

**Young Women's Christian Association of Metropolitan Chicago and Local 329, Child Care Division, Service Employees International Union, AFL-CIO, Petitioner. Case 13-RC-13637**

October 31, 1975

### DECISION ON REVIEW AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS  
JENKINS AND PENELLO

On May 13, 1975, the Regional Director for Region 13 issued a Decision and Direction of Election in the above-entitled proceeding, finding appropriate a unit consisting of the employees of the three day care centers operated by the Young Women's Christian Association of Metropolitan Chicago, hereinafter the Employer. Thereafter, the Employer, pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, filed a timely request for review of the Regional Director's decision, contending that the Regional Director erroneously asserted jurisdiction herein. By telegraphic order dated July 3, 1975, the Board granted the Employer's request for review. Both the Petitioner and the Employer filed briefs on review.

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 herein with respect to the issues under review, including the briefs of the parties, and makes the following findings.<sup>1</sup>

The Petitioner seeks to represent a unit limited to the employees of the three day care centers operated by the Employer.<sup>2</sup> The Employer contends, *inter alia*, that these day care centers are exempt from the Act's jurisdiction because the city of Chicago, and not the Employer, determines the working conditions of the employees of the day care centers. The Regional Director rejected this argument and directed an election. We find merit in the Employer's contentions.

The Employer is an Illinois nonprofit corporation that offers various social services to Chicago area women. The Employer operates the day care centers involved herein pursuant to individual contracts with the city of Chicago, hereinafter the City.

The City has contracted for the Employer to operate these centers to provide free or inexpensive

custodial care for the children of parents who work or attend school or job training programs.<sup>3</sup> The centers' services are available only to the poor. The City funds the centers with money appropriated by Congress pursuant to Title IV-A of the Social Security Act and distributed by HEW to the City via the State of Illinois. The contracts themselves are negotiated and administered by Model Cities—Chicago Committee on Urban Opportunity, hereinafter Model Cities, an agency of the City.

As indicated above, the City funds each center separately. Each contract with the City includes a work program and a budget. The work programs outline each center's goals, activities, administrative procedures, and labor relations policies. The budgets list the expenses each center expects to incur during the contract year. The Employer prepares the work programs and budgets and submits them to the City, i.e., Model Cities, for approval. The record indicates that to receive Model Cities' approval the work programs and budgets have to comply with policies established by that agency.<sup>4</sup>

Based upon the budgets approved by Model Cities, the contracts specify the maximum amount Model Cities, as agent for the City, will pay the Employer as compensation for operating each day care center. The Employer, however, does not receive a lump sum payment equal to this amount when the contract year begins. As a condition of the contract, the Employer is instead reimbursed periodically by Model Cities for the costs of operating the centers. The contracts further provide that to receive reimbursement the Employer must submit vouchers supported by whatever documentation Model Cities requires. The contracts also reserve to the City the right to reduce the amount of compensation specified by the contracts by reducing any item of a center's budget any time during the contract year. Another provision permits the City to terminate the contracts upon 5 days' notice for cause and 10 days' notice for convenience.

As indicated above, the Employer must comply with Model Cities' policies to receive funding from the City. For this reason, the Employer has adopted the policies established by Model Cities regarding working conditions at the day care centers. The record indicates that Model Cities has established salary guidelines for each category of day care center employee, has limited annual salary increases for day care center employees to 5 percent, and has prohibited the payment of any overtime to them. The type of

<sup>1</sup> As the record and briefs adequately present the issues and the positions of the parties, the request for oral argument by Petitioner is hereby denied. Petitioner's request to consolidate this case with Cases 13-RC-13635 and 13-RC-13636 for decision is also denied.

<sup>2</sup> The unit sought by the Petitioner includes about 43 employees.

<sup>3</sup> Approximately 200 children between the ages of 3 and 5 attend the 3 centers which operate from about 7 a.m. to 6 p.m.

<sup>4</sup> Model Cities publishes a pamphlet containing most of its policies concerning the operation of City-sponsored day care centers.

benefits the centers' employees receive is also affected by Model Cities' policies. For example, Model Cities' policies prohibit the establishment of a pension program for the centers' employees. The employees' hours, vacations, and holidays are also determined by these policies. Thus, Model Cities fixes the number of hours the centers' employees work per week; permits them a 2-week vacation, and establishes a holiday schedule for them. The record further indicates that Model Cities has established specific qualifications for each category of day care center employee and these have been directly incorporated into each center's work program.

The record discloses that the policies described above have significantly restricted the Employer's discretion to determine working conditions at the day care centers. Thus, the policies concerning hours, vacations, holidays, and benefits are specific, and the Employer needs Model Cities' permission to change them. While the guidelines concerning salaries apparently allow the Employer some discretion, e.g., there is no indication that Model Cities has ever directed the Employer to pay an employee a specific salary, nonetheless, this discretion has been circumscribed to a considerable degree in that Model Cities has limited the size of individual salary increases.

The Employer's discretion regarding staffing decisions is also limited to a significant extent. Although the Employer is responsible for screening and selecting applicants for jobs at the centers, all hires, as well as promotions and job classifications, are subject to Model Cities' approval and must be reported within 5 days. The record indicates that this

has not been just a *pro forma* procedure. Thus, Model Cities has refused to reimburse the Employer for salary vouchers submitted for employees who have not satisfied the qualifications for the jobs for which they had been hired and thereby forced the Employer to terminate them. Model Cities has also forced the Employer to rescind employee promotions for the same reason.<sup>5</sup>

To summarize, the Model Cities' labor relations policies applicable to the Employer's day care centers have eliminated or significantly limited the Employer's discretion to determine those working conditions "that would form the basis for collective bargaining as contemplated by the Act. . . ."<sup>6</sup> The Employer is required by Model Cities to adopt these policies and needs Model Cities' permission to deviate from them. Based upon the record as a whole, we conclude that the Employer does not retain sufficient independent discretion to determine terms and conditions of employment at the day care centers to enable the Employer to effectively bargain with the Petitioner.<sup>7</sup> As we find that the City, through Model Cities, exercises substantial control over the labor relations at the Employer's three day care centers, we find the Employer shares the City's exemption from the Act and we shall dismiss the petition herein.<sup>8</sup>

#### ORDER

It is hereby ordered that the petition herein be, and it hereby is, dismissed.

<sup>5</sup> There is no indication, however, that Model Cities ever directed the Employer to hire or promote a specific employee.

<sup>6</sup> *N.L.R.B. v. E. C. Atkins & Company*, 331 U.S. 398, 406 (1947).

<sup>7</sup> See, e.g., *Current Construction Corp.*, 209 NLRB 718 (1974).

<sup>8</sup> Cf. *Lutheran Welfare Services of Illinois*, 216 NLRB No. 96 (1975), wherein the record failed to establish that Model Cities controlled the labor relations policies of the day care centers involved there to the extent shown by the present record.