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STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of  
Greater Cincinnati Building and Construction Trade Council,  
Employee Organization,  
and  
International Union of Operating Engineers, Local No. 20,  
Employee Organization,  
and  
Ohio Council 8, American Federation of State, County and  
Municipal Employees, AFL/CIO Local No. 1027,  
Employee Organization,  
and  
Cincinnati Metropolitan Housing Authority,  
Employer.

CASE NUMBERS: 84-VR-04-0226  
84-VR-04-0233  
84-VR-04-0308  
84-RC-04-0449

DENIAL OF MOTION FOR RECONSIDERATION  
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix; April 10, 1986.

This matter arises from Requests For Voluntary Recognition and Petitions For Election filed for various proposed units of employees of the Cincinnati Metropolitan Housing Authority (Employer). The Employee Organizations involved in these matters are the Greater Cincinnati Building and Construction Trade Council; International Union of Operating Engineers, Local No. 20 (IUOE); and Ohio Council 8, American Federation of State, County and Municipal Employees, AFL/CIO Local No. 1027 (AFSCME). Because of issues related to appropriate units and the status of the Employer as a "public employer," the matter was referred to hearing.

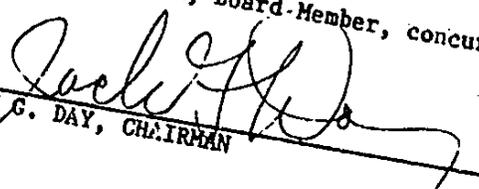
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On September 19, 1985, after reviewing the record, the hearing officer's recommendation, exceptions to the recommendations and responses, the Board voted to approve the hearing officer's conclusions of law and recommendations and directed that a secret ballot election pursuant to Ohio Revised Code Section 4117.07 be conducted in what the Board determined were appropriate units. On December 2, 1985, the Employer filed a Motion For Reconsideration of the Board's direction of election. On December 23, 1985, oral argument was heard on the merits of the Motion For Reconsideration.

For reasons provided in the attached opinion, incorporated by reference, the Board concludes that the Cincinnati Metropolitan Housing Authority is a public employer within the meaning of Ohio Revised Code Section 4117.01(B). Accordingly, the Employer's Motion To Reconsider the direction of election is overruled. The election will be held at the places, times and dates to be determined by the Representation Section in consultation with the Board and serve on later than April 18, 1986, the Employer shall file with the Board and serve on the Employee Organizations accurate alphabetized lists, for each unit, of all employees eligible to vote as of the pay period ending just prior to September 19, 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 10th day of April, 1986.

  
JACQUELYN F. DAVIS, GENERAL COUNSEL

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OPINION

Day, Chairman:

Although there are a number of issues raised by the motion for reconsideration of the order directing an election in these cases, there is but one which is novel. That one is whether or not Cincinnati Metropolitan Housing Authority (CMHA) is a "public employer" within the meaning of Ohio Revised Code Section 4117.01(B).

For reasons which are adduced below, CMHA is a public employer. The motion to reconsider the order directing an election will be overruled.

I

The CMHA plans, builds, operates and administers rental housing for low and moderate income families under contract with the Department of Housing and Urban Development of the United States Government (HUD). The funds for this program are sourced primarily, if not exclusively, in the federal

contract and income from rental units.<sup>1</sup> No dollars are provided by the State of Ohio.<sup>2</sup>

HUD sets minimum performance standards and evaluations for CMHA. Evaluations may result in direct orders from HUD to correct operating deficiencies.<sup>3</sup>

HUD provides a sample personnel policy but permits CMHA to deviate from the sample to conform to local public sector practice.<sup>4</sup> However CMHA has the primary responsibility for the implementation of personnel policy on a day by day basis.<sup>5</sup> HUD does not regulate daily financial operations of CMHA beyond this -- CMHA line item spending must not exceed HUD approved allocations.<sup>6</sup> HUD also conducts an annual management review to insure compliance with the guidelines.<sup>7</sup>

The day by day operations of CMHA are controlled by an executive director whose authority includes the power to hire, fire, transfer, discipline and conduct other daily labor relations functions.<sup>8</sup> Its governing board is appointed by local elected officials.<sup>9</sup>

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<sup>1</sup>Hearing Officer's Findings of Fact (FF) Nos. 2 and 3.

<sup>2</sup>Transcript of proceedings (TR) 146.

<sup>3</sup>FF No. 1.

<sup>4</sup>For example, HUD policy permits employees to join a union or not, FF No. 6.

<sup>5</sup>FF No. 10, T. 783-789.

<sup>6</sup>FF No. 9, T. 86, 133, 150, 335-350.

<sup>7</sup>FF No. 11, T. 5-8, 20-22, 93-95; See CMHA Exhibit No. 5.

<sup>8</sup>FF No. 5.

<sup>9</sup>See O.R.C. Section 3735.27(B) and (C); FF No. 7.

II

CMHA is a creation of the Ohio Legislature.<sup>10</sup> It was established and is qualified as a housing authority under the Ohio Revised Code.<sup>11</sup> Its status as political subdivision of the state was conceded and announced in a court case to which it was party. An Ohio Court of Appeals said,

"By stipulation it appears that the Cincinnati Metropolitan Housing Authority is a body corporate and politic, organized, existing and acting under the laws of the State of Ohio, is a political subdivision of the state and operates thirteen projects providing housing accommodations for approximately nineteen thousand people."<sup>12</sup>

This same political subdivision conclusion was adopted in a federal decision. A United States District Court said, "like a park district, a metropolitan housing authority is a political subdivision of the State of Ohio which by delegation performs state functions which are governmental in character."<sup>13</sup> The District Court was affirmed on appeal.<sup>14</sup>

III

CMHA has several nexus with the State of Ohio in addition to its Ohio statutory source. For example, it recognizes longevity pay for its

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<sup>10</sup>See O.R.C. Sections 3735.01 and 3735.27.

<sup>11</sup>O.R.C. Section 3735.27; T. 54.

<sup>12</sup>Cincinnati Met. Housing Authority v. Union (1969) 22 OH App. 2nd 39, 39-40.

<sup>13</sup>Cuyahoga Met. Housing Authority v. City of Cleveland (1972) 342 F Supp. 250, 257.

<sup>14</sup>The affirmation was Sub. Nom. Cuyahoga Metropolitan Housing Authority v. Harmody (1973) 474 F 2nd 1102, 1107-1108, cf. 1105-1106.

employees who have transferred from other Ohio governmental entities;<sup>15</sup> pays state workers compensation premiums,<sup>16</sup> has state unemployment insurance,<sup>17</sup> and CMHA employees are covered by the Public Employees Retirement System (PERS).<sup>18</sup> And it has been noted that CMHA governing board is appointed by local elected officials.<sup>19</sup> If one were to sum up the thrust of the factual and legal characteristics of CMHA which square with status as a political subdivision of the State of Ohio, it would amount to this -- the agency has, in some measure, many if not all of the stigmata of state characteristics except fiscal control.<sup>20</sup>

IV

The contract with HUD makes CMHA dependent on HUD for part of its financial support. The contract provides the fulcrum for HUD's leverage to force CMHA to submit to some procedures and policies in response to HUD's interest and HUD's notion of efficient operation. The power is exercised directly but, in the final analysis, is negotiable because contractual.

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<sup>15</sup>FF No. 10; T. 788-789.

<sup>16</sup>T. 138.

<sup>17</sup>T. 138.

<sup>18</sup>FF No. 8; R.C. Section 145.01.

<sup>19</sup>See fn. 9 in I, supra.

<sup>20</sup>See Southeast Ohio Regional Resource Center Education Association and Southeastern Ohio Voluntary Education Cooperative (1985) 84-VR-08-1721 and 84-RC-08-1871, 2 OPER Sec. 2653, p. VII 467 dealing with "at least four crucial characteristics."

HUD is not a legislative body as defined in the statute.<sup>21</sup> Characteristically, such bodies have total fiscal control of agencies within their jurisdictions. Their authority also includes the power to approve or disapprove submissions of public sector collective bargaining agreements. Approval or disapproval cannot be partial but must affect the whole submission.<sup>22</sup> However, the difference between this power and HUD's contractual power approximates the difference between the power to order and the power to powerfully persuade.

In any event, the difference does not readily support the idea that the housing authority is either not a state agency or one with such unusual features that its employees are not entitled to the benefits of the state's collective bargaining policy.

One might argue that the federal funds flowing from the HUD contract with the concomitant power the funds generate provide evidence negating Ohio public employer status for CMHA. The argument limps. Logic argues against

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<sup>21</sup>See R.C. 4117.10(B) for a statutory definition of legislative body as used in R.C. 4117.10: "As used in this section, 'legislative body' includes the general assembly, the governing board of a municipal corporation, school district, college or university, village, township, or board of county commissioners or any other body that has authority to approve the budget of their public jurisdiction."

<sup>22</sup>R.C. 4117.10(B) and (C); see also SERB v. East Palestine School District Board of Education (1986) Case No. 85-UR-03-3147.

the federal contract<sup>23</sup> stripping CMHA of its essential character as a political subdivision of the State of Ohio. For federal dollars infuse a variety of state activities without changing the nature of the function from a state to a federal enterprise. Were this not the case, federal subsidies could obliterate the states for all practical purposes.

It is concluded that CMHA is a political subdivision of the State of Ohio for the purposes of the Ohio Public Employee Collective Bargaining Act.

Accordingly, the Motion For Reconsideration of SERB's previous action directing an election in the unit appropriate for Cincinnati Metropolitan Housing Authority is overruled.

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

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<sup>23</sup>See Cuyahoga Met. Housing Authority v. City of Cleveland, supra, at p. 259, where the court discussed the status and nature of HUD agreements with Metropolitan housing authorities as federal law pursuant to the Supremacy Clause of the United States Constitution (Art. VI, CL. 2) and indicated the difficulty in repudiating a cooperation agreement between a municipality and HUD:

"...a cooperation Agreement may not be abrogated, changed or modified without the consent of the government so long as there exists an Annual Contribution Contract between the government and the local authority."

However, the case did not reach the collective bargaining rights of state employees nor attempt to limit the status of the employees of the housing authority as public employees of an Ohio political sub-division. Of course, Chapter 4117 could not have been a factor. It was not in existence.