Lima and Allen County Community Action Commission, Inc. *and* Ohio Association of Public School Employees, AFSCME/AFL–CIO, Petitioner. Case 8–RC–13584

August 27, 1991

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On April 14, 1987, the Regional Director for Region 8 issued a Decision and Order in the above-entitled proceeding in which he declined to assert jurisdiction over the Employer. In accordance with Section 102.67 of the Board's Rules and Regulations, the Petitioner filed a timely request for review of the Regional Director's decision. By telegraphic order dated August 12, 1987, the Board granted the Petitioner's request for review.

Thereafter on November 16, 1990, the Board, sua sponte, remanded the case to the Regional Director to take evidence on the Employer's tripartite board of directors[1] in order to determine the 2(2) status of the Employer consistent with the Board's decisions in *Woodbury County Community Action Agency*, 299 NLRB 554 (1990), and *Economic Security Corp*., 299 NLRB 562 (1990).[2] On January 3, 1991, the Regional Director transferred the hearing officer's report and the matter back to the Board for a decision on review. Both the Employer and the Petitioner filed posthearing briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record, including the briefs, and makes the following findings.

The Employer is a private nonprofit Ohio corporation formed to administer antipoverty programs originating under the Economic Opportunity Act of 1964. It serves the city of Lima and the Allen County area in Ohio.[3] The Employer receives funds from Federal, state, and local governments, and private sector corporations for such programs as Head Start, Jobs/Skills Bank, Educational Opportunity Center, Energy Outreach Program, Home Energy Assistance Program, Senior Citizen Benefits Program, and a Minority Contractors Assistance Program. The approximately 40 employees in the petitioned-for unit are employed in the Employer's Lima and Allen County Head Start program. Eighty percent of the Head Start program's funding comes from the U.S. Department of Health and Human Services (HHS). The other 20 percent comes from local sources, primarily in the form of donated services.

The facts on which this case turns are as follows. The Employer has incorporated into its constitution and bylaws various Federal[4] and state laws[5] that require the Employer to administer its programs through a tripartite board of trustees. This board of trustees is to be composed of one-third elected, appointed, or public officials, or their designated representatives, one-third representatives of the poor in the area served, and one-third officials or members of business, industry, labor, religious, welfare, education, or other major groups and interests in the community.[6] Here, although the Employer's bylaws allow for a maximum of 51 board members, there are currently 21 trustees, with 7 members from each of the 3 constituent groups. The public official members, the representatives of the poor, and the private sector members are selected in accordance with article III of the Employer's constitution and article I of the Employer's bylaws.[7] The record also shows that the Employer's executive director, Joseph Clark, testified that the representatives of the low income groups on the Employer's board of trustees were selected by a democratic process by their respective organizations. He indicated he was personally familiar with the method of selection followed by one group, Helping Hand Credit Union. Finally, Clark testified that the personnel membership committee of the board of trustees has taken action on a regular basis to assure selection by a democratic process.[8]

In *Economic Security Corp*., 299 NLRB 562 (1990), and *Woodbury County Community Action Agency*, 299 NLRB 554 (1990), the Board considered the status of private nonprofit community service corporations, which were established for the purpose of administering an array of federally subsidized antipoverty programs at a local level. In each case, the Board held that the corporation qualified as a ''political subdivision'' of a State under Section 2(2) of the Act because it was governed by a tripartite board of directors, two-

[1] The Employer has designated its board as a board of trustees.

[2] In determining the application of Sec. 2(2) to the employing entities in those cases, the Board applied principles set out in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971).

[3] The Employer was incorporated on May 27, 1965, by three individuals under the Ohio nonprofit corporation laws. The Employer is also a tax-exempt corporation pursuant to the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

[4] Economic Opportunity Act of 1964, 78 Stat. 516, as amended; *Community Services Block Grant Act*, 42 U.S.C. §§ 9901, 9904(c) (Aug. 13, 1981).

[5] *Ohio Revised Code* § 122.66 to 122.70 (1984). See also *Ohio Revised Code Title 17*, ch. 1724.

[6] See *Community Services Block Grant Act*, 42 U.S.C. § 9904(c)(3).

[7] Art. III, sec. 3B of the Employer's constitution provides that membership of the Board shall include, inter alia, at least one-third disadvantaged persons or their representatives and that such representatives shall be selected by democratic process in accordance with the bylaws.

Art. I, sec. B2 of the Employer's bylaws provides that the personnel/-membership committee will assure that the representatives of the clientele sector have been elected by a democratic election process and that the exact method of selection of clientele sector representatives be established by the prospective group or by the personnel/membership committee.

[8] According to that testimony, when an organization notifies the board of trustees that it has selected an individual to be a trustee, the personnel committee reviews that organization's procedures to determine whether, in fact, democratic election procedures were used.

thirds of whom (representing a majority) were ''responsible to the general electorate.''[9]

In its posthearing brief, the Petitioner, while tacitly acknowledging the existence of a tripartite board of trustees fitting the description of similar boards in *Economic Security* and *Woodbury*, contends that the Employer does not satisfy the Board's test for a political subdivision because its ''representatives of the poor'' on the board are appointed and not selected by democratic procedures. Its contention rests on its assertion that Executive Director Clark testified that, except for the trustee from Helping Hand, all the other representatives of the poor were appointed and that the provisions in the Employer's constitution and bylaws are insufficient to establish that such representatives were elected by democratic process.

We find no merit in the Petitioner's contentions. Although Clark had personal knowledge only of how the trustee of Helping Hand was selected, he testified that the personnel/membership committee has regularly exercised its responsibility to assure that the representatives of the poor were selected by a democratic process. The record contains no evidence to the contrary, i.e., that the representatives of the poor were in fact not selected by such a process. Clark explained his use of the term ''appointment'' as referring to the actual placement of trustees on the board and not as describing the method by which such representatives were selected. In these circumstances, we find that Clark's testimony is consistent with the applicable laws and the Employer's bylaws requiring that the representatives of the poor be selected in accordance with democratic procedures.[10]

Therefore, we find that when the one-third representatives of the poor are combined with the one-third of those members who are public officials or their representatives, the majority of the board, as was the case in *Economic Security* and *Woodbury*, is responsible by law to public officials or the general electorate.[11] Accordingly, we find the Employer here to be an exempt political subdivision of the State of Ohio,[12] and we shall dismiss the petition.

ORDER

The petition is dismissed.

CHAIRMAN STEPHENS, dissenting.

For the reasons set forth in my dissent in *Woodbury County Community Action Agency*, supra, I would assert jurisdiction and thus would not dismiss the petition.

[9] Sec. 2(2) of the Act provides that the term ''employer'' shall not include ''any State or political subdivision thereof.''

[10] There is no contention that the applicable laws and the Employer's bylaws were not met concerning the selection of the required number of board of trustees who come from the ranks of elected or appointed public officials or their designated representatives.

[11] Responsibility to public officials or the general electorate does not require that the directors be subject to removal from office by public officials or the general electorate in addition to being placed in office by public officials or the general electorate. See *Economic Security*, supra at 565.

[12] See also *GMN Tri-County Community Action Committee*, 300 NLRB 963 (1990).