

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

THE GUILD FOR EXCEPTIONAL CHILDREN, INC.

Employer

THOMAS FALLON, AN INDIVIDUAL

Petitioner

Case No.29-RD-1099

CIVIL SERVICE EMPLOYEES ASSOCIATION,
LOCAL 1000, AMERICAN FEDERATION OF STATE
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Kevin R. Kitchen, 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, the undersigned finds:

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

2. The parties stipulated that The Guild for Exceptional Children, Inc. herein the Employer, a domestic corporation, with an office and principal place of business located at 260 68th Street, Brooklyn, New York, and at various other locations throughout the borough of Brooklyn, New York, is engaged in providing services to individuals with

development disabilities. During the past year, which period is representative of its annual operations generally, the Employer derived gross revenues in excess of \$500,000 and purchased and received at its Brooklyn locations, goods and materials valued in excess of \$5,000 from entities located within the State of New York, which goods and materials originated from locations outside the State of New York.

Based on the stipulation of the parties and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated that Civil Service Employees Association, Local 1000, American Federation of State, County and Municipal Employees, AFL-CIO, herein the Intervenor, is a labor organization within the meaning of Section 2(5) of the Act. The Intervenor 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.

5. At the hearing, the parties stipulated that the following unit is appropriate for the purposes of collective bargaining:

All full-time and regular part-time Activity assistant, Assistant Habilitation Specialist, Assistant Teacher, Bookkeeper, Case Manager, Cook, Counselor, Family Support Staff, Habilitation Specialist, Housekeeper, Maintenance, Program Secretary, Public Relations, Recreation, Residential Habilitation Specialist, Secretary, Shipping Transportation, Teacher, Work Shop Aide, Supv. Work Shop Aide/Vocational, trainer employees employed by the Employer at the following locations: 260-68th Street, Brooklyn, New York, 216 Ovington Avenue, Brooklyn, New York, 6743 3rd Avenue, Brooklyn, New York, 6749 3rd Avenue, Brooklyn, New York, 3108 Quentin Rd., Brooklyn, New York, 310 67th Street, Brooklyn, New York, 311 Senator Street,

Brooklyn, New York, 541 72nd Street, Brooklyn, New York, 350 85th Street, Brooklyn New York, 124 Bay Ridge Avenue, Brooklyn, New York, 1273 57th Street, Brooklyn, New York, 7015 Colonial Rd., Brooklyn, New York, 27 Maine Avenue, Brooklyn, New York, 8910 Colonial Road, Brooklyn, New York, 619 73rd Street, Brooklyn, New York, 301 68th Street, Brooklyn, New York, 170 88th Street, Brooklyn, New York, 7001-03 Narrows Avenue, Brooklyn, New York, and 443 72nd Street, Brooklyn, New York, but excluding all other employees, guards, and supervisors as defined in Section 2(11) of the Act.

Following the close of the hearing herein, the parties entered into a written stipulation, now received as Board Exh. 2, wherein the parties stipulated that teachers employed by the Employer are professional employees as defined in Section 2(12) of the Act. Accordingly, the employees in the teacher classification, in addition to voting for or against union representation, shall initially vote separately whether or not they wish to join the non-professional bargaining unit. *Sonotone Corp.* 90 NLRB 1236 (1950). If the majority of the teachers vote for inclusion in a unit with non-professional employees, I find that the following employees will constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Activity assistant, Assistant Habilitation Specialist, Assistant Teacher, Bookkeeper, Case Manager, Cook, Counselor, Family Support Staff, Habilitation Specialist, Housekeeper, Maintenance, Program Secretary, Public Relations, Recreation, Residential Habilitation Specialist, Secretary, Shipping Transportation, Teacher, Work Shop Aide, Supv. Work Shop Aide/Vocational,¹ trainer employees employed by the Employer at the following locations: 260-68th Street, Brooklyn, New York, 216 Ovington Avenue, Brooklyn, New York, 6743 3rd Avenue, Brooklyn, New York, 6749 3rd Avenue, Brooklyn, New York, 3108 Quentin Rd., Brooklyn, New York, 310 67th Street, Brooklyn, New York, 311 Senator Street,

¹ Following the close of the hearing, the parties stipulated, and I therefore find, that the classification of Supv. Work Shop Aide/Vocational is not a supervisor within the meaning of Section 2(11) of the Act. That Stipulation has been received as Board's Exhibit 3.

Brooklyn, New York, 541 72nd Street, Brooklyn, New York, 350 85th Street, Brooklyn New York, 124 Bay Ridge Avenue, Brooklyn, New York, 1273 57th Street, Brooklyn, New York, 7015 Colonial Rd., Brooklyn, New York, 27 Maine Avenue, Brooklyn, New York, 8910 Colonial Road, Brooklyn, New York, 619 73rd Street, Brooklyn, New York, 301 68th Street, Brooklyn, New York, 170 88th Street, Brooklyn, New York, 7001-03 Narrows Avenue, Brooklyn, New York, and 443 72nd Street, Brooklyn, New York, but excluding all other employees, guards, and supervisors as defined in Section 2(11) of the Act.

If a majority of the professional employees do not vote for inclusion in the unit with non-professional employees, I find that the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Unit A (professional): All full-time and regular part-time teachers employed by the Employer at the following locations: 260-68th Street, Brooklyn, New York, 216 Ovington Avenue, Brooklyn, New York, 6743 3rd Avenue, Brooklyn, New York, 6749 3rd Avenue, Brooklyn, New York, 3108 Quentin Rd., Brooklyn, New York, 310 67th Street, Brooklyn, New York, 311 Senator Street, Brooklyn, New York, 541 72nd Street, Brooklyn, New York, 350 85th Street, Brooklyn New York, 124 Bay Ridge Avenue, Brooklyn, New York, 1273 57th Street, Brooklyn, New York, 7015 Colonial Rd., Brooklyn, New York, 27 Maine Avenue, Brooklyn, New York, 8910 Colonial Road, Brooklyn, New York, 619 73rd Street, Brooklyn, New York, 301 68th Street, Brooklyn, New York, 170 88th Street, Brooklyn, New York, 7001-03 Narrows Avenue, Brooklyn, New York, and 443 72nd Street, Brooklyn, New York, but excluding all employees employed as Activity assistant, Assistant Habilitation Specialist, Assistant Teacher, Bookkeeper, Case Manager, Cook, Counselor, Family Support Staff, Habilitation Specialist, Housekeeper, Maintenance, Program Secretary, Public Relations, Recreation, Residential Habilitation Specialist, Secretary, Shipping Transportation, Teacher, Work Shop Aide, Supv. Work Shop Aide/Vocational, trainer employees and all other employees, guards, and supervisors as defined in Section 2(11) of the Act.

Unit B (non-professional): All full-time and regular part-time Activity assistant, Assistant Habilitation Specialist, Assistant

Teacher, Bookkeeper, Case Manager, Cook, Counselor, Family Support Staff, Habilitation Specialist, Housekeeper, Maintenance, Program Secretary, Public Relations, Recreation, Residential Habilitation Specialist, Secretary, Shipping Transportation, Work Shop Aide, Supv. Work Shop Aide/Vocational, trainer employees employed by the Employer at the following locations: 260-68th Street, Brooklyn, New York, 216 Ovington Avenue, Brooklyn, New York, 6743 3rd Avenue, Brooklyn, New York, 6749 3rd Avenue, Brooklyn, New York, 3108 Quentin Rd., Brooklyn, New York, 310 67th Street, Brooklyn, New York, 311 Senator Street, Brooklyn, New York, 541 72nd Street, Brooklyn, New York, 350 85th Street, Brooklyn New York, 124 Bay Ridge Avenue, Brooklyn, New York, 1273 57th Street, Brooklyn, New York, 7015 Colonial Rd., Brooklyn, New York, 27 Maine Avenue, Brooklyn, New York, 8910 Colonial Road, Brooklyn, New York, 619 73rd Street, Brooklyn, New York, 301 68th Street, Brooklyn, New York, 170 88th Street, Brooklyn, New York, 7001-03 Narrows Avenue, Brooklyn, New York, and 443 72nd Street, Brooklyn, New York, but excluding teachers, all other employees, guards, and supervisors as defined in Section 2(11) of the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the units found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by the Civil Service Employees Association, Local 1000, American Federation of State County and Municipal Employees, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the units who were employed during the payroll period ending immediately before 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 services of the United States who are employed in the unit may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

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 the lists 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).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office election eligibility lists, one for each of the units found appropriate herein, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). These lists must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the lists should be alphabetized (overall or

by department, etc.). Upon receipt of the lists, I will make them available to all parties to the election. In addition, the Employer should provide lists, by unit, for each of the locations set forth in the unit descriptions above.

To be timely filed, the lists must be received in the Regional Office, Two MetroTech Center, 5th Floor, Brooklyn, New York 11201, on or before **February 8, 2008**. No extension of time to file the lists will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file these lists. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The lists may be submitted by facsimile transmission at (718) 330-7579. Since the lists will be made available to all parties to the election, please furnish a total of **two** copies of each, unless the lists are submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

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, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **February 15, 2008**. The request may **not** be filed by facsimile.

The parties are advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described Request for Review electronically, please refer to the guidance which can be found under "E-Gov" on the National Labor Relations Board website: www.nlr.gov.

Dated: at Brooklyn, New York, February 1, 2008.

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201