

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Elida Fire Fighters, IAFF Local 4020,

Employee Organization,

and

Elida Community Fire Company, Inc.,

Respondent.

Case No. 2000-REP-09-0183

DIRECTIVE
(OPINION ATTACHED)

Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich: November 15, 2001.

On September 11, 2000, Elida Fire Fighters, IAFF Local 4020 ("Petitioner") filed a Request for Recognition seeking to represent certain employees of the Elida Community Fire Company, Inc. ("Company"). On September 27, 2000, the Company filed a Petition for Representation Election - Employer and an Objection to Request for Recognition. On May 25, 2001, the State Employment Relations Board ("Board") directed this matter to hearing to determine whether the Elida Community Fire Company, Inc. is a public employer and for all other relevant issues.

On June 6, 2001, a Notice of Hearing and Prehearing was sent to the parties. On June 25, 2001, Prehearing Statements were filed by parties. On July 2, 2001, Joint Stipulations were filed by the parties in lieu of a hearing. On July 31, 2001, the Company filed its posthearing brief; on August 1, 2001, the Petitioner filed its posthearing brief. On September 6, 2001, the case was transferred from the Hearings Section to the Board for a determination on the merits.

After reviewing the joint stipulations, parties' briefs, and all filings in this case, the Board finds that the Elida Community Fire Company, Inc. is not a "public employer" as that term is defined by O.R.C. § 4117.01(B), dismisses the Request for Recognition, Petition for Representation Election, and Objections to Request for Recognition for lack of jurisdiction, and issues the attached Opinion, incorporated by reference, with supporting Findings of Fact and Conclusions of Law.

It is so ordered.

POHLER, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member, concur.


SUE POHLER, CHAIRMAN

Directive
Case No. 2000-REP-09-0183
November 15, 2001
Page 2 of 2

You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 119.12, by filing a notice of appeal with the State Employment Relations Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and with the Franklin County Court of Common Pleas within fifteen days after the mailing of the State Employment Relations Board's directive.

I certify that a copy of this document was served upon each party's representative by regular U.S. Mail this 21st day of November, 2001.



SALLY L. BARAILLOUX, EXECUTIVE SECRETARY

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**STATE OF OHIO
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In the Matter of

Elida Fire Fighters, International Association of Fire Fighters, Local 4020,

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Case Number: 2000-REP-09-0183

OPINION

VERICH, Board Member:

I. INTRODUCTION

On September 11, 2000, the Elida Fire Fighters, International Association of Fire Fighters, Local 4020 ("Local 4020") filed a Request for Recognition, with the showing of interest, seeking to represent all full-time fire fighters and captains employed by the Elida Community Fire Company, Inc. ("Company"). On September 27, 2000, the Company filed a Petition for Representation Election and Objections to the Request for Recognition. On May 24, 2001, the State Employment Relations Board ("SERB" or "Board") directed this matter to hearing to determine whether the Elida Community Fire Company, Inc. is a public employer and for all other relevant issues. The parties entered into Joint Stipulations of Fact in lieu of a hearing on July 2, 2001, and filed briefs on the merits. On September 6, 2001, the Board transferred this case from the Hearings Section to the Board for a decision on the merits. For the reasons below, we find that the Elida Community Fire Company, Inc. is not a "public employer" as that term is defined under Ohio Revised Code ("O.R.C.") § 4117.01(B).

II. FINDINGS OF FACT

1. The Elida Community Fire Company, Inc. is a nonprofit corporation that was organized under the Ohio General Corporation Act. The Company's Articles of Incorporation were filed with the Ohio Secretary of State in July 1949. (Stipulation ["Stip."] 4; Joint Exhibit ["Jt. Exh."] 2).

2. The Elida Fire Fighters, International Association of Fire Fighters, Local 4020 is an "employee organization" within the meaning of O.R.C. § 4117.01(D), and it exists, in whole or in part, for the purpose of dealing with the Company concerning grievances, labor disputes, wages, hours, terms and other conditions of employment. (Stip. 4).

3. The Company presently has contracts to provide firefighting services in four townships in Allen County: American, Sugar Creek, Marion, and Amanda. The contracts do not grant the right to terminate the agreement to the townships upon inadequate performance by the Company. The townships have not reserved for themselves the right to revoke or limit the money they are obligated to pay the Company to provide firefighting and rescue services upon the happening or nonoccurrence of various events. The contracts do not discuss how the Company is to go about discharging its basic contractual duty to provide firefighting and emergency-response services to the townships. The Company has no obligation to satisfy any township that the Company is performing its task properly. No governmental body has delegated its duties to the Company. Once the Company is paid by the townships under the contracts, all decisions about how the Company spends the money it receives rest entirely with the Company. No township controls how the Company uses those funds. (Stip. 5; Jt. Exhs. 3-6, 8).

4. The Company is governed by a Board of Directors, and membership in the corporation is open to all who meet basic firefighting and rescue-training standards. The

Company's bylaws were not drafted by any political subdivision or arm of government and imposed on the Company. The bylaws were adopted by a vote of the Company's membership. The Board of Directors has ten members; five members are selected by vote of the membership, two members are appointed by the board of trustees for American Township, and one member is appointed by each of the boards of trustees for Sugar Creek, Marion, and Amanda Townships. The Board of Directors has authority to amend the bylaws without the approval of any township. (Stip. 6; Jt. Exhs. 7-8).

5. The Company's bylaws are included in the Company's Standard Operating Guidelines ("Guidelines"). The Guidelines address such topics as emergency response policy, shift hours, daily work procedures, order of command, maintenance of vehicles, response area for crews, routes to be taken, and order of departure. The Guidelines also include a number of policies and protocols that dictate how the Company is to be operated. The Guidelines have been drafted, considered, discussed, adopted, and implemented by the Company. No political subdivision provided input or oversight or otherwise participated in this process. (Stip. 6; Jt. Exhs. 7-8).

6. Most of the money that the Company uses to operate is paid by the townships pursuant to their contracts with the Company. The money from the townships is derived from tax-levy funding. The Company has other sources of operating income, including donations, fund-raising activities, memorial gifts, and EMS (emergency medical services) billings. The fire stations used and operated by the Company are owned by the Board of Trustees of American Township. (Stip. 8; Jt. Exhs. 8-10).

7. The Company has employees who are compensated by it; it does not consider these workers to be public employees. These employees do not participate in any state public employment retirement system and do not receive other benefits provided to employees of state or local governments. The Company also utilizes the services of

approximately 20-25 unpaid volunteer fire fighters and rescue personnel. (Stip. 9; Jt. Exh. 8).

8. The Company has historically operated in a manner completely independent of control by any township or other governmental unit. No township has directed the Company in the daily performance of its functions. No township has exercised any type of daily operational control over the corporation. The townships do not prescribe training standards or employment criteria for the fire fighters and rescue officers who work for the Company. The Company is not audited by the State of Ohio. None of the Company's employees or volunteers reports to any elected or appointed public official. Compensated employees of the Company, as opposed to the volunteers, are paid by the Company, not by any political subdivision. The Company maintains workers' compensation insurance on the employees' behalf. (Jt. Exh. 8).

III. DISCUSSION

The key issue in this case is whether the Company is a "public employer" as defined in O.R.C. § 4117.01(B). If the Company is a public employer, the Board may exercise jurisdiction over it for labor relations purposes. *Ohio Historical Soc. v. State Emp. Relations Bd.* (1993), 66 Ohio St.3d 466, 1993 SERB 4-35 ("*Ohio Historical Society*"); *Cincinnati Metro. Hous. Auth. v. State Emp. Relations Bd.* (1990), 53 Ohio St.3d 221, 1990 SERB 4-67. O.R.C. § 4117.01(B) provides in pertinent part:

As used in this chapter:

* * *

(B) "Public employer" means 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; governing authority of a community school established under Chapter 3314. of the Revised Code; state institution of higher learning; public or special district; state agency, authority, commission, or board; or other branch of public employment.

Under O.R.C. § 4117.01(B) an entity is a public employer if it is one of three things: (1) the state, (2) a political subdivision of the state, or (3) an “other branch of public employment.” *Ohio Historical Society, supra* at 475, 1993 SERB at 4-39. Local 4020 argues that the Company is a “public employer” because it operates within four townships in Allen County, it is effectively controlled by local government, and it performs a uniquely governmental function using government-derived revenues.

The Company is very similar to the Ohio Historical Society. The Company is a private, nonprofit corporation. The Company was created by a group of individuals, in their capacities as private citizens, not by governmental entities. The Company is not subject to governmental control. The Company’s relationships with the townships are based on contracts. The Company contracts with the different townships to perform certain public functions designated in O.R.C. § 505.37 for which the Company receives public funds. The company receives public funding only because it has entered into contracts to provide services to the townships. The contracts between the Company and the four townships set out the services to be performed by the Company. The contracts do not give the townships the authority to determine how the work is performed. The Company is governed by a set of corporate bylaws written and adopted by its Board of Directors. Those bylaws may be amended by the Board of Directors itself without input or oversight from the townships. The Company’s Board of Directors is responsible “for hiring a management staff which shall carry out the day-to-day functions of the Company, and shall take such other actions as may be delegated to the management staff by the Board of Directors.” Jt. Exh. 7, p. 47. Neither the Company’s leaders nor its members are subject to the political process. The Company is not required by statute to perform governmental

functions. Thus, since the Company was neither created by the townships nor is it subject to the townships' control, the Company is not a public or government entity. In both form and substance, the Company is a private corporation.

In *In re Greenville Area Emergency Rescue Service*, SERB 94-003 (2-8-94) ("GAERS"), the Board compared the facts in *Ohio Historical Society* to the facts in the case before it to determine whether the Rescue Service was a "public employer." The facts in GAERS are in sharp contrast to the facts in the present case. In GAERS, the Rescue Service was created by public bodies; here, the Company was created as a nonprofit corporation by a group of individuals acting as private citizens. In GAERS, the Rescue Service's "membership" was identical to its board of trustees, and all of the board of trustees of the Rescue Service were appointed by the township trustees. Here, according to the Company's bylaws, five of its ten board directors are elected at the annual meeting of the members of the Company; the members with voting rights are those individuals who serve as unpaid volunteers and are not full-time paid employees of the Company. *Jt. Exh. 7, p. 47.* The American Township trustees appoint two board directors; the Marion, Sugar Creek, and Amanda Township trustees each appoint one board director. *Id.* Further, the Company's Board of Directors can amend the Company's bylaws without any input or oversight from the townships with which it has contracts. In GAERS, the Rescue Service had no independent existence apart from its role as provider of ambulance services for Greenville Township; here, the Company has its primary contractual responsibility with the four townships, but it can enter into written mutual aid agreements with other emergency responders. In GAERS, the citizens of Greenville indirectly, if not directly, exercised control over the GAERS board of trustees; here, no township has direct or indirect control over the Company, and the four townships collectively do not have control, directly or indirectly, over the Company's Board of Directors. Thus, following the Board's analysis in GAERS, the Company is not a "public employer" under O.R.C. § 4117.01(B).

In *Ohio Historical Society*, the Ohio Supreme Court set forth the three requirements to find an entity to be a political subdivision of the state. First, the entity must exercise authority in a limited geographic area of the state. In *GAERS*, the Rescue Service was limited to Greenville Township and Darke County. While the Company currently operates in four townships within Allen County, its bylaws and contracts with the townships recognize that it could operate in other places. Hence, its authority is not restricted to a limited geographic area. Second, the entity must be a public agency. In *GAERS*, the Rescue Service was a public body that was created by two public bodies, the City of Greenville and Greenville Township. The Company is a nonprofit corporation created by private citizens and does not meet this requirement. Third, the entity must be authorized to exercise some governmental function. "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' * * *." *GAERS, supra* at 3-38. The Company clearly meets this requirement. Thus, since the Company meets only one of the three requirements, it is not a political subdivision of the state.

Local 4020 also cites the Ohio Supreme Court's decision in *State, ex rel. Freedom Communications, Inc. v. Elida Community Fire Co.* (1998), 82 Ohio St.3d 578 ("*Freedom Communications*"), to support its position that the Company is a "public employer." In *Freedom Communications*, the Company's status under the Public Records Act was the issue before the Court. O.R.C. § 149.43(A)(1) defines a "public record" as "any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units[.]" The issue before the Court was whether the Company is a "public office" as defined by O.R.C. § 149.011, which states:

As used in this chapter:

(A) "Public office" includes any state agency, *public institution*, political subdivision, or any other organized body, office, agency, institution, or *entity established by the laws of this state for the exercise of any function of government*. (Emphasis added).

The Court stated: "An entity need not be operated by the state or a political subdivision thereof to be a public office under R.C. 149.011(A)." *Id.* at 579. The Court found that the Company was a "public office" because it was a public institution, i.e., an entity organized for rendering service to residents of the community and supported by public taxation, that is performing a function that is historically a government function. A comparison of the definitions of "public office" and "public employer" reveals that the terms are not used interchangeably. The scope of the term "public office" is significantly broader than the definition of a "public employer." Thus, *Freedom Communications* is not on point and is not controlling precedent for the issue herein.

IV. CONCLUSIONS OF LAW

1. The Elida Fire Fighters, International Association of Fire Fighters, Local 4020 is an "employee organization" within the meaning of O.R.C. § 4117.01(D).
2. The Elida Community Fire Company, Inc. is not a "public employer" within the meaning of O.R.C. § 4117.01(B).
3. Since the Elida Community Fire Company, Inc. is not a public employer, it is not within the jurisdiction of the State Employment Relations Board under O.R.C. Chapter 4117.

V. DETERMINATION

For the reasons above, we find that the Elida Community Fire Company, Inc. is not a "public employer" as that term is defined under O.R.C. § 4117.01(B). Accordingly, the Request for Recognition filed by the Elida Fire Fighters, International Association of Fire Fighters, Local 4020 must be dismissed for lack of jurisdiction under O.R.C. Chapter 4117.

Pohler, Chairman, and Gillmor, Vice Chairman, concur.