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Jacksonville Urban League, Inc. *and* Service Employees International Union (SEIU), AFL–CIO, Petitioner. Case 12–RC–8983

December 18, 2003

ORDER DENYING REVIEW

CHAIRMAN BATTISTA AND MEMBERS LIEBAN AND WALSH

The National Labor Relations Board, by a three-member panel, has carefully considered the Employer's request for review of the Acting Regional Director's Decision and Direction of Election (pertinent portions of which are attached as an appendix). The request for review is denied as it raises no substantial issues warranting review. In denying review, the Board adheres to its holding in *Management Training Corp*., 317 NLRB 1355 (1995), and rejects the Employer's argument that the Board should overrule *Management Training* and apply *Res-Care, Inc.*, 280 NLRB 670 (1986).

Dated, Washington, D.C. December 18, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Jacksonville Urban League, Inc., operates head start program centers in Duval County, Florida. On October 27, 2003, the Petitioner, Service Employees International Union (SEIU), AFL–CIO, filed petitions with the National Labor Relations Board (the Board), under Section 9(c) of the National Labor Relations Act (the Act), seeking to represent separate units of certain employees. On October 31, 2003, I issued an Order Consolidating Cases 12–RC–8983 and 12–RC–8984.

On November 7, 2003, a hearing officer of the Board held a consolidated hearing, at which the parties reached certain stipulations that I now approve. Based upon these stipulations, and the record as a whole,[1] I conclude:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.[2]

2. The Employer is engaged in commerce within the meaning of the Act,[3] and it will effectuate the purposes of the Act to assert jurisdiction in this case.[4]

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.

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[1] Only the Employer filed a brief, and I have carefully considered it.

[2] The sufficiency of a petitioner's showing of interest is an administrative matter not subject to litigation. *O.D. Jennings and Co.*, 68 NLRB 516 (1946). I am administratively advised that the Petitioner's showing of interest is adequate.

[3] The parties stipulated that Jacksonville Urban League, Inc., a nonprofit corporation, incorporated in the State of Florida, with an office and places of business located in Duval County, Florida, is engaged in the business of ensuring that children are educated properly. During the 12-month period ending September 30, 2003, the Employer derived gross revenues in excess of $250,000, and purchased and received at its centers located within Duval County, Florida, goods valued in excess of $50,000, from suppliers located outside the State of Florida.

[4] In *Management Training Corp.*, 317 NLRB 1355, 1358 (1995), the Board adopted a simplified two-prong test to determine whether jurisdiction should be asserted over private sector employers with close ties to an exempt government entity: (1) Does the employer meet the definition of "employer" under Sec. 2(2) of the Act and (2) does the employer meet the Board's statutory and monetary jurisdictional standards? The Board also ruled that it would not analyze whether the private sector employer is a joint employer with the exempt government entity in order to determine jurisdiction. 317 NLRB at 1358, fn. 16. Although the Board has no jurisdiction over a government entity and cannot compel it to sit at the bargaining table, the private employer is capable of engaging in effective bargaining regarding terms and condition of employment within its control. Id. at 1358, fn. 16. In *Management Training*, the Board overruled *Res-Care*, 280 NLRB 670 (1986), and rejected its test which required the Board to examine the control over essential terms and conditions of employment retained by both the employer and the exempt government entity to determine whether the employer is capable of engaging in meaningful collective bargaining. The Board described the *Res-Care* test as "unworkable and unrealistic". 317 NLRB at 1355. The Sixth, Fourth, and Tenth Circuits have upheld the *Management Training* doctrine. See *Pikeville United Methodist Hospital of Kentucky v. NLRB*, 109 F.3d 1146 (6th Cir. 1997); *Teledyne Economic Development v. NLRB*, 108 F.3d 56 (4th Cir. 1997); and *Aramark Corp. v. NLRB*, 156 F.3d 1087 (10th Cir. 19898). The Employer argues that the Board should apply the *Res-Care* test, and it proffered evidence to show that the degree of control exercised by various exempt government entities over the terms and conditions of employment of the petitioned-for unit employees renders it incapable of engaging in meaningful collective bargaining with the Petitioner. The Employer concedes that it satisfies the Board's discretionary jurisdictional standards and statutory definitions within the meaning of Sec. 2(6) and (7) of the Act. I find that the Employer satisfies the Board's *Management Training* test and the record evidence provides no other basis for declining to assert jurisdiction. I am obligated to apply current Board law. I so find that the assertion of jurisdiction over the Employer is clearly warranted, and the Employer's motion to dismiss the petitions for lack of jurisdiction is denied.

5. The following employees of the Employer constitute units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Case 12–RC–8983:

All full-time and regular part-time teachers, lead teachers, teacher assistants, family development liaisons, administrative assistants, male involvement specialists, system specialists, receptionists, and data entry assistants, employed by the Employer at its Duval County, Florida, facilities, excluding presidents, directors, assistant directors, managers, supervisors and guards as defined in the Act, bus drivers, part-time bus drivers, bus dispatchers, food van drivers, food service aides, food service employees, cooks, maintenance employees, custodial employees, disability specialists, and mail carriers.

Case 12–RC–8994:

All full-time and regular part-time bus drivers, part-time bus drivers, bus dispatchers, food van drivers, food service aides, food service employees, cooks, maintenance employees, custodial employees, disability specialists, and mail carriers, employed by the Employer at Duval County, Florida, facilities, excluding presidents, directors, assistant directors, managers or monitors, supervisors and guards as defined in the Act, teachers, lead teachers, teacher assistants, family development liaisons, administrative assistants, male involvement specialists, system specialists, receptionists, and data entry assistants.