

**The United Way of Howard County, Inc. and Local No. 1205, United Steelworkers of America, AFL-CIO, Petitioner. Case 25-RC-8199**

6 January 1988

**DECISION ON REVIEW AND DIRECTION**

**BY MEMBERS JOHANSEN, BABSON, STEPHENS, AND CRACRAFT**

On 19 July 1985 the Regional Director for Region 25 issued a Decision and Direction of Election in this proceeding in which, inter alia, he asserted jurisdiction over the Employer, finding that the annual value of the Employer's services exceeds the Board's discretionary jurisdictional standards for retail operations, and that the impact of the Employer's operation on interstate commerce is sufficient for the Board's assertion of jurisdiction. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision, contending, inter alia, that the Regional Director erred in asserting jurisdiction.

By telegraphic order dated 15 August 1985, the Board granted the request for review with respect to the jurisdictional issue.<sup>1</sup> Following review of the record, the Board, by order dated 23 December 1985, remanded the proceeding to the Regional Director for the taking of additional evidence relevant to the jurisdictional question. On 3 April 1986 the record was reopened pursuant to the remand order, and the proceeding subsequently was transferred back to the Board.

The Board has reviewed the entire record in this case with respect to the issue under review and makes the following findings.

The Employer is a nonprofit Indiana corporation engaged in the solicitation, collection, and distribution of funds "for benevolent, charitable or patriotic purposes." Among its functions, according to the corporate bylaws submitted by the Employer, are the assessment of the need for social service programs and the development of financial resources to be made available for social services in the community. Generally, the Employer receives charitable contributions from local businesses, organizations, and individuals and allocates the funds received to nonprofit agencies providing various social services in the community. In 1984, the Employer received donations totaling more than \$1.3

million and allocated over \$1.1 million to social service agencies. As an example of the effect of the Employer's activities on interstate commerce, we note that, of the funds donated to the Employer in 1984, more than \$150,000 was received directly from sources outside the State of Indiana, of the funds the Employer allocated in 1984, approximately \$15,000 went directly to agencies outside the State.

The Regional Director, noting that the Board had not at that time established a particular jurisdictional standard applicable to operations like the Employer's, analogized its function to that of a retail operation. He asserted jurisdiction, finding that the Employer's annual revenues exceeded any of the Board's jurisdictional standards based on gross revenue and that the Employer had a sufficient impact on interstate commerce.

In its request for review, the Employer urges the Board to return to the rule of *Ming Quong Children's Center*, 210 NLRB 899 (1974), and thus decline to assert jurisdiction, as nonprofit, charitable organizations engaged in activities like the Employer's do not, as a class, have a massive impact on interstate commerce. Additionally, the Employer contends that the Board's assertion of jurisdiction is improper because, in its function of raising and disbursing funds for charitable purposes, the Employer engages in no commercial activity.

With respect to the Employer's jurisdictional contentions, we adhere to the principles of *St. Aloysius Home*, 224 NLRB 1344 (1976), in which we overruled *Ming Quong*, above, and held that we would not decline to assert jurisdiction over an institution because of its nonprofit, charitable status. Instead, we announced that we would determine in each case whether the organization's impact on commerce was sufficient for the Board to exercise its jurisdiction. *St. Aloysius Home*, above at 1345. As we recently observed in *Long Stretch Youth Home*, 280 NLRB 678 fn. 11 (1986), we have continued to reaffirm our position in *St. Aloysius Home*, and the courts have accepted the inclusion of nonprofit, charitable employers within our jurisdiction. To the extent that the Employer argues that we should not assert jurisdiction in this case because its operations are not commercial in nature, it is merely attacking the rule of *St. Aloysius Home*, to which we continue to adhere.

In determining whether a sufficient impact on commerce is shown to warrant our exercise of jurisdiction in this case, however, we will not apply the retail standard used by the Regional Director. Rather, we shall follow *Hispanic Federation for Social & Economic Development*, 284 NLRB 500 (1987), a case in which we established a jurisdic-

<sup>1</sup> Pursuant to the Board's procedures, an election was conducted on 16 August 1985 and the ballots were impounded pending the Board's Decision on Review. In his decision, the Regional Director found, in accordance with the parties' stipulation, that the appropriate unit includes all full-time and regular part-time employees of the Employer, excluding managers, guards, and supervisors as defined in the Act.

tional standard of \$250,000 in annual revenues "for all social service organizations other than those for which there exists a standard specifically applicable to the type of activity in which they are engaged." *Id.* at 501. There, we reasoned that use of this discretionary standard will bring within the Board's jurisdiction only those employers in the social services field exerting a significant impact on interstate commerce. *Ibid.*

The record demonstrates clearly that the Employer here meets the *Hispanic Federation* standard. It is a social service organization for which there is no other specifically applicable jurisdictional standard. Its annual revenues in 1984, over \$1.3 million, far exceed the minimum jurisdictional amount of \$250,000. The record evidence cited above indicating only the *direct* effect of the Employer's activities on interstate commerce<sup>2</sup> establishes the Board's statutory jurisdiction and confirms the view expressed in *Hispanic Federation* that the \$250,000 standard will result in the assertion of jurisdiction over employers having a significant impact on interstate commerce. Accordingly, we affirm the Regional Director's conclusion that the Board's jurisdiction should be asserted over the Employer.<sup>3</sup>

#### DIRECTION

The Regional Director for Region 25 is directed to open and count the impounded ballots, to issue a tally of ballots, and to take further appropriate action in light of this decision and the Rules and Regulations of the National Labor Relations Board.

<sup>2</sup> The Board, of course, may evaluate the indirect as well as the direct effect of an employer's operations on interstate commerce in considering the question of its jurisdiction.

<sup>3</sup> With respect to Member Johansen's dissenting opinion, we note that his opening characterizations of this Employer, and of other "consortiums," are not based on the record. Further, the applicability of the *Hispanic Federation* standard is intended to be broad, and not narrowly tailored to a particular social service operation, as our colleague suggests. This is so *because of the diversity* of social service organizations which come before us. Finally, although it may be that our colleague is referring to a unit question (which is not at issue here), to the extent that his dissent suggests a jurisdictional analysis involving a ratio between an employer's annual revenues and the number of its employees, we do not agree with it. The essence of the jurisdictional analysis here is an evaluation of the impact of the Employer's operation on interstate commerce, and, in so proceeding, we have adhered to the Board's well-established, appropriate approach to such matters.

MEMBER JOHANSEN, dissenting.

The United Way is a consortium of charitable organizations which have joined together to more economically and efficiently solicit charitable contributions. The one here appears to be relatively small, and similar organizations, I believe, are to be found nationwide. The charities which make up such consortiums are diverse and have widely varying strategies and purposes: medical, environmental, social, societal, economic, legal. The list goes on, limited, perhaps, only by the imagination of the categorist and that of the philanthropic. Many, but not all, of these organizations can generally if loosely be called "social service organizations." That is, they appear to provide "organized welfare efforts carried on under professional rules by a trained personnel."<sup>1</sup> (At least I would not quarrel with that conclusion.) It also seems clear, however, that not all members of such consortiums would generally be thought to be "social service organizations."

In *Hispanic Federation*, 284 NLRB 500 (1987), which the majority relies on, the employer provided "social services" as I generally understand that term: social workers and technical support services related to providing housing. It had some \$220,000 in annual revenue and eight employees. The Board examined Census Bureau data and concluded that as a social service other than child day care a \$250,000 jurisdictional standard was appropriate and declined jurisdiction. No such analysis is made here. This Employer, a solicitor of funds and a provider of funds, not to the needy, but to those who would aid them, does not easily fit into the *Hispanic Federation* niche.

United Way of Howard County, the Employer, has annual revenue over \$13 million and but three employees. If that is a common ratio, and on this record there is no basis to find it is not, then extrapolation reveals that we will be asserting jurisdiction over employers with three-fifths of an employee (presumably a part-timer).

I dissent because I do not believe an adequate case has been made for the use of the jurisdictional standard applied here.

<sup>1</sup> *The American College Dictionary*, 1146 (1969) *Webster's Third New International Dictionary*, 2162 (1971), provides a broader definition: organized philanthropic assistance of the sick, destitute, or unfortunate.