

85-036

(PBA)

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
Ohio Association of School Employees,

Employee Organization,
and
South Community, Inc.,
Employer.

CASE NUMBER: 84-RC-11-2351

DIRECTION OF ELECTION
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix; July 3, 1985.

The Ohio Association of Public School Employees filed a Petition For Representation Election for a unit of employees of South Community, Inc. (Employer), a non-profit Ohio corporation engaged in the delivery of mental health services under contract to the Montgomery County 648 Board. The Employer filed a Motion to Dismiss, alleging that the employees for whom representation was sought are not "public employees" under Ohio Revised Code Section 4117.01(C). The matter was referred to hearing.

For the reasons stated in the attached Opinion, incorporated by reference, the Board approves the hearing officer's conclusion and directs an election pursuant to the Consent Election Agreement. The election shall be held at the date, places, and times to be determined by the Administrator of Representation in consultation with the parties. No later than August 9, 1985, the Employer shall serve on the Employee Organization and file with the Board an alphabetized eligibility list stating the names and addresses of all employees eligible to vote as of July 3, 1985.

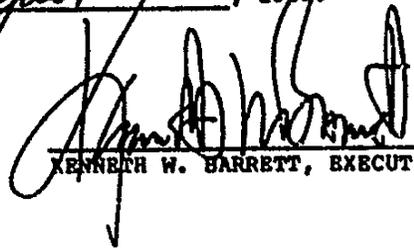
It is so directed.

DAY, Chairman; SHEEHAN, Vice Chairman; and FIX, Board Member, concur.



JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party
on this 2nd day of August, 1983.



KENNETH W. BARRETT, EXECUTIVE DIRECTOR

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OPINION

Day, Chairman:

This is a single issue case. For the parties have consented to an election subject to one condition. And that condition depends upon the disposition of the employer's motion to dismiss. In the parties' own words:

"If the motion to dismiss is granted, the Consent Election Agreement shall be void and will not be submitted to the State Employment Relations Board. If the Motion to Dismiss is not granted, the Consent Election will be signed by the parties and submitted to the State Employment Relations Board so that an election can be scheduled."

For reasons adduced below the motion is denied.

I

Ohio Revised Code Section 4117.01(C) provides in pertinent part:

"'Public Employee' means any person holding a position by appointment or employment in the service of a public employer, including any person working pursuant to a contract between a public employer and a private employer and over whom the national labor relations board has declined jurisdiction on the basis that the involved employees are employees of a public employer..."

The Regional Director of the National Labor Relations Board (NLRB) issued an order dated November 2, 1984, finding the employer not to be an "employer" within the meaning of Section 2(2) of the National Labor Relations Act. The petition of the employee organization, Ohio Association of Public School Employees (OAPSE), was dismissed on the grounds that the employer was exempt from the NLRB's jurisdiction. Neither party appealed.

The single issue devolves into the contention by the employer that there has been no NLRB declination of jurisdiction because there has been no request by OAPSE to review the regional director's decision. This is so, it is contended, because "filing a request for review is a condition precedent to obtaining the determination by the National Labor Relations Board which is contemplated by [Ohio Revised Code] Section 4117.01(C)."¹

II

The employer's exceptions concede that Section 3(b) of the National Labor Relations Act "authorizes the National Labor Relations Board to delegate to its regional directors authority to determine the validity of representative petitions such as the one filed by OAFSE."² Moreover, the regional director has denied NLRB jurisdiction and the employer concedes that review is discretionary.³

While it is true that the regional director's determination may be reviewed by the NLRB, the employer cites nothing to support its bare assertion that NLRB review is necessary to ripen the determination of no

¹[Employer's] Exceptions, etc. p. 3.

²Id. pp 2-3.

³Id.

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jurisdiction. In addition, there is an indication that the NLRB considers its regional director's order final and appealable. This follows because the regional director notes that Section 102.71 of National Labor Relations Board Rules and Regulations, Series 8, as amended permits "any party" to secure review of the director's action by filing an appeal with the NLRB.⁴

Since neither party has appealed the regional director's decision, his order and its no jurisdiction rationale stands. Thus the employer's ultimate contention is both unsupported and untested.

The motion to dismiss must be, and is, denied. A consent election is directed pursuant to the Consent Election Agreement executed by the parties. The election will be held on the date and at the place or places and times determined by the Administrator of Representation in consultation with the parties.

Sheehan, Vice-Chairman, and Fix, Board Member, concur.

⁴See fn. 1. In the Matter of South Community, Inc. and Ohio Association of Public Employees, AFSCME, AFL-CIO NLRB Case No. 9-RC-14574.