

**Queens Borough Public Library, Employer-Petitioner
and District Council 37 and its affiliated Local No.
1321, American Federation of State, County and
Municipal Employees, AFL-CIO. Case 29-UC-32**

March 21, 1972

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS JENKINS
AND KENNEDY

Upon a petition filed by Queens Borough Public Library, herein called the Employer or the Library, on March 19, 1971, a hearing was held before Hearing Officer Gary T. Kendellen of the National Labor Relations Board. District Council 37 and its affiliated Local No. 1321, American Federation of State, County and Municipal Employees, AFL-CIO, herein called the Union, which has been recognized by the Library since March 1968 as the exclusive bargaining representative for certain employees, participated in the hearing.

Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, by direction of the Regional Director for Region 29, this case was transferred to the Board for decision. Thereafter, the Employer and the Union filed briefs.

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.¹

Contrary to the contentions of the Union, the Library argues that it is not a political subdivision within the meaning of Section 2(2) of the Act, that the Board should assert jurisdiction over the Library, and that certain classifications of employees should be excluded from the unit as being supervisors. For the reasons stated, *infra*, we find that it would not effectuate the policies of the Act to assert jurisdiction over the Library and we dismiss the petition without determining whether the Library is a statutory employer.

Upon the entire record in this case, the Board finds:

In 1896 the regents of the University of the State of New York issued a charter to the Long Island City Public Library. In 1899 the regents amended this

charter to provide, *inter alia*, that the name of the Library be changed to Queens Borough Library and that it be governed by 15 trustees appointed by the mayor of the city of New York.

As a result of an offer made by Andrew Carnegie to furnish money needed for the erection of buildings for free branch libraries, in 1901² the Legislature of the State of New York authorized the city of New York to acquire title to sites for such branches. Thereafter, in 1907³ and again in 1913⁴ the legislature incorporated the Queens Borough Public Library as "a body politic and corporate" and merged the Queens Borough Library with this new corporation.

In accordance with the 1907 and 1913 laws, 15 trustees, in addition to the mayor, the comptroller, and the president of the Board of Aldermen of the city of New York, who serve as *ex officio* members, constitute the Library's board of trustees. The trustees' term of office is for 5 years, they serve without compensation, and they are appointed by the mayor who administers an oath of office to all new trustees. According to the bylaws of the Library, trustees can be removed from office by a two-thirds vote of all the members of the board but this removal is subject to approval by the mayor.

Trustees control the expenditure of all money appropriated by the city for the maintenance of the Library but the Library is required to submit annual reports of its operations to the comptroller of the city of New York. Moreover, while the Library is generally free to hire its own employees, fix salaries, and establish its own rules and regulations, the money required for salaries and operating expenses of the Library is provided by the city out of tax revenues and the title to all Library buildings, books, and furniture is in the name of the city of New York.

At the present time, the Library employs approximately 1,000 employees and operates a central library, 55 branch libraries, and 3 bookmobiles. During the 1969-70 fiscal year the Library had a total gross income in excess of \$10 million of which approximately \$8.5 million was furnished by the city and \$1.5 million by the State of New York and the Federal Government. Only \$326,000 was derived from funds generated from Library operations such as rentals and fines for overdue books.

In order to obtain this money from the city, in December of each year the Library submits an expense budget to the budget director for the city of New York. Thereafter, the budget director schedules a meeting with officials of the Library at which any questions the director has with respect to specific items in the budget

¹ Subsequent to the close of the hearing, the Union moved that a letter dated March 19, 1959, be admitted into evidence as its Exh 48. The Union also requested the Board to strike Employer's Exh 15 on the ground that the Employer failed to submit certification that this document was a true copy of the original. Both motions are hereby denied as we have not relied on either the Union's proposed Exh 48 or the Employer's Exh 15 in reaching our decision herein.

² Chapter 580, Laws of 1901

³ Chapter 164, Laws of 1907

⁴ Chapter 541, Laws of 1913

are answered. Following this meeting, the city publishes the mayor's executive budget for the Library and public hearings are held before the New York City Board of Estimate and the City Council Finance Committee. After these public hearings, the budget is approved by the board of estimate and the city council and is submitted to the mayor for his signature.

Somewhat similar procedures are followed with respect to the Library's capital budget. This budget contains, *inter alia*, requests for additional physical facilities needed by the Library and, after approval by various city authorities, the comptroller of the city sells municipal bonds to finance, *inter alia*, these Library capital requirements. In addition, the New York City commissioner of real estate negotiates for the sale of any real property needed for the Library's expansion and, if the sale cannot be concluded, uses the city's powers of eminent domain to condemn the property.

While Library employees are not included in the city of New York's civil service system, they do participate in the New York State employees' retirement system with the city paying the requisite employer contributions. Moreover, Library employees are paid according to the schedules set for various classifications reflected in the New York city career and salary pay plan.

Under this plan, the Union negotiates directly with the city for increases in the wages paid Library employees. In the past, the Union negotiated with the Library concerning all other terms and conditions of employment of its employees. Recent changes in this procedure are discussed below.

While the Library hires, fires, promotes, sets working hours and other employment conditions for its own employees, and pays employees with checks drawn from the Library's bank accounts, the city personnel director must approve the Library's payment of any negotiated retroactive wage increases and shift differentials as well as any contemplated reclassification of Library employees. In addition, the Library was required to comply with 1969 and 1970 job freezes imposed by the city of New York. Moreover, all repairs to Library buildings are made by the City Department of Public Works and the Library's investigators are sworn in by the New York Police Department as "special patrolmen."

In posthearing correspondence from both the Union and the Library, it appears that on October 21, 1971, the Library's board of trustees elected to make applicable to the Library the provisions of the New York City Collective Bargaining Law. Thus, in the future the

Union will negotiate all terms and conditions of employment of the Library employees with the New York City director of labor relations.

In *Temple University*⁵ we concluded that because of the "unique relationship" between the University and the Commonwealth of Pennsylvania we would decline to assert jurisdiction. In the instant proceeding, the nexus between the Library and the city of New York is as close, if not closer, for without city support the Library would cease to exist. Thus, the city supplies in excess of 80 percent of the Library's operating income and the State of New York and the Federal Government supply the remainder save the relatively minuscule amount generated by the Library through its own operations.

In addition, the Library's expense and capital budgets are dependent on approval by the city, the city acquires all real estate required by the Library, the title to all Library property is in the name of the city, and the city provides repair services for all Library buildings.

In spite of the control the Library exercises over the day-to-day operations of its facilities and personnel, the approval of the city must be obtained before retroactive wage increases and shift differentials can be paid. Moreover, in 1969 and 1970 the city did effectively control the Library by imposing a hiring freeze. Finally, during the time the Union has represented Library employees, the city has carried the burden of negotiating with the Union the wages of Library employees; in the future the city will negotiate with the Union all other terms and conditions of employment of Library employees.

For these reasons, we conclude that, irrespective of the Library's status under Section 2(2) of the Act, it would not effectuate the policies of the Act to assert jurisdiction over the Library.⁶ Accordingly, we shall dismiss the petition.⁷

ORDER

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

⁵ 194 NLRB No. 195.

⁶ The Library, in contending that the result herein should be otherwise, relies on *Minneapolis Society of Fine Arts*, 194 NLRB No. 55. We view that case as clearly distinguishable. Thus, unlike the present case, in *Minneapolis Society of Fine Arts* only a very minor percent of the society's finances were derived from tax revenue, and no state or municipal government exercised any supervision or control over the society's operations.

⁷ *Temple University, supra*.