

**Archdiocese of Philadelphia or, in the alternative, Archdiocese of Philadelphia and each of 273 Parishes as Joint or Coemployers and Association of Catholic Teachers Local Union No. 1776, American Federation of Teachers, AFL-CIO, Petitioner. Case 4-RC-11987**

August 21, 1979

**SUPPLEMENTAL DECISION AND ORDER**

**BY CHAIRMAN FANNING AND MEMBERS PENELLO  
AND MURPHY**

On January 17, 1977, the National Labor Relations Board issued a Decision and Direction of Election<sup>1</sup> in the above-entitled proceeding finding that it would effectuate the purposes of the National Labor Relations Act, as amended, to assert jurisdiction over the Archdiocese of Philadelphia (hereinafter the Archdiocese or the Employer); that a question affecting commerce existed concerning the representation of employees of the Employer within the meaning of Section 2(6) and (7) and Section 9(c) of the Act; and that the petitioned-for archdiocesan-wide unit of lay teachers in 273 parish elementary schools was appropriate for the purposes of collective bargaining. Consequently, the Board directed an election in the appropriate unit.

Thereafter, the Employer filed a motion in the United States District Court for the Eastern District of Pennsylvania seeking preliminary and permanent injunctive relief from the Board's assertion of jurisdiction over the Employer. On February 17, 1977, the district court issued a preliminary injunction enjoining the Board from taking any further administrative action until the court ruled on the Employer's claims for permanent relief. On March 3, 1977, the General Counsel appealed to the United States Court of Appeals for the Third Circuit. On July 7, 1977, the district court issued an order permanently enjoining the Board from asserting jurisdiction or taking administrative action with respect to the parish elementary schools of the Archdiocese and the lay teachers employed therein. Subsequently, on March 21, 1979, the Supreme Court issued its decision in *N.L.R.B. v. The Catholic Bishop of Chicago, et al.*<sup>2</sup> In that case the Court affirmed a decision of the Seventh Circuit denying enforcement of a bargaining order issued by the Board against a church-operated Catholic school.<sup>3</sup>

Thereafter, the Board decided, *sua sponte*, to reconsider its decision in this proceeding in light of the Court's opinion in *Catholic Bishop, supra*. Accordingly, the Board filed a motion with the Third Circuit requesting the court to vacate the order of the District Court and to remand the case to the said District Court with instructions to hold it in abeyance in order to permit the Board to dismiss the representation petition in the instant case. On May 10, 1979, the court granted the Board's motion.

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.

Upon reconsideration of the entire record in this proceeding the Board has decided to vacate its previous Decision and Direction of Election in this proceeding and dismiss the petition filed herein.

As fully detailed in our January 17, 1977, decision, the Archdiocese of Philadelphia is a religious institution which encompasses 273 private parish elementary schools. Each of these schools is under the immediate direction of a parish pastor appointed by and responsible to the archbishop. The archbishop, who holds the supreme legislative, judicial, and persuasive authority in the Archdiocese, has delegated responsibility for the supervision of the schools to the archdiocesan superintendent of schools. Thus, the schools are operated by the Archdiocese.

Subsequent to the Board's original decision in this proceeding, the Supreme Court issued its decision in *Catholic Bishop, supra*. In its opinion the Court observed that although the respondents therein pressed their claims under the religion clauses of the first amendment, it first had to consider, under its traditional rules of statutory construction, "whether Congress intended the Board to have jurisdiction over teachers in church-operated schools"<sup>4</sup> before reaching the respondents' constitutional claims. The Court concluded that the Board did not have jurisdiction over the respondent on the ground that, "in the absence of a clear expression of Congress' intent to bring teachers in church-operated schools within the jurisdiction of the Board,"<sup>5</sup> it would decline to construe the Act in a manner that would require it to resolve difficult questions arising out of the guarantees of the religion clauses of the first amendment.

Upon reconsideration of our prior decision in this proceeding we conclude that our assertion of jurisdiction over the Employer herein cannot stand because it is contrary to the holding of the Supreme Court in *Catholic Bishop, supra*.

<sup>1</sup> 227 NLRB 1178.

<sup>2</sup> 440 U.S. 490 (1979).

<sup>3</sup> *The Catholic Bishop of Chicago v. N.L.R.B.*, 559 F.2d 1112 (7th Cir. 1977), denying enforcement of 224 NLRB 1221 (1976).

<sup>4</sup> *N.L.R.B. v. The Catholic Bishop of Chicago, supra*, 440 U.S. at 494.

<sup>5</sup> *Id.*

Accordingly, we shall vacate our previous Decision and Direction of Election and dismiss the petition filed herein.<sup>6</sup>

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<sup>6</sup> In view of our decision herein, we find it unnecessary to pass on the request of Association of Catholic Teachers Local Union No. 1776, American Federation of Teachers, AFL-CIO (the Petitioner), for withdrawal of the petition.

### ORDER

It is hereby ordered that the Board's Decision and Direction of Election in Case 4-RC-11987, reported at 227 NLRB 1178, be, and it hereby is, vacated.

IT IS FURTHER ORDERED that the petition herein be, and it hereby is, dismissed.