

**Young World, Inc. and Michigan Council No. 55, American Federation of State, County and Municipal Employees, AFL-CIO, Petitioner.** Cases 7-RC-12180 and 7-RC-12298

February 10, 1975

DECISION ON REVIEW

BY ACTING CHAIRMAN FANNING AND  
MEMBERS JENKINS AND PENELLO

On May 22, 1974, the Regional Director for Region 7 issued a Decision and Direction of Elections in the above-entitled proceeding in which he asserted jurisdiction over the Employer's proprietary day-care center operations by applying the National Labor Relations Board jurisdictional standard for educational institutions,<sup>1</sup> and he found appropriate the Petitioner's requested units of employees at two of the Employer's day-care centers located in Lansing and Delta Township, Michigan, respectively, excluding "lead teachers" from each unit as supervisors. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, as amended, the Petitioner filed a timely request for review of the Regional Director's decision on the ground that he erred in finding the lead teachers to be supervisors. The Employer filed opposition thereto.

On July 18, the Board by telegraphic order denied the Petitioner's request for review as to the supervisory status of the lead teachers but, *sua sponte*, granted review on the question of what jurisdictional standard, if any, is applicable to the Employer's operations, and it invited the parties to submit briefs on the issue. Thereafter, the Employer filed a brief.

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 considered the entire record in this case with respect to the issues under review, including the Employer's brief, and makes the following findings:

The Regional Director in his decision indicated that he viewed the Employer's day-care centers as essentially educational institutions. The Employer asserts that its day-care centers are partially educational and partially custodial in nature, and it urges that because of marked similarities between child day-care centers and nursing homes the \$100,000 jurisdictional yardstick established for nursing

homes<sup>2</sup> should be applied to child day-care centers. For the reasons below, we shall affirm the Regional Director's assertion of jurisdiction herein.

The Employer is a Delaware corporation, organized for profit, operating 10 proprietary child day-care centers in the State of Michigan. Its projected revenues from all sources for its fiscal year 1973-74 total \$1,037,675. Fifty percent of the centers' funds are supplied on a state-matching basis by the Department of Health, Education, and Welfare through Title IV (a) of the Social Security Act. These Federal funds are directed primarily to cover the costs of providing care for welfare children, whose families participate in Aid to Dependent Children or Aid to Families with Dependent Children programs, and who comprise over one-half of the children attending the Employer's centers.<sup>3</sup> The Employer purchases or leases over \$50,000 in goods and services from out-of-state suppliers: for example, office supplies, which must be continually replenished, from Ohio; toys from a New Jersey firm; cots from a Minnesota firm; over \$56,000 worth of equipment from a New York company; and some outdoor equipment from a supplier in Iowa. The Employer also purchased large amounts of supplies and equipment from out of State for its recently constructed new facilities. The construction company which builds the Employer's facilities is wholly owned by the Employer and purchased large amounts of materials from out-of-state sources. The Employer participates in a national organization of day-care centers and its directors travel to meetings held around the country.

The centers, licensed to care for children 2-1/2 through 8 years, care for approximately 1,500 children primarily from the ages of 2-1/2 years through kindergarten age, who live within a 4- to 8-mile radius of the center they attend. An unspecified number of out-of-state children also utilize the Employer's services for an average period of 2-3 weeks at a time when they visit relatives living within the State.

The centers are engaged in "developmental day care" which combines custodial care and learning experiences, such as field trips and reading skills. Each center employs approximately four lead teachers, four teachers, and teachers' aides proportionate in number to the children at each center. Children are usually cared for in groups of 12 to 20. The majority of children attending the Employer's centers have working parents. In order to accommodate them, the centers are open from 6:30 a.m. to 6 p.m.

the costs of the food program at two of the Employer's centers. In addition, the Employer participates in a federally funded research project conducted by Michigan State University

<sup>1</sup> See *The Windsor School, Inc.*, 200 NLRB 991 (1972)

<sup>2</sup> See *Kew Gardens Nursing Home Company, Inc.*, 194 NLRB 370 (1971).

<sup>3</sup> Federal funds contributed by a community action program also administered by the Department of Health, Education, and Welfare support

Where the children are of school age, the centers care for children before and after school. Thus, the Employer operates a bus service, unconnected with the public school bus service, to transport those children attending school to and from the centers. Each center also employs a cook, one or two drivers, a secretary-receptionist, and a director.

While the centers are engaged in "developmental" programs, described by the director of operations to include "lunch, snacks, naps, and field trips," we note that the emphasis is not on a formalized educational program, but on custodial care which incorporates learning experiences for young children. Additionally, the Regional Director found that the centers' teachers and teachers' aides do not have the formal education which public school systems usually require of their teachers. Thus, only some of the lead teachers have college degrees, and the teachers and teachers' aides "are not required to have any advanced education or technical training for work involving the emotional development and well-being and even the physical safety of quite young children. . . ."

It is clear from the foregoing that the Employer's operations are distinguishable from those of an educational institution. Nor do we see any basis in the record for viewing its operations as an adjunct to local public school systems in the areas served.<sup>4</sup> Further, while we thus disagree with the Regional

<sup>4</sup> In this respect the instant case is factually distinguishable from the Board's Advisory Opinion in *Pennsylvania Labor Relations Board*, 209 NLRB 152 (1974), in which it was concluded that the day-care centers involved were an adjunct to the public school system of Pittsburgh since they primarily functioned as a "head start" program whose operations focused on preparing preschool age children for public school education. Member Fanning's participation herein should not be taken as an endorsement of the Advisory Opinion in *Pennsylvania Labor Relations Board*, *supra*.

<sup>5</sup> See *Cornell University*, 183 NLRB 329, 334 (1970)

<sup>6</sup> See *Siemons Mailing Service*, 122 NLRB 81 (1958); *University Nursing Home, Inc.*, 168 NLRB 263 (1967); *Drexel Home, Inc.*, 182 NLRB 1045 (1970); Jurisdictional Rule, NLRB Rules and Regulations, Sec. 103.1

Director's holding that the jurisdictional standard for educational institutions is applicable to the Employer's operations, we are not prepared at this time to establish a jurisdictional standard for day-care centers as a class. However, in the circumstances of this case, we are satisfied that the commerce data relating to the Employer's operations support a finding that the Employer is engaged in commerce to the extent that a labor dispute in connection therewith would substantially affect interstate commerce.<sup>5</sup> In so finding, we note that the Employer meets every discretionary jurisdictional standard the Board has applied to date.<sup>6</sup> We conclude, therefore, that it would effectuate the purposes of the Act to assert jurisdiction herein.

Accordingly, the case is remanded to the Regional Director for Region 7 for the purposes of conducting elections pursuant to his Decision and Direction of Elections,<sup>7</sup> provided that the payroll period for determining eligibility shall be that immediately preceding the date of issuance of this Decision.<sup>8</sup> [*Excelsior* footnote omitted from publication.]

MEMBER KENNEDY, dissenting:

For the reasons set forth in my dissenting opinion issuing today in *Lutheran Welfare Services of Illinois*, 216 NLRB No. 96, I disagree with my colleagues in extending the jurisdiction of this Board to the Employer's day-care center operation.

<sup>7</sup> The following, as found by the Regional Director, are the appropriate units herein for purposes of collective bargaining

All teachers, teachers aides, cooks, drivers, and riders employed at the Employer's Day Care Center located at 4711 South Logan Street, Lansing, Michigan, excluding the director, lead teachers, and other supervisors as defined in the Act, executives, confidential employees, managerial employees, and all other employees

All teachers, teachers aides, cooks, drivers, and riders employed at the Employer's Day Care Center located at 4010 West Michigan, Delta Township, Michigan, excluding the director, lead teachers, and other supervisors as defined in the Act, executives, confidential employees, managerial employees, and all other employees.