LOCAL 1115, EMPLOYEES UNION V. CITY, 8 OCB 22 (BOC 1971) [Decision No. 22-71 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION
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In the Matter of

LOCAL 1115, EMPLOYEES UNION, NATIONAL FEDERATION OF INDEPENDENT UNIONS,

DECISION NO. 22-71

DOCKET NO. RU-117-69

-and-

WILLIAMSBURGH COMMUNITY CORPORATION
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DECISION AND ORDER

Local 1115, Employees Union, National Federation of Independent Unions (hereinafter referred to as "Petitioner"), filed a representation petition on June 9, 1969, with the Board of Certification (hereinafter referred to as the "Board"), claiming representative status and seeking an election among a group of employees, designating the Williamsburgh Community Corporation (hereinafter referred to as the "Corporation"), as the employer.

Thereafter, by application dated July 9, 1969, District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO, and its Local 1485 (hereinafter referred to jointly as "AFSCME"), moved to intervene in the instant proceeding.

The said application to intervene is granted by the Board.

By letter, dated July 15, 1969, Mr. Hal Yourman, Labor Relations Officer of the Human Resources Administration of the City of New York, filed a "Notice of Interest" with the Board on behalf of the Council Against Poverty (hereinafter referred to as "CAP").

By notice dated January 7, 1969, all interested parties including petitioner, intervenor, the Office of Labor Relations (hereinafter referred to as the "City"), and the several "poverty" corporations were notified that the Board would hear argument on February 5, 1970, with respect to the threshold question of the Board's jurisdiction; that is, whether the provisions of the New York City Collective Bargaining Law (Chapter 54 of the Administrative Code of the City of New York) are applicable to the Williamsburgh Corporation.

N o n e of the interested parties questioned the Board's jurisdiction, the record revealing affirmative support therefor by all parties in interest.

Pursuant to the aforesaid notice of argument, dated January 7, 1969, the petitioner, intervenor, and the City appeared before the Board on February 5, 1970, and, through their respective counsel, presented oral arguments.

The within Decision and Order of the Board are rendered after hearing the arguments of all interested parties and upon due and deliberate consideration of the record in its entirety, including the briefs, exhibits and other material submitted by the parties.

The Questions

Based upon the record in its entirety, the questions before the Board are:

1. Does the Board have jurisdiction to determine the question of representation herein?

2. If the answer to question "1," above, is answered in the affirmative, is the unit requested appropriate for collective bargaining purposes?

The Jurisdictional Issue

At the outset, the Board notes the current jurisdictional uncertainty occasioned by dismissals of separate representation petitions previously filed by the petitioner with the New York State and National Labor Relations Boards. It also appears that a representation petition was filed with PERB but withdrawn following an informal conference.

The representation petition filed by the petitioner with the New York State Labor Relations Board, was administratively "dismissed" by that Board "because the employer is a civil subdivision of the State and therefore is not subject to the provisions of the New York State Labor Relations Act" (emphasis added).[1]

The National Labor Relations Board affirmed the Regional Director's "dismissal of the petition in the above case and has concluded that the circumstances of the Employer's creation by the City of New York as an instrumentality for the administration of federal funds under the Office of Economic Opportunity Development Act establishes that the employer is a political instrumentality of the City of New York and an exempt employer under Section 2 (2) of the Act"[2] (emphasis added).

Both of these decisions have as their main thrust the findings, in each case, that the matter is not within the jurisdiction of the Board concerned.

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[1] Williamsburgh Community Corporation, Case No. SE-42411, Dec.23, 1968, NYSLRB.

[2] Williamsburgh Community Corporation, Case No. 29-RC-1175, May 1, 1969, NLRB.

The corporation, together with some twenty-five other similar entities located in various neighborhoods throughout the City, is closely controlled and administered by the New York City Human Resources Administration (HRA) and the Council Against Poverty (CAP).

The Human Resources Administration is a sub-unit of City government which functions as a coordinator of related departments and agencies of the City of New York. The Administrator of HRA is appointed by the Mayor, and HRA is a mayoral agency within the meaning of Section 1173-3.Of of the New York City Collective Bargaining Law. One of the agencies under its control is the Council Against Poverty (CAP) which was created by Executive Order 87 amending Executive Order 28 on July 1, 1968. CAP's functions are "(i) to determine overall program plans and priorities for the City's Attack on Poverty... (ii) to provide for the creation ... of community corporations...as the primary instruments for citizens participation and community action... (iii) to adopt each year proposed community development agency estimates...(iv) to give final approval of all program and budgets for Attack on Poverty funds from community corporations... (v) to require the [HRA] Administrator ... to submit

estimates for the Attack on Poverty and to apply for and receive from OEO the necessary Title II (A) funds ... (vi) to allocate among the community corporations ... funds ... and to require the Administrator ... to make such funds available... (vii) to enforce compliance with all conditions of grants from the United States Office of Economic Opportunity..." The mission, endeavors, purposes and objectives of the various "poverty" corporations, including Williamsburgh, find a common source and point of origin in these two City agencies. All functions of the various "poverty" corporations, including Williamsburgh, are totally dependent upon CAP and HRA and are so interlocked and integrated that in reality they constitute a joint and composite entity. The corporation is, in fact, a creature of CAP, and exists as an instrument to implement the policies set forth and prescribed by CAP, There is ample evidence of CAP's plenary authority (budgeting, fiscal, personnel) exercised through the Community Development Agency over the corporation.

The Community Development Agency (CDA) is the administrative and fiscal control arm of CAP.

The contract pursuant to which the Williamsburgh

Community Corporation receives funds is an agreement between the Corporation and CDA. Part I of the contract sets forth, the Corporation's budget and provides that it will conduct a Community Organization Program and-provide overall administration for delegate agencies operating anti-poverty programs in the Williamsburgh area" in return for reimbursement of its expenses by CDA'. Part II contains "general provisions" including the Corporation's agreement to employ a competent staff and assume responsibility and liability for their work. The contract further contains detailed provisions designed to obtain compliance with personnel policies and regulations of OEO, CAP, and CDA. The appointment of the Corporation's Executive Director is effective only upon ratification by CDA. The Corporation must formulate "standards and procedures. applicable to the performance" of the contract and these are reviewable by CDA. CDA exercises control over the Corporation by auditing its financial records and inspecting programs, facilities, funds and equipment. The Corporation is required to submit bi-monthly written reports to CDA concerning its activities, and its staff members may be required to attend CDA training sessions.

Indeed, CAP, under its contract with the poverty corporations, including Williamsburgh, is empowered to place the corporation in trusteeship for failure to comply with CAP's rules, requirements and regulations and to designate a trustee to carry out the poverty mission previously assigned to the corporation (cf. Lugovina v. Human Resources Administration, City of New York, Supreme.Court, N,Y. County, Spec. Term, Part I, Nadel, J., N.Y.L.J. 12/214/69, p.2)_

An integral part of the contract between Williamsburgh and CDA is a resolution adopted by CAP on October 10,1968, which centralizes control of all labor relations policies and collective bargaining in CAP. Pursuant to the resolution, CAP is "constituted as the sole negotiating agent for * * * all community corporations .... No collective bargaining agreement will be effective until approved by the Council Against Poverty." (Section 1 b).

Thus CAP holds a veto power over the approval of a collective bargaining agreement and, therefore, is in a position to influence all of Williamsburgh's labor policies (cf. Frostco Super Save Stores, Inc., 50 LRRM 1558; S.A.G.E; Inc. of Houston, 55 LRRM 1297). Traditional precedents hold that "the control which one party exercises ever the labor relations policy of the other" is a "critical factor" and whether the control be "actually exercised" is "immaterial," so long as "it may potentially be exercised by virtue of the agreement under which the parties operate." (cf. Southland Corp., 67 LRRM 1582).

The degree of control over labor relations is further evidenced by the fact that the Labor Relations Officer of HRA acts as a consultant to the community corporations in labor relations matters and guides them in collective bargaining. The New York City Office of Labor Relations, which appears for all mayoral agencies, represented the Williamsburgh Community Corporation in the litigation of the instant case.

In addition, "The Council Against Poverty * * * after consultation with the appropriate agencies involved shall * * * have the duty to bargain with Certified Employee Organizations on wages, hours, and other working conditions." The resolution also provides that only the "Office of Collective Bargaining" may certify employee organizations (Section V, Eligibility for Certification.)

Therefore, on the record before us, sufficient facts exist to warrant the conclusion that the employees involved are employees of a City agency, CAP, which is an arm of HRA, a mayoral agency. The question with which we are concerned is not whether the employees involved are employees of the City government for every conceivable purpose but, whether there exists a public employer-public employee relationship, such as is contemplated by the NYCCBL. The record supports the finding that the employees involved may be deemed employees of a mayoral agency within the meaning of the NYCCBL and we so find and determine.

The Unit Issue

The petitioner requested a unit of all employees of the corporation. We find that such a unit would not be appro-

priate for bargaining purposes. In this respect, we have elsewhere in this Decision noted that the endeavors, purposes, mission and objectives of all the "poverty" corporations and CAP are interrelated and interlocked so that the final reality is a joint and composite entity rather than separate and distinct entitles. Since we are dealing with an Intergrated enterprise, operating on a City-wide basis, it is our conclusion that the petitioner's request for a limited to employees working in one poverty area is too narrow and limited in scope. It is our determination that the scope of the unit should be coextensive with the employer's operations, to wit, City-wide. We shall, therefore, dismiss the petition as inappropriate. The unit proposed is similar to the departmental unit concept which we have abandoned (New York City Local 246, SEIU, AFL-CIO, Decision No. 45-69).

O R D E R

Pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

0 R D E R E D, that the petition of Local 1115, Employees Union, National Federation of Independent Unions be, and the same hereby is, dismissed,

DATED: New York, N.Y.

March 22 , 1971

ARVID ANDERSON
C h a i r m a n

ERIC J. SCHMERTZ
M e m b e r

WALTER L. EISENPERG
M e m b e r