STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

International Union of Operating Engineers, Local No. 20,

Employee Organization,

and

Greenville Area Emergency Rescue Service,

Employer.

CASE NUMBER: 92-REP-09-0208

OPINION

MASON, Board Member:

I.

The case comes before the Board on exceptions from a Hearing Officer's Recommended Determination. The issues before the hearing officer were jurisdictional in nature and involved the determination of whether the Greenville Emergency Medical Technicians are "public employees" either due to the "public employer" status of the Greenville Area Emergency Rescue Service, Inc. (GAERS, Employer) pursuant to Ohio Revised Code (O.R.C.) §4117.01(B), or due to the contractual relationship between the GAERS and the Greenville Township Board of Trustees.

The hearing officer recommended to the Board that GAERS is not a "public employer" as defined by O.R.C.§ 4117.01(B), and that the hourly Emergency Medical Technicians are not "public employees" within the meaning of O.R.C. §4117.01(C). For the reasons [illegible] below, we do not agree with the hearing officer, and we find that GAERS is a "public employer" under O.R.C. §4117.01(B).

II.

On September 21, 1992, The International Union of Operating Engineers, Local No. 20 (Employee Organization) filed a Petition for Representation Election seeking to represent certain employees of GAERS. While the parties stipulated that the collective bargaining unit should be defined as all hourly Emergency Medical Technicians excluding confidential employees, management level employees, supervisors, and volunteers (Stipulation No. 13), the Employer argued that the SERB has no jurisdiction to direct an election in any bargaining unit under this Employer since GAERS is not a "public employer" pursuant to O.R.C. Chapter 4117.

Section 4117.01(B) defines a "public employer" for purposes of the Act as:

> "the state or any political subdivision of the state located entirely within the state including, without limitation, any municipal corporation with a population of at least five thousand according to the most recent federal decennial census, county, township with a population of at least five thousand in the unincorporated area of the township according to the most recent federal decennial census, school district, any state agency, authority, commission, or board, or other branch of public employment."

Section 4117.01(C) defines a "public employee" as:

> "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 hearing officer reached the determination that GAERS is not a "public employer" and hence is not under SERB's jurisdiction on Ohio Historical Society, 66 Ohio St. 3d 466, 1993 SERB 4-35 (1993) by comparing the facts in the Ohio Historical Society case to the case at bar and concluding that the two fact patterns are similar. Our analysis shows that at least on those facts the Ohio Supreme Court found most relevant to its decision in that case, the two fact patterns are very different.

The Ohio Historical Society decision describes three scenarios under which an employer

is a "public employer." An entity is a public employer if it is either (1) the state, (2) a political subdivision of the state or (3) an "other branch of public employment."

In analyzing whether the Ohio Historical Society was the state, the Supreme Court began by detailing the Society's history and origin. The Court clearly attached enormous importance to the private genesis of the Historical Society and its existence before the state decided to utilize its services. While the state is the major contractor of the Historical Society, the Society was a viable body prior to the involvement of the state and could continue its existence independent of the state, providing the same services as before though obviously on a much smaller scale. The Ohio Historical Society, as the Supreme Court emphasized, was created by a group of individuals, in their capacities as private citizens, to promote a knowledge of archaeology and history, especially in Ohio. The Society's constitution was written and adopted by its members, and half of the trustees are elected from the Society's membership. The Supreme Court also pointed out that neither the Society's leaders nor its members are subject to the political process, that the members of the board are responsible to the membership of the Society alone, and thus, neither directly nor indirectly do the citizens of the State of Ohio at large exercise control over the Society.

In contrast, the GAERS board was not created by a group of individuals in their capacities as private citizens to promote some private interest. Rather, it was created by public bodies, i.e., the City Council, the Mayor and the Township Trustees, after local funeral directors sent a letter to the Mayor of Greenville indicating that as of January of 1975, they would no longer provide ambulance service to the Greenville area. Beginning in 1975 as a volunteer organization, it was directed by a mayor's committee consisting of township trustees and city council members. Then in 1981, the constitution and bylaws of the rescue service were modified so that all of the board of trustees of the rescue service were appointed by the township trustees. These changes were made so that the service could be funded by a public tax levy. (Findings of Fact Nos. 1, 2, and 3). Later, in 1985, the constitution and bylaws of the rescue service were amended to provide for five members of the board of trustees: one appointed by the Greenville Township Trustees, one by the Mayor of Greenville,

one by the Greenville City Council, one by the Greenville Area Chamber of Commerce, and one by the Darke County Medical Association. (Joint Exhibit 2).

Unlike the Ohio Historical Society, GAERS has had no independent existence apart from its role as provider of ambulance services for the Township. The failure of two past efforts to supply ambulance service to the Greenville area, one by a private organization and the other by voluntary funding, shows that if public support for GAERS' services were abandoned, GAERS could not exist.

Although GAERS, like the Historical Society, has a constitution and bylaws written and adopted by the membership, the memberships of the two entities are decidedly different. The Historical Society has a broad-based membership. At the time of the SERB hearing in the case, it consisted of some 7,000 individuals around the state.[1] GAERS' "membership" is identical to its Board of Trustees, i.e., five trustees, three of whom are appointed by public officials.[2] Thus, the argument that the GAERS trustees are not subject to state control because they need only answer to the GAERS board has no basis in reality. Obviously, the Service Trustees answer to the state and are under the control of the state by the nature of the structure of GAERS. Thus, unlike the Ohio Historical Society, the citizens of Greenville indirectly, if not directly, exercise control over the GAERS Board.

The core differences between the Ohio Historical Society and GAERS are best illustrated by applying the Ohio Supreme Court's summary description of the Society to the facts before us in this case. About the Ohio Historical Society, the Court stated:

> "Quite simply, the Society is not public: it was neither created by the state nor is it subject to state control. The Society is private, not-for profit corporation. It was created by a group of individuals, in their capacities as private citizens....The corporate

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[1]See Appendix of In Re Ohio Historical Society, SERB 86-004 (2-12-86), Finding of Fact No. 6(A).

[2]See Jt. Ex. 1, Article VII, Section 1, at page 5.

> constitution, not a state statute, provides that half of the trustees are elected from the Society's membership and half are appointed by the Governor of Ohio. The Board elects corporate officers to operate the Society and these officers report directly to the Board." Ohio Historical Society, at 4-39 and 4-40.

In the instant case almost the exact opposite could be stated:

Quite simply, the GAERS board is public. It was created by governmental bodies, the Township and the City, and it is subject to their control. It was not created by a group of individuals, in their capacities as private citizens, but at the direction of the mayor's committee consisting of township trustees and city council members in their capacities as public officials to provide an essential service to the public. The corporate constitution provides that three out of the five board of trustees are appointed by governmental bodies and the corporate officers report directly to the GAERS board which is controlled by the appointing governmental authorities.

Clearly, on the key issues to which the Court attached importance in finding the Society a private employer, the Greenville case differs. Applying the specific analysis of the Supreme Court in Ohio Historical Society to the Greenville case, the GAERS Board is a public employer.

The same result follows when GAERS is analyzed as a political subdivision of the state. In Ohio Historical Society the Court, defining political subdivision, quoted from an Attorney General opinion, "A political subdivision is a limited geographical area of the State within which a public agency is authorized to exercise some governmental function." 1972 Ohio Atty. Gen. Ops. No. 72-035. The Court succinctly reasoned, "Because the Society does not exercise governmental authority in a limited geographical area, it is not a political subdivision." Ohio Historical Society, at 4-40.

Under this definition, three requirements must be met for an entity to be found to be a political subdivision. First, it must exercise its authority in a limited geographical area of the state. Here, this portion of the test is clearly met. The emergency rescue service is limited to Greenville Township and Darke County. Second, the entity must be a public agency. As demonstrated above, GAERS, unlike the Ohio Historical Society, is a public body and not a private one. Finally, the entity must be authorized to exercise some governmental function. The issue becomes whether providing emergency rescue service is "some governmental function." While private companies do provide ambulance service, public hospitals and governments are also known to provide such service. Emergency rescue service is an essential service to the public at large, and one that is provided by government and thus, clearly meets the definition of "some governmental function," and thereby in the case at bar meets the definition of political subdivision.

Accordingly, we find that unlike the Ohio Historical Society, the Greenville Area Emergency Rescue Service, Inc. is a "public employer" pursuant to O.R.C. §4117.01(B). Hence, the Greenville Emergency Medical Technicians, who hold their positions by employment in the service of a public employer, are "public employees" pursuant to O.R.C. §4117.01(C).

Owens, Chairman and Pottenger, Vice Chairman, concur.

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