

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Ohio Association of Public School Employees,  
Employee Organization,

and

St. Marys City School District Board of Education,  
Employer.

Case Number: 94-REP-01-0009

OPINION

POHLER, Chairman:

This representation case comes before the State Employment Relations Board ("SERB") on exceptions from a Hearing Officer's Recommended Determination issued on March 3, 1995. At issue is the determination of an appropriate bargaining unit. For the reasons below, we find the unit proposed by the Ohio Association of Public School Employees ("OAPSE") is the appropriate unit and direct an election in this unit.

I. BACKGROUND

On January 11, 1994, OAPSE filed a Request for Recognition, seeking to represent all bus drivers employed by the St. Marys City School District Board of Education ("Employer"). OAPSE later clarified its bargaining unit description to include special programs drivers.<sup>1</sup> On February 1, 1994, the Employer filed an Objection to Request for Recognition and a Petition for Representation Election. The Employer proposed a much broader bargaining unit than OAPSE had proposed, to include all ten classifications of the Employer's classified employees.

---

<sup>1</sup>The hearing officer properly granted OAPSE's motion to amend its bargaining unit description to include special programs drivers. This motion was merely a clarification of the original petition. The substantial interest was sufficient and no prejudice was caused to the Employer.

On April 24, 1994, we directed this matter to hearing to determine the appropriate bargaining unit and any other issues.

The Employer's certificated employees, all professional employees under O.R.C. § 4117.01(l), are represented by another employee organization and have a collective bargaining agreement. None of the employer's classified employees, who are not professional employees, are currently represented by an employee organization. The Employer operates a rural school district comprised of one high school, one junior high school, four elementary schools, and one kindergarten building. There are approximately ten separate classifications of classified employees in the district, including the bus drivers and the special programs drivers.<sup>2</sup>

## II. DISCUSSION

### A. General procedural considerations

In *State ex rel. Glass, Molders, Pottery, Plastics & Allied Workers Internatl. Union, Local 333, AFL-CIO, CLC v. State Emp. Relations Board*, (1994), 70 Ohio St.3d 252, 1994 SERB 4-64 ("GMPP II"), the Ohio Supreme Court set forth procedural guidelines for unit determinations where the employer objects to the unit description proposed by the employee organization or where more than one proposed unit description is pending before SERB.

This is the first opportunity we have had to apply the *GMPP II* guidelines to a case before us when all of the procedural considerations play a part. This case involves a Request for Recognition filed by OAPSE seeking to represent a unit of bus drivers and special programs drivers. The Employer filed objections to this bargaining unit, as well as a Petition for Representation Election, in which it proposed a different bargaining unit. The Employer's proposed unit is comprised of all classified employees including bus drivers, custodians,

---

<sup>2</sup>Transcript ("Tr.") 90, 91.

15

OPINION

Case No. 94-REP-01-0009

Page 3 of 8

cleaners, cooks, head cooks, secretaries, maintenance persons, education aides, special programs drivers and library clerks.

Under *GMPP II*, there are two different applicable procedural considerations: first, the Employer's objections to OAPSE's petitioned-for unit; and second, the relationship between the Employer's proposed unit and OAPSE's petitioned-for unit. Regarding the objections to the petitioned-for unit, *GMPP II* states the one who objects to the employee organization's petitioned-for unit has the burden to show by substantial evidence that the objectionable unit is inappropriate. If the objecting party carries its burden of proof, the petitioned-for unit will not be found to be appropriate. If, on the other hand, the objecting party fails to carry the burden of proof by substantial evidence and no Petition for Representation Election with a different proposed unit was filed, the Board will find the employee organization's petitioned-for unit to be appropriate.

Where an employer files a Petition for Representation Election in response to a Request for Recognition, even if the petitioned-for unit is found appropriate, the Board will not certify the unit without first conducting an election in it. Under *GMPP II*, an employer's Petition for Representation Election may fulfill another function. If, in the petition form, the employer proposes a unit description different from the one petitioned for by the employee organization, SERB will consider both units when it determines the appropriate bargaining unit. In the case at issue, the Employer filed both objections to OAPSE's petitioned-for unit in the Request for Recognition, as well as a Petition for Representation Election in which it described a bargaining unit different from OAPSE's.

The following discussion will apply the *GMPP II* guidelines to the two different procedural steps taken by the Employer in this case: first, the objections to the Request for Recognition; and second, the Petition for Representation Election with a different unit description.

16

**B. The Employer's Objections to OAPSE's Petitioned-for Unit**

Under O.R.C. § 4117.06(B), the list of factors to be considered in determining the appropriateness of a bargaining unit includes: 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. The efficiency of operations and the administrative structure are interrelated. The community of interest and the working conditions of the employees, including wages and hours, are also interrelated.

In its exceptions to the Hearing Officer's Recommended Determination, the Employer raised only the factors of community of interest and efficiency of operations as the basis for objecting to OAPSE's petitioned-for unit of bus drivers and special programs drivers. To support its argument that no community of interest exists between the bus drivers and the special programs drivers, the Employer enumerated various differences in working conditions between the two employee groups. Among those differences we find that bus drivers operate buses and the special programs drivers operate vans and cars; that bus drivers and special programs drivers cover different routes; that the bus drivers' routes are the same each year while the special programs drivers' routes vary from year to year; and that bus drivers and special programs drivers have different wage scales and separate lists of substitute drivers.

The Employer's list shows that differences exist between the bus drivers and the special programs drivers. Obviously, different classifications include employees who perform different duties and, thus, may have different working conditions. The issue is not whether differences in working conditions exist among the employees in the petitioned-for unit, but whether such differences warrant placing these employees in separate bargaining units. There is enough in common between the bus drivers and the special programs drivers in this case to place them in the same bargaining unit: both share the transportation of students as the essential job function, both have the same supervision; both share the same nine-month work

17

OPINION

Case No. 94-REP-01-0009

Page 5 of 8

year, and both share the same vacation benefits and receive the same holiday leave.<sup>3</sup> Thus, we do not find the Employer's argument for lack of community of interest to be persuasive, especially when the Employer's own proposed unit includes both these classifications and others with less community of interest than the two at issue.

Regarding the administrative efficiency factor, the Employer maintains that OAPSE's petitioned-for unit will create different policies for the unit employees than for the rest of the classified employees, in addition to those under the teachers' contract. Currently, the Employer negotiates a contract with the teachers and then rolls the agreed-on economic benefits to the rest of the employees. The Employer argues that OAPSE's petitioned-for unit is inappropriate since the existing lean administrative and financial structure of the school will not be able to handle multiple sets of employee policies. The Employer's argument is not persuasive because it is not really directed at OAPSE's specific unit, but at any possible change of the status quo. Whichever unit configuration of classified employees is determined to be appropriate, OAPSE's petitioned-for unit, the Employer's proposed unit, or any other possible combination, the Employer will still have to handle multiple sets of employee procedures.<sup>4</sup>

In sum, the Employer did not carry its burden of proof because it did not show by substantial evidence that OAPSE's petitioned-for unit is inappropriate. Thus, under *GMPP II*, the petitioned-for unit is an appropriate unit.

---

<sup>3</sup>Findings of Fact ("F.F.") Nos. 17, 19, 20, 53, and 54.

<sup>4</sup>While the Employer may prefer the existing situation, the collective bargaining law gives the classified employees in this case the right to be represented, if they so wish, by an employee organization of their choice. The classified employees have the right to be represented by OAPSE if they so choose and negotiate their own conditions of employment rather than receive benefits negotiated by the Employer with the teachers union, which does not represent them.

**C. The Employer's Petition for Representation Election**

In addition to its objections to OAPSE's petitioned-for unit, the Employer filed a Petition for Representation Election in which it proposed a unit different from OAPSE's unit. The Employer's proposed unit is comprised of all classified employees including: bus drivers, custodians, cleaners, cooks, head cooks, secretaries, maintenance persons, education aides, special programs drivers, and library clerks. Similar wall-to-wall units of classified employees have been found by SERB to be appropriate. Since OAPSE's petitioned-for unit has been found above to be appropriate, we have now before us two appropriate units.

According to *GMPP II*, SERB must now consider both units to determine the appropriate bargaining unit.

**D. The Determination of the Appropriate Unit by Comparison**

In *GMPP II*, the Ohio Supreme Court stated: "Of necessity then, before a representation election of all employees in the appropriate unit can be held, SERB must consider all proposals and, where more than one proposed unit is 'an' appropriate unit, decide which of them shall be deemed 'the' appropriate unit." *Id.* at 254, 1994 SERB at 4-65.

We have before us two proposals for bargaining units, one petitioned for by OAPSE consisting of bus drivers and special programs drivers, and the other, proposed by the Employer, a wall-to-wall unit of all classified employees. As discussed above, each of these proposals is an appropriate unit. The statutory framework for the determination of an appropriate bargaining unit is the list of factors enumerated in O.R.C. § 4117.06(B). The same framework will be utilized in determining by comparison the appropriate bargaining unit where more than one proposal is before SERB for consideration.

O.R.C. § 4117.06(A) states in relevant part: "The State Employment Relations Board shall decide in each case the unit appropriate for the purpose of collective bargaining . . ."

(emphasis added). Thus, the decision of the appropriate unit must be made on a case-by-case basis and should not be pre-determined and based on *a priori* principles. The process of comparing the bargaining units before us involves the analysis of each unit according to the factors listed in O.R.C. § 4117.06(B).

The desires of the employees are evidenced by the fact that OAPSE's Request for Recognition was supported by the statutorily required evidence of majority support and by the fact that no employee objected to the petitioned-for unit. In *In re Northwest Local School District Bd of Ed*, SERB 84-007 (10-25-84) ("*Northwest*"), SERB ruled that the "desires of employees" factor will be treated as the equivalent of the extent of organization; however, this factor is not determinative *per se*, but an element for consideration. In the case at issue, this factor weighs in favor of the smaller unit.

Community of interest (including wages, hours, and other terms and conditions of employment) is probably the most flexible factor. Wall-to-wall units, where the only community of interest the employees have is their common employer, were historically held appropriate. However, smaller units with less variety of classifications have tighter community of interest than larger units with more variety of job classifications. Clearly, the bus drivers and the special programs drivers have among themselves a more specific community of interest of a special kind, all being drivers, than the cooks and the secretaries, or the custodians. Thus, the community of interest in this case weighs slightly in favor of the smaller unit of drivers.

The effect of over-fragmentation will obviously favor fewer units. Over-fragmentation may cause friction among employees; financial and time burdens on the employer; and inefficient representation for the employees, who may benefit more from a larger, stronger unit. The question is where to draw the line, or, how many units are too many. However, as was reiterated and approved in *GMPP II from Northwest*, in the absence of other units, the effect of over-fragmentation is not an issue. Thus, at this point in time there is no effect of over-fragmentation. While we will not dwell on speculation, we must note that a prudent

labor policy should restrict the exercise of chipping away small parts of bargaining units, which could create over-fragmentation, especially in small jurisdictions. As we mentioned above, such over-fragmentation is a burden on the employer and the taxpayer, and it does not serve the employees well. In sum, the effect of over-fragmentation does not apply under the facts of this case.

The efficiency of operations and the administrative structure of the public employer are interrelated factors, depending in each case on the type of employer, the operations involved, and the employer's administrative structure. In the case at issue, the Employer's business manager unequivocally testified that it will be administratively more efficient to negotiate and administer the smaller unit of drivers than the bigger unit with all classified employees.<sup>5</sup> In this case these factors clearly weigh in favor of the smaller unit.

There is no history of bargaining among the Employer's classified employees. Thus, this factor is not relevant in the case at issue.

Weighing the various factor as analyzed above, we find OAPSE's petitioned-for unit is the appropriate unit. The applicable statutory factors to be considered in determining the appropriateness of bargaining units in this case weigh in favor of the smaller unit.

### III. CONCLUSION

For the reasons above, we find the petitioned-for unit including bus drivers and special programs drivers is the appropriate bargaining unit. We direct an election in this bargaining unit.

POTTENGER, Vice Chairman, and MASON, Board Member, concur.

---

<sup>5</sup>Tr. 91-93.