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**Catholic Social Services, Diocese of Belleville and Teamsters, Automotive, Petroleum and Allied Trades Union Local No. 50, affiliated with the International Brotherhood of Teamsters, Petitioner.** Case 14–RC–12769

August 27, 2010

ORDER DENYING REVIEW

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER  
AND BECKER

The Board, by a three-member panel, has carefully considered the Employer’s request for review of the Regional Director’s Decision and Direction of Election (pertinent portions of which are attached as an appendix). Consistent with *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), the Regional Director asserted jurisdiction over the Employer, a not-for-profit Illinois corporation doing business as Catholic Social Services of Southern Illinois, which is engaged in the operation of St. John Bosco Children’s Center, a non-profit, licensed, childcare facility located in Belleville, Illinois. The Employer contends that the Regional Director should not have asserted jurisdiction over the Employer under the decision of the United States Supreme Court in *Catholic Bishop*, supra, because it is a religious organization. The Employer argues further that the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *University of Great Falls v. NLRB*, 278 F.3d 1335 (2002), suggests that the Board lacks jurisdiction in this case because the Employer provides religious instruction. We deny the Employer’s request for review because it raises no substantial issues warranting review. The Regional Director properly applied *Catholic Bishop*. In addition, even assuming *University of Great Falls v. NLRB* governs the Board’s assertion of jurisdiction over religious, educational institutions, we would nonetheless conclude that it is appropriate to assert jurisdiction here.

We agree with the Regional Director’s application of *Catholic Bishop* to the facts of this case. The exercise of jurisdiction over the Employer will not create “serious constitutional questions” of the type the Supreme Court sought to avoid in *Catholic Bishop*, 440 U.S. at 501. The Supreme Court was concerned in *Catholic Bishop* with the Board’s assertion of jurisdiction over religious schools given the central role of education in propagating and sustaining religious faith. The Court specifically observed, quoting its earlier decision in *Lemon v. Kurtzman*, 403 U.S. 602, 616 (1971), “[P]arochial schools

involve substantial religious activity and purpose.” 440 U.S. at 503. And the Court further emphasized the “unique role of the teacher in fulfilling the mission of a church-operated school.” Id. at 501. In this case, however, the Employer is providing secular social services—residential childcare—and, as an ancillary part of the provision of those services, providing wholly secular education to a small number of the children within its care. We need not weigh the evidence to determine whether the limited education provided at the Center is secular, because the Employer plainly acknowledges that fact in its request for review: “The Specialists teach these children a complete educational curriculum, including math, reading and other traditional courses. . . . They also educate all the children on basic life skills.” Request for Review at 11. The Regional Director was thus correct when he held that *Catholic Bishop* has no application here.<sup>1</sup>

In *University of Great Falls*, supra, the court of appeals held that the Board should decline to assert jurisdiction over an educational institution if it (1) “holds itself out to students, faculty and community as providing a religious educational environment”; (2) “is organized as a nonprofit”; and (3) “is affiliated with, or owned, operated, or controlled, directly or indirectly, by a recognized religious organization, or with an entity, membership of which is determined, at least in part, with reference to religion. . . .” 278 F.3d at 1343 (citations and internal quotations omitted). Even were we to apply that test here, we would sustain the Regional Director’s decision.

It is clear that the Employer does not meet the first prong of the test because the Employer does not “hold itself out . . . as providing a religious educational environment”—even if the term “educational environment” is broadly construed, as suggested by our dissenting colleague. Given the extraordinary deference that the court of appeals would have the Board accord to institutions’ public self-description, surely that description should clearly and explicitly inform the public that the institution provides “a religious educational environment.” Without such a clear statement to the public, there is no “market check” on an Employer’s claims for exemption of the type envisioned by the court of appeals. 278 F.3d at 1344. For these reasons, we do not believe the court would find the first prong of its test satisfied absent communications to the public clearly stating that the

<sup>1</sup> The Employer argues in its request for review that the Catholic Church controls the Center, but both the Board and the courts of appeal have made clear that church control, standing alone, does not bring an employer within the holding of *Catholic Bishop*. See, e.g., *NLRB v. St. Louis Christian Home*, 663 F.2d 60, 63 (8<sup>th</sup> Cir. 1981).

Employer provides religious education of some form. Here, however, the Employer can point to nothing like the statement in the University of Great Falls' mission statement "offer[ing] students a foundation for actively implementing Gospel values and the teachings of Jesus within the Catholic tradition." 278 F.3d at 1345. Rather, the Employer and our dissenting colleague would have us comb through the employees' position descriptions and other nonpublic documents and make assumptions not supported by any direct evidence about how portions of those documents inform the care provided at the residence. But such inquiry, going beyond an examination of the Employer's public self-description, is inconsistent with the *Great Falls* court's intent to avoid "intrusive inquiries." 278 F.3d at 1342. It is undisputed that the professed purpose of the facility and the function of the petitioned-for residential treatment specialists and aides is a secular one—to provide childcare in a residential treatment facility for abused and neglected children who are wards of the State of Illinois.<sup>2</sup>

The facility is licensed as a child welfare agency by the State and is not a school. Although the residential treatment specialists and aides "homeschool" or tutor residents who have been expelled from school, it is undisputed that the specialists and aides provide no religious instruction nor other education that has as at least one of its purposes the inculcation of religious values. Moreover, the Employer operates without imposing any restrictions on the religious preferences or practices of its employees, except for the Employer's executive director. The specialists and aides are not required to profess the Catholic faith or subscribe to its tenets. Nor must the children that they care for. Employees are instructed to respect the religious practices of others. The Employer thus holds itself out as performing a secular function, and the operations and services of the Employer are secular, not religious. In sum, even assuming the *Great Falls* test were applicable, we would assert jurisdiction over the Employer.

In our view, the Employer provides services that are comparable to the services provided by other social services programs over which the Board has consistently asserted jurisdiction. See, e.g., *Salvation Army*, 345 NLRB 550 (2005) (applying *University of Great Falls*,

<sup>2</sup> In arguing that the Employer meets this prong of the *University of Great Falls* test, the dissent emphasizes the Center's name and mission statement as evidence that the Employer holds itself out as a "religious institution." But, the court's test is whether the Employer holds itself out as providing a "religious educational environment." 278 F.3d at 1343 (emphasis added). For the reasons we outline, the Employer does not meet that test. A religious institution may, for reasons central to its tenets, hold itself out as providing and actually provide critical, but wholly secular social services. That is the case here.

the Board asserted jurisdiction over non-profit organization providing pre-release services under a contract with Federal Bureau of Prisons);<sup>3</sup> *Hanna Boys Center*, 284 NLRB 1080, 1083 (1987), enfd. 940 F.2d 1295 (9th Cir. 1991), cert. denied 504 U.S. 985 (1992) (Board asserted jurisdiction over unit of childcare workers, recreation assistants, cook-helpers, and maintenance employees at a Catholic residential facility for troubled youths); *Harborcreek School for Boys*, 249 NLRB 1226 (1980) (jurisdiction asserted over school for troubled boys owned and operated by a Catholic diocese). Accepting the dissent's suggestions that we should broadly construe the concept of education to encompass the instruction and modeling that takes place during childcare and a broad range of other social service activities from drug rehabilitation programs to nursing homes, and that we should assume that church sponsorship implies that religious doctrine will inform how that broad range of social services are provided, would sweep away decades of Board precedent post-*Catholic Bishop*, precedent that has been repeatedly affirmed in the courts of appeals. E.g., *Hanna Boys Center*, supra; *Salvation Army of Massachusetts Dorchester Day Care Center*, 271 NLRB 195 (1984), enfd. 763 F.2d 1 (1st Cir. 1985); *St. Louis Christian Home*, 251 NLRB 1477 (1980), enfd. 663 F.2d 60 (8th Cir. 1981)

Contrary to our dissenting colleague's contention, the request for review has not cited evidence raising a substantial issue regarding the Regional Director's finding that the residential treatment specialists and aides do not teach or inculcate religious values when tutoring or teaching the children in residence who have been suspended or expelled from school. The Regional Director found that "[n]o specific religious-based courses are taught to the children" and no religious services or programs are held at the Center. The dissent presumes that because all employees sign a job description in which they agree to ensure, promote, and integrate the Employer's mission and philosophy into the performance of their duties, it necessarily follows that "in concert" with their direct care role they inculcate and teach religious values to the children. We disagree. The signing of the job descriptions alone is not evidence that the residential specialists and aides, in fact, inculcate and teach religious values, particularly in view of the Regional Director's findings that the same requirement to promote and integrate the Employer's philosophy appears in all employees' job descriptions, including those of the cook, main-

<sup>3</sup> Contrary to our dissenting colleague's contention, *Salvation Army*, supra, is not distinguishable on the grounds that it involved the care of adults. The key fact in both that case and this one is that there was no evidence that the employer at issue provided religious instruction.

tenance worker, and secretary, and that the specialists and aides do not teach any courses with religious content. We have often held that mere words in a position description are not sufficient to exclude employees from the Act's protection. See, e.g., *Heritage Hall, E.P.I. Corp.*, 333 NLRB 458, 458–459 (2001).

In *Hanna Boys Center*, supra, the Board, like the Regional Director here, found no evidence that the actual duties of the child-care workers included religious teaching, despite the fact that their job description described responsibility for “[t]eaching values: ethical principles, religious observances.” 284 NLRB at 1083. Our dissenting colleague suggests that religious education can take place outside a classroom, but there is simply no evidence of any form of religious education in this case no matter how broadly defined. We think the evidence here demonstrates that the Employer provides high-quality and critical, but wholly secular, social services to children “of all backgrounds with social and emotional needs,” consistent with its stated mission to do so “[a]s a visible expression of God’s loving community and consistent with the example of Jesus Christ.” As the Eighth Circuit observed in affirming the Board’s assertion of jurisdiction over a home for neglected children in *NLRB v. St. Louis Christian Home*, 663 F.2d at 64, “The Christian Church may perceive its religious mission to include caring for unfortunate children, but the actual business of the Home and of its employees does not involve a religious enterprise comparable to a church-operated school. The Home operates in the same way as a secular child-care institution.” Neither *Catholic Bishop* nor *University of Great Falls* suggests that the Board should decline to assert jurisdiction over the employees’ petition under these circumstances.

Accordingly, we deny the Employer’s request for review.

Dated, Washington, D.C. August 27, 2010

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Wilma B. Liebman, Chairman

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Craig Becker, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER SCHAUMBER, dissenting.

The Board engages here in the important task of considering whether exercising jurisdiction over a religious institution would impinge upon the organization’s First Amendment right to conduct operations according to its

religious values. In my view, the majority has undertaken this task too lightly by applying precedent without carefully examining the unique characteristics of the St. John Bosco Children’s Center that render that precedent inapposite. I would grant review to consider the Employer’s contention that the Children’s Center is a religious organization over which the Board should not assert its jurisdiction.

The petitioned-for unit consists of all full-time and regular part-time residential treatment specialists and residential treatment aides. These employees are direct-care givers for the Center’s residents, typically abused and neglected male children between the ages of 6 and 12. Specialists and treatment aides are responsible for the daily care of these young residents, including waking and preparing for school, grooming and personal hygiene, meals, attendance at therapy and treatment sessions, monitoring Individual Treatment Plans, adjusting behavioral issues, transporting to activities, assisting in completing homework, playing, and getting ready for bed at night. In short, the employees function *in loco parentis* and essentially raise these young boys. Moreover, in certain instances when children have been suspended or expelled from school (and the record reflects that about 20% of the current residents fall in that category), the specialists and treatment aides are responsible for home schooling, i.e., they serve as full-time teachers. The residents’ average length of stay is 1 year.

All Children’s Center employees are required to sign written job descriptions including, among other things, their agreement to insure, promote and integrate the Employer’s mission and philosophy into all of their duties. This includes a Code of Ethics, which states: “We will remain faithful to Biblical values, the social teaching of the Roman Catholic Church, the Code of Canon Law, and the directives of the Bishop of the Diocese of Belleville.” It also includes the Employer’s mission statement, which describes the Center as follows:

As a visible expression of God’s loving community and consistent with the example of Jesus Christ, Catholic Social Services of Southern Illinois provides direct services to persons of all backgrounds with social and emotional need across the continuum of life.

Although employees are not required to be Catholic, they are required by contract to model and teach Catholic principles to the children in their care.

As the majority notes, the Center provides its residents with no formal religious education. But the majority focuses too narrowly on an institution’s formal educational component without recognizing that the inculcation of religious values occurs in many ways outside of a

classroom, especially in young children like those at the Center. Both *NLRB v. Catholic Bishop of Chicago*, supra, and *University of Great Falls*, supra, address a “religious educational environment” because the subjects in those cases are educational institutions. But the holdings of those cases are not limited to educational institutions. In my view when the Center’s treatment specialists and aides perform parent-like functions in concert with the principles mandated by their mission statement and Code of Ethics, as they have agreed to do in writing as a condition of employment, they inculcate religious values in their wards in an even more profound way than the teachers at issue in *Catholic Bishop* and *University of Great Falls*. Courts have acknowledged that “the rationale of *Catholic Bishop* would also support the exclusion from the Board’s jurisdiction of other employment relationships if they involved the same constitutional problems inherent in the relationship between teachers and church-operated schools.” *NLRB v. Hannah Boys Center*, 940 F.2d 1295, 1302 (9th Cir. 1991). If, for example, the Union in collective bargaining sought a health care plan that conflicted with the Center’s Code of Ethics, the kind of constitutional problem that the Ninth Circuit envisioned would occur. Therefore, I would grant review to consider whether the residential treatment specialists and residential treatment aides, as the principal agents involved in teaching religious values to the residents, should be exempt from the Board’s jurisdiction.

The majority relies on *Salvation Army*, supra, *Hanna Boys Center*, supra, and *Harborcreek School for Boys*, 249 NLRB 1226 (1980), where the Board asserted jurisdiction over certain workers employed in social service programs. Although the institutions in these cases are superficially similar to the Children’s Center—residential centers providing services to their residents—the populations of each program and the services provided by the proposed-unit employees are meaningfully different. *Salvation Army* involved the Community Correctional Center, which provides convicts with prerelease services such as drug treatment, job readiness, and preparation for transitioning back into the community. The center’s residents are adults, and there is no religious component to the secular services the center provides. In sharp contrast, treatment specialists and treatment aides at the St. John Bosco Children’s Center essentially raise impressionable young children according to the religious values expressed in the center’s mission statement. In *Hanna Boys Center*, the Board asserted jurisdiction over a residential boys’ center similar to St. John Bosco Children’s Center. The basis for this decision, however, was not because of the center’s work or mission, which the Ninth Circuit found was “infused with an

important religious component,” but because the employees in the proposed unit—clerical employees, recreational assistants, cooks, cooks’ helpers, and child-care workers—were not involved in the residents’ religious or secular teaching. In contrast, the Children’s Center’s treatment specialists and aides are involved in all aspects of the residents’ lives, including the inculcation of values expressed in the Center’s mission statement. In *Harborcreek School*, the Board found that the only connection the school had to anything religious was the fact that the Catholic diocese owned the facility. Unlike here, the employees made no agreement to teach and uphold Catholic principles and values or to actively integrate those values into their work. Thus, none of these cases is analogous to the facts of this case.

In *NLRB v. Bishop Ford Central Catholic High School*, 623 F.2d 818, 822 (2d Cir. 1980), the court stated: “The entire focus of *Catholic Bishop* was upon the obligation of lay faculty to imbue and indoctrinate the student body with the tenets of a religious faith. . . . It is the commitment of the faculty to religious values . . . and the obligation to propagate those values which provides the risk of entanglement.” The Center’s treatment specialists and aides have made a similar commitment to uphold the Center’s mission, and the Board should grant review to consider whether they face the same risk of entanglement that existed in *Catholic Bishop*.

Finally, I would grant review to consider whether the Employer satisfies the court’s jurisdictional test in *University of Great Falls*, supra. Unlike the majority, it is not “clear” to me that the Employer does not hold itself out to the public as providing a religious educational environment. Rather, the Center’s name and its mission statement, quoted above, suggest that the Employer holds itself out as a religious institution. It is undisputed that the Center is a non-profit organization, and the Center operates under and is controlled by the Diocese of Belleville.

Dated, Washington, D.C. August 27, 2010

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Peter C. Schaumber, Member

NATIONAL LABOR RELATIONS BOARD

## APPENDIX

REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION

Catholic Social Services, Diocese of Belleville, here called the Employer, is a not-for-profit Illinois corporation doing business as Catholic Social Services of Southern Illinois, which, among other things, is engaged in the operation of St. John Bosco Children's Center, here called the Center, a non-profit licensed childcare facility in Belleville, Illinois, the only facility involved here. The Petitioner, Teamsters, Automotive, Petroleum and Allied Trades Local Union No. 50, affiliated with the International Brotherhood of Teamsters, filed a petition with the National Labor Relations Board, here called the Board, under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of all full-time and regular part-time direct care workers employed by the Employer at the Center. At hearing, the parties stipulated that if the Board asserts jurisdiction and directs an election, the appropriate collective-bargaining unit is: All full-time and regular part-time residential treatment specialists, residential treatment aides, and similar classifications involved in direct patient care, employed by the Employer at St. John Bosco Children's Center located at 900 Royal Heights, Belleville, Illinois, EXCLUDING all therapists, case managers, maintenance workers, cooks, office clerical and professional employees, guards, and supervisors as defined in the Act, and all other employees. A hearing officer of the Board held a hearing and the parties filed briefs with me, which I have carefully considered.

As evidenced at hearing and as set forth in the briefs, the only issue is whether the Board has jurisdiction over the Employer.<sup>3</sup> The Employer contends that the Board does not have jurisdiction because the Employer is a religious organization under the control and direction of the Roman Catholic Church, Diocese of Belleville, here called the Diocese, and the Diocese's Bishop, and operates in accordance with the policies and mission of the Diocese, diocesan policy, and canon law, and that the exercise of the Board's jurisdiction would infringe upon the First Amendment rights of the Employer. Contrary to the Employer, the Petitioner contends that the Employer is not exempt from the Board's jurisdiction under the religious institution exemption. For the reasons set forth below, I have concluded that the Employer is not a religious organization and does not fall within the religious institution exemption. Accordingly, I shall direct an election in the stipulated unit, which currently consists of 18 residential treatment specialists, here called specialists and 2 residential treatment aides, here called aides.

## I. OVERVIEW OF OPERATIONS

The Employer, a not-for-profit social services agency of the

<sup>3</sup> At hearing, the parties stipulated that the Employer is engaged in commerce within the meaning of the Act where the Employer meets the gross annual revenues and statutory indirect inflow jurisdictional standards.

Roman Catholic Church, Diocese of Belleville, operates four Southern Illinois regional offices located in Belleville, Carbon-dale, Mt. Carmel, and Mt. Vernon, which provide programs including adoption services, foster care, counseling, clinical services, and job training. The Employer also operates a senior assisted living facility in Olney and the Center in Belleville, a residential treatment facility for children and the only facility involved here. The Employer's mission statement, which was written by the Employer's Board of Directors' Mission Integration Committee, and approved by the Bishop, describes the Employer's mission as follows:

As a visible expression of God's loving community and consistent with the example of Jesus Christ, Catholic Social Services of Southern Illinois provides direct services to persons of all backgrounds with social and emotional needs across the continuum of life.

The vision statement identifies the Employer as a premier social services agency devoted to the care and treatment of individuals and families and committed to promoting a just and caring community. The Employer adheres to many, but not all, of the policies of the Diocese including the Diocese's conflict of interest and child protection policies.

The Employer's board of directors, here called the board, currently consists of 15 members, one of whom is a priest. The directors generally serve two 3-year terms. The Bishop is an ex-officio board member, meaning that his term comes with his position and is without a term limit, and attends board meetings on occasion. The Vicar-General, who is a priest, and the Executive Director are also ex-officio members of the board; and the Bishop has the authority to appoint three additional ex-officio members. The ex-officio members may participate in debate, but have no vote.

The Bishop provides the overall vision of the Employer but is not involved in the day-to-day operations of the Employer's programs and generally only participates in decisions to start or end a particular program. The Bishop is alerted to major issues and crises of the Employer, and the Employer submits periodic reports and updates to the Bishop and the Chancery, the administrative headquarters and offices of the Diocese. The Bishop also participated in the blessing of the Center when it moved to its new location in 2007.

Board members are screened by a board development committee comprised of board members and selection is the exclusive decision of the Bishop. The board members must agree to adhere to the mission, vision, and philosophy of the Employer, but are not required to be of the Catholic faith. Board members are generally prominent community leaders.

An executive director oversees the operations of all six of the Employer's facilities through the management of regional directors and program directors who are assigned to each of the Employer's four regional offices, the assisted living facility, and the Center. Regional directors report to the executive director regarding the programs in their regional area. Program directors, who are responsible for the direct day-to-day management and operation of their program, report to a regional director.

The executive director, who reports on the operations of the

Employer's programs and facilities to the board and to the Chancery, attends all board meetings as well as Diocese meetings, and, as noted, is a non-voting ex-officio member of the board. The board conducted a search for the position of executive director, screened and interviewed the applicants, and made a recommendation to the Bishop, who made the final hiring decision. The executive director is required to be of the Catholic faith.

The Center is a not-for-profit licensed child care facility housed in two wings of a former nursing home, which provides residential treatment to abused and neglected wards of the State of Illinois. The center optimally houses 14 children, typically males between the ages of 6 and 12, but occasionally females reside at the Center. In addition to the program director, there is an assistant director position that is currently vacant and two supervisors, whom the parties stipulated were supervisors within the meaning of the Act. There are 18 specialists, and 2 aides, whom the Petitioner is seeking to represent. There is also a staff therapist and part-time therapists, case worker, cook, part-time maintenance worker, and part-time secretary. Specialists are required to have a college degree in human services or related field or 5 years of equivalent experience, while aides are required to have a high school diploma. Aides can perform many of the same tasks as the specialists but are not permitted to do case notes on a resident or restrain a child who is acting out without a specialist present.

Applicants for positions at the Center submit their application or resume to the Employer, and the human resources office screens the applications. The Center's program director, with input from the supervisors, regularly decides who will be hired. On occasions when the Center's director or supervisors are unable to do so, the human resources office conducts interviews of the applicants. The name of the selected applicant is forwarded for final approval by the executive director. The board is not involved in the hiring and filling of existing positions but must approve the addition of positions.

All employees of the Employer are required to sign written job descriptions agreeing to abide by the requirements and qualifications contained therein. All of the job descriptions for employees of the Center include the same eight functions which, in relevant part, assert that employees will insure, promote, and integrate the mission and philosophy of the Employer in all duties performed. This includes actively integrating the values of the agency into practice, and lists the values of collaboration, sacredness of human life, appreciation of differences among us, and recognition of the value of community and family. Employees are further reminded to adhere to the Employer's mission and philosophy during orientation, bi-annual Employer-wide employee meetings, and during other individual program training or meetings as well as by supervision. Employees are hired regardless of their religious faith or practices. Center employees are not required to participate in religious practices or services, such as fasting during Lent or genuflecting in front of the crosses located at the Center. Employees are, however, instructed to be respectful of the religious practices of others.

Center employees are paid by the Employer and are denoted on the Employer's payroll records with a code specific to the

Center. Health and life insurance benefits are provided through the Employer, who participates in the Diocese's benefit plans. The Employer is covered by the liability insurance of the Diocese, and the Diocese selects the Employer's auditor. The Center's director and supervisors make employee disciplinary decisions. Employees can grieve disciplinary actions, which are then reviewed up to the level of the Executive Director. Employees directly managed by the Executive Director can grieve discipline to the board.

The Center, which is leased by the Employer from a private owner, is licensed by the State of Illinois as a childcare facility and is a child welfare agency through the Illinois Department of Children and Family Services (DCFS). As part of licensure, DCFS determines the size of resident rooms, type of intervention and programs provided, staff to resident ratios, and meal plans; and the Center is subject to inspections by DCFS representatives. DCFS provides the majority of the Center's funding with the remaining funds coming from charitable donations received by the Employer, client fees, Medicare and Medicaid, and other insurance proceeds. The funds received from DCFS are payment for services rendered by the Center to the residents who are wards of the State. All monies received from the State must be used for child related services and any unused money is returned to the State or, in some circumstances, can be transferred to other child related programs operated by the Employer.

The Employer borrows money from the Diocese to cover the lapse in funding from the DCFS, which is later repaid when payment is released by the State. The Diocese engages in fund-raising efforts and some of those monies raised are directed to the Employer's programs including the Center. The Employer also engages in fund-raising for its operations including the Center. The Employer maintains one bank account for all of its six facilities with funds for the individual programs delineated by code. The Center does not maintain its own bank accounts nor does it conduct its own fund-raising. However, the Center does have a clothing donation drop box from which it receives donations specifically for the children.

Children are recommended to the Center by their case manager, generally after other treatments and programs such as the foster care system have been unsuccessful. Children stay an average of 1 year during which they attend the Belleville public schools. While in residence, they receive therapy and counseling at the Center based on an Individual Treatment Plan (ITP) created by the Center's therapist and the case worker from the agency which recommended the child for placement at the Center. The ITP is implemented by the Center's therapist, case manager, and supervisors.

The specialists and aides are responsible for the daily direct care of the children including waking and readying for school, grooming and personal hygiene, making sure meals are eaten, ensuring attendance at therapy and treatment sessions, monitoring ITPs, adjusting behavioral issues, reinforcing positive behavior, transporting to activities, assisting in completing homework, playing, and getting ready for bed at night. Each specialist is assigned to three to four children each day. Specialists and aides are at the Center 24 hours per day, 7 days per week, but none reside at the Center. Children who have been

expelled from the public school are essentially home-schooled or tutored at the Center, usually by the specialists, during their expulsion. On a single day in September, there were two to three children at the Center who were not in school.

No specific religious-based courses are taught to the children. The Center's treatment services are provided regardless of the religious denomination of the child. The Center does not hold mass or other religious services or programs. The Center does not have a chapel, but there are religious symbols displayed at the Center. Children that request to attend a religious service are transported to the service regardless of their creed.

## II. ANALYSIS

The Employer contends that the Board is precluded from exercising jurisdiction by the Supreme Court's decision in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979). In *Catholic Bishop*, the Board certified a labor organization to represent a unit of lay teachers at two groups of Catholic high schools. One group of schools was operated by the Catholic Bishop of Chicago, a corporation. Those schools offered special religious instruction as well as college preparatory courses similar to those offered in public schools. The other group of schools was operated by the Diocese of Fort Wayne-South Bend, Inc. and also provided secular education accompanied by mandatory religious training. The Supreme Court in *Catholic Bishop* held that if it were to construe the Act to grant jurisdiction, it would then be required to decide whether that grant of jurisdiction was constitutionally permissible under the Religion Clauses of the First Amendment to the United States Constitution. *Id.* at 499.

The Court considered "whether Congress intended the Board to have jurisdiction" over teachers in church-operated schools, and approached that inquiry in two steps. *Id.* at 500. The Court found it necessary to determine whether the Board's exercise of jurisdiction "would give rise to serious constitutional questions." *Id.* at 501. If such questions were raised, in the Court's view, it would then have to identify "the affirmative intention of the Congress clearly expressed" before concluding that the Act granted the Board jurisdiction over teachers in church-operated schools. *Id.* at 500-501. The Court found that teachers in parochial schools have a "critical and unique" role in fulfilling the mission of a church-operated school, and saw no escape from conflicts flowing from the Board's exercise of jurisdiction over teachers in church-operated schools and the consequent serious First Amendment questions that would follow. *Id.* at 501, 504. The Court cited the 1974 amendment to the Act, where Congress removed the exemption of non-profit hospitals. *Id.* at 505. However, in the absence of a clear expression of Congress' intent to bring teachers in church-operated schools within the jurisdiction of the Board, the Court concluded that there was no Board jurisdiction. The Court declined to reach the "difficult and sensitive" constitutional questions arising out of the guarantees of the First Amendment Religion Clauses. *Id.* at 506.

The Board has not limited the *Catholic Bishop* principle to schools operated by a religious organization itself. Instead, the Board has found that it is the religious purpose and the employees' role in effectuating that purpose that prompted the Court's decision. In *Jewish Day School of Greater Washington*, 283

NLRB 757 (1987), the Board declined to exercise jurisdiction over a unit of teachers in a school because the majority concluded that "*Catholic Bishop* precludes the Board from exercising jurisdiction where a Union seeks to represent a unit of teachers in a school whose purpose and function in substantial part are to propagate a religious faith." *Id.* at 761. In *Jewish Day School*, religious instruction was mandatory at all grade levels, students devoted 40 percent of their school day to religious study, and the teachers' role included effectuating the school's religious purpose.

In contrast, in *Hanna Boys Center*, 284 NLRB 1080 (1987), *enfd.* 940 F.2d 1295 (9th Cir. 1991), the Board asserted jurisdiction over the non-profit, charitable residential facility for boys when the unit sought was for childcare workers and other non-teacher employees. The institution was founded by two Roman Catholic priests, fell under the ecclesiastical jurisdiction of the Diocese of Santa Rosa, and required that residents attend morning and evening prayers and coursework on various aspects of theology. However, the Board held that the childcare workers were less involved in the religious inculcation of the residents than were the teachers and thus the first amendment issues surrounding the assertion of jurisdiction over teachers noted by the Court in *Catholic Bishop* was not involved in the assertion of jurisdiction over the childcare workers and other non-teacher unit members. *Id.* at 1083.

The Board also found it had jurisdiction over a school engaged in the care of socially and emotionally disturbed boys, which facility was owned by the Roman Catholic Church, was not separately incorporated, and its board of directors assumed its authority from the powers delegated to it by the diocese in *Harborcreek School for Boys*, 249 NLRB 1226 (1980). The Board held that the evidence showed that the purpose of the school was not the promulgation of the Roman Catholic faith, but the provision of a social service on a nondenominational basis and the school's employees were not required to have any particular religious background or training, and there was no showing that any employee was directly or indirectly involved in the teaching of religious philosophy. The Board concluded that, while the work of the school was in accord with the charitable aims and purposes of the diocese, the school was not a religious institution with a sectarian philosophy or mission; and, thus, the assertion of jurisdiction was not violative of the freedom of religion clause of the first amendment. An election was conducted in a voting group that included childcare workers. *Id.* at 1226-1227.

Similarly, in *NLRB v. St. Louis Christian Home*, 663 F.2d 60 (8th Cir. 1981), enforcing *St. Louis Christian Home*, 251 NLRB 1477 (1980), the Eighth Circuit Court of Appeals held that the Board had jurisdiction to direct the employer to bargain collectively with the union over a unit of childcare workers, maintenance employee, and storeroom clerk employed by an emergency residential treatment center for battered, abused, and neglected children, operated by the Christian Church Disciples of Christ. The Court found that the children's home operated in the same way as secular childcare institutions, received funds primarily from government services, hired employees without regard to religion to perform essentially secular functions, took children solely from state agency referrals, the children re-

mained wards of the state, and was required by the state to obtain parental consent before resident children could attend church services. *Id.* at 64. See also, *Ecclesiastical Maintenance Services*, 325 NLRB 629 (1998) (Board asserted jurisdiction over the employer, a non-profit corporation formed by the Roman Catholic Archdiocese of New York, which provided cleaning and maintenance services on a contract fee basis exclusively for facilities including churches, schools, and seminaries in the Archdiocese and the unit employees' tasks were secular in nature); *Salvation Army of Massachusetts*, 271 NLRB 195 (1984), *enfd.* 763 F.2d 1 (1<sup>st</sup> Cir. 1985) (Board had jurisdiction over day care center operated by non-profit, religious organization, where the center's function was primarily to provide care for children, not education; center involved no religious instruction, indoctrination, or extracurricular activities; neither children, teachers, nor parents were chosen for their religious affiliation; and no significant conditions of employment was of a religious nature).

The cases cited by the Employer are distinguishable on the basis that the employers are non-profit, religious organizations over which the Board generally will not assert jurisdiction. In *St. Edmund's High School*, 337 NLRB 1260 (2002), the Roman Catholic Church and its related schools were one, single employer, and directly employed the petitioned-for custodians. Jurisdiction was not asserted in *Riverside Church*, 309 NLRB 806 (1992), where the Employer was a religious institution with a stated mission that "worships, witnesses and works for the advancement of the ideals of the gospel." In connection with its religious mission, it provided regular worship services, conducted weddings, funerals and baptisms, and provided Christian education for adults and children. See also, *Faith Center-WHCT Channel 18*, 261 NLRB 106 (1982) (employer was a non-profit church corporation that utilized a television station as its pulpit, the purposes of which was to provide a church for public worship and religious training). In *Motherhouse of the Sisters of Charity*, 232 NLRB 318 (1977), the employer was a partially cloistered convent that was the permanent and legal residence of the Sisters of Charity and included a nursing home maintained for the purpose of enabling infirm sisters to continue the practice of their religion and their existence as part of the religious community. The Employer in *Board of Jewish Education*, 210 NLRB 1037 (1974), operated for the sole purpose of furthering Jewish education among the Jewish population in the Greater Washington D.C. area. In all of these cases, the Board did not assert jurisdiction over religious institutions which operated "in a conventional sense using conventional means" and declined to assert jurisdiction over secular employees of religious institutions, without whom the employers could not accomplish their religious missions. *St. Edmund's High School*, *supra*.

The Employer's reliance on *Carroll College v. NLRB*, 558 F.3d 568 (D.C. Cir. 2009) and *University of Great Falls v. NLRB*, 278 F.3d 1335, (D.C. Cir. 2002), is also unpersuasive where the holdings in those cases are first based on whether the employers held themselves out as schools providing a religious education environment. Here, the Center is a residential treatment facility, not a school, and provides no religious instruction, education, or guidance to its residents; rather, on those

occasions when a resident is unable to attend the local public schools, the Center's specialists tutor the students in the regular academic subjects common place in secular schools.

Here, unlike the cases cited by the Employer, the Center is not an employer which is itself a religious institution and does not hold itself out as a religious school, and it will effectuate the policies of the Act to assert jurisdiction here. The Center is a program of the Employer, a social service agency operated by the Diocese of Belleville, whose vision is to be an example of the mission and philosophy of the Diocese, whose Executive Director must be of the Catholic faith, and whose board of directors is selected by the Bishop of the Diocese. However, the Center is engaged in the secular function of operating a residential treatment facility for abused and neglected wards of the State of Illinois. The Center receives funds primarily from government sources, hires employees without regard to religious denomination who perform essentially secular functions of child care, provides services to children of all backgrounds, and provides no religious education or inculcation. Thus, the Employer does not have a religious purpose and the specialists and aides are not engaged in effectuating a religious purpose, and the exercise of jurisdiction does not create a significant risk of constitutional infringement that the Supreme Court discussed in *Catholic Bishop. Hanna Boys Center*, *supra*; *Harborcreek School for Boys*, *supra*; *St. Louis Christian Home*, *supra*. Accordingly, I find that it will effectuate the purposes and policies of the Act to assert jurisdiction.<sup>4</sup>

### III. CONCLUSIONS AND FINDINGS

Based on the entire record<sup>5</sup> in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of the Section 9(b) of the Act:

All full-time and regular part-time residential treatment specialists and residential treatment aides employed by the Employer at St. John Bosco Children's Center located at 900 Royal Heights, Belleville, Illinois,<sup>6</sup> EXCLUDING all thera-

<sup>4</sup> I note that the finding of a religious purpose on the part of the Employer could create a tension between the State's support and use of the Employer's services and the establishment clause of the First Amendment. Such concerns are, of course, beyond the scope of this decision.

<sup>5</sup> At hearing, the parties agreed to the Employer's post-hearing submission of additional exhibits, which have been received and are made a part of the official record as Employer Exhibits E-7, E-8, and E-9.

<sup>6</sup> While the parties stipulated to the inclusions of "similar classifications involved in direct patient care", the record fails to reflect that this

pists, case managers, maintenance workers, cooks, office clerical and professional employees, guards, and supervisors,<sup>7</sup> as defined in the Act, and all other employees.

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identifies any employees currently employed. Indeed, the record reflects an agreement between the parties as to the number and classifications of the employees in the appropriate units. Therefore, I am deleting “similar classifications involved in direct patient care” from the unit inclusion. If there are employees to whom this is a reference, they may vote subject to the Board’s challenged ballot procedures.

<sup>7</sup> The parties stipulated that the program director, assistant director (which position is currently vacant), and the two supervisors are supervisors within the meaning of the Act, and I so find.