

Roman Catholic Orphan Asylum of San Francisco, d/b/a Mount St. Joseph's Home for Girls and Social Services Union, Local 535, SEIU, AFL-CIO, Petitioner. Case 20-RC-13796

April 25, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND MURPHY

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Miguel A. Gonzalez. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 20, this case was transferred to the National Labor Relations Board for decision. Thereafter, the Employer and the Petitioner filed briefs.

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 reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is a nonprofit corporation which operates a licensed child welfare facility for the residential care of neglected, dependent, or abused children ranging in age from 6 to 18. The facilities involved herein consist of six group homes, five of which are used to provide long-term shelter while the sixth, Shalom House, is an emergency care shelter. To carry on its function, the Employer employs at each home, including Shalom House, senior counselors, child care workers, housekeepers, and cooks. It also employed, up until September 1, 1976, five lay social workers whose function it was to work with the child care workers.

The Employer contends that its operations are so intimately connected with the operations of the county of San Francisco, an exempt employer under the Act, that the Board should find that the Employer shares the county's exemption from the Act's provisions. The Employer further contends that, inasmuch as its activities are entirely local and have virtually no impact on commerce, the Board lacks jurisdiction over it.

The exempt status issue and the jurisdictional issue raised here by the Employer were previously raised

by it and answered by the Board in *Roman Catholic Orphan Asylum of San Francisco, d/b/a Mount St. Joseph's Home for Girls*, 227 NLRB 404 (1976). In that case¹ we held that the Employer's operations are not so interconnected with the county's operations as to entitle the Employer to share in the county's exemption from the Act's jurisdiction. Furthermore, we found that, inasmuch as the Employer's gross annual revenues far exceeded the \$250,000 discretionary jurisdictional standard we have established for these types of institutions, it met our discretionary jurisdictional standards. Based on our decision in *Mount St. Joseph's Home for Girls*, *supra*, we shall assert jurisdiction herein.

2. The labor organization involved claims to represent certain employees of the Employer.

3. For the reasons set forth below, we find that no question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit consisting of all social workers employed by the Employer at its several homes, excluding supervisors. The parties stipulated that the Employer's intake supervisor at Shalom House, Mr. Mayberry, who also performs social work, is a supervisor within the meaning of the Act and should be excluded from any unit or units found appropriate. The parties also stipulated that Sister Gloria Briganti, who serves as a social worker part of her working time, should be excluded as a managerial employee or one closely allied with management.

Sometime prior to August 20, 1976, the Employer decided to eliminate all part-time social worker positions and to retain only the full-time positions in the unit sought. At that time, there were three part-time and two full-time social workers employed by the Employer.

By October 8, 1976, the decision to eliminate the part-time social worker positions had been fully implemented and the Employer had only two full-time social workers in its employ. One week before the hearing, one of these social workers voluntarily resigned. At that time the Employer decided that it would not replace the social worker who resigned but would operate with only one full-time social worker and possibly hire a staff psychologist to handle the more pressing needs of the residents. Sister Betty Marie Dunke, assistant administrator of the Employer, testified that this decision was based on the Employer's desire to establish a child-social worker ratio comparable to that of other similar child care institutions, which is 1 social worker for every 12 to

¹ The decision in that case was issued on December 17, 1976, after the hearing in this case closed.

16 girls. This ratio is achieved by the use of one full-time social worker and the part-time social work functions performed by Intake Supervisor Mayberry and Sister Gloria Briganti.²

Inasmuch as it appears that the Employer now employs only one social worker in the unit sought and does not intend to employ more than one such social worker at a given time, and, as it is contrary to Board policy to certify a single person unit,³ we shall decline to direct an election in this case. Accordingly, we shall dismiss the petition.

² The record shows that the total number of girls enrolled in the Employer's regular program is 32.

³ *Crescendo Broadcasting, Inc., WATV Radio*, 217 NLRB 697 (1975), *Sonoma-Marin Publishing Company*, 172 NLRB 625 (1968).

ORDER

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

MEMBER MURPHY, concurring in part and dissenting in part:

While I agree with my colleagues' dismissal of the instant petition, I disagree with their assertion of jurisdiction over the Employer. As stated in my dissent in the earlier Decision involving this Employer,⁴ I would not assert jurisdiction over charitable, nonprofit, noncommercial institutions such as the Employer. Accordingly, I would find it unnecessary to reach the unit question presented.

⁴ *Roman Catholic Orphan Asylum of San Francisco, d/b/a Mount St. Joseph's Home for Girls*, *supra*.