

VERMONT LABOR RELATIONS BOARD

CALEDONIA NORTH)	
EDUCATION ASSOCIATION)	
)	
and)	DOCKET NO. 14-51
)	
CALEDONIA NORTH SUPERVISORY)	
UNION SCHOOL BOARD)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

The Caledonia North Education Association (“Association”) filed a unit clarification petition on June 21, 2014, to add behavior interventionists and behavior specialists employed by the Caledonia North Supervisory Union School Board (“Employer”) to the existing bargaining unit of special education instructional assistants of the Employer represented by the Association. The Association filed the petition pursuant to Section 34.1 of Labor Relations Board *Rules of Practice*, which provides:

A petition for clarification of an existing bargaining unit may be filed by a collective bargaining representative or an employer where no question concerning the majority status of the existing bargaining representative is pending at the time the unit clarification petition is filed. Such a petition may be filed where 1) there is a dispute over the unit inclusion or exclusion of employee(s), or 2) there has been an accretion to or reorganization of the workforce, or 3) the collective bargaining representative or employer seeks a reorganization of the existing structure of a bargaining unit or units.

The Employer filed a response to the petition on June 18, 2014, stating that it does not oppose the unit clarification petition.

The Labor Relations Board decided to hold an evidentiary hearing before making a decision on the unit clarification petition. The Board held a hearing on December 4, 2014, in the Board hearing room in Montpelier before Board Members Richard Park, Acting Chairperson; Alan Willard and Edward Clark, Jr. Vermont-NEA General Counsel James Fannon represented

the Association. Attorney Pietro Lynn represented the Employer. At the hearing, the Association withdrew its petition to add the behavior specialists to the existing bargaining unit of special education instructional assistants, leaving as the only issue whether the behavior interventionists should be added to the bargaining unit.

At the hearing, the Association presented witnesses and exhibits in support of its petition. The Employer represented no witnesses or exhibits and did not engage in any questioning of the witnesses presented by the Association. The Association filed a post-hearing brief on December 18, 2014. The Employer did not file a post-hearing brief.

FINDINGS OF FACT

1. The Employer has employed behavior interventionists since 2005. The behavior interventionists have not been represented by the Association or any other employee organization from 2005 to the present. For the 2013-2014 school year, the Supervisory Union reclassified its more experienced behavior interventionists as behavior specialists.

2. Prior to 2013, special education instructional assistants were employees of the individual school districts within the Supervisory Union. Some of the special education instructional assistants in the school districts were represented by the Association. The special education instructional assistants moved from being employed by the school districts to becoming employees of the Supervisory Union for the 2013-2014 school year through Section 23 of Act No. 56 of the 2013 Session of the Vermont General Assembly which allowed supervisory unions to assume employment of special education paraeducators formerly employed by school districts. Section 23 of Act No. 56 further provided for the “immediate and voluntary recognition by the supervisory union of the recognized representatives of the

employees of the member districts as the recognized representatives of the employees of the supervisory union.” (Association Exhibit 8).

3. The Employer recognized the Association as the representative of the special education instructional assistants pursuant to this Act. The Association and the Employer entered into a collective bargaining agreement covering the special education instructional assistants for the 2013-2014 school year.

4. Special education instructional assistants support the education of students with special needs as designed by special educators through an individualized education program (“IEP”). The instructional assistants provide specific instructional activities that support students’ progress toward learning, achievement and skill acquisition as specified in the goals of the students’ IEPs as directed by the special educator in consultation with the classroom teacher. Instructional support may be provided in the general education classroom or in other areas, inside and outside the school, as designated in the IEP. It is required that an instructional assistant have a high school diploma; an Associate’s or Bachelor’s Degree is preferred (Association Exhibit 1).

5. Behavior interventionists implement behavior and instructional support programs that meet the needs of students with emotional and behavioral needs. They assist the Collaborative Program special educator in developing schedules of instructional support, and developing and implementing social and behavior plans for students in the program. It is required that a behavior interventionist has an Associate’s degree or comparable years of valid experience working with students with special needs; a Bachelor’s degree is preferred. Also, a behavior interventionist is required to have a minimum of three years of experience providing

instruction and/or support under an IEP program with an emphasis on social skills, autism and behavior management (Association Exhibit 1).

6. Lynn Franko is a special education instructional assistant at Millers Run School in Sheffield. She reports to Brian Carroll, the Supervisory Union Director of Student Services, and works under the special education teacher at the school. The school principal does her performance evaluation. Until recently, Franko was working one on one with a challenging student with autism. She discontinued working with the student recently when a behavior interventionist was hired to work one on one with the student. Franko trained the behavior interventionist to work with the student and deal with his autism. The behavior interventionist is performing similar work with the student as did Franko. The behavior interventionist also works under the special education teacher at the school and reports to the Director of Student Services.

7. Kim Morin is a behavior interventionist at Burke Town School. The Director of Student Services is her overall supervisor; she reports to the principal at the school. Morin works with three students at the school with behavior issues as part of the autism collaborative at the school. She works one on one with them during different parts of the day. Previously, she was a special education instructional assistant at the school, working in the autism collaborative, and was in the bargaining unit represented by the Association. When she moved into the behavior interventionist position, Morin received a wage increase. Morin works with students with behavior issues and is involved in establishing student schedules as a behavior interventionist. She did not work with students with behavior issues as an instructional assistant and was not involved in setting student schedules. Morin mostly worked in the classroom as an instructional assistant; as a behavior interventionist she works more with students outside the classroom.

8. There are not behavior interventionists in every school in the Supervisory Union. In their absence, instructional assistants work with students with behavior issues. In one school, an instructional assistant worked with a challenging student with behavior issues. The Employer then created a behavior interventionist position providing higher wages, and the instructional assistant moved into it. She is performing the same duties as previously, but is better compensated.

9. There are between 35 and 40 instructional assistants in the bargaining unit represented by the Association. At the time of the hearing in this matter, there were six behavior interventionists employed by the Employer with one other behavior interventionist position being advertised for hiring.

10. The Association filed an unfair labor practice charge against the Employer on March 14, 2014, alleging that the Employer committed an unfair labor practice through its Director of Student Services meeting with behavior interventionists and engaging in conversation with them in violation of state labor laws. The Association and the Employer entered into an agreement on May 2, 2014, providing that: 1) the Association withdraws the unfair labor practice charge, 2) the Association will file a unit clarification petition for the current behavior specialists/interventionists employed by the Employer; and 3) the Employer will not oppose the petition. The Labor Relations Board issued an order on May 6, 2014, dismissing the charge pursuant to its withdrawal by the Association (Association Exhibits 2, 3; Labor Relations Board Docket No. 14-19).

OPINION

The issue to be decided is whether to grant the unit clarification petition filed by the Association to add the seven behavior interventionists employed by the Employer to the existing bargaining unit of approximately 35 to 40 special education instructional assistants of the Employer represented by the Association. By filing a unit clarification petition, the Association requests that we add the behavior interventionists to the existing bargaining unit without a representation election due to a reorganization of the workforce.

In a unit clarification case such as the one before us, the Board must consider the facts in light of conflicting policies of maintaining stability in labor relations and assuring that employees have the right to choose their own bargaining representative. *Barre Town School Chapter, AFSCME Local 1369 and Barre Town School District*, 13 VLRB 364, 369 (1990). *Woodstock Union High School Teachers Organization, Educational Support Personnel Unit and Woodstock Union High School District*, 22 VLRB 186, 196 (1999). *UE Local 267 and University of Vermont*, 24 VLRB 260, 270 (2001).

Factors that may favor the granting of the unit clarification petition in cases similar to the one before us are the similarity of duties and a shared community of interests between the petitioned-for employees and the employees in the existing bargaining unit. *Woodstock, supra*. *UE Local 267 and University of Vermont, supra*. *Vermont State Employees' Association and Judiciary Department of the State of Vermont*, 32 VLRB 21 (2012). *Grand Isle Supervisory Union-NEA and Alburgh School Board*, 33 VLRB 1 (2014). Also, a unit clarification petition is more likely to be granted if productive labor relations are threatened if the petitioned-for employees are left out of the bargaining unit. *Local 1369, AFSCME AFL-CIO and City of Barre*, 7 VLRB 36, 46 (1984) *Woodstock*, 22 VLRB at 199.

Here, the behavior interventionists perform similar duties to instructional assistants in supporting the education of students with special needs. The closeness of the duties of the respective positions is indicated by evidence before us that the duties they perform may be indistinguishable and instructional assistants may be moved directly into behavior interventionist positions. Also, the behavior interventionists and instructional assistants have shared community of interests given their similarities in method of compensation, hours of work, employment benefits, supervision, qualifications, training, job functions and job sites.

Further, given the similarities between the positions and the ready movement of instructional assistants into behavior interventionist positions, productive labor relations would be threatened if the behavior interventionists are not placed in the same bargaining unit as instructional assistants. As an example, the evidence in this case indicates that the potential exists for the creation of additional behavior interventionist positions that replace instructional assistant positions. Another example is that the potential desire of instructional assistants to move into behavior interventionist positions inevitably leads to their interest in being able to collectively bargain over the criteria for selecting behavior interventionists. The interchange between the positions means that having some employees in the bargaining unit, while others are not in the unit, may be problematic for both the employees and the Employer when employees move from one position to the other. The stability of labor relations would be enhanced if, in addressing such issues, the instructional assistants and behavior interventionists are in the same bargaining unit.

In so holding, we are not intending to diminish the democratic rights of employees to determine whether they wish to be represented by a union. However, given the circumstances of this case, we conclude that adding the behavior interventionists to the existing bargaining unit of

instructional assistants enhances the stability of labor relations, a factor which outweighs in this case the right of the behavior interventionists to determine in an election whether they wish to be represented by a union.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the unit clarification petition filed by the Caledonia North Education Association is granted, and the behavioral interventionists employed by the Caledonia North Supervisory Union School Board are added to the existing bargaining unit of special education instructional assistants of the Supervisory Union represented by the Association.

Dated this 29th day of January, 2015, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park
Richard W. Park, Acting Chairperson

/s/ Alan Willard
Alan Willard

/s/ Edward W. Clark, Jr.
Edward W. Clark, Jr.