

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

**CATHOLIC SOCIAL SERVICES OF  
MONROE COUNTY, INC.<sup>1</sup>**

**Employer**

**and**

**Case 7-RC-22424**

**MICHIGAN AFSCME COUNCIL 25,  
AMERICAN FEDERATION OF STATE  
COUNTY AND MUNICIPAL EMPLOYEES,  
AFL-CIO<sup>2</sup>**

**Petitioner**

**APPEARANCES:**

Karen Piper, Attorney, of Detroit, Michigan, for the Employer.  
Eric I. Frankie, Attorney, of Detroit, Michigan, for the Petitioner.

**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.

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,<sup>3</sup> the undersigned finds:

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

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The name of the Petitioner appears as amended at the hearing.

<sup>3</sup> The parties filed briefs, which were carefully considered.

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. The labor organization involved 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 Sections 2(6) and (7) of the Act.

The Petitioner seeks a unit of all full-time and regular part-time teachers, teacher assistants, center aides, bus aides, family service workers, home visitors, and bus drivers employed by the Employer in its Head Start preschool program for children.<sup>4</sup> The Employer contends that the proposed unit is inappropriate and must exclude teachers as supervisory and/or professional employees.<sup>5</sup> The Petitioner disagrees and contends that the teachers do not meet either criteria and should be included in the proposed unit. There are approximately 65 employees in the unit the Petitioner seeks to represent. There are approximately 11 disputed teachers.

I find that the teachers are supervisory by virtue of their authority to effectively recommend the hiring and firing of the teacher assistants, center aides, bus drivers and bus aides; discipline them; resolve their disputes; and make and direct their work assignments. In light of my finding that the teachers are supervisors, it is unnecessary to address the issue of their professional status.

The Employer administers the federally-funded Head Start program for Monroe County, Michigan,<sup>6</sup> at seven separately leased facilities in Monroe County. The Employer utilizes a total of 10 classrooms at 7 facilities which are contained in public school buildings, churches, and private day care centers. The Head Start program is a 30-year-old federal preschool program governed by the Department of Health and Human Services which provides preschool education services to three to five-year-old children based on financial need. In Michigan,

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<sup>4</sup> The Petitioner agrees to exclude from the proposed unit all specialists, program specialists, family partnering monitor/team leaders, SN monitor/team leaders, guards and supervisors as defined in the Act.

<sup>5</sup> I note that a finding of professional-only status would not necessarily exclude the teachers from the petitioned-for unit. It would only require a Sonatone, 90 NLRB 1236 (1950), election if the teachers otherwise enjoy a community of interest.

<sup>6</sup> The Employer's activities also include administering the Michigan School Readiness Program for Monroe County; operating as a United Way agency and an outpatient clinic for Blue Cross and Blue Shield; and overseeing mental health services, substance abuse services, adult services, family counseling, critical stress debriefing services, and other social services. However, the only aspect of the Employer's operations in the instant case involves the operation of the Head Start program.

all Head Start programs are required to meet the State child day-care licensing requirements.

**Management Hierarchy.** The Employer has undergone significant changes in supervisory structure in recent months. The teachers currently report directly to Cheryl Baryo, deputy director for education. Baryo is responsible for the overall supervision of the 10 classrooms. Baryo, along with four other deputy directors<sup>7</sup>, previously held the title of site manager.<sup>8</sup> As site managers, they supervised not only the teachers but also the teacher assistants, center aides, bus drivers, and bus aides. In August 2002, the Employer designated the teachers as program directors for their classrooms and transferred the supervisory responsibilities of the teacher assistants and center aides from the site managers directly to the teachers<sup>9</sup>. Later, in January, 2003, the site manager position was eliminated and the supervisory responsibilities of the bus drivers and bus aides were additionally transferred to the teachers.<sup>10</sup> The Employer acknowledges that before August 2002, the teachers were not supervisors.<sup>11</sup> The deputy directors work in the Employer's corporate administrative offices as did the previous site managers. The deputy directors report directly to Marilyn Williams, Head Start interim director, who reports to Candy Salazar, executive director, president and CEO of the Employer.

**Hiring.** The hiring process for teacher assistants and center aides is approved by the Head Start policy council<sup>12</sup> and governing board. It involves the screening of a pool of applicants followed by a face-to-face interview of each chosen applicant by a deputy director and parent associated with the policy council.

Since about August 2002, some teachers have participated, along with the deputy director and parent, in the applicant screening and hiring interviews of teacher assistant, center aide and general aide substitute candidates on a voluntary

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<sup>7</sup> The record indicates that Sue Bezeau is deputy director for education training; Jackie Mettie is deputy director for disabilities health nutrition; Jeff Gutschow is deputy director for facilities transportation; and Marilyn Williams is deputy director for mental health.

<sup>8</sup> According to the Employer's revised organizational charts, the site manager position was eliminated as of January 23, 2003.

<sup>9</sup> At this same time, the job description of the teachers was changed to note that they supervise teacher assistants and center aides.

<sup>10</sup> The Employer acknowledges that while the bus drivers are responsible for the day-to-day duties of the bus aides and observe their job performance while on the bus, the teachers are the supervisors of the bus aides for personnel purposes. The parties agree that the bus drivers are not supervisors within the meaning of Section 2(11) of the Act.

<sup>11</sup> In February 2002, the Employer stipulated to the Petitioner's petitioned-for unit in Case 7-RC-22112 which included the teachers.

<sup>12</sup> The policy council, also known as the advisory committee, is comprised of parents and community residents who advise and approve policies and procedures of the Head Start program.

basis. Those teachers who have voluntarily participated in these interviews asked questions of the applicants and discussed applicant answers in private with the other interviewers following the interview. The participating teacher also completed “Interview Rating” forms in which they scored applicants in different areas such as education, experience, oral presentation, and written presentation. The interview rating forms were reviewed, but not relied upon, by the deputy director. After discussion regarding the applicant, the participating teachers also signed off on a “Recommendation to Hire” form, along with the deputy director and participating parent. Upon recommendation for hire by the deputy director, parent and teacher, the third step of the hiring process is final approval by the Head Start policy council.<sup>13</sup> All of the candidates recommended by the interview panels consisting of a deputy director, teacher, and parent were approved for hiring.

**Discipline and Termination.** Although they are instructed to notify and consult with a deputy director for guidance prior to the issuance of any discipline, the teachers are authorized, on their own, to issue verbal and written discipline, up to and including disciplinary probation, in accordance with the Employer’s progressive discipline policy. The progressive discipline policy does not dictate specific disciplinary action in response to specific violations. Rather, it provides guidelines, such as consideration of the offense at hand and the employee’s past record, and options for the disciplining official to follow. In this regard, an example of teacher discipline that was provided at the hearing involved a teacher who issued a verbal warning, on her own, to a center aide for absenteeism. When the aide continued to have absenteeism problems, the teacher notified her deputy director and consulted with her as to further options for discipline. The teacher subsequently issued a disciplinary probation reprimand to the aide. All disciplinary write-ups by the teachers are reviewed by a deputy director, the interim director and ultimately by the executive director.

There is one example in the record of a teacher, along with a deputy director, participating in the disciplinary conference of a teacher assistant which led to the assistant’s discharge. In this example, the teacher was authorized to conduct the disciplinary conference on her own and asked the deputy director to observe the disciplinary conference. The teacher recommended discharge of the teacher assistant to the deputy director following the conference. Based on the teacher’s recommendation, the deputy director then recommended discharge to the executive director without conducting any further investigation. The teacher assistant was ultimately discharged. All teacher recommendations for employee termination must be reviewed and approved by a deputy director and ultimately

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<sup>13</sup> The record also indicates that the employee must be approved for hire by Director Williams, Executive Director Salazar and the human resources manager, but this is more of a formality.

approved by Executive Director Salazar. All employee termination letters are signed by Executive Director Salazar.

**Evaluations.** While the record indicates that the teachers have been trained regarding their supervisory authority with respect to evaluating the job performance of other employees<sup>14</sup>, there is nothing in the record which demonstrates that any teachers have evaluated any employees. There is no evidence to indicate that the exercise of this authority to evaluate employees would result in the reward or promotion of other employees, or otherwise affect their terms and conditions of employment.

**Transfers.** Recently, a teacher assistant was transferred from one facility to another based on her Spanish-speaking abilities. Interim Director Williams made the decision to transfer the employee and provided the teachers at both involved facilities the opportunity to comment on the proposed transfer decision.

**Dispute Resolution.** There is a four-step grievance procedure for teacher assistants, center aides, bus drivers, and bus aides. The first step includes employee presentation of the grievance to the “immediate supervisor” for determination and recommendation regarding the grievance. The second step includes determination and recommendation by a deputy director. The third step includes determination and recommendation by Interim Director Williams. The fourth step includes final determination by Executive Director/CEO Salazar. The record indicates that the teachers were trained by the Employer regarding the grievance procedure and dispute resolution. There is one example in the record in which the grievance of a discharged teacher assistant was presented to a teacher for determination. In that case, the grievance was denied by the teacher and forwarded on to the next step for further investigation and determination.

**Overtime.** Teachers are authorized to approve straight-time overtime<sup>15</sup> for teacher assistants, center aides, bus drivers, and bus aides when there is a plan in place for extra work by these employees which has been pre-approved by the Employer. In the case of extra hours for the teacher assistants and center aides, the teacher can direct the teacher assistants and center aides regarding how to use the allotted overtime hours, based on her discretion. In the case of bus drivers and bus aides, the teachers are authorized to approve their straight time overtime hours utilized for field trips. Teachers do not have authority to approve time and a half overtime for other employees. Overtime forms from teacher assistants, center

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<sup>14</sup> The bus drivers, who are stipulated by the parties to be non-supervisors, also attended this training regarding their responsibilities and authority with respect to the evaluation of bus aides.

<sup>15</sup> Straight-time overtime is any hours worked beyond an employee’s regular weekly scheduled hours which results in less than 40 hours a week.

aides, bus drivers, and bus aides are submitted directly to the teacher for review and forwarded on to the payroll office for final processing.

**Assignments and Scheduling.** The teachers are the highest level employee in the classroom and are primarily responsible for directing the teaching of children in the classroom. There is one teacher, one teacher assistant, and one center aide per classroom. In the absence of a teacher, a teacher assistant, center aide, bus driver, or bus aide may assist in the classroom. The classroom curriculum is determined based on Head Start program-wide performance standards and regulations which require staff, parent, and community involvement in the development of the overall program curriculum. The Employer has specifically chosen a Head Start prescribed education program called the “High Scope” program to educate its preschoolers. Under the High Scope program, the teacher is responsible for measuring the progress of each child via data input into a computer program to ensure kindergarten readiness of the child. This computer program generates periodic student reports which are then condensed into facility and entire Monroe Head Start program reports for review by the management team. These computer-generated reports cover approximately 16 different indicators of student progress including language, literacy, art, and music.

The teachers develop daily lesson plans and determine day-to-day classroom assignments for teacher assistants and center aides based on the Head Start curriculum description, the High Scope program, as well as an independent assessment of each student’s needs. The teachers are invested with some authority, limited by federal Head Start and state licensing regulations, to discipline students in the classroom, up to and including expulsion. While the teachers must consult the administrative staff, including a deputy director, regarding chronic student disciplinary problems and possible expulsion, they are responsible for day-to-day student discipline in connection with maintaining order in their classrooms. The teachers are also charged with ensuring compliance with State day-care licensing regulations in their classrooms.

**Other Secondary Indicia.** In August 2002, the Employer revised the job descriptions of teacher, as well teacher assistant and center aide, to note the supervisory authority of the teachers with respect to these non-supervisory employees. In January 2003, the job descriptions of bus driver and bus aide were likewise revised to note the supervisory authority of the teachers over them. The teachers attend management meetings with Deputy Director Baryo and Interim Director Williams. However, the record is unclear as to how often these meetings are held and what is discussed during these meetings. In August 2002, the teachers, along with the human resources manager, the clinical director and the executive director, attended supervisory training. This training program was

coordinated by the deputy directors and Interim Director Williams. Additionally, the teachers have received specific training in the High Scope program and attend periodic in-service training relating to their teacher and supervisory duties. Since the teachers were designated as supervisors in August 2002, they have become salaried employees and receive year-round health insurance benefits. The other petitioned-for employees are paid on an hourly basis.

## **Analysis**

The term “supervisor” is defined in Section 2(11) as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet this definition, a person needs to possess only one of the specific criteria listed, or the authority to effectively recommend, as long as the performance of that function is not routine but requires the use of independent judgement. *Fred Meyer Alaska, Inc.*, 334 NLRB No. 94, slip op. at 3-4 (July 19, 2001) (other citations omitted). The burden of proof rests with the party seeking to exclude the individual as a supervisor. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001); *Benchmark Mechanical Contractors*, 327 NLRB 829 (1999). The Board is mindful not to deprive employees of their rights under Section 7 by interpreting the term supervisor too broadly. *Unifirst Corp.*, 335 NLRB No. 58, slip op. at 8 (Aug. 27, 2001).

The Employer contends that its teachers effectively recommend the hiring of the teacher assistants and center aides by participating in the interview process. That the teachers’ participation in hiring interviews is on a voluntary basis does not diminish their authority in this regard. Three examples were provided demonstrating the participation of teachers in the hiring process. These participating teachers were part of a three-person panel, including a deputy director and parent, responsible for screening a pool of applicants. These teachers were actively engaged in asking questions of the chosen applicants and met privately with their panel members following interviews to discuss possible hiring. Along with the other panel members, these teachers completed an interview rating sheet with numerical ratings and signed off on a recommendation to hire form. The applicants were not thereafter substantively interviewed by any higher

management officials.<sup>16</sup> All of the candidates recommended by the interview panels were approved for hiring. Here, the evidence establishes that the teachers have, and some have exercised, the authority to effectively recommend the hiring of employees. *Delta Carbonate, Inc.*, 307 NLRB 118, 119-120 (1992); *Fred Meyer Alaska, Inc.*, supra at 4.

The Employer's contention that the teachers possess the authority to issue disciplinary reprimands is established by the weight of the evidence. Despite the requirement to notify and consult with their supervisor, a deputy director, for guidance prior to the issuance of any discipline, the record demonstrates that the teachers are authorized to issue, and have actually issued, verbal and written discipline, up to and including disciplinary probation, in accordance with the Employer's progressive discipline policy. In doing so, they have used their independent judgment. A single incident of disciplining an employee is sufficient to confer supervisory status. *Biewer Wisconsin Saw Mill*, 312 NLRB 505 (1993); *Sunnyside Home Care Project, Inc.*, 308 NLRB 346, 347 (1992).

Although all teacher recommendations for employee termination must be reviewed and approved by a deputy director and ultimately approved by Executive Director Salazar, the record demonstrates that teachers effectively recommend the termination of other employees. Teachers are authorized to conduct disciplinary conferences of employees and recommend discharge following the conference to the deputy director, which recommendations are followed by the Employer in deciding to ultimately discharge the employee. Accordingly, I find that the teachers possess supervisory authority to effectively recommend discharge of employees. *Delta Carbonate, Inc.*, supra at 119-120.

As to their role in the evaluation process, mere evidence that the teachers have been trained in their alleged supervisory responsibility regarding the evaluation of other employees does not impart supervisory status without evidence, absent here, that they actually complete evaluations and that the evaluations constitute effective personnel recommendations. *Brown & Root*, 314 NLRB 19 (1994).

The four-step grievance procedure for teacher assistants, center aides, bus drivers, and bus aides includes employee presentation of the grievance to the "immediate supervisor" for determination and recommendation at the first step. The record indicates that teachers were trained by the Employer regarding the

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<sup>16</sup> The record indicates that subsequent interviews of the applicants were held with the human resources manager and executive director. However, these interviews were more of a formality and involved discussing wages, hours, and terms and conditions of employment in addition to welcoming the applicant into employment with the Employer.

grievance procedure and dispute resolution and are authorized to resolve grievances at the first step. Here, the one grievance that was presented to a teacher for determination involved an employee discharge. While the record demonstrates that the teacher did not have authority to reverse the discharge in determining this grievance, it appears that in grievances involving disciplinary actions short of discharge, the teacher does possess authority to resolve the grievance at the first step. It does not matter that the employee has not yet exercised his authority to act in the employer's behalf; if he is so authorized he is a supervisor. *Fred Meyer Alaska, Inc.*, supra at fn. 8.

Regarding the assignment and direction of the work by the teacher, the teacher is responsible for developing daily lesson plans and determining day-to-day classroom assignments for the teacher assistant and center aide based on the Head Start curriculum description and the High Scope program. Although the general job tasks required for assisting in the classroom involve following a set pattern and, for the most part, are constant and repetitive, the teacher must nevertheless guide and instruct the teacher assistant and center aides based on her prepared lesson plan as well as her independent assessment of the students' needs. The teachers are further responsible for maintaining order in the classroom and, in this regard, are invested with limited authority to discipline students. Teachers possess some authority to approve straight time overtime for teacher assistants, center aides, bus drivers, and bus aides provided there is a plan in place for extra work by these employees which has been pre-approved by the Employer. In this regard, the teachers use their discretion in determining how the extra hours should be utilized by the other employees.

The Employer also relies on several secondary indicia of supervisory status. The existence of secondary indicia of supervisory status such as the possession of keys, title, higher pay, and the like are, standing alone, insufficient to demonstrate supervisory status. *Shen Automotive Dealership Group*, 321 NLRB 586, 594 (1996); *Billows Electric Supply*, 311 NLRB 878 fn.2 (1993). However, in the instant case, the existence of secondary indicia is significant given the Employer's recent designation of supervisory authority to the teachers and their limited history of actually exercising their supervisory authority.

The Employer's recently revised job descriptions of teacher as well teacher assistant, center aide, bus driver and bus aide all note the supervisory authority of the teachers with respect to the other non-supervisory employees. The teachers are the highest level employees in the classrooms. But for them, there would be no one in the classrooms with any authority. There is no indication that the next highest level employees, the deputy directors, are present in the classroom on any regular basis. The absence of other supervision is one of the secondary indicia

which may be considered in establishing supervisory status. See, *Essbar Equipment Company*, 315 NLRB 461 (1994); *St. Francis Medical Center-West*, 323 NLRB 1046, 1047 (1997). The teachers also attend management meetings and have received extensive training regarding their supervisory responsibilities. Since the teachers were designated as supervisors in August 2002, they have become salaried employees and receive year-round health insurance benefits. The other petitioned-for employees are paid on an hourly basis.

Based on the foregoing, I find that the probative evidence establishes that the teachers are statutory supervisors within the meaning of Section 2(11) of the Act.

5. Based on the foregoing reasons, and the record as a whole, I find that the following employees constitute an appropriate unit of employees for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time time teacher assistants, center aides, bus aides, family service workers, home visitors, and bus drivers employed by the Employer at or out of its facilities located at (1) 1735 Ash Street, Carlton, Michigan; (2) 2121 North Monroe Street, Unit 285, Monroe, Michigan; (3) 1920 Lewis Avenue, Ida, Michigan; (4) 908 East Second Street, Monroe, Michigan; (5) 1070 North Monroe Street, Monroe, Michigan; (6) 2121 South Custer Road, Monroe, Michigan; and (7) 9144 Lewis Avenue, Temperance, Michigan; but excluding all specialists, program specialists, family partnering monitor/team leaders, SN monitor/team leaders, and guards and supervisors as defined in the Act.

Those eligible to vote shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 22<sup>nd</sup> day of April 2003.

(SEAL)

/s/ Stephen M. Glasser  
Stephen M. Glasser  
Regional Director-Seventh Region  
National Labor Relations Board  
Patrick V. McNamara Federal Building  
477 Michigan Avenue – Room 300  
Detroit, Michigan 48226

Classifications

177 8520 3900

177 8520 0800

177 9300 9301

177 9300 9375

## DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of 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 employees 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. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military service 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 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:

### MICHIGAN COUNCIL 25, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

#### LIST OF VOTERS<sup>17</sup>

In order to ensure 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); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (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 full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before April 29, 2003. No extension of time to file this list shall be granted except in extraordinary circumstances, nor

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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, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by May 6, 2003.

**Section 103.20 of the Board's Rule concerns the posting of election notices. Your attention is directed to the attached copy of that Section.**