

The Children's Village, Inc. Union Free School District No. 11, Greenburgh, Employer-Petitioner and Greenburgh No. 11, Federation of Teachers, Local 1532, American Federation of Teachers, AFL-CIO.¹ Case 2-RM-1635

June 30, 1972

DECISION AND ORDER

Upon a petition filed by The Children's Village, Inc. Union Free School District No. 11, Greenburgh, herein called the Employer, or the School District, a hearing was held before Hearing Officer Irwin M. Portnoy of the National Labor Relations Board. Greenburgh No. 11, Federation of Teachers, Local 1532, American Federation of Teachers, AFL-CIO, herein called the Union, participated in the hearing. Also participating in the hearing were Intervenor Office & Professional Employees International Union, Local 153, AFL-CIO, herein called Local 153, and The Children's Village Association of Child Care Counselors.

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 2, this case was transferred to the Board for decision. Thereafter, the Union filed a brief and the Employer filed a letter in lieu of a brief.

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 case, the Board finds:

1. Positions of the parties

The Employer argues that its operations are integrated into those of Children's Village to such an extent as to create either a single employer or joint employers. The Employer contends that since the Board has recently asserted jurisdiction over Children's Village,² we should likewise assert jurisdiction in this case, and direct an election in a unit including teachers aides and child care counselors employed by Children's Village. In the alternative, the Employer argues that the Board should direct an election in a unit made up of these two groups since, it alleges, as of June 1, 1971, the teachers aides have been employees of Children's Village.

On the other hand, the Union asserts that at the

least a substantial part of this requested unit, namely the teachers aides, are employees of the School District, which, according to the Union, is a political subdivision of a State within the meaning of Section 2(2) of the Act. The Union accordingly takes the position that the Board is precluded from asserting jurisdiction in this case. Alternatively, the Union contends that a unit combining both teachers aides and child care counselors is inappropriate.

2. Background

In *The Children's Village, Inc., supra*, the parties stipulated that the School District was separate from Children's Village and jurisdiction was contested only on the ground that Children's Village was a nonprofit hospital. Consequently, on the record made in that case, we had no occasion to consider the jurisdictional issue before us in the instant case. Although we there asserted jurisdiction over Children's Village and directed an election in a unit confined to psychologists and caseworkers, the sole jurisdictional issue litigated was whether or not Children's Village was a hospital within the meaning of Section 2(2) of the Act. We concluded that Children's Village was not a hospital within the meaning of the Act, and that it would effectuate the policies of the Act to assert jurisdiction.

A. Union Organization Among the Employees of Children's Village

On April 13, 1971, the Board certified Local 1707, Community and Social Agency Union, AFSCME, as collective-bargaining agent for the unit of psychologists and caseworkers employed by Children's Village. This action was preceded by an unsuccessful attempt by Children's Village to obtain a permanent injunction in the United States District Court for the Southern District of New York against the Board compelling it to set aside its Decision and Direction of Election in *The Children's Village, Inc.*

On October 7, 1971, the Board issued a Supplemental Decision and Certification of Representation in Case 2-RC-15527 (unpublished) in which it certified Local 153 as collective-bargaining representative for a unit of child care counselors employed by Children's Village. Although the parties stipulated in that case that child care counselors constituted an appropriate unit, the Employer now contends that child care counselors *and* teachers aides constitute an appropriate unit.

¹ The name of the Union appears in the caption as amended at the hearing

² *The Children's Village, Inc.*, 186 NLRB No 137

B. *Union Organization Among the Employees
of the School District*

The Union has represented the teachers employed by the School District since before 1969. On December 12, 1969, the School District filed charges against the Union with the New York Public Employment Relations Board, herein called PERB, alleging that the Union had engaged in an illegal teachers' strike. In an affidavit submitted to the Supreme Court of the State of New York in support of a petition filed by the School District to enjoin the above-mentioned strike, Frederick Holdsworth, president of the Board of Education of the School District, stated:

3. The Board of Education of the Union Free School District Greenburgh #11, is a *governmental agency performing a governmental function* in administering the educational system in the District for the benefit of the people in the District and the State of New York as required by the Constitution and Education Law of the State of New York, *and its employees are public employees holding employment in the public school service.* The district served by the Board is an area encompassing the grounds of The Children's Village, an institution for the treatment of emotionally disturbed boys. [Emphasis supplied.]

In contrast to the position the School District took before the Supreme Court of the State of New York and the PERB in the matter of the above-mentioned strike, when the Union filed a petition with PERB on November 17, 1970, seeking to represent the same teachers aides as are involved in the instant case, the School District contended that it "and its employees are not public within the meaning of the [New York] Act." Thus, the School District argued that the petition filed by the Union should be dismissed on the ground that the PERB lacked jurisdiction. On the other hand, the Employer contended there, as it does here, that the School District and Children's Village are joint employers.

The director of public employment practices and representation rejected both of these contentions stating:

As defined in Sec. 201.7 of the Public Employees' Fair Employment Act . . . the term "public employer" means a "school district or any governmental entity operating a public school, college or university" The special act which created this school district specifically granted to it all the powers and privileges accorded other school districts under the provisions of the Education Law. [Footnote omitted.] Accordingly, it is indisputably a "public employer."

Thus, the only real issue herein is whether the school district is the sole employer of the school aides whom the petitioner is now seeking to represent. [Footnote omitted.] In this regard, the school district apparently contends that the Village is the employer or, alternatively, that the school district and the Village are joint employers of the school aides.⁹ However, the uncontradicted evidence of record before me, as well as other acts of the school district of which I take administrative notice *infra*, clearly point to the school district as being the sole employer. The record reveals that

⁹ In a prior proceeding before the National Labor Relations Board, it was held that the village was subject to that Board's jurisdiction. That case involved psychologists and case workers employed by the Village and the decision indicates that the parties had stipulated "that [the school only the school district hires, fires, and directs the work activities of the school aides. Further, only the school pays the school aides and makes payroll deductions for such benefits as workman's compensation and social security. Clearly, then, the school district has sole control over the terms and conditions of employment of the school aides

The school district has never attempted to document its general claim that this Board is without jurisdiction to process the instant petition. However, I take administrative notice of the following facts which lead to a contrary conclusion since they indicate the school district's willingness to succumb to the Act and this Board's jurisdiction in matters involving its teaching employees:

1. On December 10, 1969, the "Board of Education of Union Free School District Greenburgh #11" and the petitioner entered into a collective agreement dealing with the terms and conditions of employment of certified teaching personnel of the school district No representative of the Village was a signatory thereto.

2. On May 5, 1970, the school district designated a hearing officer to determine whether a teacher was in violation of Sec. 210.1 of the Act which prohibits public employees and employee organizations from engaging in strikes. . . . [Footnote omitted.]

3. On May 22, 1970 . . . the petitioner . . . submitted a joint request to a supervising mediator of this Board for assistance in resolving an impasse in the teacher negotiations between the school district and the petitioner. The impasse dispute was processed through fact-finding without, of course, any claim being made that this Board lacked jurisdiction.

Accordingly, based upon all the above, I find that the school district is the sole employer of the school aides.¹¹

¹¹ It follows, *a fortiori*, that the school aides are "public

This decision was affirmed by the PERB on May 10, 1971.

By letter of May 24, 1971, some 2 weeks after the decision by the PERB, the School District announced that, effective June 1, all teachers aides would become employees of Children's Village. The letter stated that after June 1 teachers aides could, if they so desired, increase the number of hours they work per week. Teachers aides were also granted the same fringe benefits enjoyed by employees of Children's Village and, subsequent to June 1, their wages have been paid by checks drawn on the account of Children's Village.

On June 17, 1971, the director of public employment practices and representation concluded that the Union had satisfied the requirements of the New York Act for certification without an election in the unit of teachers aides. The PERB affirmed this decision on July 29, 1971.

On November 3, 1971, the Union filed with the PERB "improper practices charges" alleging that the School District had refused to bargain with the Union under the certification issued by that board. Proceedings in this matter were pending at the time of the hearing in the instant case.

C. *Jurisdictional Status of the School District*

Although we asserted jurisdiction over *private* educational institutions in *Cornell University*,³ it is well settled that local public school boards do not come within the definition of "employer" as set out in Section 2(2).⁴ The Employer has presented nothing in the record here to cause us to depart from this interpretation of the Act.

The School District was established by the New York State Legislature in 1928. The board of education of each union free school district in New York, including the one involved herein, is a "body corporate,"⁵ and its members may be removed from office by the commissioner of education of the State of New York.⁶

The powers and duties of the boards of education of union free school districts include, *inter alia*, establishing rules and regulations concerning order and discipline in the schools, prescribing the course of study for the pupils and the textbooks to be used

in the schools, contracting for the employment of teachers, and providing inservice training for teachers.⁷ These boards of education have all the powers and privileges of trustees of common school districts,⁸ and stringent limitations are placed on these union free school districts regarding the expenditure of money,⁹ recordkeeping,¹⁰ and temporary investment of school funds.¹¹ In addition, the Board of Regents of the University of the State of New York appoints the commissioner of education¹² who has general supervision over all schools and institutions which are subject to the New York Education Law,¹³ including union free school districts.

The five members of the Board of Education of the School District are all members of the board of directors of Children's Village. The same individual acts as director of fiscal affairs for Children's Village and as treasurer of the School District. In addition, the title to the building occupied by the School District is in the name of Children's Village, and the Village supplies many services such as bookkeeping and maintenance to the School District. Moreover, employees of both the School District and Children's Village share common cafeteria facilities and telephone switchboard equipment.

On the other hand, the School District and Children's Village operate under separate budgets and accounting systems. In addition, teachers receive tenure under the New York Education Law; they must be certified by the state department of education; and before they can be hired by the School District, their applications must first be approved by the superintendent of the Board of Cooperative Education Services.

As the U.S. Supreme Court pointed out in *N.L.R.B. v. Natural Gas Utility District*,¹⁴ the Board has: . . . limited the exemption for [Sec. 2(2)] political subdivisions to entities that are either (1) created directly by the state, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate.

It is clear from the evidence in this record that the Employer meets both of the above criteria.

Evidence here shows that the commissioner of education, who is responsible to the Board of Regents of the University of the State of New York, exercises considerable control over the Employer,

³ 183 NLRB 41

⁴ See *International Brotherhood of Electrical Workers, A F of L, Local No 16 (Al J Schneider Company, Inc)*, 87 NLRB 99, overruled in part not pertinent here, *Local Union No 313, International Brotherhood of Electrical Workers, AFL-CIO (Peter D Furness)*, 117 NLRB 437

⁵ Sec 1701, New York Education Law

⁶ Sec 1706, New York Education Law

⁷ Sec 1709, New York Education Law

⁸ Sec 1710, New York Education Law

⁹ Sec 1718, New York Education Law

¹⁰ Sec 1721, New York Education Law

¹¹ Sec 1723-a, New York Education Law

¹² Sec 302, New York Education Law

¹³ Sec 305, New York Education Law

¹⁴ 402 U S 600, 604 (June 1, 1971)

including the power to remove from office the members of its board of education. In addition, the duties and responsibilities of the Employer are specifically set out by state statute, and stringent limitations are placed on its operations and fiscal affairs. Thus, it is clear that the Employer is administered by individuals who are responsible to public officials.

While declarations and interpretations of state courts and administrative agencies are not controlling, they are given careful consideration.¹⁵ In this regard, we have studied the decision of the director of public employment practices and representation and consider it to be an accurate description of the status of the Employer. We also note that our conclusion is further supported by the information presented by the president of the board of education of the Employer in its petition for an injunction before the Supreme Court of the State of New York. Although the parties in the earlier Board case chose to stipulate that Children's Village and the School District were separate entities, it appears that there is a very close connection between the two organizations. Nevertheless, while the full extent of state control over the Children's Village operation is not entirely clear, we consider the fact that the State controls the hiring, certification, and tenure of the primary employees of the School District, the teachers, to be sufficient to distinguish operations of the School District from those of Children's Village.

D. *Employment Status of the Teachers Aides*

As stated, 2 weeks after the above-mentioned adverse decision by the PERB, the School District changed the employment status of the teachers aides. Thus, Children's Village began paying the teachers aides directly and these employees now share in the fringe benefits enjoyed by employees of Children's Village. It is clear, however, that the change with respect to the method of compensation for teachers aides is one of form rather than substance. This is so because the School District reimburses Children's Village for the wages paid the teachers aides.

In addition, teachers aides were given the opportunity to supplement their income by working part time as child care counselors. It appears, however, that the

number of teachers aides performing this work now is no greater than before the changes in their employment status.

Although the Employer now contends that the teachers aides are employees of Children's Village, the evidence, when viewed in the light most favorable to the Employer, at best supports the argument that the School District and Children's Village are joint employers. Thus, while the duties of teachers aides are primarily to work in conjunction with and under the direction of state employees, the teachers, a limited number of them also perform some work as child care counselors. Moreover, while Children's Village has suspended teachers aides in the past, their grievances are processed within the School District.

Since the locus of employment of the teachers aides is primarily within the School District and since the School District reimburses Children's Village for their wages, we conclude that the employer of the teachers aides is, for practical purposes, the School District, a political subdivision of the State. As the School District lies outside our jurisdiction, we likewise have no jurisdiction over these teachers aides.

Even if we found merit to the School District's argument that the teachers aides are employees of a private employer, Children's Village, we would dismiss the petition. This result would follow because it is well established that the Board will recognize the validity of state-conducted elections and certifications where the election procedure is free of irregularities and reflects the true desires of the employees.¹⁶ As no party has contended that the proceedings under which the Union was certified as the collective-bargaining representative for the teachers aides were irregular, we would in any event find that there was no question concerning the representation of these employees.

For the above considerations, we conclude that the School District is a political subdivision within the meaning of Section 2(2) of the Act. Accordingly, we shall dismiss the petition.

ORDER

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

¹⁵ *N L R B v. Natural Gas Utility District, supra*

¹⁶ *See Cornell University, supra*