

84-007

84-007 10/25/6
(7)

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

Ohio Association of Public
School Employees,

Petitioner

v.

Northwest Local School District
Board of Education,

CASE NO. 84-RC-04-0137

Respondent

OPINION

DAY, Chairman:

This is a representation case in which the only issue is whether the unit sought by the Petitioner, Ohio Association of Public School Employees (OAPSE), is an appropriate unit for collective bargaining under R.C. 4117.06(B). That unit is:

"Transportation Department." Employees included: Bus drivers and mechanics; excluded: Supervisors - managerial confidential - professional employees.

For reasons adduced below, the proposed unit is found to be appropriate and a representation election is ordered for the 26th day of November, 1984, at times and sites determined by the Director of Representation.

I.

For the first time since the effective date of R.C. 4117, the State Employment Relations Board (SERB) is asked to determine a unit appropriate in a disputed context. In this sense the issue is one of first impression. SERB is writing on a clean slate. Its formulations will be for now and for the future subject to change when, and if, new facts require new considerations.

II.

The General Assembly has set down specific elements it is SERB's duty to consider in unit determinations. But these elements are bedded in general terms:

The Board shall determine the appropriateness of each bargaining unit and shall consider among other relevant factors: the desires of the employees, the community of interest; wages, hours, and other working conditions of the public employees; the effect of over-fragmentation; the efficiency of operations of the public employer; the administrative structure of the public employer; and the history of collective bargaining. R.C. 4117.06(B)

84-007 10/25/84
7

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

Ohio Association of Public
School Employees,

Petitioner

v.

Northwest Local School District
Board of Education,

Respondent

CASE NO. 84-RC-04-0137

OPINION

DAY, Chairman:

This is a representation case in which the only issue is whether the unit sought by the Petitioner, Ohio Association of Public School Employees (OAPSE), is an appropriate unit for collective bargaining under R.C. 4117.06(B). That unit is:

"Transportation Department." Employees included: Bus drivers and mechanics; excluded: Supervisors - managerial confidential - professional employees.

For reasons adduced below, the proposed unit is found to be appropriate and a representation election is ordered for the 26th day of November, 1984, at times and sites determined by the Director of Representation.

I.

For the first time since the effective date of R.C. 4117, the State Employment Relations Board (SERB) is asked to determine a unit appropriate in a disputed context. In this sense the issue is one of first impression. SERB is writing on a clean slate. Its formulations will be for now and for the future subject to change when, and if, new facts require new considerations.

II.

The General Assembly has set down specific elements it is SERB's duty to consider in unit determinations. But these elements are bedded in general terms:

The Board shall determine the appropriateness of each bargaining unit and shall consider among other relevant factors: the desires of the employees, the community of interest; wages, hours, and other working conditions of the public employees; the effect of over-fragmentation; the efficiency of operations of the public employer; the administrative structure of the public employer; and the history of collective bargaining. R.C. 4117.06(B)

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
PAGE -2-

While the statutory mandate includes particular factors which must ("shall be") taken into account, the Board is not tightly limited. The statutory requirements are general directions to SERB. The internal content of the generalization is for it to decide. Moreover, the statutory requirements are not a total circumscription. For they are to be considered "among other relevant factors". Thus, R.C. 4117.06(B) is not a corset but a guide.

III.

The desires of the employees in this case are evidenced, at least in part, by the fact that the preliminary investigation of OAPSE's allegations of interest [see R.C. 4117.07(A)(1)] resulted in a determination of "reasonable cause to believe that a question of representation" existed and a consequent hearing. Of course, the finding that a representation question exists is not conclusive. If it were, no hearing would be necessary.

Treating the "desires of employees" factor as the equivalent of "extent of organization",³ that factor is not determinative per se, but an element for consideration. A hearing was ordered in the present case after investigation. This suggests that at least thirty percent of the unit sought had evinced an interest in representation. The hearing officers finding of fact No. 19⁴ indicates that only transportation employees have shown "any significant interest in unionizing". And representation is sought for the bus drivers and mechanics only. Thus, the confinement of the representation claim to employees falling within transportation and the related categories linked with a showing of interest in a unit composed only of bus drivers and mechanics is a measure of the appropriateness of the unit petitioner seeks. But it is not a singular and final measure. Other factors must be weighed.

¹ None of the "shall nots" for unit determinations set out in R.C. 4117.06(D) are relevant here.

² The allegation of interest had to claim that at least 30 percent of the employees in an appropriate unit had an interest in collective bargaining [see R.C. 4117.07(A)(1)].

³ See NLRB v. Metropolitan Life Insurance Company (1965) 380 U.S. 438, 441-422 where it was held that 29 U.S.C. Sec. 159(C) did not prohibit consideration of the extent of organization in determining the unit appropriate. What the section did preclude was the making of the extent of organization the "controlling factor".

⁴ Findings of fact will be designated by "FF" followed by the relevant numeral.

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
PAGE -3-

IV.

The facts found by the hearing officer⁴ (see especially FF 8, 11, 12, 14, and 15) establish a strong set of common characteristics in the bus drivers and the mechanics classifications.

Both job classifications are primarily concerned with transportation and report to the Assistants for Transportation Services and the Transportation Supervisor. The mechanics occasionally share some bus driving duties with those employees who drive exclusively (FF 14; FF 18). Bus drivers and mechanics work out of the same garage (FF 11); members of neither classification mingle with other non-teaching employees (FF 17); both Assistants for Transportation Services (FF 9); both must have a valid Ohio Chaffeurs license and a current annual bus driver license issued by the Board of Education; both must complete an 18-hour training course and a first aid course and receive a certificate of completion; both must be familiar with Ohio Pupil Transportation Laws and Regulations (FF 15); and both receive hourly wages (FF 5). These shared conditions argue for a "community of interest." And it is some reflection of a perceived community of interest that only transportation employees have shown any significant interest in unionizing" (FF 19) and are proceeding through a single union representative.

There are some differences between the terms and conditions of employment for bus drivers and mechanics. For example, bus drivers work ten-month schedules, mechanics twelve. This difference results in mechanics receiving vacation leave while bus drivers receive none (FF 5). Bus drivers must pass an annual physical examination to maintain certification but the findings of fact do not specify whether the mechanics must. However, it is clear that they "could be asked" to take physical exams (FF 16). Bus drivers are required by state law to attend safety meetings. The findings of fact indicate that safety meeting attendance is not compulsory for other employees but it is not clear from the findings whether the mechanics who occasionally drive are exempted from attendance (FF 16).

Bus drivers are not compensated for time at safety meetings, for bus inspection and for vehicle cleaning at the end of the school year (FF 17) and are not compensated for school intermissions. This non-payment characteristic is shared with other employees who neither teach nor drive buses nor perform duties that are ancillary to driving buses (FF 17).

On balance the aggregation of factors indicating similarities telling for community of interest between bus drivers and mechanics far outweighs in both numbers and importance those workplace characteristics which either or both classifications hold in common with other non-teaching personnel. This imbalance of commonalities contrasts starkly with the obvious relationship the mechanics' work bears to the bus driving task.

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
PAGE -4-

V.

Wages, hours and other working conditions in the school district display many variations in the non-teaching classifications. The significant determinant of differences appears to be primarily related to whether employees in a classification work only when school is in session or year round. Bus drivers work when school is in session. Mechanics work year round. If employees (e.g., bus drivers and cooks, FF 17) do not work at the various school intermissions, benefits (e.g., vacations, FF 5) are not available to them and thus are less than those accruing to employees whose employment is for twelve months (see FF 5 and 17). It is not pluperfectly clear from FF 4, but the implication is there, that other fringe benefits apply equally to all full-time non-teaching employees (FF 4) and pro rata to part-time employees. Bus drivers are the only workers who are assigned split shifts (FF 13) and are paid on the basis of the time necessary to complete an assigned task. For them work time is calculated from an estimate of the time necessary to complete assigned routes (FF 13).

If employees happen to be paid under the same scheme of remuneration, that may be a significant factor in a unit determination because the sameness suggests that the reasons for identical treatment stem from a nexus in some degree or kind between the respective jobs. This condition may tell for the appropriateness of including comparably compensated employees in the same unit. On the other hand, logic does not compel a single conclusion from the fact of identical pay arrangements. For sameness in compensation may argue for or against unit inclusion depending on the total factual situation, especially job content. On the other hand, it may be that a work function is different enough to justify a difference in pay or benefits even though jobs are closely related in a production objective warranting unit inclusion. Or it may be that the facts will disclose that differences in recompense reflect job functions alien to one another. In this circumstance a difference in pay suggests a disparity in function or interest warranting exclusion. Thus pay alone, or in conjunction with other elements, may commend, even demand, a particular determination of unit appropriateness. In fine, an appropriate unit determination requires a finding based on a totality of relevant facts and these may vary in implications and from case to case.

In the present case the characteristics of bus driving and bus maintenance are so related, and so special, in contrast to other school district job functions, that a case is made justifying a separate unit appropriate for bus drivers and mechanics. Differences in terms and conditions which argue against community of interest are present but not compelling.

⁵ Driving time unrelated to route driving is paid separately. Non-route drivers are volunteers. Their extra time is not included in calculations of overtime. Mechanics occasionally drive so called "athletic runs" (FF 14).

VI.

Among the key words in the statutory admonitions are these: "[To] consider the effect of over-fragmentation". It is clear in this case that a separate unit for bus drivers and mechanics will include a considerable number but far less than all the non-teaching employees of the school district. However, any finding of "over-fragmentation" at this juncture would be conjectural. For the finding of an appropriate unit on the facts here does not provide an ineluctable basis for an "over-fragmentation" conclusion. All that is clear presently is that if this unit is found appropriate and other units are approved later, there will be more than one. How many more, if any, and whether more would constitute over-fragmentation, are pure conjecture. Guessing does not, and will not, provide a sufficient foundation for a fragmentation judgment.

VII.

There is no development in the finding of facts, nor any suggestion of fact in the exceptions to the recommendations, that justifies a conclusion that the efficiency of the employers' operations will be affected by collectively bargaining with the employees in the proposed unit. Determination of effects in the absence of evidence cannot be justified.

The same conclusion applies to the consideration of the administrative structure of the employer. There is an evidential hiatus. Nothing in the facts indicates that the administrative structure of the employer will be affected at all. The paucity of facts provides no guidance to decision. Moreover, when a party which could command evidence does not adduce it, the conclusion is warranted that the evidence does not exist or would tell against the party in control.

The final consideration, mandated by statute -- the history of collective bargaining -- cannot be a factor here because this is the first bargaining effort in the district affecting non-teaching personnel. Of course, it would be absurd, in the light of the statutory objectives, to conclude that the absence of a history of bargaining counts against the establishment of a petitioner's request.

The evidence has developed no other factor or factors that bear upon the propriety of the unit sought.

VIII.

The unit proposed in this case is found to be appropriate. An election in that unit is ordered under the procedural conditions provided in the order which this opinion accompanies.

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
PAGE -6-

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

JACK G. DAY, CHAIRMAN

I hereby certify that this document was filed and a copy served upon each party on this _____ day of _____, 1984.

By _____
KENNETH W. BARRETT
EXECUTIVE DIRECTOR