

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

MARY CRANE CENTER

Employer

and

Case 13-RC-107347

**SEIU HEALTHCARE INDIANA
ILLINOIS**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (“the Act”), a hearing was held before a hearing officer of the National Labor Relations Board (“the Board”). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding.¹

¹Upon the entire record in this proceeding, I find:

1. The hearing officer twice granted unopposed motions by the Employer to keep certain exhibits confidential, in essence providing a protective order regarding the exhibits, Joint Exhibits 1 and 2. Having duly considered the matter, I have determined that the exhibits in question are not essential to a decision on this matter and have stricken them from the record. In any event, the exhibits are subject to the rules and exemptions of the Freedom of Information Act. I find that in all other respects the hearing officer’s rulings made at the hearing were free from prejudicial error and those rulings are hereby affirmed.
2. SEIU Healthcare Illinois Indiana (“the Petitioner”) is a labor organization within the meaning of the Act.
3. The Petitioner claims to represent certain employees of the Employer in the unit described in the petition it filed herein, but the Employer declines to recognize the Petitioner as the collective-bargaining representative of those employees
4. There is no collective-bargaining agreement covering any of the employees in the unit sought in this petition and the parties do not contend that there is any contract bar to this proceeding.
5. 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.

I. ISSUES

There is a single issue herein: whether the Board has jurisdiction over Mary Crane Center (“the Employer”).

The Employer argues that, first, that it is a political subdivision of the State of Illinois because government entities dictate the Employer’s human resources and labor relations policies—leaving the Employer with no discretion to bargain, and, second, its revenues are insufficient to establish a substantial effect on interstate commerce because the major share of the revenues come from the City of Chicago, the Federal government, and the State of Illinois. The Petitioner argues that the facts demonstrate that the Employer is an employer within the meaning of Section 2(2) of the Act—not a political subdivision of the State of Illinois—and that the Employer meets the monetary requirements for the assertion of the Board’s jurisdiction.

II. DECISION

For the reasons discussed in detail below, I find that the Employer meets the definition of “employer” under Section 2(2) of the Act and that the Employer meets the applicable monetary jurisdictional standards. Accordingly, **IT IS HEREBY ORDERED** that an election be conducted under the direction of the Regional Director for Region 13 in the following appropriate bargaining unit:

Eligible to vote are all lead teachers, teacher’s aides, home visitors, health aides, teacher assistants, administrative assistants, food aides, family workers, family workers’ aides, and paraprofessionals employed by the Employer at the employer’s facilities located at 1120 North Lamon, Chicago, IL (Morse); 316 North Pulaski, Chicago, IL (Lake & Pulaski); 2905 North Leavitt, Chicago, IL (Molade); and 1545 West Morse, Chicago, IL (Lathrop), but excluding all other employees, guards, and supervisors as defined in the Act.

III. ANALYSIS

The Employer, Mary Crane Center, is an Illinois not-for-profit corporation. The Employer operates four facilities in the City of Chicago that provide Head Start, Early Head Start, and childcare services to City of Chicago residents who meet certain income guidelines. The Employer is a delegated agency through the City of Chicago for the Federal Head Start program and also provides Pre-Kindergarten, and childcare services.

A. **Mary Crane Center is an Employer within the Meaning of Section 2(2) of the Act**

Section 2(2) of the Act provides in relevant part that the “term ‘employer’ shall not include...any State of political subdivision thereof.” The Board has held that for an ostensibly private employer to be considered a political subdivision of a state and therefore not an employer under Section 2(2) of the Act, the employer must be “created directly by the state” or “administered by State-appointed or elected officials.” *Natural Gas Utility District of Hawkins*

County, 167 NLRB 691, 691 (1967). In the absence of a finding that an employer is a political subdivision of a state, the Board determines whether to assert jurisdiction over an employer that contracts with a government entity when “the employer meets the definition of ‘employer’ under Section 2(2) of the Act” and such employer “meets the applicable monetary jurisdictional standards.” *Management Training Corp.*, 317 NLRB 1355, 1355 (1995) (overruling *Res-Care, Inc.*, 280 NLRB 670 (1986)).

Here, the Employer does not contend that it was directly created by the State of Illinois, admitting that its Board of Directors “is not technically appointed by public officials.” But the Employer does argue that it is “administered by individuals who are responsible to public officials or to the general electorate,” *NLRB v. Natural Gas Utility Dist. of Hawkins County*, 402 U.S. 600, 604-5 (1971), because Federal regulations, the Chicago Public Schools, or the State of Illinois require certain education for teachers and teacher’s assistants; the use of special software to prepare lesson plans and to track student performance; require continuing education; dictate the curriculum; establish salary ranges for teaching employees; and provide for the participation of program parents in personnel decision making. Most significantly, according to the Employer, failure to adhere to these requirements will result in the loss of government funding. This fact, the Employer argues, makes the Employer “responsible to public officials.”

The second prong of the *Hawkins County* test requires the Employer to show that the majority of individuals who administer the entity were appointed by and subject to removal by public officials. *Chicago Mathematics & Science Academy Charter School, Inc.*, 359 NLRB No. 41, slip op. at 8 (Dec. 14, 2012). Here, the Employer admits that its board of directors is not appointed by public officials. “Where an examination of the appointment-and-removal method yields a clear answer to whether an entity is ‘administered by individuals who are responsible to public officials or to the general electorate,’ the Board’s analysis properly ends.” *Chicago Mathematics & Science Academy*, 359 NLRB No. 41, slip. op. at 9-10. Yet, the Employer argues that it is “effectively a political subdivision” because its government funders impose “operational requirements, many of which would be mandatory subjects of bargaining” such that “Mary Crane[...] is constructively administered by the public agencies that control [its] funding.” Essentially, without actually citing the case, the Employer is blending the overruled *Res-Care, Inc.*, 280 NLRB at 672, test—whether an employer under Section 2(2) of the Act “retained sufficient control over the employment conditions of its employees to enable it to engage in ‘effective’ or ‘meaningful’ bargaining with a labor organization”—with the *Hawkins County* test.

In support of its argument, the Employer relies on *Oklahoma Zoological Trust*, 325 NLRB 171, 171-72 (1997), a *Hawkins County* case that does not even address whether an employers’ reliance on public funding and the requirements of those agencies can amount to “constructive administration” by public agencies.

There is no support in Board law for the Employer’s theory that it is a *de facto* politico subdivision. That the Employer is subject to government regulation is irrelevant in determining whether it is an employer under Section 2(2) of the Act. At issue is whether the Employer’s Board of Directors is appointed and subject to removal by public officials. The Employer admits that the answer to that narrow question is “no.” Thus, the Employer is not a political subdivision of the State of Illinois. See *Pilsen Wellness Center*, 359 NLRB No. 72, slip op. at 3-4 (Mar. 8, 2013) (rejecting the Regional Director’s consideration of factors—including that the employer

was required to comply with local, State and Federal laws affecting terms and conditions of employment—other than whether the board of directors was appointed and subject to removal by public officials). The Employer meets the definition of employer under Section 2(2) of the Act and thereby satisfies the first part of the *Management Training Corp.* test for the exercise of the Board’s jurisdiction.

B. The Employer Meets the Board’s Monetary Standards for Assertion of Jurisdiction

As a social service organization operating a Head Start program, the Employer is subject to a \$250,000 gross annual revenue standard. See *Salt & Pepper Nursery School No. 2*, 222 NLRB 1295, 1296 (1976). Where the evidence showed that gross revenues met the Board’s gross revenue standards and a substantial amount of that revenue derived from Federal funds, the Board has determined that the transfer of Federal funds across state lines constitutes interstate commerce more than sufficient to establish legal jurisdiction. *Hispanics United of Buffalo, Inc.*, 359 NLRB No. 37, slip op. at 1 n.4 (Dec. 14, 2012) (adopting the administrative law judge’s jurisdiction analysis); *Bricklayers & Allied Craftsmen Local 2*, 254 NLRB 1003, 1003 (1981) (employer’s \$1 million contract with the Los Angeles County Department of Roads was funded through the Federal Government); *Montgomery County Opportunity Board*, 249 NLRB 880, 880 (1980) (directing election in Head Start program); *Mon Valley United Health Servs., Inc.*, 227 NLRB 728, 728 (1977) (advisory opinion).

The Employer contends that it does not affect commerce within the meaning of Section 2(6) and (7) of the Act. In support of its argument, the Employer advances the proposition that funds received from government sources may not be counted as revenue where there is a possibility that the employer would lose funding if it did not adhere to all program requirements imposed by government-funder agencies. In support of its argument, the Employer relies on *KVST-TV*, 217 NLRB 419, 420 (1975) in which Board stated that it does not include revenue not available for operating expenses. Yet, in *KVST-TV*, the Board determined that the employer failed to show that a contribution conditioned on matching donations was not available for operating expenses.

The Employer’s argument is no more meritorious than KVST-TV’s argument. Here, the government funding for the Employer’s operations comes from several sources: the Chicago Public Schools for pre-kindergarten programming; the City of Chicago’s Department of Family Support Services for Early Head Start and Head Start programming, which money comes from the Federal government and which the Employer receives through the City; the Illinois State Board of Education for funds for food; and the State of Illinois for the Childcare Assistance Program. The Employer pools the money received from all sources into a “blended” or “braided” fund, which allows the Employer to provide higher quality and more services in all program areas. That the Employer might hypothetically fail to adhere to a government-funder requirement and hypothetically lose funds at some point in the fiscal year does not mean that the revenue is unavailable for operating expenses. There is no showing here that government funds were provided with a limitation on their use for operating expenses.

Further, the Employer's fiscal year runs from July 1 – June 30. In fiscal year 2012, the Employer received \$2,499,264 in Federal funds from the City of Chicago for Early Head Start and Head Start; \$732,750 from the Chicago Public Schools for the Pre-Kindergarten program; \$502,108 from the State of Illinois for childcare programs. In fiscal year 2013 up to May 31, 2013, the Employer received \$1,819,699 in Federal Head Start funds; \$674,666 from the Chicago Public Schools; and \$217,787 from the State of Illinois. The Employer's annual revenues easily satisfy the \$250,000 revenue standard for Head Start programs and the revenue received from the Federal government satisfies the statute's interstate commerce requirement. See *Community Services Planning Council/Area 4 Agency*, 243 NLRB 798, 799 (1979) (employer's participation in and receipt of Federal moneys adequately demonstrates that the Employer's operations have a substantial effect on commerce and establishes the required statutory jurisdiction of the Board) (citing *Garfield Park Comprehensive Community Health Center, Inc.*, 232 NLRB 1046, 1046-47 (1977) and *East Oakland Community Health Alliance, Inc.*, 218 NLRB 1270, 1271 (1975)). Therefore, the Employer satisfies the second part of the *Management Training Corporation* test.

IV. CONCLUSION

Based on the foregoing and the entire record herein, I have found that the Employer is not a political subdivision of the State of Illinois; that the Employer meets the definition of "employer" under Section 2(2) of the Act; and that the Employer meets the Board's applicable monetary jurisdictional standards. The Board has jurisdiction over the Employer and I direct an immediate election.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are all lead teachers, teacher's aides, home visitors, health aides, teacher assistants, administrative assistants, food aides, family workers, family workers' aides, and paraprofessionals employed by the Employer at the employer's facilities located at 1120 North Lamon, Chicago, IL (Morse); 316 North Pulaski, Chicago, IL (Lake & Pulaski); 2905 North Leavitt, Chicago, IL (Molade); and 1545 West Morse, Chicago, IL (Lathrop), but excluding all other employees, guards, and supervisors as defined in the Act.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strikes that have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike

which commenced more than 12 months before the election date and who have been permanently replaced.

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the SEIU Healthcare, Illinois Indiana.

VI. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Employer*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, 209 South, LaSalle Street, Suite 900, Chicago, Illinois 60604 on or before **July, 24, 2013**. **No** extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **July 31, 2013**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 17th day of July 2013.

/s/ Peter Sung Ohr

Peter Sung Ohr, Regional Director
National Labor Relations Board, Region 13
209 South LaSalle Street, 9th Floor
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