

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

THE WEST HAVEN COMMUNITY
HOUSE ASSOCIATION, INC.

Employer¹

and

CONNECTICUT STATE EMPLOYEES
ASSOCIATION, LOCAL 2001, SEIU, AFL-CIO

Petitioner²

Case No. 34-RC-2060

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 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, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; the labor organization involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning the representation of certain employees of the Employer.

The Petitioner seeks to represent a unit of approximately 31 full-time and regular part-time head teachers, teachers, teachers aides, the kitchen assistant and family workers employed by the Employer in its Head Start Program at its West Haven, Connecticut facility.³ The Employer contends that the eight petitioned-for Head

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

³ In its post-hearing brief, the Petitioner withdrew its previous request to include the chef in the petitioned-for unit. Accordingly, I shall exclude the chef from the unit.

Teachers are supervisors within the meaning of the Act. For the reasons noted below, I agree with the Employer's claim that the Head Teachers are statutory supervisors.

The Employer operates a Head Start program and other social service programs from its West Haven facility. Head Start is a federally-funded early childhood program that provides comprehensive services to pre-school children from low-income families. Primarily responsible for the Employer's overall operations are Executive Director Peter Schwartz and Associate Executive Director Patty Stevens. Director of Head Start Linda Michaels is primarily responsible for the Employer's Head Start operations. Reporting directly to Michaels is Education Services Manager Mary Ellen Myers, and reporting directly to Myers are two Education Specialists. Each of the eight Head Teachers in the Head Start program report directly to one of the two Education Specialists.

The Employer's Head Start Program consists of four "part day" classrooms, which children attend for only a half day, and four "full day" classrooms, which children attend for a full day. Each Head Teacher is assigned to either a "part day" classroom or a "full day" classroom, and is responsible for the daily operations in that classroom. Reporting directly to each Head Teacher in the full day classrooms are a teacher and two aides. Reporting directly to each Head Teacher in the part day classrooms are a teacher and one aide. Two of the four part day classrooms share a single aide.

In support of its assertion that the Head Teachers are supervisors within the meaning of Section 2(11) of the Act, the Employer primarily claims that Head Teachers have the authority to evaluate and discipline teachers and aides, and to assign and direct their work.

Evaluations

Head Teachers prepare annual and probationary evaluations for the teachers and aides assigned to their classroom. The evaluation prepared by the Head Teacher consists of essentially two parts: a numerical score based on how the Head Teacher ranks the employee in a variety of areas, and a written narrative that describes the employee's work performance.

When it is time for the Head Teacher to prepare an evaluation, the Head Teacher receives a standard evaluation form on which he or she ranks the employee on a variety of performance elements, such as "adaptability" and "attendance and punctuality". The

ranking portion of the evaluation is forwarded by the Head Teacher to the Director, who enters the Head Teacher's rankings into a computer program. The computer program translates the rankings into numerical form and generates standardized language that correlates to the ranking received in each performance area. The evaluation is then returned to the Head Teacher to review and make any further changes, and to prepare and attach the written narrative. The written narrative, which includes an evaluation of specific job duties, is forwarded by the Head Teacher to the Education Specialist, who in turn forwards it to the Director and Associate Executive Director for final approval. The Associate Executive Director reviews the evaluation for internal inconsistencies, such as ranking the employee as very good for attendance but stating in the narrative that the employee is always late. Upon final approval, the evaluation is signed by the Associate Executive Director, Director and the Head Teacher. The Head Teacher then provides the evaluation to the employee in a private meeting, which may also be attended by the Education Specialist. The record indicates only two instances where the evaluations prepared by the Head Teachers were substantively altered by upper management.

The evaluations have no impact on wages, which are set across the board for all employees based on a federal cost of living increase. Instead, the evaluations are used to determine whether a probationary employee will be retained or their probationary period extended. The evaluations may also be used to determine whether a regular employee should be placed in probationary status due to work performance issues. For the most part, Head Teachers make such recommendations in the written narrative, and the record reflects that such recommendations are followed by upper management. Moreover, in the event that a regular employee is placed on probation or a probationary employee is placed on an extended probationary period, the Head Teacher participates in creating and implementing a written performance improvement plan for the employee. In this regard, the Head Teacher informs the employee what is expected of them to improve their performance, observes and corrects the employee's performance on a daily basis, and meets with the employee on a regular basis to review the employee's progress during the probationary period. At the end of the probationary period, the Head Teacher makes a recommendation as to whether the employee should be

retained. Upper management follows such recommendations, and there is no evidence that these recommendations are subject to independent review by upper management.

Discipline

The Employer has a progressive disciplinary system that includes verbal warnings (also referred to as reprimands), formal written warnings, probation (as described above), and discharge. Although the Employer's written policies provide for review by upper management of all disciplinary actions, the record reflects that Head Teachers have the authority, which they have regularly exercised, to issue verbal reprimands without prior supervisory approval. Although the issuance of written warnings appears to be rare, the record reflects that Head Teachers have the authority to recommend such discipline and, once approved, would be responsible for issuing the written warning to the employee. As discussed above with respect to performance evaluations, Head Teachers may also recommend probation and discharge of employees. All discharges must be approved by the "Policy Council", a governing board comprised of parents and community representatives.

Assignment of Work and Direction of Employees

Head Teachers are responsible for creating the lesson plans for their classroom, which must satisfy Head Start Program guidelines. Once the lesson plans are created, the Head Teacher decides which employee will perform each task in the plan on a daily basis. The Head Teacher bases these assignments on the particular skills of each employee in conjunction with the particular task involved. Additionally, for each child enrolled in Head Start, the Employer is required to document and perform certain activities according to a "time line", which identifies certain tasks, such as parent/teacher conferences and home visits, that must be completed by a certain date. The Head Teacher also assigns these tasks to employees in their classroom and is responsible for ensuring that the tasks are completed by the specified date. Head Teachers, particularly in the full day classrooms, may schedule employees to come into work or to stay past their scheduled hours to cover staff shortages, as long as such scheduling does not result in overtime being paid to the employee. Finally, Head Teachers are responsible for ensuring that the employees assigned to their classroom

follow the Employer's policies and that the employees properly supervise and interact with the children in the classroom.

Other Factors

Head Teachers regularly attend supervisory meetings with other undisputed supervisors, receive supervisory training, and have a starting wage range that is at least a dollar an hour more than teachers and aides in their program. The Head Teacher job description contains references to supervisory qualifications and, while it contains no explicit reference to any disciplinary authority, states that Head Teachers must "assume responsibility for the operation of the classroom" and "supervise and provide guidance to classroom staff." Moreover, the record reveals that Head Teachers are evaluated on their supervisory duties and are held accountable for not properly enforcing the Employer's policies and not properly assigning work to and directing their staff. Additionally, the job descriptions for teachers and aides designate the Head Teacher as their supervisor, and the standard letter sent to teachers and aides upon hire informs the employee that the Head Teacher is their supervisor.

Analysis and Conclusion

It is well established that the burden of proving supervisory status is upon the party asserting it. *Pine Brook Care Center, Inc.*, 322 NLRB 740 (1996), and cases cited therein at footnote 3. For the reasons noted below, I find that the Employer has met its burden.

More specifically, I find that the Head Teacher's authority to discipline employees and independently prepare employee evaluations that can result in further probation or termination, establishes that they are supervisors within the meaning of Section 2(11) of the Act. *First Healthcare Corp. d/b/a Hillhaven Kona Healthcare Center*, 323 NLRB 1171 (1997) (evaluations); *Healthcare & Retirement Corp.*, 310 NLRB 1002, 1006-1007 (1993) (evaluations); *Rhode Island Hospital*, 313 NLRB 343, 348 (1993)(evaluations); *Pine Manor Nursing Center*, 270 NLRB 1008, 1009 (1984) (discipline and evaluations); *Venture Industries, Inc.*, 327 NLRB 918, 919 (1999)(discipline).

Accordingly, I find that 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.

All full-time and regular part-time Head Start Program teachers, teachers aides, kitchen assistants and family workers employed by the Employer at its West Haven, Connecticut facility; but excluding all other employees, head teachers, the chef, home Head Start employees, all headquarters (administrative office) workers, health care employees, and guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate herein at the time and place set forth in the notices of election to be issued subsequently.

Eligible to vote: those employees in the unit 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 in the military services of the United States, ill, on vacation, or temporarily laid off; and 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.

Ineligible to vote: 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 strike's commencement 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.

The eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by Connecticut State Employees Association, Local 2001, SEIU, AFL-CIO.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate

with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before January 28, 2004. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

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, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by February 4, 2004.

Dated at Hartford, Connecticut this 21st day of January, 2004.

/s/ Peter B. Hoffman
Peter B. Hoffman, Regional Director
National Labor Relations Board
Region 34

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