

Young Women's Christian Association of Metropolitan Chicago and Local 372, Child Care Division, Service Employees International Union, AFL-CIO,¹ Petitioner. Case 13-RC-13637

April 7, 1978

DECISION AND DIRECTION OF ELECTIONS

On October 31, 1975, the National Labor Relations Board issued a Decision and Order* in the above-entitled proceeding finding that the city of Chicago controlled the labor relations policies of the Employer's three day care centers and ordering that the petition be dismissed. On April 16, 1976, the Petitioner, citing certain evidence developed at the hearing in *Hull House Association*, 235 NLRB 797, issued this day, requested that the Board reopen the record to receive said evidence and reconsider its Decision and Order of October 31, 1975. On June 4, 1976, the Board granted the Petitioner's motion and remanded this proceeding for further hearing.³ A second hearing was held on December 2 and 3, 1976. After duly considering the evidence introduced at that subsequent hearing, the Board has decided to reinstate the petition and direct an election.⁴

1. Two officials from Model Cities testified at the second hearing: Wade Parker, attached to the executive director's Programs Office, and Lillian Tauber, the director of Children's Services. Parker and Tauber explained the extent to which Model Cities' guidelines determine the labor relations policies of the so-called delegate agencies, such as the Employer, that contract with Model Cities to operate day care centers.

The Employer is reimbursed under a voucher system by Model Cities for the costs of operating the

centers. The guidelines established by Model Cities set forth those expenses that are reimbursable under this voucher system. These guidelines indicate, *inter alia*, the amount Model Cities will reimburse the Employer to cover the costs of salaries and fringe benefits for the day care center employees. Thus far, the Employer has not spent any more for salaries and fringe benefits than is reimbursable under these guidelines, but not because Model Cities has prohibited the Employer from increasing the salaries and fringe benefits of these employees with money from other sources.

Our initial findings regarding the working conditions of the day care center employees were derived from the testimony of Doris Wilson, the Employer's executive director. The assumption apparently underlying her testimony was that the Employer was only allowed to incur those costs that Model Cities would reimburse. For example, she testified that Model Cities limited annual-salary increases to 5 percent. Tauber's testimony, to the contrary, however, indicated that Model Cities has permitted other contractors, or delegate agencies, like the Employer, to increase salaries above this level. Although these agencies have supplemented Model Cities' funds with funds from other sources to provide the added increases, we cannot now find, as we did earlier, that the Employer's discretion to determine the salaries of the day care center employees "has been circumscribed to a considerable degree." Tauber also acknowledged that other delegate agencies, without any interference from Model Cities, had improved the fringe benefits of day care employees by using money from sources other than Model Cities.⁵

With respect to vacations, Tauber also explained that Model Cities would reimburse the Employer for the costs of giving each day care center employee 2 weeks' paid vacation. She acknowledged, however,

¹ The Petitioner's name appears as amended at the hearing.

² 221 NLRB 262.

³ The Board's order stated in relevant part:

IT IS FURTHER ORDERED that the record in this proceeding be, and it hereby is, reopened, and that a further hearing be held for the purpose of receiving evidence concerning the extent to which the City of Chicago controls the labor relations policies of the centers involved herein. Evidence that is relevant to this inquiry might include, but is not limited to testimony, from officials of Model Cities-CCUO and others, regarding the purpose and effect of the Model Cities-CCUO personnel policies that are applied to the centers herein; the nature and extent of any collective bargaining that may have occurred at Head Start and/or Day Care centers that have operated pursuant to the same contractual arrangement with Model Cities-CCUO as the centers herein have; and the role, if any, that Model Cities-CCUO has played, and currently plays, in such collective bargaining (including any involvement of Model Cities-CCUO in reviewing, modifying, or disapproving the outcome of any such collective bargaining).

This case was remanded along with *Catholic Bishop of Chicago, A Corporation Sole, Department of Federal Programs*, 235 NLRB 776, issued this day, and *The Chase House, Inc.*, 235 NLRB 792, also issued this day.

⁴ The Employer contends that the Petitioner's motion for reconsideration and to reopen the record was improperly granted. We disagree. As discussed below, the testimony of Model Cities' officials taken at the hearing in *Hull House Association, supra*, indicated to us that the evidence taken at the first hearing was incomplete and to a certain extent inaccurate. Petitioner's motion sought to introduce evidence that we believe should have been taken at the first hearing, but was not. See National Labor Relations Board's Rules and Regulations, Series 8, as amended, **Sec. 102.65(e)(1)**. The *Hull House Association* hearing was not concluded until March 19, 1976. Under the circumstances, we believe the Petitioner's motion was filed sufficiently prompt after the close of that hearing. See *Marianas Stevedoring & Development Co., Inc.*, 182 NLRB 1043 (1970).

⁵ Contrary to our earlier finding, Tauber also testified that Model Cities would under certain circumstances cover the costs of a pension plan for day care employees. According to Tauber, if the delegate agency's non-day care employees were covered by a plan, Model Cities would agree to reimburse the delegate agency for the cost of extending the plan to the day care employees. Further, as noted above, a delegate agency would not be prohibited from using funds from other sources to provide the day care employees with a pension plan. We also found earlier that Model Cities prohibited the payment of overtime to the day care center employees. We note that in *Catholic Bishop of Chicago, a Corporation Sole, Department of Federal Programs*, 235 NLRB 776, Tauber testified that Model Cities did not prohibit this.

that the Employer was free to increase the number of paid vacation days above 2 weeks by using money from sources other than Model Cities to cover the added costs of such an increase. Our earlier finding that the Employer needed Model Cities' permission to increase the number of paid vacation days assumed that the Employer could only pay for such an increase with funds allocated by Model Cities. As Tauber's testimony shows, Model Cities' permission is not necessary if the added increase is paid for with money from other sources. Although Model Cities has established a list of paid holidays that are reimbursable for the center, the Employer, according to Tauber, and contrary to our earlier finding, has some discretion to decide when to close from those listed.

Tauber's and Parker's testimony regarding Model Cities' hiring and firing guidelines is essentially the same as that given in *Catholic Bishop of Chicago, A Corporation Sole, Department of Federal Programs, supra*. For the reasons stated there, we find the Employer controls the hiring and firing of its day care employees.⁶

Pursuant to the remand order, evidence was also taken regarding the collective-bargaining agreements that were negotiated with Hull House Association, which operated child care centers under the same contractual arrangement with Model Cities as does the Employer. That evidence was essentially the same as that introduced in *Hull House Association, supra*, and *Catholic Bishop of Chicago, supra*, and we see no need to repeat the summaries found therein.

We therefore find that for the reasons stated in *Hull House Association* and in *Catholic Bishop of Chicago*, the city of Chicago, acting through Model Cities, does not control labor relations at the Employer's day care centers, and that these centers do not share the City's exemption under the Act.⁷

During a representative 12-month period, the Employer had annual gross revenues of approximately \$1.75 million and purchased goods and services worth approximately \$5,000 from sources outside the State of Illinois. As the Employer's gross revenue figure satisfies any gross revenue jurisdictional standard we have set,⁸ and its operations have more than a *de minimis* impact on commerce,⁹ we find that it would effectuate the purposes of the Act to assert jurisdiction herein.

⁶ Thus, contrary to our earlier finding, we do *not* find the qualifications Model Cities has established for each day care job classification limits the "Employer's discretion regarding staffing decisions . . . to a significant extent."

⁷ For the reasons stated in *Catholic Bishop of Chicago*, we also reject the Employer's intimate connection argument.

⁸ The day care centers had gross revenues of approximately \$450,000, and direct inflow of approximately \$3,000. We note that these figures alone

2. The parties stipulated, and we agree, that the Petitioner is a labor organization within the meaning 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 Regional Director found that the social workers employed at the Employer's day care centers were professional employees within the meaning of the Act and entitled to a separate vote under Section 9(b)(1) of the Act. Neither party requested review of this finding.¹⁰

We find, therefore, that the following employees may constitute a unit appropriate for the purposes of collective bargaining 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.

The unit set forth above includes professional and nonprofessional employees. However, the Board is prohibited by Section 9(b)(1) of the Act from including professional employees in a unit with employees who are not professionals unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, to ascertain the desires of the professional employees as to inclusion in a unit with nonprofessional employees, we shall direct separate elections in the following voting groups:

Voting group (a): All child care employees including 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, social workers, maintenance employees, guards and supervisors as defined in the Act.

satisfy the jurisdictional standard for day care centers. *Salt & Pepper Nurser, School & Kindergarten No. 2*, 222 NLRB 1295 (1976) (Member Fanning dissenting).

⁹ Compare *Inglewood Park Cemetery Association*, 147 NLRB 803 (1964).

¹⁰ The Regional Director also found that the head teacher at Harris Center should be allowed to vote subject to challenge, and that the centers' teachers were not professionals. Neither party requested review of these findings.

Voting group (b): All social workers employed by the Employer at its Coretta Scott King, Harriet M. Harris, and Uptown day care centers; 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 Local 372, Child Care Division, Service Employees 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 Local 372, Child Care Division, Service Employees 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 vote of the 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 alone, 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 Elections omitted from publication.]¹¹

MEMBER PENELLO, dissenting:

I would not assert jurisdiction over the day care center operations of the Employer.¹² I am persuaded that Model Cities—Chicago Committee on Urban Opportunity (Model Cities), an agency of the city of Chicago, exercises sufficient control over the centers' labor relations policies as to disable the Employer from bargaining with a union over the wages, hours,

and other working conditions of the employees at the centers.

The centers, which provide day care and educational services for underprivileged children, are funded on an annual basis through contracts between Model Cities and the Employer.¹³ By these contracts, each of which contains a budget and a "work program" outlining in detail the expenses and operations of each center for the year, Model Cities governs virtually all facets of the centers' labor relations. Thus, Model Cities has established salary ranges for every employee job classification, and each contract specifies the exact amount to be paid each employee out of Model Cities' funds, the educational and other qualifications required for each position,¹⁴ the hours to be worked by the employees, and the vacations, holidays, and fringe benefits to which the employees are entitled. Further, Model Cities conducts regular and detailed audits to insure compliance with its standards, and may terminate a contract with the Employer for noncompliance.

Model Cities exercises the same degree of control over the labor relations policies of each of the employers operating its day care center programs. In my dissent in *Catholic Bishop of Chicago, A Corporation Sole, Department of Federal Programs*, 235 NLRB 776 (1978), which involved another Model Cities delegate agency, I explained in detail my reasons for concluding that such employers are not granted sufficient freedom to engage in genuine collective bargaining. I would therefore dismiss the petition in this case for the same reasons I refused to assert jurisdiction over the employer in *Catholic Bishop*.

MEMBER MURPHY, dissenting:

Contrary to my colleagues, I would not assert jurisdiction over the Employer's three day care centers. I find that the city of Chicago—acting in furtherance of fundamental governmental objectives—exercises substantial and pervasive control over the labor relations policies of the centers herein which precludes the Employer from effectively bargaining concerning those centers' working conditions.

Here the Employer's day care centers are funded through the Social Security Act of 1935. And the primary purpose of the program is to provide social and educational services for children of poverty. The centers are operated pursuant to servicecontracts let annually by Model Cities—Chicago Committee on

Government provides 75 percent of the funds for the day care centers, while the city of Chicago contributes 25 percent in matching funds.

¹⁴ Although the Employer does the initial screening and selection of hires, candidates for promotion, etc., such actions must be reported to Model Cities within 5 days for its approval.

¹¹ [Excelsior footnote omitted from publication.]

¹² The Employer operates three day care centers.

¹³ Model Cities administers the day care programs, but subcontracts the actual operation of the centers to designated "delegate agencies," generally private employers engaged in providing social services. The Federal

Urban Opportunity (hereinafter Model Cities), an agency of the city of Chicago. The contracts with the city include a budget and wage program covering, e.g., the type of cumculum, dietary plan, and social and medical services, all of which must be approved by the city before the city will agree to allocate funds for the centers' operation.

In addition, Model Cities sets all operational standards for the Employer's programs. Thus, the "Standards for Project Design" specify all employee classifications for the centers' personnel, educational and experience qualifications for each classification, detailed uniform job descriptions for each staff position, and corresponding salary levels. Model Cities further specifies hours of operation, vacations, holidays, fringe benefits, ratio of staff to children, and total employee complement. To enforce its standards, Model Cities closely monitors all aspects of the Employer's programs and may terminate a contract for noncompliance.

The facts of the instant case do not differ materially from those presented in *Catholic Bishop of Chicago, A Corporation Sole, Department of Federal Programs*, 235 NLRB 776 (1978). For the reasons more fully set forth in my dissenting opinion in that case, I find that the Employer's day care programs are funded as part of a Federal comprehensive antipoverty program designed to meet the specialized social and educational needs occasioned by the poverty environment and to open economic opportunities for a deprived class of citizens by freeing them from child care to enter the work force.

¹⁵ *N.L.R.B. v. E. C. Atkins & Company*, 331 U.S. 398, 406 (1947).

¹⁶ In the alternative, since the Employer's day care centers are operated as part of a governmentally funded antipoverty program and offer services which are essential and basic to the furtherance of that interest, I conclude

In implementing the Federal policy, the city of Chicago (in lieu of undertaking to provide such services directly) has chosen to contract with a private nonprofit agency to provide these fundamental services subject to substantial and pervasive controls which enable the city to insure the accomplishment of its objectives. Thus, as shown *supra*, the city regulates every aspect of the centers' labor relations policies, frequently monitors each center's operations to determine compliance with Model Cities' guidelines, and retains authority to terminate a contract for failure to comply with Model Cities' guidelines.

In sum, I find that Model Cities' labor relations policies applicable to the Employer's day care centers have significantly limited any discretion on the part of the Employer to determine those working conditions "that would form the basis for collective bargaining as contemplated by the Act."¹⁵ Under these circumstances, I can see no choice under the Board's established policies but to find that such extensive control precludes our assertion of jurisdiction.¹⁶ *Herbert Harvey, Inc.*, 171 NLRB 238 (1968); *ARA Services, Inc.*, 221 NLRB 64 (1975); *Teledyne Economic Development Company*, 223 NLRB 1040 (1976).

I so find, though I am mindful of the fact that certain employees at these day care centers may desire union representation. But the facts, the law, the Federal policies, and this Board's policies impel me—however reluctantly—to conclude that the Board should not assert jurisdiction over these centers.

that the services provided by the Employer are intimately related to fundamental governmental objectives. I find that, in any event, it would not effectuate the policies of the Act to assert jurisdiction. Cf. *Herbert Harvey, Inc.*, 171 NLRB 238, 240 (1968).