

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

Ohio State Troopers Association,

Employee Organization,

and

Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO,

Employee Organization,

and

State of Ohio,

Employer.

Case No. 98-REP-05-0120

**DIRECTIVE DISMISSING PETITION FOR CLARIFICATION OF BARGAINING UNIT
(OPINION ATTACHED)**

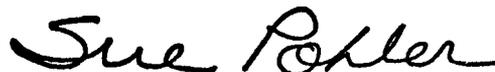
Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich:
March 23, 2000.

On May 18, 1998, the Ohio State Troopers Association ("Petitioner") filed a Petition for Clarification of Bargaining Unit seeking to have the State Employment Relations Board ("Board") clarify State Bargaining Unit 1 to include certain employees of the State of Ohio, Department of Public Safety, Division of Highway Patrol ("Employer"). On February 10, 1999, the Board directed this matter to hearing to determine the bargaining-unit status of the employees in question and for all other relevant issues. A motion to intervene was filed by the Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO ("OCSEA"); the motion was granted. A hearing was conducted on September 21, 1999. On December 1, 1999, the Administrative Law Judge's Recommended Determination was issued. On December 21, 1999, the Employer filed objections to the Recommended Determination. On December 22, 1999, OCSEA filed exceptions to the Recommended Determination. On December 28, 1999, the Petitioner filed its response to the objections and exceptions. On February 16, 2000, the parties' representatives presented oral arguments to the Board.

After reviewing the record, including the transcript and the parties' briefs, the Board finds, for the reasons set forth in the attached Opinion, incorporated by reference, that Radio Operators employed by the State Highway Patrol are "public employees" as that term is defined in O.R.C. § 4117.01 (C) and are "members of the highway patrol" as that term is defined in O.R.C. § 4117.01(O); that the Radio Operators were not included in the description of State Unit 1 at the time their positions were reclassified and the Radio Operators' duties were not being performed by State Bargaining Unit 1 members when the unit was last certified; and that the Petition for Clarification of Bargaining Unit filed by the Petitioner is inappropriate and, as a result, is hereby dismissed.

It is so directed.

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



SUE POHLER, CHAIRMAN

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 432154213, and with the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of the Board's directive.

I certify that this document was filed and a copy served upon each party by certified mail, return receipt requested, on this 24th day of March 2000.



SALLY L. BARAILLOUX, EXECUTIVE SECRETARY

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OPINION

POHLER, Chairman:

This representation case comes before the State Employment Relations Board ("Board") upon the filing of exceptions and response to exceptions to the Administrative Law Judge's Recommended Determination issued on December 1, 1998, and upon the oral arguments presented to the Board by the parties on February 16, 2000. For the reasons below, we find that the Radio Operators employed by the State Highway Patrol are "public employees" as that term is defined in Ohio Revised Code ("O.R.C.") § 4117.01(C) and are "members of the highway patrol" as that term is defined in O.R.C. § 4117.01(O). Since the Radio Operators were not included in State Unit 1 when their positions were reclassified and the Radio Operators' duties were not being performed by State Unit 1 members when the unit was last certified, the Petition for Clarification of Bargaining Unit filed by the Ohio State Troopers Association ("OSTA" or "Petitioner") is inappropriate and must be dismissed.

I. BACKGROUND

The Ohio Civil Service Employees Association, Local 11, AFL-CIO (“OCSEA”) is the employee organization that represents employees of the State of Ohio (“Employer”) in approximately 980 classifications in State Bargaining Unit 9 (“Unit 9”), including Telephone Operator 1, Telephone Operator 2, Radio Dispatcher, and Radio Operator. Employees in Unit 9 are permitted to strike. The Fraternal Order of Police, Ohio Labor Council, Inc. represents 27 classifications in State Bargaining Unit 2 (“Unit 2”), including the Police Officer 1 and Police Officer 2 classifications (collectively “Police Officers”); employees in Unit 2 are not permitted to strike. The OSTA represents State Bargaining Unit 1 (“Unit 1”), which includes the following classifications for employees of the State of Ohio, Department of Public Safety, Division of Highway Patrol (“Highway Patrol”): Highway Patrol Trooper, Highway Patrol Communication Technician 1, Highway Patrol Communication Technician 2, Highway Patrol Radio Dispatcher, Highway Patrol Radio Technician 1, Highway Patrol Radio Technician 2, and Highway Patrol Radio Technician 3.² Employees in Unit 1 are not permitted to strike. (F.F. Nos. 7, 13-15).

Before 1991, the Troopers were assigned to duty at the Governor’s residence. Before 1993, the Troopers were also assigned to duty at the Ohio Statehouse (“Statehouse”). Starting in 1993, the Police Officers were assigned to provide 24-hour uniformed security at the Statehouse. From 1993 to 1996, the Police Officers handled the telephone and radio traffic for the Statehouse and Governor’s residence. The number of Police Officers employed at the Statehouse also rose from 15 to approximately 18.

¹Few of the facts in this case are disputed. Most of the Findings of Fact (“F.F.”) are derived from the parties’ 26 Stipulations (“Stip.”).

²See “Certification of Election Results and of Exclusive Representative,” *Ohio State Troopers Association and State of Ohio*, 96-REP-12-0261 (4-24-97).

On June 24, 1996, the Highway Patrol hired a Telephone Operator 1 who was assigned to the Statehouse. The Telephone Operator 1 classification is in Unit 9. Three additional Telephone Operator 1 s were hired on October 27, 1997, November 24, 1997 and December 7, 1997. They were also assigned to the Statehouse. The Statehouse Police Officers performed dispatching duties when no Telephone Operator Is were scheduled to work. (F.F. Nos. 7-8).

On December 1, 1997, a “working out of classification” grievance was filed by a Telephone Operator 1. The grievance alleged that the Highway Patrol Telephone Operator Is were performing the duties of the Radio Operator classification. OCSEA represented the Telephone Operator 1 during the processing of this grievance. The grievance settlement agreement between the Employer and OCSEA reclassified the Telephone Operator Is employed by the Highway Patrol as Radio Operators, which afforded these employees a raise. (F.F. Nos. 9-10).

Before the grievance settlement, the Highway Patrol did not utilize or have any employees classified as Radio Operators. In January 1998, the Highway Patrol moved its general headquarters to 1970 West Broad Street. Three additional employees were hired then and were classified as Radio Operators. (F.F. No. 11).

Radio Operators, formerly known as Radiomen until 1991, have been part of the State of Ohio’s classification plan since the establishment of the State Classification Plan in January 1976. Radio Operator classifications are used by the Department of Administrative Services/General Services; the Department of Mental Retardation and Developmental Disabilities at the Northwest Ohio Developmental Center; the Department of Natural Resources, Division of Geological Survey and Parks and Recreation; and the Department of Transportation. The Radio Operators employed by these departments are not appointed pursuant to O.R.C. § 5503.01. (F.F. Nos. 12, 17-18).

The Radio Operators working for the Highway Patrol are appointed pursuant to O.R.C. § 5503.01. (F.F. No. 2; Stip. 24). The Radio Operators are listed on the Organizational Chart of the Office of Field Operations along with other Highway Patrol employees. (F.F. No. 13; Joint Exhibit 13). Six employees are currently employed by the Highway Patrol in that capacity. The main function of the Radio Operators is to support the Police Officers performing security functions at the Statehouse, the Public Safety Building, and the Governor's residence with radio communication.

The Radio Operators occupy a room at the Statehouse that is accessible to employees and the public. For eight hours a day, this position is supervised by a Highway Patrol Sergeant; for another eight hours a day, it is supervised by a State Police Officer Sergeant. The final shift, which begins at midnight, is not supervised. (F.F. No. 19).

Dispatchers are assigned to all Highway Patrol posts throughout the state as well as to the Highway Patrol Communications Center in Columbus. At the Department of Public Safety Building, Radio Operators have no public contact and only relate to other employees as they arrive at and leave from work. Dispatchers at the Communication Center have no public contact and only relate to other employees as they arrive at and leave from work and are supervised by a Radio Dispatcher Supervisor. (F.F. Nos. 17, 20).

The Law Enforcement Automated Data System ("LEADS") certification is required by both Radio Operators and Dispatchers. LEADS machines are placed at all Highway Patrol posts, including the Shipley Building and the Statehouse. "COPS" is a mechanism to enter information for Troopers, Police Officers, and other Highway Patrol members before a warrant is actually issued. Both Radio Operators and Dispatchers have the capability to interact with COPS.

The Dispatchers in Bargaining Unit 1 have responsibilities and duties that include handling emergency telephone calls, dispatching ambulances and other Troopers to

accident scenes, handling calls for domestic violence, robberies, homicides, assaults and road conditions for weather emergencies. The Dispatchers also maintain warrant files, enter criminal cases into the computer, coordinate court appearances of Troopers, and handle inquiries by the public.

The Radio Operators at issue performed many of the same duties performed by the Dispatchers. The Radio Operators used the Dispatchers' policy and procedure manual when being trained and on the job. The greatest difference between the two positions was that the Dispatchers handled a higher volume of calls than Radio Operators. In addition, the Dispatchers received hazardous duty pay, but the Radio Operators did not. Since the Telephone Operators were reclassified as Radio Operators, their days and hours of coverage increased. As Telephone Operators, coverage was Monday through Friday with a day and afternoon shift. Once they became Radio Operators, the coverage went to 365 days per year and 24 hours per day.

On May 18, 1998, the OSTA filed a Petition for Clarification of Bargaining Unit pursuant to Ohio Administrative Code ("O.A.C.") Rule 4117-5-01 (E)(2) seeking to have the Board clarify Unit 1 to include individuals in the Radio Operator classification who are employed by the Highway Patrol. On February 10, 1999, the State of Ohio filed a position statement opposing the petition. On July 29, 1999, SERB found reasonable cause to believe that the petition was sufficient and that a question concerning representation existed, and directed this matter to hearing to determine the bargaining-unit status of the employees in question, and for all other relevant issues.

II. DISCUSSION

The Radio Operators are appointed pursuant to O.R.C. § 5503.01. See F.F. No. 2. O.R.C. § 4117.01(O) states:

“Members of the state highway patrol” means highway patrol troopers and radio operators appointed under section 5503.01 of the Revised Code. (emphasis added).

The Radio Operator positions at issue came into existence as a result of a grievance settlement between the State of Ohio and OCSEA. A “working out of classification” grievance was filed by an employee holding the position of Telephone Operator 1. The grievance alleged that the Telephone Operator 1 s were performing the duties of the Radio Operator classification. In settlement of the grievance, the State of Ohio and OCSEA agreed to reclassify the Telephone Operator Is as Radio Operators. The statutory provisions relative to the Radio Operators employed by the Highway Patrol had been enacted before the settlement was reached. It is well established in Ohio that all persons are charged with knowledge of the law. See, e.g., In *re Ohio Dept of Health*, SERB 99-007 (5-21-99). We must assume that the parties were aware of the statutory provisions relative to the Radio Operators at the time the settlement was reached.

Since the Radio Operators are “members of the highway patrol” pursuant to O.R.C. § 4117.01(O), the next step is to review O.R.C. § 4117.06 to determine if any statutory provision exists that would prohibit their continued inclusion in Unit 9. O.R.C. § 4117.06 states in pertinent part as follows:

(D) In addition, in determining the appropriate unit, *the* board shall not:

(3) *Include* members of a police or fire department or members of *the state highway patrol in a unit with other classifications of public employees of that department[.]* (emphasis added).

Once the Telephone Operator Is were reclassified as Radio Operators employed by the Highway Patrol, appointed pursuant to O.R.C. § 5503.01, their continued inclusion in Unit 9 with employees who are not members of the highway patrol was prohibited under

O.R.C. § 4117.06(D)(3). Therefore, these Radio Operators have been improperly treated as if they are included in Unit 9.³

The OSTA has filed its Petition for Clarification of Bargaining Unit concerning Unit 1. The purpose of a petition for clarification is to determine whether a particular employee or group of employees is included in or excluded from the unit based upon the unit description and the duties performed by the employees in question. O.A.C. Rule 4117-5-01(E)(1) and (2); *In re Shawnee State Univ*, SERB 97-010 (6-30-97); *In re Ohio Council 8, AFSCME*, SERB 95-021 (12-29-95). "Unit clarification does not alter the status quo, but rather maintains it." *Id.* at 3-143.

When Unit 1 was last certified on April 24, 1997, the unit included the following classifications: Highway Patrol Trooper, Highway Patrol Communication Technician 1, Highway Patrol Communication Technician 2, Highway Patrol Radio Dispatcher, Highway Patrol Radio Technician 1, Highway Patrol Radio Technician 2, and Highway Patrol Radio Technician 3. The Radio Operator classification was not included in Unit 1's description. The duties of the former Telephone Operator 1 s and the current Radio Operators, although similar to the Highway Patrol Radio Dispatchers, were not being performed by members of Unit 1. Therefore, the request to include the Radio Operators in Unit 1 by way of a Petition for Clarification of Bargaining Unit was inappropriate since it would alter the status quo. Consequently, the OSTA's Petition for Clarification Bargaining Unit relative to Unit 1 must be dismissed.⁴

³We note that no petition for amendment or clarification of Unit 9 concerning these positions has been filed at this time.

⁴In this case, we have not explored — and the employees have not had an opportunity to express their desire -whether the Radio Operators could be added to Unit 1, any other State Unit, or a new unit by a Petition for Representation Election, Petition for Amendment of Certification, opt-in voluntary recognition, or opt-in election.

III. CONCLUSION

For the reasons above, we find that the Radio Operators employed by the State Highway Patrol are “public employees” as that term is defined in O.R.C. § 4117.01 (C) and are “members of the highway patrol” as that term is defined in O.R.C. § 4117.01(O). Since the Radio Operators were not included in the description of State Unit 1 at the time their positions were reclassified and the Radio Operators’ duties were not being performed by Unit 1 members when the unit was last certified, the Petition for Clarification of Bargaining Unit filed by the OSTA is inappropriate and is hereby dismissed.

Gillmor, Vice Chairman, and **Verich**, Board Member, concur.