Harborcreek School for Boys[1] ***and*** **Amalgamated Food Employees Union Local No. 1 a/w United Food and Commercial Workers International Union, AFL-CIO, Petitioner.** Case 6-RC-8571

June 12, 1980

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND TRUESDALE

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer F. J. Surprenant. Pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 6, this case was transferred to the National Labor Relations Board for decision. Thereafter, the Employer and the Petitioner filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, including the briefs, the Board finds:

1. Harborcreek School for Boys is a private general care agency with its principal facility located at 5712 Iriquois Avenue, Harborcreek, Pennsylvania. It is engaged in the care and rehabilitation of socially and emotionally disturbed boys who are referred to it by various governmental social service agencies in the western Pennsylvania area. The Employer stipulated that during the 12 months preceding the date of the hearing it received gross revenues in excess of $2 million and purchased goods in excess of $50,000 which were received either directly or indirectly from outside the Commonwealth of Pennsylvania.

The Employer contends that the Board's exercise of jurisdiction in this matter would be violative of the freedom of religion clause of the first amendment of the United States Constitution and that Congress did not intend that the Board assert such jurisdiction. In support of its contention, the Employer presented evidence that the physical facilities of the Employer are owned by the Catholic Bishop of the Diocese of Erie, Pennsylvania, and that the school itself is not separately incorporated or otherwise chartered as an independent entity, and that the board of directors assumes its authority from the powers delegated to it by the diocese. The Employer also points out that the school was originally founded by a Catholic priest in 1911, that it was staffed until several years ago by Sisters of the Society of St. Joseph, and that the operation of the school by the diocese is an integral part of the Church's mission to perform works of mercy. We find no merit in the Employer's contention.

The record establishes that the purpose of the school is not the promulgation of the Roman Catholic faith but the provision of a social service on a nondenominational basis. Thus, the Employer is engaged in the care, treatment, and education of youths suffering from behavior disorders, learning disabilities, emotional and social maladjustments, and neurotic problems. The Employer's staff consists of professional child-care workers, teachers, nurses, and a supporting staff of teachers aides and kitchen, laundry, and maintenance employees. None of these employees is required to have any particular religious background or training and there is no showing that any employee is directly or indirectly involved in the teaching of a religious philosophy. In addition, although the diocese owns the physical plant facilities, the school receives all of its operating income from the various governmental agencies that refer clients to the school. Thus, while the work of the school is in accord with the charitable aims and purposes of the diocese, the school is not a religious institution with a sectarian philosophy or mission. On the record here, we find that our assertion of jurisdiction over the Employer in this matter would not violate the religion clause of the first amendment. Accordingly, we conclude that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.[2]

2. Amalgamated Food Employees Union Local No. 1 a/w United Food and Commercial Workers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The parties have stipulated, and we find, that the following employees constitute an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and part-time child care workers, teachers and teachers aides, nurses, kitchen

[1] The name of the Employer appears as amended at the hearing.

[2] See *Catholic Community Services*, 247 NLRB No. 103 (1980), and the cases cited therein.

workers, laundry workers and maintenance workers employed by Harborcreek School for Boys at the Employer's main campus, group homes, transmittal living units and intensive treatment units, located in and around Harborcreek, Pennsylvania, excluding the Executive Board, Executive Director, Unit Directors, Administrative Consultants, teachers not employed by Harborcreek, foster grandparents, college students in work study group, office and clerical employees, guards and supervisors as defined in the Act.

The parties stipulated that the child-care workers, teachers, and nurses are professional employees within the meaning of Section 2(12) of the Act and will vote in a "self-determination" election.[3] Accordingly, we shall direct separate elections in the following voting groups:

Voting Group (a): All teachers aides, kitchen workers, laundry workers and maintenance workers, but excluding guards and supervisors as defined in the Act.

Voting Group (b): All full-time and part-time child care workers, teachers, and nurses, but excluding all other employees, guards, and supervisors as defined in the Act.

The employees in the nonprofessional voting group (a) will be polled to determine whether or not they desire to be represented for collective-bargaining purposes by Amalgamated Food Employees Union Local No. 1 a/w United Food and Commercial Workers International Union, AFL-CIO.

The employees in voting group (b) will be asked two questions on their ballot:

(1) Do you wish to be included with nonprofessional employees in a single unit for purposes of collective bargaining?

(2) Do you wish to be represented for purposes of collective bargaining by Amalgamated Food Employees Union Local No. 1 a/w United Food and Commercial Workers International Union, AFL-CIO?

If a majority of the professional employees in voting group (b) vote "yes" to the first question, indicating their wish to be included in a unit with nonprofessional employees, they will be so included. Their votes on the second question will then be counted together with the votes of nonprofessional employees to decide whether or not the Union has been selected to represent the combined bargaining unit. If, on the other hand, a majority of the professional employees do not vote for inclusion, they will not be included with the nonprofessional employees. Their votes on the second question will be counted to decide whether or not they wish to be represented by the Union in a separate professional unit. If a majority in either the professional unit, the nonprofessional unit alone, or the combined unit vote for the Union, the Regional Director will issue an appropriate certification of representative for such unit or units.

[Direction of Election and *Excelsior* footnote omitted from publication.]

[3] The Board is prohibited by Sec. 9(b)(1) of the Act from including professional employees in a unit with employees who are not professional employees unless a majority of the professional employees vote for inclusion in the unit.