

**Salt River Project Agricultural Improvement and Power District and Local Union 226, International Brotherhood of Electrical Workers, AFL-CIO, Petitioner. Case 28-RC-3260**

July 28, 1977

**DECISION AND ORDER DISMISSING PETITION**

**BY MEMBERS JENKINS, MURPHY, AND WALTHER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Bruce R. Kettler of the National Labor Relations Board. Following the close of the hearing, the Regional Director for Region 28, pursuant to Section 102.67(h) of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, transferred the case to the Board for decision. Thereafter, the Employer and the Petitioner filed briefs with the Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

Petitioner has filed a petition seeking to represent certain employees of the Employer who are employed at its Navajo Generating Station, located near Page, Arizona. The issue before us in this proceeding is whether the Employer is a political subdivision over which the Board is statutorily forbidden from asserting jurisdiction under Section 2(2) of the National Labor Relations Act.<sup>1</sup>

The Employer was formed in 1937 by the Salt River Valley Water Users' Association, in accordance with Arizona law, as a means of securing for the Association the rights, privileges, exemptions, and immunities granted political subdivisions of the State of Arizona with regard to the financing, generating, transmitting, and selling of electricity. Thereafter, the Employer has engaged in these activities for the benefit of the residents of the city of Phoenix and Maricopa County.

The State of Arizona has established by statute the procedure for the formation of an agricultural improvement district. Pursuant to these sections, a petition for the formation of an agricultural improve-

ment district must first be filed with the board of supervisors for the county in which the proposed district is to be located. Following approval by that board and a public hearing, the county board of supervisors directs an election to determine if the district should be formed, and, if so, who should serve on its board of directors. This election procedure must, as provided in the enabling legislation, accord as nearly as practicable with Arizona's election laws.

The statute provides that in order to qualify to vote, a person must be a property owner and taxpayer within the boundaries of the District at least 60 days prior to the election, and be otherwise qualified under Arizona voting laws. Following the election, the board canvasses the votes cast, and, if favorable, orders the establishment of a district.

Under a newly enacted state law, the Employer's board of directors will have 14 members, 4 of whom are members at large, and all of whom are to be elected for a term of 4 years. The four members at large will be elected by property owners of the district on the basis of one-man, one-vote; for the other 10, the votes will be weighted so that for each one-hundredth of an acre, the voter receives one-hundredth of a vote. An individual must own a minimum of one one-hundredth of an acre of property in the District in order to be eligible to vote.

The operating funds for the District come from a variety of sources. First, the District receives payment from its customers for its electricity. Second, if these revenues are insufficient, it is authorized to levy taxes to redress any deficit. In addition, it has financed its capital expenditures through the extensive issuance of municipal bonds.

The District pays no property, bond, or social security taxes. It does, however, make a voluntary contribution to the property and social security taxing bodies in an amount equal to the tax which would be levied. In addition, it pays sales, severance, and unemployment taxes.

Under Arizona law, the District has the power of eminent domain, which includes authority not only to condemn private property, but public property as well, when the District has a use for the property which is higher than its present use. Pursuant to Arizona law, the District is required to publish a financial report, open its board meetings to the public, and allow the public to inspect its records during normal business hours. It is uncontroverted that the District complies with all of these requirements.

With regard to recall or removal of members of its board of directors, the District asserts that the

<sup>1</sup> Sec. 2(2) of the Act provides, in relevant part, "The term 'employer' . . . shall not include . . . any State or political subdivision thereof . . ."

provisions of the constitution of Arizona and the Arizona state statutes pertaining to the removal of public officials are applicable. However, it appears that there had not been any decision by the Arizona Supreme Court concerning the applicability of the recall provisions to members of the board of directors of the District, and no evidence was introduced to establish that a recall petition had ever been filed against any member of the board of directors.

On this record, we conclude that the District is a political subdivision within the meaning of Section 2(2). In this regard, we find controlling here our decision in *Electrical District Number Two, Pinal County, State of Arizona*, 224 NLRB 904 (1976), for the facts in the present case are virtually indistinguishable from those of that prior decision. In *Electrical District Number Two*, as here, the district's board was elected by property owners within the district; the district had the power of eminent domain; it was exempt from most state and local

taxes; and its records and meetings were open to the public. Indeed, the two cases arise in the same State and involve the same statutory provisions for disclosure to the public and for removal of directors. The enabling legislation, while different in some aspects, is also highly analogous.

In so ruling, we reject the Union's contention that, because we have in the past asserted jurisdiction over the Salt River Valley Water Users' Association, we must also assert jurisdiction over its public counterpart, the District. Under Section 2(2), we have no discretionary jurisdiction over political subdivisions. Since, on the facts before us, it is clear that the District is such an entity, we have no jurisdiction to entertain the representation petition. Accordingly, we shall dismiss the petition herein.

#### ORDER

It is hereby ordered that the petition be, and it hereby is, dismissed.