

Albany County Opportunity, Inc. and The Civil Service Employees Association, Inc., Local 1000 AFSCME, AFL-CIO, Petitioner. Case 3-RC-8414

December 13, 1990

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

On September 2, 1986, the Regional Director for Region 3 issued a Supplemental Decision and Order in the above-entitled proceeding in which he asserted jurisdiction over the Employer. In accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's Supplemental Decision. By telegraphic order dated June 8, 1987, the Board granted the Employer's request for review.¹

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 Petitioner's brief on review, and makes the following findings.

The Employer is a "community action agency," organized to facilitate, encourage, and promote (1) the provisions and purposes of the Economic Opportunity Act of 1964,² the Community Services Block Grant Act³ (created by the Omnibus Reconciliation Act of 1981), and (2) the implementation of Federal, state, and local laws relative to the elimination and prevention of poverty. The Employer was incorporated in the State of New York on August 1, 1966, as a not-for-profit corporation under 26 U.S.C. § 501(c)(3) (Aug. 15, 1954), as amended. Its bylaws provide that the purposes and powers of the corporation shall be in accord with the New York State Not-For-Profit Corporation Law. The Employer administers head start, weatherization, senior action, and home energy assistance programs. It also administers a community service block

grant, which provides funding for some smaller projects. It receives funding from the Federal, state, and local governments as an antipoverty agency in Albany County, New York.

State legislation, in accordance with Federal law requirements, mandates that the Employer have a board of directors and that the composition of the board be as follows:

[O]ne-third of the members of the board are elected public officials, currently holding office or their representatives, to be selected by the chief elected officials of the state or local government or combination thereof who possess the authority to designate an eligible entity pursuant to this article, except that if the number of elected officials reasonably available and willing to serve is less than one-third of the membership of the board, membership on the board of appointive public officials may be counted in meeting such one-third requirements. At least one-third . . . chosen in accordance with any democratic selection procedure which assures maximum feasible participation of poor persons residing in the area to be served by the eligible entity; and one-third . . . representatives of interest groups and private organizations within the community to be served, including but not limited to social service agencies, educational institutions, business, industrial, labor and religious organizations.⁴

The Employer's bylaws in article IV, section A, in compliance with the above requirements, provide that the board of directors of the Employer shall be divided into three groups as follows:

(1) One-third are elected public officials, including the chief elected officials or their representatives.⁵

(2) One-third of the board must be democratically selected representatives of the poor in the area served.

(3) A maximum of one-third directors are designated annually by major private community groups and interests.⁶

¹On June 16, 1983, the Acting Regional Director issued a Decision and Direction of Election. The election was held on June 20, 1983, and on September 22, 1984, the Board granted the Employer's request for review of the Decision and Direction of Election and the ballots were impounded. On June 30, 1986, the Board remanded the case for further consideration in light of *Res-Care, Inc.*, 280 NLRB 670 (1986), and *Long Stretch Youth Home*, 280 NLRB 678 (1986). The Acting Regional Director, on September 2, 1986, issued a Supplemental Decision and Order asserting jurisdiction and further ordering that the impounded ballots be opened and counted, and that a tally of ballots issue. The Employer requested review and on June 8, 1987, the Board granted the Employer's request for review, and remanded the case sua sponte to the Regional Director to take evidence on the Employer's tripartite board of directors, in order for the Board to determine the 2(2) status of the Employer. See *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971) (*Hawkins County*).

²Economic Opportunity Act of 1964, 42 U.S.C. § 2701 et seq. (Aug. 20, 1969).

³The Community Services Block Grant Act, 42 U.S.C. § 9901 et seq. (Aug. 13, 1981).

⁴1982 N.Y. Laws, Chapter 728, Community Services Block Grant Program, approved July 27, 1982.

⁵Public sector seats may be allotted to appointed public officials only when the chief elected officials have determined officially that the number of such officials reasonably available or willing to serve is less than one-third of the membership of the board.

⁶Although the composition of the board allows for 21 members, there are presently only 16 members: 6 of whom are elected public officials or their representatives; 5 are representatives of the poor; and the remaining 5 members are the representatives of private groups. The public members are in practice designees of elected officials and not the officials themselves. No more than one board member is to come from any of the nine towns or four cities of the county or the county legislature. Any board member can serve as officer or as member of the executive board. The public members serve at the pleasure of the elected official who appointed them. They are also subject to removal, as is any board member, by a majority of the board.

The Employer's bylaws, in article VII-B, set forth an elaborate selection procedure which is to be followed in conducting the elections of the representatives of the poor. The nominating committee, consisting of one representative of each of the three sections of the board of directors, searches throughout the year for possible candidates for representatives of the poor to the board. The elections are conducted prior to the board's annual meeting in March, and they are preceded by a nominating process and an election process designed to include as many persons from poor areas as possible. The community at large has to be notified of the elections and has the right to submit the names of candidates.⁷ The names of candidates ultimately nominated are publicized to the community.⁸ The elections are conducted in target areas, i.e., areas with a high number of residents who are considered poor by Federal guidelines. The date, the time, and the location of the voting spots must be properly supplied to the community prior to the election, which is then held at convenient locations throughout the community. At the voting sites there must be a sealed ballot box and a sign-in sheet for eligible voters. At the close of the elections the ballot box and voting list are turned over to the nominating committee or supervisor of election, i.e., League of Women Voters, which will count the ballots and announce the results. The persons elected by this process serve a 2-year term and are eligible to be repeat candidates. Any member of the board of directors may be removed for cause; such removal, must be by a majority vote of the board members present at a special meeting called by the board for that purpose.

Section 2(2) of the Act provides that the term "employer" shall not include "any State or political subdivision thereof." The Board has limited the "political subdivision" exemption 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." *Hawkins County*, supra at 604-605.

In *Economic Security Corp.*, 299 NLRB 562 (1990), and *Woodbury County Community Action Agency*, 299 NLRB 554 (1990), the Board found that nonprofit community action organizations which by virtue of Federal and state law are composed of a tripartite board of directors which encompass equal parts consisting of (1) public officials or their representatives; (2) members and representatives of different political, religious, or business groups in the community; and (3)

⁷Candidates who propose to be members of the board of directors must submit a letter to the nominating committee stating their reasons for wishing to serve. The nominating committee then has the right to screen such applicants as to their interest and acceptability.

⁸The nominating committee publishes the list of candidates and the candidates themselves may publicize the fact of their nomination.

"elected" members representative of the poor in the area to be served by the entity, are exempt from the Board's jurisdiction.⁹ The Board held that the one-third of the board of directors composed of public officials, when combined with the one-third of "elected" members representative of the poor, constituted a majority of directors accountable to public officials or the general electorate,¹⁰ thus satisfying the second prong of the test enunciated in *Hawkins County*, supra, for the exemption of political subdivisions.

The case before us fits squarely within the parameters of both *Economic Security*, supra, and *Woodbury*, supra. The State of New York has included in its laws relating to "community action agencies" the Federal law requirement that one-third of the board of directors must consist of public officials and their appointees, and the requirement that one-third be representatives of the poor chosen under the "democratic selection process," designed to ensure that they are representative of the poor in the target area to be served by the agency. The Employer's bylaws have incorporated these requirements. The Employer's election procedure ensures that those board members representative of the "poor," are elected in accordance with "democratic selection procedures" adequate to assure they are truly representative of the poor in the area served. When the one-third representative of the poor is combined with the one-third of those members that are public officials or their representatives, the majority of the board 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 New York, and we dismiss the petition.¹²

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.

⁹In *Economic Security Corp.*, the Board held that Federal and state laws, by referring to "democratic selection procedures" envisioned an election of individuals representative of the poor. The organizations' elaborate election procedures reinforced this holding.

¹⁰General electorate has been defined to encompass even limited groups of electors and clearly covers the Albany County area served by the Employer. See *Economic Security Corp.*, supra at 563 fn. 12.

¹¹Responsibility 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.

¹²We find it unnecessary to address the other issues raised in the Employer's request for review.