

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Fresno, CA)

FRESNO COUNTY ECONOMIC
OPPORTUNITIES COMMISSION

Employer

and

Case 32-RC-4606

AMALGAMATED TRANSIT UNION,
LOCAL 1027, AFL-CIO

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,¹ the undersigned finds:

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

2. The Employer is a California nonprofit public benefit corporation whose principal place of business is Fresno, California. The Employer is in the business of providing a variety of services to low income, disadvantaged, disabled and elderly persons to help them become self sufficient. These services include transportation, education, job training, health

¹ By agreement of the parties, the record was reopened to receive into evidence Board Exhibit 3 and Employer Exhibits 16, 17(a) through (e) and 18.

services and nutritional services. During the past calendar year, the Employer has received revenues in excess of \$500,000 for its services and during the same period purchased in excess of \$50,000 worth of goods and materials directly from outside the State of California.

3. The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. Petitioner claims to represent employees in the following unit of approximately 110 employees, which the parties have stipulated is an appropriate unit:

All full time and regular part time drivers, substitute drivers and drivers aides within the transit system's department employed by the Employer out of its 3120 West Nielsen Avenue, Fresno, California location; excluding all mechanics, dispatchers, mail delivery drivers, on-call drivers, clerks, all other employees, guards and supervisors, as defined in the Act.

5. For the reasons set forth below, I conclude that the Employer is exempt from the Board's jurisdiction under Section 2(2) of the Act because it constitutes a political subdivision of the State of California. Accordingly dismissal of the petition is warranted.

Section 2(2) of the Act excludes from the definition of "employer" any ". . . State or political subdivision thereof . . ." In determining whether an entity is a political subdivision exempt from the Act, the Board, as it explained in its recent decision in Enrichment Services Program, Inc., 325 NLRB No. 154 (1998) uses a two-prong test which was approved in principle by the Supreme Court in NLRB v. Natural Gas Utility District of Hawkins County, 402 US. 600 (1971). That test provides that entities that are either (1) created directly by the State, so as to constitute departments or administrative arms of the government or (2) "administered by" individuals who are responsible to public officials or to the general electorate are exempt from the Act's coverage. For an entity to be "administered by" individuals responsible to public officials or to the general electorate, those individuals must constitute a majority of the entity's governing group. Jefferson County Community Center v. NLRB, 732 F.2d 122, 126 (10th Cir. 1984). As set forth below, I conclude that the Employer meets the second prong of the Hawkins test because it is "administered by" individuals who are responsible to public officials or to the general electorate.

The Employer is a private, nonprofit, tax-exempt² corporation incorporated under the laws of the State of California. It operates several programs providing a variety of services to low income, disadvantaged, disabled and elderly persons within Fresno County, California.

² The Employer's Federal tax exemption is pursuant to 26 U.S.C. § 501 (c) (3), which applies to nonprofit charitable entities. This exemption turns on the Employer's nonprofit status and is not determinative of political subdivision status. Enrichment Services, supra at 3.

The Employer's programs are funded and its affairs conducted in accordance with the Federal Community Services Block Grant (CSBG) Act,³ the California Community Actions Programs Statute (CCAP)⁴ and the California Community Services Block Grant Act of 1982 (CCSBGA)⁵. In addition, the California Code of Regulations (Regulations) contains specific criteria which community action agencies such as the Employer must meet in establishing their governing bodies.⁶

The Federal CSBG requires that recipient organizations be governed by a tripartite board of directors, with one-third being elected public officials or their representatives, or appointed public officials, at least one-third being "persons chosen in accordance with democratic selection procedures adequate to assure that they are representatives of the poor in the area served", and that the remainder of the directors be "officials or member of business, industry, labor, religious, welfare, education or other major groups and interests in the community". 42 U.S.C. § 9901, 9904 (c)(3).

The California CCAP also specifically requires that community action agencies such as the Employer be governed by a tripartite board of directors, with one-third being elected public officials, currently holding office, or their representatives, at least one-third being "persons chosen in accordance with democratic selection procedures outlined in regulations promulgated by the department to assure that the members represent the poor in the area served" and that the remainder be officials or members of business, industry, labor, religious, welfare, education or other major groups and interests in the community. California Govt. Code § 12751.

The Regulations further require that while the "low-income representatives" on a tripartite board of directors of a community action agency such as the Employer "need not be poor themselves" they must be selected in a manner which ensures they "truly represent the poor"⁷ The Regulations allow the low income representatives to be either "Area Representatives of Low Income Persons"⁸ or "Non-area Representatives of Low Income Persons"⁹. For an entity providing services primarily to "compact geographic areas in which

³ 42 U.S.C. §§ 9901 et seq.

⁴ California Govt. Code § 12750 et seq.

⁵ California Govt. Code §§ 12785 et seq.

⁶ 22 C.C.R. § 100605

⁷ 22 C.C. R. § 100605 (c)(2)

⁸ 22 C.C.R. § 100605 (c)(3)

⁹ 22 C.C.R. § 100605 (c)(4)

poverty is concentrated", the Regulations require the representatives of the low income in those "target areas" be selected by "all residents" of the area, with special emphasis given to ensuring that poor residents of the target area "participate fully in the selection process"¹⁰

The Employer is governed by a twenty-four 24 member Board of Commissioners. Each Commissioner has a term limit of four (4) years and the terms are staggered. At present there are eight (8) Commissioners who are public officials, seven (7) Commissioners who are members or representatives of groups or interests in the community¹¹ and eight (8) Commissioners who are "low income representatives".

The eight Commissioners representing low income representatives were each elected from one of eight (8) "target areas" which collectively cover all of Fresno County in accord with the following procedure, established by the Employer to comply with the statutes and regulations set forth above:

The Employer, using the same areas designated as Fresno County supervisorial districts for the political election of Fresno County's Board of Supervisors, divided the entire county into eight (8) target areas, Areas A through H. One Commissioner representing the low-income is elected from each such area. The Employer places a public notice in the largest newspaper of general circulation in a target area advising the general public that an election for Board Commissioner/low income representative will be held in a specified target area. The public notice includes a boundary map advising the public of the exact geographic area in which the election will be conducted, and details the process to be utilized to become a candidate, the process to follow to become eligible to register to vote in the election, and the election process. The public notice advises the general public that to vote in the Employer's "Target Area Representative Election" an individual must be eighteen (18) years or older and a resident of the target area. The public notice details that to register to vote an individual need only complete and return a voter registration form to the Employer's named Board Secretary at the Employer's business address during a specified 30 day period. The public notice further states that the election will be by mail-in ballot only, states the date when the Employer will mail the ballots to those registered to vote in the election, states the post marked date by which ballots must be returned, and the date on which the election results will be posted and the new Commissioner(s) seated. An independent accounting firm counts the ballots and announces the results.

The Employer's Board of Commissioners holds regular meetings that are open to the public and its books and records are open to the public for inspection.

¹⁰ 22 C.C.R. § 100605 (c)(3)

¹¹ There is presently one vacancy in this "Private" one-third of the Board of Commissioners.

As noted above, one-third of the Employer's Board of Commissioners is comprised of community leaders from the private sector.¹² There is no contention that these individuals are responsible to public officials or the general electorate. Another one-third of the Employer's Board of Commissioners is comprised of elected public officials or their representatives¹³. I find these eight (8) individuals are responsible to public officials or the general electorate under the second prong of Hawkins County. Since, under Jefferson County Community Center, supra, a majority of the Employer's Board of Commissioners must be comprised of individuals responsible to public officials or to the general electorate in order to be considered "administered by them", the eight (8) elected low income representatives selected through the Employer's Target Area Representative Elections must be deemed responsible to the general electorate in order for the Employer to be considered a political subdivision exempt from the Board's jurisdiction.

I conclude that, unlike the "representatives of the poor" on the tripartite board in Enrichment Services, supra, the Employer's low income representatives are elected by an electorate which is the same as that for a general political election. The entire area served by the Employer, Fresno County, California, has been divided into eight voting areas identical to those used in general political elections to elect a representative to Fresno County's Board of Supervisors. The only requirement for voter eligibility in the Employer's Target Area Representative Election is that the individual be at least eighteen (18) years old and a resident of the Target Area. The public notice in the largest circulation newspaper in the Target Area details the process to become registered to vote and to vote in the election. Moreover, I do not regard the Employer's requirement that individuals complete a separate registration process as warranting a different conclusion. Although being registered to vote in a general political election does not automatically make an individual eligible to vote in the Employer's Target Area Election, the only requirement to register is residency and being eighteen (18) years old, and the resulting electorate is certainly comparable to the electorate for a general political election.

According, because a majority of the Employer's Board of Commissioners is comprised of public officials or individuals responsible to the general electorate, I conclude that the Employer's operations satisfy the second prong of Hawkins County and is therefore a political subdivision of the State of California exempt from the Board's jurisdiction.

¹² At present, the Employer's roster of Board of Commissioners reflects seven (7) of the eight (8) private community representatives are designated as representing Industry, the Community at Large, Business, Senior at Large, African American Organization, Hispanic Organization, and Labor. There is one vacant position

¹³ The Employer's roster of present Board Commissioners reflects the eight (8) public officials or their representatives represent the 14th California Senatorial District, the Fresno County Board of Supervisors (2), the Fresno County Superior Court Judge Sitting in the Juvenile Court, the Board of the State Center Junior College District, the 31st California Assembly District, the Mayor of the City of Fresno and the 30th California Assembly District.

ORDER

IT IS HEREBY ORDERED, that the petition filed in this case, and hereby, is dismissed.

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, address to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D. C. 20570. This request must be received by the Board in Washington by June 8, 1999.

DATED AT Oakland, California this 25th day of May, 1999.

/s/ James S. Scott

James S. Scott, Regional Director
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