

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

**WAYNE METROPOLITAN COMMUNITY  
ACTION AGENCY**

**Employer**

**and**

**Case 7-RC-22452**

**LOCAL 517M, SERVICE EMPLOYEES INTERNATIONAL  
UNION, AFL-CIO**

**Petitioner**

APPEARANCES:

R. Ian Hunter, Attorney, of Troy, Michigan, and Jennifer Lepard of Wyandotte, Michigan, for the Employer  
Krista Sturgis, 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>1</sup>, 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.

---

<sup>1</sup> The Employer and Petitioner filed briefs, which were carefully considered.

3. The labor organization involved herein 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 to represent a unit of approximately 70 full-time and regular part-time teachers, lead teachers, teachers' assistants, family service workers, family service worker assistants, bus aide/food aides, food techs, custodians, and receptionist/schedulers employed by the Employer at its facilities located at 2622 Florian, Hamtramck, Michigan; 3891 Prescott, Hamtramck, Michigan; 19475 Beaconsfield, Harper Woods, Michigan; and Glendale and Third Avenue, Highland Park, Michigan; but excluding all administrative assistant/receptionists, fatherhood outreach specialists, literary outcomes specialists, accountants, coordinators, and all other managerial employees, and guards and supervisors as defined in the Act. The Employer contends that the Board does not have jurisdiction over the Employer because it is exempt under Section 2(2) of the Act as a political subdivision.

I find that the Employer does not qualify as an exempt political subdivision under Section 2(2) of the Act because the conditions imposed upon the Employer by its contract with a government entity do not demonstrate that it is an exempt political subdivision, and a majority of the Employer's board of directors is not made up of persons who are responsible to public officials or the general electorate.

The Employer was incorporated in 1971 as a non-profit social service agency that administers programs for low-income individuals in Wayne County, Michigan. It operates numerous programs, but the Petitioner seeks to represent only the Head Start program operated by the Employer. The Head Start program is funded by the U.S. Department of Health and Human Services (DHHS). Wayne County is the designated grantee for the funds. The county's Department of Health & Community Services is responsible for providing physical and mental health resources to county residents. It was granted funding by DHHS to administer a Head Start program for income-eligible children three and four years old, and for children with certified disabilities. The county contracted with the Employer to operate the program for 498 children in the cities of Hamtramck, Highland Park, and Harper Woods, using the funds provided by DHHS.<sup>2</sup>

The current contract between Wayne County and the Employer took effect in May 2003 and expires in April 2004, and designates the maximum compensation the Employer may receive from the county to operate the program. The contract also

---

<sup>2</sup> The Employer is one of several delegate agencies with which Wayne County contracts to operate Head Start programs in various areas of the county, excluding Detroit.

references a budget that the Employer must follow while operating the program. Under the terms of its contract with the county, the Employer is responsible for obtaining qualified personnel to operate the program. Personnel must meet the Head Start Performance Standards promulgated by DHHS, and the Employer must maintain a position classification system establishing wage comparability according to federal regulations for Head Start. The Employer must provide the county with copies of its personnel policies and notify the county prior to distributing any cost-of-living or quality award increases to program personnel. The Employer is also responsible for designating a Head Start director to supervise the staff and the contract requires that the position be full-time. The Employer must submit a copy of a potential director's credentials to the county for concurrence prior to making a final decision to hire. The Employer must submit regular progress reports to the county. County personnel conduct on-site monitoring visits to ensure that the Employer is complying with the terms of the contract.

The Employer is governed by a board of directors. The Michigan Economic and Social Opportunity Act of 1981, Public Act 230, mandates the structure of the board. One-third of the board is made up of public officials; one third is made up of representatives of the poor; and one third is made up of representatives from the private sector. No less than five representatives of the poor are elected by each of five Regional Advisory Councils representing the areas in which the Employer operates. One member representing the poor is elected by the Head Start Policy Committee. The Regional Advisory Councils are made up of persons representing individuals or organizations in each region's geographic area. The representative may be a person who is either eligible for agency services at the time of the election or a person who provides assistance to the poor on a volunteer basis. At least 50% of the members of each council must be persons eligible for services from the agency under state and federal guidelines. The public sector representatives on the board are either elected officials or their designated alternates; appointed public officials may be selected if there are not enough elected officials willing to serve. The board elects representatives from the private sector from a list of candidates chosen by the Employer's chief executive officer. The private sector representatives must be an official or member of business, industry, labor, religious, welfare, educational, or other major group or interest within the community.

Section 2(2) of the Act excludes from the definition of an "employer" covered by the Act "any State or political subdivision thereof." The term "political subdivision" is not defined in the Act and the Act's legislative history does not disclose that Congress explicitly considered its meaning. In *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600, 77 LRRM 2348 (1971), the Supreme Court upheld the Board's two-prong test for determining whether an entity is a political subdivision. The Board has limited the exemption to entities either 1) created directly by the state so as to constitute departments or administrative arms of government or 2) administered by individuals who are responsible to public individuals or to the general electorate. The

Board will also look to whether the actual operations and characteristics of the entity indicate that it is public in nature and a political subdivision. It is undisputed in this case that the Employer was not created directly by Wayne County. The Employer is exempt under *Hawkins County* only if it is administered by individuals who are responsible to public individuals or the general electorate.

Prior to 1995, the Board determined whether an employer that contracted with a government entity was being administered by individuals who are responsible to public individuals or to the general electorate by analyzing whether the government entity or the employer retained control over “the entire package of employee compensation, i.e., wages and fringe benefits.” *Res-Care*, 280 NLRB 670, 674 (1986). The Board abandoned that standard in *Management Training Corp.*, 317 NLRB 1355 (1995). In *Management Training*, the Board held that “[t]he fact that some matters [relating to terms and conditions of employment] have to be approved by the contracting government agency does not mean that bargaining is meaningless.” Under the current standard, the Board will only consider whether or not the employer meets the definition of “employer” under the Act, and whether the employer meets the applicable monetary standards. There is no dispute that the Employer meets the applicable monetary standards for the Board to exercise its discretionary jurisdiction. The conditions imposed upon the Employer by its contract with the county do not demonstrate that it is an exempt political subdivision under the *Management Training* test. The fact that its contract with the county provides for maximum funding and has various other requirements bearing on personnel matters would create a burden in negotiations “no greater than that carried by any contractor operating under a cost-plus-fixed fee contract.” *Id.*

The Board will also decline jurisdiction if a majority of the employer’s board of directors is made up of persons who are responsible to public officials or the general electorate. It is not disputed that the third of the Employer’s board that represents the private sector is not responsible to public officials or the general electorate; it is also not disputed that the third of the board that is made up of elected or appointed public officials is responsible to the general electorate. The only remaining issue is whether or not the third of the board made up of representatives of the poor is responsible to the general electorate. Under *Enrichment Services Program, Inc.*, 325 NLRB 818 (1998), this standard is not met when the board members represent only a “limited group of voters.” An electorate comprised of “all poor persons or groups thereof does not include all individuals in the area served who would be eligible to vote in general political elections.” Such groups “are responsible to the general electorate under *Hawkins County* only if the relevant electorate is the same as that for general political elections.” *Id.* at 819-20 and fn. 13. According to the Employer’s bylaws, the representatives of the poor on the Employer’s board are elected by members of the agency’s Regional Advisory Councils and must either meet income or volunteer status requirements in order to qualify. The electorate for these posts is not the same as that for general elections, and

the presence of representatives of the poor on the board does not qualify the Employer as an exempt political subdivision. *FiveCAP, Inc.*, 331 NLRB 1165 (2000), enfd. 170 LRRM 2401 (6<sup>th</sup> Cir. 2002).

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time teachers, lead teachers, teachers' assistants, family service workers, family service worker assistants, bus aide/food aides, food techs, custodians and receptionist/schedulers employed by the Employer at its facilities located at 2622 Florian, Hamtramck, Michigan; 3891 Prescott, Hamtramck, Michigan; 19475 Beaconsfield, Harper Woods, Michigan; and Glendale and Third Avenue, Highland Park, Michigan; but excluding all administrative assistant/receptionists, fatherhood outreach specialists, literary outcomes specialists, accountants, coordinators, and all other managerial employees, 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 28<sup>th</sup> day of May 2003.

(SEAL)

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

Classification

177 1683 5000