**Young Women's Christian Association of Metropolitan Chicago *and* Local 372, Child Care Division, Service Employees International Union, AFL–CIO.** Case 13–CA–17972

March 7, 1979

## DECISION AND ORDER

Upon a charge filed on August 22, 1978, by Local 372, Child Care Division, Service Employees International Union, AFL–CIO, herein called the Union, and duly served on Young Women's Christian Association of Metropolitan Chicago, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 13, issued a complaint and notice of hearing on September 27, 1978, against Respondent, alleging that Respondent had engaged in, and was engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges, in substance, that on June 8, 1978, following a Board election in Case 13–RC–13637 the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about August 14, 1978, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested, and is requesting, it to do so. On October 10, 1978, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On October 18, 1978, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on November 2, 1978, the Board issued an Order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed an opposition to the Motion for Summary Judgment.

Upon the entire record in this proceeding, the Board makes the following:

### Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent admits the factual allegations made in the General Counsel's Motion for Summary Judgment but denies that the unit is appropriate for collective bargaining and asserts affirmatively that the city of Chicago controls Respondent's labor relations to such an extent that it is precluded from bargaining effectively with the Union, and that Respondent shares the exemption of the City of Chicago as provided by the Act.

In the Motion for Summary Judgment, counsel for the General Counsel contends that all issues raised by Respondent were previously litigated and decided by the Board in the prior proceeding, *Young Women's Christian Association of Metropolitan Chicago*, 235 NLRB 788 [2] that the pleadings raise no factual issues litigable in this proceeding, and that summary judgment is proper. We agree.

Review of the record, including that of the underlying representation proceeding, 235 NLRB 106, shows that on February 10, 1975, Local 329, Child Division, Service Employees International Union, AFL–CIO (Local 329), filed a petition seeking certification as the collective-bargaining representative of certain employees of Respondent. Following a hearing, the Regional Director for Region 13 issued a Decision and Direction of Election on May 13, 1975, concluding that the designated unit was appropriate for collective bargaining and that Respondent's relationship with the city of Chicago did not deprive the Board of jurisdiction. Respondent thereafter requested review of the Regional Director's decision, and by telegraphic order dated July 3, 1975, the Board granted Respondent's request for review. On October 31, 1975, the Board issued a Decision on Review and Order, dismissing the petition.[3]

On April 16, 1976, Local 372, Child Care Division, Service Employees International Union, AFL–CIO (Local 372), the successor to Local 329, filed a petition for reconsideration and to reopen the record in Case 13–RC–13637. On June 4, 1976, the Board issued an Order granting petition for reconsideration and remanding for hearing to receive further evidence concerning the issue of whether the city of Chicago, acting through the Model Cities–CCUO, controls labor relations policies of Respondent to the extent that Respondent would be precluded from ef-

[1] Official notice is taken of the record in the representation proceeding, Case 13 RC 13637, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va., 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[2] See also *Catholic Bishop of Chicago, A Corporation Sole, Department of Federal Programs*, 235 NLRB 776, Members Penello and Murphy dissenting separately, and *The Chase House, Inc.*, 235 NLRB 792, Members Penello and Murphy dissenting separately.

[3] 221 NLRB 262.

fectively bargaining with Petitioner about working conditions at the day care centers.[4]

Following the second hearing, the Board, on April 7, 1978, issued a Decision and Direction of Election,[5] finding that since Respondent controlled and managed the day care centers and was responsible for the labor relations at the centers, and since the city, through the Model Cities-CCUO, was found to merely reimburse Respondent for the cost of operating the centers, Respondent did not share the city's exemption under the Act and therefore Board exercise of jurisdiction was proper.

The designated unit was also found to be appropriate for purposes of collective bargaining in voting groups (a) and (b) as set forth in the Board's Decision and Direction of Election of April 7, 1978. Thereafter, on May 31, 1978, an election was held. The tally of ballots for voting group (a) showed that a majority of the professional employees wished to be included in a unit of nonprofessionals, with two employees voting for inclusion and one employee voting against inclusion in the nonprofessional unit. The tally of ballots for voting groups (a) and (b) reflected that a majority of valid votes were cast for Local 372, with 30 employees voting for the Petitioner, 1 against, and 1 challenged ballot.

On June 8, 1978, the Regional Director issued a Certification of Representative certifying Local 372 as the representative of Respondent's child care employees in the unit found appropriate by the Board in its Decision and Direction of Election of April 7, 1978. No objections to conduct affecting the results of the election were filed.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representative proceeding.[6]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at the hearing any newly discovered or previously unavailable evidence; it does not allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

## Findings of Fact

### I. The Business of Respondent

The record indicates that the Young Women's Christian Association of Metropolitan Chicago (YWCA) is an Illinois nonprofit corporation engaged in providing social services for Chicago area women and girls. The YMCA has an annual gross revenue of approximately $1.75 million and during a representative 1-year period, purchased goods and services worth approximately $5,000 from sources outside State of Illinois. Respondent's day care operations account for approximately $540,000 of its gross revenue and account for approximately $3,000 of the YWCA's total purchases of goods and materials shipped directly to Respondent from outside the State of Illinois.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

### II. The Labor Organization Involved

Local 372, Child Care Division, Service Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

### III. The Unfair Labor Practices

#### A. *The Representation Proceeding*

##### 1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All child care workers, including social workers, assistant social workers, social worker aides, head teachers, teachers, teacher assistants, teacher aides, food service employees, and clerical employees employed by the Employer at its Coretta Scott King, Harriet M. Harris, and Uptown day care centers; but excluding center directors, site directors, maintenance employees, guards and supervisors as defined in the Act.

[4] This case was remanded along with *Catholic Bishop of Chicago, A Corporation Sole, Department of Federal Programs* and *The Chase House Inc.*, fn. 2, *supra*.

[5] 235 NLRB 788.

[6] See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

2. The certification

On May 31, 1978, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 13, designated the union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on June 8, 1978, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about August 14, 1978, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about August 14, 1978, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since August 14, 1978, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Young Women's Christian Association of Metropolitan Chicago is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 372, Child Care Division, Service Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All child care workers including social workers, assistant social workers, social worker aides, head teachers, teachers, teacher assistants, teacher aides, food service employees, and clerical employees employed by the Employer at its Coretta Scott King, Harriet M. Harris, and Uptown day centers; but excluding center directors, site directors, maintenance employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since June 8, 1978, the above-named labor organization has been, and now is, the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about August 14, 1978, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in, and

is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Young Women's Christian Association of Metropolitan Chicago, Chicago, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local 372, Child Care Division, Service Employees International Union, AFL-CIO, as the exclusive bargaining representative of its employees in the aforesaid appropriate unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Coretta Scott King, Harriet M. Harris, and Uptown day care facilities in the city of Chicago copies of the attached notice marked "Appendix."[7] Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

[7] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

MEMBERS PENELLO and MURPHY, dissenting: We dissent from the Board's decision to grant the General Counsel's Motion for Summary Judgment for the reasons stated in our separate dissenting opinions in the underlying representation case, *Young Women's Christian Association of Metropolitan Chicago*, 235 NLRB 788 (1978).

## APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local 372, Child Care Division, Service Employers International Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All child care workers including social workers, assistant social workers, social workers aides, head teachers, teachers, teacher assistants, teacher aides, food service employees, and clerical employees employed by the Employer at its Coretta Scott King, Harriet M. Harris, and Uptown day care centers; but excluding center directors, site directors, maintenance employees, guards and supervisors as defined in the Act.

YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF METROPOLITAN CHICAGO