UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

SALVATION ARMY FAMILY SERVICES[1] Employer and WAREHOUSE, MAIL ORDER, OFFICE, TECHNICAL, AND PROFESSIONAL EMPLOYEES UNION, LOCAL 743, AFL-CIO Petitioner

Case 13-RC-20477

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(*c*) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as 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[2] in this proceeding, 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 engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[3]

3. The labor organization(*s*) involved claim(*s*) 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.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(*b*) of the Act:[4]

All regular full-time and regular part-time Family Aides I and Family Aides II employed by Salvation Army Family Services at its facility currently located at 4800 North Marine Drive, Chicago, Illinois 60640; but excluding all supervisors, professionals, managers, directors, all other employees and guards as defined in the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(*s*) 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 those in the unit(*s*) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. 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 Warehouse, Mail Order, Office, Technical, and Professional Employees Union, Local 743, AFL-CIO

LIST OF VOTERS

In order to insure that all eligible voters may 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); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994).** Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before January 3, 2001. 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.

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, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570.** This request must be received by the Board in Washington by January 10, 2001.

DATED December 22, 2000 at Chicago, Illinois.

/s/Gail R. Moran
Acting Regional Director, Region 13

---

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

1/ The names of the parties appear as amended at the hearing.

2/ The arguments advanced by the parties at the hearing and in post-hearing briefs have been carefully considered.

3/ The Employer is a non-profit Illinois corporation engaged in providing parenting and home care skills to child welfare families or senior citizens or individuals with disabling conditions.

The Employer contends that the Board lacks jurisdiction and, therefore, the petition should be dismissed because its activities are essentially local and have less than a de minimis effect on interstate commerce. The Employer further contends that because it provides social services to individuals designated by the Illinois Department of Children and Family Services (DCFS), it is an agent of DCFS and therefore exempt from the Board's jurisdiction under Section 2(2) of the Act.

The Employer provides services to individuals and families designated by DCFS and local charitable organizations. Individuals may also request such services on their own from the Employer. DCFS and the charitable organizations compensate the Employer for the services it provides to families. The parties stipulated at the hearing that the Employer's gross annual revenue, or reimbursement for services rendered, exceeds $250,000.

Initially, the Employer previously stated during the first hearing that it did not make any out-of-state purchases and that many of its computers were donated. However, evidence submitted during the second hearing shows that within the current year, the Employer purchased and received goods, at its Chicago, Illinois facility, from suppliers and vendors located outside the state of Illinois. Specifically, these items were: computers and computer monitor totaling $2,732.72 from Wisconsin; software totaling $224.00 from California; and a floor literature rack totaling $79.56 from Missouri. The total amount of these out-of-state purchases by the Employer exceeds $3,000. Further, statements from utility companies for gas, electricity, water, sewage, and telephone services received by the Employer were admitted into evidence.

The Salvation Army Family Services is not an independently incorporated company. Rather, it is part of the Illinois Corporation, which is one corporation within the international Salvation Army. The Employer's witness testified that no one from Salvation Army Family Services reported to an elected official. The evidence presented during the first hearing shows that the director of the Salvation Army Family Services reports to the Salvation Army Metropolitan Division, which in turn reports to the Illinois Corporation.

Analysis

The Board's jurisdiction under the Act extends to all cases involving enterprises whose operations affect interstate commerce. The Board has adopted standards for the

assertion of jurisdiction which are based on the volume and character of business done by an employer. Based on the review of the record and evidence submitted during the hearings, I find that the Board has jurisdiction over the Employer.

In *Hispanic Federation for Development*, 284 NLRB 500, 501 (1987), the Board announced that it would apply a $250,000 gross annual revenue for all social service organizations other than those for which the Board has already set a specific standard for the type of activity in which they are engaged. In doing so, the Board noted that it had previously set a standard of $100,000 for homemaker services and for visiting nurses' associations. *Id*. at 500. In the instant case, the parties stipulated during the hearing that the Employer's gross annual revenue exceeded $250,000, thereby establishing that the Board has discretionary jurisdiction over the Employer.

In the instant case, I find that the Employer's interstate purchases, which exceed $3,000, are more than de minimis and satisfy the statutory test for jurisdiction. The Board has repeatedly found that interstate purchases for amounts significantly lower than those in the instant case satisfied the statutory test for jurisdiction. See, e.g., *Atlantic-Pacific Management*, 312 NLRB 242, 242-243 (1993) (statutory jurisdiction based on direct inflow across state lines of $2500); *Pioneer Concrete Co.*, 241 NLRB 264, 265 (1979) (citing cases finding $2000 and $1800 in purchases across state lines to be sufficient to establish statutory jurisdiction). See also *NLRB v. Aurora City Lines, Inc.*, 299 F.2d 229, 231 (7th Cir. 1962), ("'De minimis in the law has always been taken to mean trifles—matters of a few dollars or less.' The time has not yet arrived when $2,000 is but a trifle."), citing *NLRB v. Suburban Lumber Co.*, 121 F.2d 829, 832 (1941). Accordingly, I find that the Employer's purchases exceeding $3,000 across state lines satisfies the Board's statutory jurisdiction requirements.

The Employer argues that *Ohio Public Interest Campaign*, 284 NLRB 281 (1987) mandates that the petition be dismissed for want of jurisdiction. However, I find that case to be distinguishable. In that case, the Board declined jurisdiction both because the nature of the employer's operations appeared to be limited to matters concerning issues of public concern affecting residents of one state, and because the Board had not previously asserted jurisdiction over the class of employers involved therein. *Id.*, 284 NLRB at 281. Here, the Employer is not of the same class as the employer in *Ohio Public Interest Campaign*, (i.e., a consumer lobbying corporation), but instead provides social services to various constituencies. The Board has previously asserted jurisdiction over similar employers, as long as they met the statutory and discretionary standards discussed above. See, e.g., *Goodwill Industries of Denver*, 304 NLRB 764, 765 (1991); *Contemporary Guidance Services*, 291 NLRB 50, 52 (1988). Therefore, I find that it is proper to assert jurisdiction over the Employer herein.

The Employer contends that it is an agent of Illinois DCFS. I do not agree. Section 2(2) of the Act exempts from the Board's jurisdiction "any State or political subdivision thereof…." In *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600, 604-05 (1971), the Court stated that for an entity to be exempt from the Board's jurisdiction as a political subdivision, it must either (1) have been created directly by the

State, so as to constitute an arm or department of the Government; or (2) be administered by individuals who are responsible to public officials or to the general electorate. The Board has interpreted this second prong of the test to require that a majority of the directors of the employer must be responsible by law to public officials or the general electorate. See, e.g., *Albany County Opportunity, Inc.*, 300 NLRB 886 (1990).

In the instant case, it is undisputed that the Employer was not created directly by any government entity. I find no evidence on record that shows that DCFS is anything more than a mere customer of the Employer. The Employer and DCFS work under a contract whereby DCFS provides the Employer with a list of clients in need of the Employer's home care services, the Employer provides these services, and then DCFS pays the Employer for those services rendered. With respect to the second prong of the *Hawkins County* test, it is undisputed from the record that no one from Salvation Army Family Services reports directly to an elected official. Accordingly, I find that the Employer is not an agent or a subdivision of the Illinois Department of Children and Family Services.

In short, the record evidence is sufficient to establish both statutory and discretionary jurisdiction over the Employer. I further find that the evidence did not show that the Employer was an agent of Illinois Department of Children and Family Services so as to be exempt from jurisdiction under Section 2(2) of the Act. Accordingly, I will assert jurisdiction over the Employer herein.

4/ The parties agree, and I find, that the unit of employees described above constitutes an appropriate unit for the purposes of collective bargaining. There are approximately 30 employees in the unit.

260-6793; 280-8320; 260-3390

Jurisdiction-Monetary Standards
Jurisdiction-Other
Jurisdiction-Statutorily Exempted Employer