to unionize.

ever come to deciding was in 1979 when it ruled in favor of the church in a case involving teachers at a Chicago parochial school. In *NLRB vs. the Catholic Bishop of Chicago*, the court upheld a lower court ruling that the National Labor Relations Act (NLRA) was never meant to cover teachers in a religious institution. As a result, the school did not have to negotiate with the teachers' union. But the

"Through Co-op America we found a comprehensive health insurance plan that covers a wide range of community and alternative practitioners, with low unisex rates and socially responsible investment of premiums."

—IN THESE TIMES

IN THESE TIMES recommends this health plan for our readers

Co-op America's Health Insurance Plan combines secure, comprehensive coverage of your health care needs and gives you a voice in the benefits of the plan.

The plan is structured on a cooperative basis and the investments of your premiums are made in socially responsible enterprises.

With this insurance plan the needs of the members, not profits, are the bottom line. Co-op America is concerned with providing comprehensive health insurance at the lowest possible premiums for the maximum protection of medical expenses due to routine sickness or injury as well as catastrophic illness expense. The plan provides up to \$1,000,000 maximum lifetime benefit.

Unique features of the plan include benefits for health care received through primary care providers such as nurse practitioners, certified midwives, homeopaths, naturopaths, osteopaths, chiropractors and licensed physicians. Alternative care providers like acupuncturists, massage therapists and nutritionists as well as a wide range of mental health practitioners are covered.

The plan also covers reproductive health care for men and women...including the services of a licensed midwife, alternative birthing centers and home births. Birth control, abortions and vasectomies are covered as well.

Co-op America members collectively contribute to the plan and share in the claims experience. And their favorable claims experience benefits them. At the end of each policy year any monies remaining in the plan, after paying claims and administrative expenses and setting aside a prudent reserve for future claims, will be returned to the insured as an experience refund.



Co-op America has developed the plan in conjunction with Consumers United Insurance Company (CUIC) of Washington, D.C. CUIC, the underwriter and administrator of the plan, is the largest employee-owned insurance company in the United States and has a 20 year track record of successes as a registered cooperative.

This insurance plan is just one part of Co-op America's broad effort to change the way we do business. The plan is one of the many services Co-op America has to offer its members.

For more information please call us toll free at 1-800-424-9711, or mail the coupon below.

Please send me information on the health insurance and other products and services that Co-op America provides its members.

Name _____ Phone () _____
please print daytime

Address _____ County _____

City _____ State _____ Zip _____

Currently the plan is not available to residents of New York, Maine or Canada.

Co-op America
2100 M Street, NW, Suite 605
Washington, D.C. 20063

ITT-2

Co-op America... Putting People First

case—often cited as precedent for actions such as Archbishop Strecker's—does not directly relate to church-run nursing homes or hospitals.

In 1974 Congress amended the NLRA to cover non-profit health care institutions, including nursing homes. Thousands of workers were brought under the jurisdiction of the NLRB. Employees of church-run institutions were considered to be a special case by Congress. It added to the act a clause dealing with employees whose religious beliefs do not allow them to join a union.

In deciding the Chicago case, the Supreme Court stated that the legislative history of the 1974 amendment showed a clear "affirmative intention" to include church-run hospitals and nursing homes. But the Court never dealt with the constitutional question of church-state separation in the Chicago case. It took the easier course, deciding that it would only deal with schools in its ruling.

But Associate Justice William Brennan Jr. wrote a strongly worded dissent. First Amendment rights of religious institutions are very important, he noted. He said the court had shirked its duty by failing to take on what he said was the real issue: is a church-run nursing home a religious institution, or is it a business like any other non-profit institution?

Sen. Sam Ervin had proposed that the 1974 law exempt church-run homes. Sen. Alan Cranston, floor manager of the bill, explained why a religious exemption was wrong: "...Such an exception for religiously affiliated hospitals would seriously erode the existing national policy which holds religiously affiliated institutions such as proprietary nursing homes to the same standards as their nonsectarian counterparts...."

It looked as if the case of St. Joseph Home was well on its way toward bringing a Supreme Court ruling on the issue when the NLRB suddenly pulled it back.

Attorney Jack Hurley of Kansas City, who represents SEIU Local 96, said that he suspects political considerations have much to do with the case being shelved.

Initially, said Hurley, the NLRB informed him that they were pulling the case from the 10th Circuit to "rearticulate" a question of how the bargaining unit at the home was arrived at by the NLRB. St. Joseph Home had claimed that there should have been a single unit at the home representing all the workers including nuns working there. The NLRB said no. But NLRB rules also provide protection against "proliferation" of bargaining units. The NLRB at first indicated it wanted to study the St. Joseph Home case to see if the unit representing workers there should also represent nuns.

"That sounded innocent enough," said Hurley.

But the articulation period stretched into months and still the case had not gone back to the court. Then Local 96 began getting "mixed signals" from the NLRB, according to Hurley. Finally the board said that it was waiting for another case regarding bargaining unit proliferation that had a stronger chance of a favorable court decision than the St. Joseph Home case did.

Meanwhile, the entire constitutional issue of church-state separation has been shelved. Hurley charges that the NLRB—now dominated by Reagan appointees—has no intention of dealing with the issue. They just hope it will go away, he said.

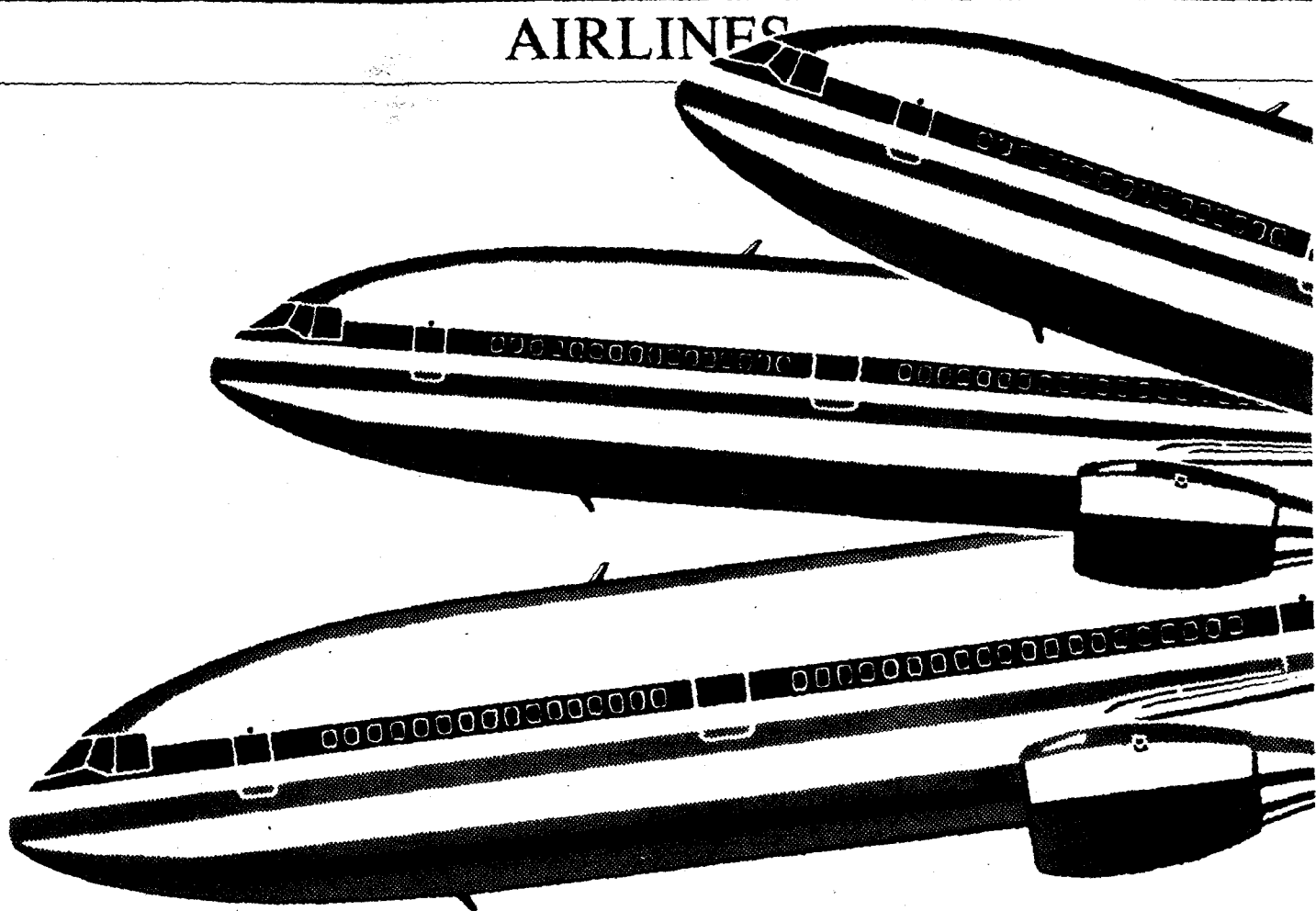
So the union planned the Rome trip, hoping to press Pope John Paul II to put into effect the principles he had espoused in his encyclical. While the women did not see the Pope, their message apparently got across. Upon their return they received the message that Archbishop Strecker had agreed to abide by the court's decision.

But since it now will not decide the case, the union notes, the archbishop's gesture is an empty one.

So the question remains: do workers at church-run institutions, whose duties are primarily secular, have the right to join unions? It's unlikely that an answer is forthcoming.

Drew Mendelson is editor of *Union Advocate*, an AFL-CIO newsweekly published in St. Paul, Minn.

AIRLINES



El Al's labor woes spread to the U.S.

By Joan Walsh

ISRAEL'S GOVERNMENT-OWNED El Al Airlines has a history of turbulent union relations at home—labor unrest has resulted in 69 strikes in 10 years and a four-month company shutdown in 1982. By contrast, for two decades El Al and the Machinists union have negotiated contracts covering the firm's 235 American workers with comparative ease.

But that string of settlements came to an end this year when the Machinists refused a 46-point list of concession demands and went on strike March 15. As the shutdown enters its eighth week, the poorly publicized strike has attracted the attention of the Immigration and Naturalization Service (INS), which is reportedly investigating charges that El Al is illegally employing Israelis to replace the striking Machinists.

INS investigators won't confirm the probe, and when asked if investigators had contacted management about the Machinists' allegations, El Al General Manager David Schneider responded, "I'm not answering that." But strike leaders say INS criminal investigators have contacted them to look into complaints that some Israeli El Al employees have been working here illegally since the strike began.

The Machinists union, which represents ground mechanics, ticket and reservation staff, and commissary and cargo workers, says 75 replacement employees started work in mid-March. Some came from El Al operations in Chicago and Los Angeles, but many came from El Al jobs in Israel. When confronted with the Machinists' charges, El Al management contended that all Israeli replacements also held U.S. citizenship and American passports. Histadrut, the Israeli union representing all El Al employees there and pilots and flight crews here, demanded that the strikebreakers return home; El Al replied that as the Machinists returned to work, the replacements would return to Israel. With 25 percent of the strikers back on the job, El Al says only 10 "dual nationals" are still working.

The Machinists also contend that El Al managers have been performing strikers' duties in violation of their E-2 visas. District 100 General Chair Gene Hoffman reported to the INS that managers are

now doing customer service and cargo work.

While INS investigator Demetrios Georgakopoulos wouldn't confirm the INS probe, he noted, "We are aware of the El Al situation," which he described as complicated. "Some employees are dual nationals, while others are here on diplomatic visas. It's extremely fuzzy, because the airline is part of the government," Georgakopoulos said.

Israel owns 99.8 percent of the financially troubled airline. (Histadrut owns the other .2 percent.) The company went into receivership for court protection from its creditors in early 1983, a result of the four-month shutdown provoked by a wave of strikes in September 1982. El Al emerged from the business stoppage with concessions from its Israeli employees, most notably a pledge that each of the eight unions representing workers could no longer strike on its own; it now takes a decision by Histadrut. It also laid off 1,000 of its 4,900 workers and won wage and work-rule concessions from the unions.

The American employees, laid off without pay during the four-month stoppage, returned to work without concessions. But almost immediately the company began saying similar austerity measures would be necessary here, including a 30-month wage freeze, subcontracting commissary and automotive operations (which would lay off 22 people), vacation reductions, unlimited use of part-time employees and work-rule relaxation.

Schneider, general manager for El Al's North and Central America operations, contends the concessions are necessary to bring the firm back from the brink of bankruptcy. "It's not as if we're pulling in fat profits," he said. "We're surrounded by non-union shops cutting fares because they pay 40 to 50 percent of what we do. We can't live with these make-work rules."

While Hoffman and others say the

The strikers charge that El Al is illegally replacing them with Israelis.

union is willing to agree to certain concessions, including a 15-month wage freeze, vacation cuts and easing work rules, Schneider says those offers were either made late or indirectly. Counters Hoffman: "He's a liar. We made that formal counterproposal April 5 and they said it wasn't enough to reach an agreement."

Even the apparent communication problems convince the Machinists that the company is not out to negotiate a settlement, but to break the union. A visit to El Al as the strike began by a high-level ministry of transport official was portrayed as a symbol of the government's support for the company's intransigence, says Machinist steward and reservations clerk Motti Horowitz. Company officials have said they have "unlimited funds" to endure the strike, implying a government financial commitment as well. Israeli public opinion has been turned against the strikers by newspaper reports that Machinist leaders have made anti-Semitic remarks in bargaining—although many, including Hoffman, are Jewish—and that the union itself is pro-Palestinian Liberation Organization (PLO).

With Israeli replacements reportedly housed at New York's Hotel Lexington and strikebreakers escorted to and from work in armed limousines, the strike is not without a financial cost to El Al. But Schneider says the firm is saving money for now. "We haven't had one cancellation, one delay. Obviously this is not the best situation for the long term, but we're getting by with a lot less workers."

Both sides are digging in their heels. Once past the seven-week mark, strikers became eligible for unemployment insurance under New York law, which has strengthened the union's ability to stay out. The recent INS interest was a boost as well, since the strikers have had little success attracting attention or support for their efforts. Demonstrations at Kennedy Airport and the Israeli consulate have drawn hundreds of strikers and their supporters, but no media. Complaints to numerous politicians, from President Reagan to Gov. Mario Cuomo, have received no reply.

Hoffman and Chief of Stewards Stuart Schwartzberg met with U.S. Rep. Tom Downey (D-NY), who they say told them he "wouldn't pick a fight with the government of Israel." Up to now, the only political support has come from New York Assemblyman Frank Barbaro (D-Brooklyn), who got 59 assembly colleagues to sign a petition calling on the Israeli government to bargain with the strikers.

Schneider, however, believes the company is beyond reproach, even in its use of Israeli strikebreakers. "We consulted our attorneys and we knew exactly what we could do and we have not violated any laws. We're squeaky clean," he said. "When they [the INS] inquire of us, we will explain it all to them."