

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION**

In the Matter of

STATE QUARTERMASTER

Employer<sup>1</sup>

and

LOCAL 223, INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL  
WORKERS, AFL-CIO-CLC

Petitioner

Case 1-RC-21774

**DECISION AND ORDER**<sup>2</sup>

The Employer in this matter is the State Quartermaster of the Commonwealth of Massachusetts. The Union seeks to represent a unit composed of 34 maintenance and craftspeople,<sup>3</sup> including fire protection personnel, employed by the State Quartermaster at

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the labor organization involved claims to represent certain employees of the Employer; 3) no question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

<sup>3</sup> The unit sought includes employees in the positions of production controller, custodial maintenance, billeting manager, construction inspector, chief engineer, maintenance mechanic, equipment operator, administrative assistant, painter, supply clerk, motor vehicle operator, electrician, industrial equipment mechanic, construction inspection specialist, high voltage electrician, eng. equipment/leader, CAD operator, and firefighter.

The parties have stipulated, and I find, that the following individuals are statutory supervisors who should be excluded from any unit found appropriate: Support Agreement Manager Melissa

its Otis Air Force Base facility located on Cape Cod in Massachusetts.<sup>4</sup> The State Quartermaster takes the position that the Employer is not subject to the National Labor Relations Act because it is a state or political subdivision and, therefore, not a statutory employer within the meaning of Section 2(2) of the Act. I agree with the State Quartermaster's position, and, accordingly, I will dismiss the petition.

#### State statutes conferring authority to the State Quartermaster

Colonel Mark Murray has been the State Quartermaster of the Commonwealth of Massachusetts since 1998 and is himself a state employee. As State Quartermaster, Murray is responsible for maintaining the land and buildings at various armories, air installations, and other military facilities throughout the Commonwealth.

The position of State Quartermaster exists pursuant to state law. Massachusetts General Laws (M.G.L.) chapter (c.) 33, Sec. 4 describes the Commonwealth's active or organized militia to include, *inter alia*, the "state staff." M.G.L. c. 33, Sec. 15 (d) defines "state staff" to include a "state quartermaster who shall...have the care and control of all land and buildings held for military purposes and all other military property of the Commonwealth...."

Further, the State Quartermaster is one of three members of an armory commission created pursuant to M.G.L. c. 6, Sec. 18. Pursuant to M.G.L. c. 6, Sec. 17, the armory commission "shall serve under the governor, and shall be subject to such supervision as the governor deems necessary and proper." Pursuant to M.G.L. c. 33, Sec. 125, the armory commission has "full supervision and control of all armories or air installations taken, purchased or erected by the Commonwealth, and on completion and acceptance of any such armory or air installation the care and maintenance thereof shall devolve upon the state quartermaster."<sup>5</sup> All such armories shall be under the control of the commander-in-chief and shall be cared for and maintained by the Commonwealth, and the necessary expenditures for care and maintenance shall be made by the state quartermaster subject to the approval of the adjutant general." Finally, M.G.L. c. 33, Sec. 128 empowers the armory commission to expend amounts appropriated by the Massachusetts general court<sup>6</sup> and to accept from the federal government funds toward the erection, alteration, or maintenance of any armory, air installation or facility, provided that the title, interest and control remains vested in the Commonwealth.

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Deibert, Structure Shop Foreman James D. Haehnel, Construction Rep Paul A. Helmuth, Sr., Utility Systems Manager Thomas F. Creighton, and Lead Dispatcher Zina M. Reigel.

<sup>4</sup> I take administrative notice of the fact that Otis Air Force Base is located on Cape Cod in Massachusetts.

<sup>5</sup> Murray testified that it is the State Quartermaster's office, and not the armory commission, that is the Employer of the petitioned-for employees.

<sup>6</sup> The general court is the legislature of the Commonwealth.

## Cooperative Agreement

The federal government and the Commonwealth of Massachusetts are parties to a “Cooperative Agreement” under which the two entities jointly operate and maintain Otis Air Force Base. The federal government, through the National Guard, gives funds to the Commonwealth that are used for the salaries of the petitioned-for employees, who maintain the land and buildings at Otis Air Force Base, as well as for the equipment they use.<sup>7</sup> The terms under which the federal government grants these funds are set forth in a document entitled, “Grants and Cooperative Agreements.” The Cooperative Agreement provides that the Adjutant General shall designate a member of his/her staff to administer the Cooperative Agreement.<sup>8</sup> Murray testified that, under state law, he is the designee. The Cooperative Agreement covering the Otis Air Force Base employees is one of three such agreements that he administers. The Cooperative Agreement gives him authority to hire personnel and to acquire equipment using the federal funds.

The federal government generally pays 75 percent of the wages and benefits of the petitioned-for employees, and the Commonwealth must pay the rest. In some instances, positions are funded 80 percent by the federal government and 20 percent by the Commonwealth. A few of the Cooperative Agreement positions are funded 100 percent by the federal government. The petitioned-for employees are paid exclusively with funds from the federal government and the Commonwealth.

A comptroller, who is a federal employee, prepares the budget for the Cooperative Agreement, in consultation with the Air National Guard commander, who has overall responsibility for the Base. Once the federal government has determined its level of funding, the State Quartermaster seeks funding for the 25 percent state share from the state legislature. He submits his budget to the military division of the Commonwealth’s Executive Office of Public Safety, which sends it to the Commonwealth’s Executive Office for Administration and Finance and, ultimately, to the legislature for approval.

## The State Quartermaster’s authority over the petitioned-for employees

Murray testified that, in theory, he is guided by the Adjutant General and that the funds he expends are controlled by the Commonwealth’s Executive Office for Administration and Finance. In practice, however, the Commonwealth has left day-to-day management of the Cooperative Agreement to him. Murray authorizes advertising for vacancies and hiring among the petitioned-for employees and is also responsible for disciplining and firing them. The paychecks of the petitioned-for employees are issued in the name of the State Quartermaster’s office. Murray testified that some Cooperative Agreements set wage rates, while others provide that the State Quartermaster will use the

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<sup>7</sup> Murray testified that he is responsible for the real estate at Otis Air Force Base. Jet airplanes and weapons located there are federal property.

<sup>8</sup> The Adjutant General, a public official appointed by the governor, is the chief of the “state staff” and the person to whom the State Quartermaster reports. M.G.L. c. 33, Sec. 15(a).

same pay scale as that used for federal employees or for state employees. Murray tries to use federal and state wage scales as a guide, although there are a few positions for which there is no equivalent. Federal and state taxes, as well as social security taxes, are deducted from the paychecks of the petitioned-for employees.<sup>9</sup>

Murray testified that the petitioned-for employees are neither state nor federal employees. In addition to employees who are employed pursuant to a Cooperative Agreement, however, Murray also employs 45 employees who are state employees and who work at various armories and air installations across the state.<sup>10</sup> Their salaries are paid by the Commonwealth, with no contribution by the federal government. The amount of their salaries is dictated by collective-bargaining agreements or by state regulations. They participate in the retirement system for state employees.

Unlike the state employees employed by the State Quartermaster, the petitioned-for employees do not participate in the retirement and health insurance plans designated for state employees. The State Quartermaster has created a separate retirement plan called a “457” plan for the petitioned-for employees, as well as a separate health care plan. Murray has authority to change the compensation and benefits of the petitioned-for employees, as long as the change does not cost more money than the total amount allocated to his office. Recently, he polled the employees covered by the three cooperative agreements that he administers, and two of the three groups of employees, including the Otis Air Force Base employees, indicated that they would like an employer’s contribution to their 457 retirement plan. Murray determined to implement an employer’s contribution as an experiment for five years, to find out the level of employee participation. He had authority to do this because he was able to use money from his existing budget to fund the employer contribution.

### Analysis

According to Section 2(2) of the Act, the term “employer” includes “any person acting as an agent of an employer, directly or indirectly, but shall not include...any State or political subdivision thereof...” The political subdivision exclusion has historically been interpreted to include only those entities that are either created directly by the State, so as to constitute departments or administrative arms of the government, or administered by individuals who are responsible to public officials or to the general electorate. NLRB v. Natural Gas Utility District of Hawkins County, 402 U.S. 600 (1971). An Employer may be found to be a political subdivision if it meets either prong of the Hawkins County test. Economic Security Corp., 299 NLRB 562 (1990).

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<sup>9</sup> I take administrative notice of the fact that state employees do not participate in the Social Security system.

<sup>10</sup> This group includes Director of Operations Noreen Heard, four team leaders, and forty rank and file employees.

I find that the State Quartermaster's office meets the first prong of the Hawkins County test, in that it is an entity created directly by the State so as to constitute an arm of the government. In this regard, the Employer in this case, the State Quartermaster, is himself a state employee whose position and functions are created by state law. The State Quartermaster, who is himself an arm of the government, hires, fires, and disciplines the petitioned-for employees, and has authority to establish and alter their wages and benefits. Finally, the petitioned-for employees are paid exclusively with public funds, and their paychecks are issued in the name of an arm of state government. University of Vermont and State Agricultural College<sup>11</sup> (university was created by the State so as to constitute a department or administrative arm of the government where, *inter alia*, it was created by a special act of the Vermont General Assembly, its finances are under the supervision of the State, and 25 percent of its operating budget comes from state appropriations.)

I acknowledge that there are some differences in the terms and conditions of employment of the petitioned-for employees versus those of the state employees in the State Quartermaster's office, in that their positions are funded, in part, by the federal government, they participate in the Social Security system, and they do not participate in certain retirement and health insurance programs designated for traditional state employees. I also acknowledge the State Quartermaster's opinion that the petitioned-for employees are neither state nor federal employees. I do not, however, find these factors to be of any significance for purposes of determining whether the State Quartermaster's office is a political subdivision.

Accordingly, I find that the Employer constitutes a political subdivision<sup>12</sup> and is not an employer within the meaning of the Act. Hinds County Human Resource Agency.<sup>13</sup> I shall, therefore, dismiss the Petition.

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<sup>11</sup> 297 NLRB 291 (1989).

<sup>12</sup> As I have found that the Employer satisfies the first prong of the Hawkins test, I find it unnecessary to determine whether the Employer is administered by individuals who are responsible to public officials or to the general public.

<sup>13</sup> 331 NLRB No. 186 (2000).

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by June 29, 2004.

/s/ Rosemary Pye  
Rosemary Pye, Regional Director  
First Region  
National Labor Relations Board  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

Dated at Boston, Massachusetts  
this 15<sup>th</sup> day of June 2004.

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