SHORE COLLABORATIVE AND MASSACHUSETTS FEDERATION OF TEACHERS, MCR-2894 (10/7/80). Decision on Appeal of Hearing Officer's Decision.

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Commissioners participating:

Joan G. Dolan, Commissioner
Gary D. Altman, Commissioner

Appearances:

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DECISION ON APPEAL OF HEARING OFFICER'S DECISION

Statement of the Case

On May 31, 1979, the Massachusetts Federation of Teachers (Federation) petitioned the Massachusetts Labor Relations Commission (Commission) to represent all employees of the Shore Collaborative (Collaborative). Hearings were held on this matter before Hearing Officer Stuart A. Kaufman who issued his decision on February 6, 1980. The hearing officer held that Shore Collaborative employees are public employees entitled to coverage under G.L. c.150E (the Law); that the municipalities that now form the Collaborative are the public employers of the Collaborative workers; and that the school committees of the participating municipalities have designated the Board of Directors of the Collaborative workers.[1] No election was ordered because of the record's lack of clarity as to which employees were professional.

The Collaborative filed a timely notice of appeal and supplementary statement; the Massachusetts Teachers Association[2] and the Federation filed supplementary statements. The Collaborative essentially argues on appeal that the hearing officer wrongly applied the right of control test to the present

[1]The full text of the hearing officer's decision is reported at 6 MLC 1856 (1980).

[2]The Massachusetts Teachers Association was allowed to intervene for the purposes of filing a brief.

case. Specifically, the Collaborative argues that the member communities which created the Collaborative have no control over the labor relations of the Collaborative workers and instead such control rests independently and exclusively with the Collaborative. The Collaborative concludes that because the Collaborative is not a public employer as defined by the Law, the Commission has no jurisdiction over the Collaborative employees.

Findings of Fact

The findings of fact are set forth fully in the hearing officer's decision and are affirmed with one minor alteration. We briefly summarize those facts relevant to the appeal.

The municipalities of Chelsea, Everett, Malden, Revere, Saugus, Winthrop, Medford and Somerville have agreed to provide joint educational programs and services. Accordingly, a collaborative agreement was entered into and the Shore Collaborative was formed. The Shore Collaborative provides special education services under Chapters 766 of the Acts of 1972. The educational programs developed by the Shore Collaborative are based upon the particular needs of the students of the member school districts. Specifically, the services provided are those for which the individual school systems have neither the students nor the funds to warrant hiring of teachers or a program director. Without participation in the Collaborative, the municipalities would be required to refer the special needs students to private institutions.

The law of Massachusetts permits cities, towns or regional school districts, by their respective school committees, to provide joint services in order to supplement and strengthen their school programs. G.L. c.40, §4(e). Specifically, this law establishes requirements for forming and operating a collaborative. For example, each participating school committee must establish an educational collaborative board (Board) and designate an individual to serve on the board. The board, in turn, is authorized by law to purchase supplies and materials and to hire staff in order to carry out the Collaborative's purpose.

The members of the Shore Collaborative Board are appointed by the participating school committees on an annual basis. All members of the Board are currently also members of the participating school committees. The Board determines the salary levels of those 38 employees who are paid with Collaborative funds, and is responsible for making final personnel decisions. In addition, the Board approves the budget and determines the overall policy of the Collaborative. The Board employs an executive director[3] who, with the Board of Directors, manages the day-to-day operations and accomplishes program planning and development in conjunction with an operating committee comprised of special education administrators from each community. The executive director also prepares the budget with the assistance of the program directors for the Board's approval and makes hiring recommendations to the Board.

[3]The Collaborative notes in its supplementary statement that the hearing officer incorrectly referred to the executive director as the executive secretary. Accordingly, we modify this finding. This fact, however, is immaterial to the outcome of the case.

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Each municipality pays an annual membership of $5,000 and is further billed for those pupils who are enrolled in the Collaborative program. Administrative costs are also billed to each participating community. In addition, a small amount of funds has in the past come from private contributions.

Opinion

The principal question before the Commission is whether the member communities, by their creation of the Collaborative and appointment of members to the Board should be considered the public employer of the Collaborative employees. Although the facts in the present case are novel, the Commission has, through the administration of the Law, obtained familiarity with the background of public employment relationships in various circumstances. See Nauset Regional School District, 5 MLC 1453 (1978); Freetown School Committee, 6 MLC 1572 (1979). Accordingly, in reaching our decision to affirm the hearing officer's conclusion we are guided by the policy of the Law and our past decisions.

The Commission, under the Law, has the responsibility of ensuring the rights of public workers to organize or refrain from organizing and to ensure them the opportunity to bargain collectively with their employers. In fulfilling its statutory mandate the Commission has the obligation to be cognizant of the changing realities of the public sector. Specifically, the Commission must closely scrutinize entities that are created by municipalities and administered by individuals responsible to municipal officers, and whose purpose is to offer traditional public services which, but for the creation of the entity, would be performed by an individual municipality. In other words, the fact that cooperating municipalities have interacted to offer services to the community should not defeat their status as public employers under the Law. See Nauset Regional School District, supra.

In Nauset, the Commission explained the four configurations of employers historically recognized under the National Labor Relations Act (NLRA). Nauset, supra, at 1453. We recognized that these configurations had analogies in the public sector. Specifically, we stated that it was possible for separate public employers to constitute a single employer "by virtue of common ownership and management" of an operation. Id. See generally, Royal Typewriter Co., a Division of Litton Business Systems, Inc., 209 NLRB 1006 (1974), enf'd. 52 F.2d 1030, 92 LRRM 2013 (6th Cir. 1976). The single employer analogy is helpful in considering the functional structure of the Collaborative.

Our inquiry focuses on whether separate public employers have common control and ownership and share management and labor relations policies of the Collaborative, or whether, as the Collaborative contends, it is an autonomous entity independent from the control of the participating school committees. We find that the participating school committees have integrated their time and resources with respect to the establishment and operation of the Collaborative, and further the Collaborative has no identity apart from its status as an integral part of the public employers' educational programs. We conclude, therefore, that the participating towns, through their school committees, must be considered as a single employer of the Collaborative workers for purposes of enforcing collective bargaining responsibilities imposed by Chapter 150E.

The following factors lead us to this conclusion.

In the present case, separate public employers have joined together to provide a service for the benefit of their citizens. The Collaborative is the ultimate creation of their joint enterprise. The purpose of the Collaborative is to provide education programs solely for the benefit of citizens of the participating municipalities. Indeed, the enabling legislation states that the purpose for a collaborative is to permit participating school committees to "supplement or strengthen school programs and services." G.L. c.40, §4(e). As a result, the Collaborative enables the school systems to meet more efficiently their obligations to special needs students under Chapter 766 of the Acts of 1972. The Collaborative, therefore, offers educational programs and services which are an essential part of the schools' normal operations.

Moreover, the record amply demonstrates that the Collaborative is dependent upon the participation of the above-mentioned school committees for its continued existence. The Collaborative has no financial independence and must rely almost exclusively upon the membership fees and pupil assessments paid by the participating school committees. In addition, the Collaborative can be terminated by the member communities. In sum, the Collaborative has no life of its own. Its existence depends entirely upon the participating school committees.

In addition, the school committees have complete control over the basic decisions concerning the operation of the Collaborative. This is accomplished because the Collaborative is managed by persons who are members of the school committee of the participating towns. Specifically, the legislation that authorizes the creation of the Collaborative mandates that the participating school committees establish the Board by designating the Board's membership. In the present case, the participating school committees established the board by selecting only school committee members from the various school committees. The Collaborative Board is, therefore, composed entirely of school committee members.

The Board has the ultimate resonsibility for approving the budget and making all final personnel decisions. The Board hired the executive director and together they run the day-to-day operations. In addition, the Board establishes the initial salary schedules of the Collaborative employees. The evidence unequivocally demonstrates that the Collaborative could not "inaugurate or establish a labor policy...that did not meet the absolute approval" of the member school committees. NLRB v. Royal Oak Tool Machine Co., 320 F.2d 77, 81, 53 LRRM 2699, 2702 (6th Cir. 1963). The labor policy of the Collaborative is administered by persons who also hold positions on the school committees of the participating towns.

Furthermore, the educational programs provided by the Collaborative are established and controlled by the member school committees. For example, the Collaborative's programs are developed by a committee comprised of directors of education from the participating school committees. There is also a marked interrelationship between the school committees in the operation of Collaborative programs. Specifically, the participating towns provide both classroom space for Collaborative use and teachers on leave to conduct some of the

Collaborative's instructional functions.

In sum, the separate school committees, interacting together, have financial control, control the management, establish the educational policy, and have ultimate control over the labor relations of the Collaborative. The Collaborative is, therefore, operated more like a separate department of the school systems than as an independent business enterprise. We hold, therefore, that the member communities, through their respective school committees, have a single employer relationship with Collaborative employees and are the public employers under the Law. Further, the public employers have designated the board of directors of the Collaborative to act in its interest in dealing with the Collaborative employees.

The Collaborative next argues that collective bargaining would be a "monumental and potentially hopeless task" and could not take place within the structure of the Collaborative. Although we recognize that collective bargaining in such a situation may be more complicated than it would normally be, we do not believe that the resulting difficulties would be sufficient to warrant denying bargaining rights to the public employees involved. There is no reason to assume that the Board will not rise to the challenge of representing the respective municipal employers in dealing with their employees for the purpose of collective bargaining. To rule otherwise would be to allow school systems to provide usual and legally mandated services while avoiding responsibilities under the Law, which is designed to provide collective bargaining rights to all public employees, including employees of school systems.

Finally, the Collaborative argues that the hearing officer "pre-decided" the case against it by going outside of the record for additional evidence. See 402 CMR 14.09. Specifically, the Collaborative states that it was inappropriate for the hearing officer to consider the legislative history of Senate Bill 201. This accusation merits attention. It was the Collaborative that originally claimed that the existence of Senate Bill 201 was significant to the outcome of the hearing officer's decision. We do not consider the hearing officer's research into the legislative history of this bill to be inappropriate or in violation of our rules. To the contrary, we believe the hearing officer's action was totally appropriate, in accordance with sound decision-making practice, and responsive to an issue raised by a party to the case.

Based on the foregoing, we AFFIRM the hearing officer's conclusion. We further ORDER that a Formal Hearing be held on Monday, October 27, 1980 at 10:00 a.m. at the offices of the Labor Relations Commission, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, Massachusetts 02202, for the purposes of determining whether any of the petitioned-for employees are professional employees within the meaning of the Law, so that an election may be ordered in the appropriate unit.

AFFIRMED. SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

JOAN G. DOLAN, Commissioner
GARY D. ALTMAN, Commissioner