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Young Women's Christian Association of Metropolitan St. Louis and Service Employees International Union, Local No. 50, affiliated with Service Employees' International Union, AFL-CIO, CLC. Case 14-CA-24582

September 11, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge and amended charge filed on May 20 and June 5, 1997, the General Counsel of the National Labor Relations Board issued a complaint on June 11, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 14-RC-11739. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On July 29, 1997, the General Counsel filed a Motion for Summary Judgment.¹ On July 31, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On August 14, 1997, the Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer and response, the Respondent admits its refusal to bargain, but attacks the validity of the certification on the ground that any assertion of jurisdiction by the Board over the Respondent is inappropriate and improper inasmuch as the Federal Government, through the Department of Health and Human Services, maintains such control over the terms and conditions of employment of the unit employees that the Respondent is prevented from engaging in meaningful bargaining, and that the Respondent and the Federal Government, through the Department of Health and Human Services, are joint employers.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any

¹The General Counsel also moved to withdraw the portion of the complaint in the introductory paragraph erroneously making reference to a notice of hearing having issued. The motion is granted.

special circumstances that would require the Board to reexamine the decision made in the representation proceeding.² We, therefore, find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.³

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, authorized to do business under the laws of the State of Missouri, with an office and place of business in St. Louis, Missouri, has been engaged in the provision of educational and social services to the community. During the 12-month period ending May 31, 1997, the Respondent, in conducting its business operations, derived gross revenues in excess of \$250,000, and purchased and received at its St. Louis, Missouri facility, goods valued in excess of \$5000 directly from points outside the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held February 28, 1997, the Union was certified on March 10, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time teachers, assistant teachers, family service workers, cook aides, and health services clerk employed by the Respondent at its St. Louis County Head Start program, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

²The Respondent contends that special circumstances exist because the Board's decision in *Management Training Corp.*, 317 NLRB 1355 (1995), relied on by the Regional Director here, constituted an unwarranted departure from longstanding Board precedent. We note, however, that the validity of the Board's decision in *Management Training*, supra, has recently been upheld by the Fourth and Sixth Circuits. See *Pikeville United Methodist Hospital of Kentucky v. Steelworkers*, 109 F.3d 1146 (6th Cir. 1997); and *Teledyne Economic Development Corp. v. NLRB*, 108 F.3d 56 (4th Cir. 1997).

³Member Higgins notes that he would have granted review in the underlying case with respect to the assertion of jurisdiction over the Respondent. However, he agrees with his colleagues that the Respondent has raised no new issues in this "technical" 8(a)(5) proceeding warranting a hearing and that summary judgment is appropriate.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since April 30, 1997, the Union has requested the Respondent to bargain and, since that date, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after April 30, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Young Women’s Christian Association of Metropolitan St. Louis, St. Louis, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Service Employees International Union, Local No. 50, affiliated with Service Employees’ International Union, AFL–CIO, CLC as the exclusive bargaining representative of the employees in the bargaining unit.

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

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employ-

ment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time teachers, assistant teachers, family service workers, cook aides, and health services clerk employed by the Respondent at its St. Louis County Head Start program, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in St. Louis, Missouri, copies of the attached notice marked “Appendix.”⁴ Copies of the notice, on forms provided by the Regional Director for Region 14 after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 20, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 11, 1997

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William B. Gould IV,	Chairman
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Sarah M. Fox,	Member
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John E. Higgins, Jr.,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁴ If 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.”

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Service Employees International Union, Local No. 50, affiliated with Service Employees' International Union, AFL-CIO, CLC as the exclusive representative of the employees in the bargaining unit.

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

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time teachers, assistant teachers, family service workers, cook aides, and health services clerk employed by us at our St. Louis County Head Start program, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF METROPOLITAN ST. LOUIS