

VERMONT LABOR RELATIONS BOARD

PETITION OF VERMONT STATE)	
EMPLOYEES' ASSOCIATION (RE:)	
AGENCY OF TRANSPORTATION)	DOCKET NO. 00-56
HIGHWAY AND MAINTENANCE)	
EMPLOYEES))	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On September 5, 2000, the Vermont State Employees' Association ("VSEA") filed a petition to organize Agency of Transportation ("AOT") highway and maintenance employees into a separate bargaining unit. VSEA clarified the composition of the proposed bargaining unit in a letter filed with the Labor Relations Board on October 3, 2000. On November 7, 2000, VSEA filed a motion to amend its petition to add certain positions to the proposed bargaining unit. As a result of the petition as amended, VSEA seeks to organize the following Agency of Transportation highway and maintenance employees into a separate bargaining unit: Transportation Maintenance Worker I, II, and III; Transportation Senior Maintenance Worker; Motor Equipment Mechanic A, B, and C; Motor Equipment Senior Mechanic; Motor Equipment Mechanic Specialist; Storekeeper A and B; Bridge Maintenance Mechanic; Maintenance Mechanic A and B; Motor Shop Supervisor A and B, Transportation Parts Specialist A, and Transportation District Traffic Shop Coordinator. These employees presently are included in the Non-Management Unit represented by VSEA.

In response to the petition, the State of Vermont ("State") contends that the separate bargaining unit proposed by VSEA is not an appropriate bargaining unit for the following reasons: 1) the interests, needs and general conditions of employment of the

listed classes are not similar across the proposed unit; 2) the proposed unit would result in overfragmentation; and 3) the Maintenance Division Director cannot take positive action on matters subject to negotiation.

A hearing on the appropriateness of the proposed bargaining unit was held on November 9, 2000, in the Labor Relations Board hearing room before Board Members Edward Zuccaro, Acting Chairperson; Carroll Comstock and John Zampieri. VSEA General Counsel David Stewart represented VSEA. Special Assistant Attorney General David Herlihy represented the State.

The parties filed post-hearing briefs on December 19, 2000. Also, on December 19, the State filed a motion to reopen, pursuant to Section 12.17 of the Board Rules of Practice, to add an affidavit to the record. On December 22, 2000, VSEA filed a memorandum in opposition to the motion. Upon review of the motion, we deny it. Section 12.17 provides that “(m)otions for leave to reopen a hearing because of newly discovered evidence shall be timely made”. The motion before us does not involve newly discovered evidence and is not timely made.

FINDINGS OF FACT

1. State employees are organized into four bargaining units: Non-Management, Supervisory, Corrections, and State Police. VSEA is exclusive bargaining representative of employees in all four units. The Agency of Transportation highway and maintenance employees in the proposed bargaining unit are in the Non-Management Unit. AOT highway and maintenance employees have been included in the Non-Management Unit since 1969.

2. The positions within the proposed bargaining unit are in the Maintenance and Aviation Division of the Agency of Transportation. There are approximately 400 employees in the proposed bargaining unit. The positions are distributed among the nine transportation districts that cover the state and a central garage in Montpelier. Each of the nine transportation districts is managed by a District Transportation Administrator (“DTA”). Each transportation district has a primary garage and satellite garages. A Transportation Maintenance Area Supervisor manages the garages within each district. DTA’s are appointing authorities for their districts. DTA’s report to the head of the Maintenance and Aviation Division, who in turn reports to the Secretary of Transportation.

3. In addition to the Maintenance and Aviation Division, the Agency of Transportation has the following divisions: Policy and Planning, Project Development, Technical Services, Finance and Administration Support, and Rail. Also, the Department of Motor Vehicles is included within the Agency of Transportation (State’s Exhibit 8).

4. Approximately half of the employees in the proposed bargaining unit hold the position of Transportation Maintenance Worker III. The Transportation Maintenance Worker I position is occupied by trainees who do not have a commercial driver’s license. Once they have a commercial driver’s license, they are promoted to a Transportation Maintenance II position. Once Transportation Maintenance Worker II’s gain experience, they are promoted to Transportation Maintenance Worker III. Approximately 75 employees in the proposed unit are Transportation Senior Maintenance Workers. They have the most experience and seniority among the maintenance workers, and serve as lead workers or supervisors of crews in their garages (State’s Exhibit 6).

5. The job duties of the Transportation Maintenance Worker I's, II's and III's; and Transportation Senior Maintenance Workers (hereinafter "TMW's") include plowing, salting and sanding state roads; installing guardrails and culverts along roadways; ditching and paving of roadways; maintaining road signs; mowing and clearing brush from roadsides; flagging traffic during paving and other projects; assisting with garage maintenance; assisting with bridge repairs; and maintaining recreational trails. TMW's spend most of their worktime outdoors. They routinely operate heavy equipment such as snowplows (also known as "Class 17" vehicles), graders and pavers. They are required to have a commercial driver's license, and are subject to random drug testing (State's Exhibit 6).

6. TMW's face a number of hazards specific to their type of work. They work with equipment and materials that can cause severe burns. Minor injuries are not unusual. They are frequently exposed to fast-moving traffic, whether in a vehicle or at a highway worksite. Employees have suffered fatal and severe injuries due to being struck by vehicles. When driving Class 17 vehicles in inclement weather, TMW's are at risk of colliding with other vehicles, guardrails or other obstacles along the road. Driver fatigue also is a significant problem. There are not strict limits on the number of hours a driver may be required to plow. During storms, TMW's may work long hours and become fatigued, with only brief opportunities for naps.

7. During winter months, TMW's are primarily responsible for plowing, salting and sanding state roads. Other employees in the proposed unit also are responsible for winter snow removal, including Bridge Mechanics, Motor Mechanics and Storekeepers. These employees responsible for snow removal earn an extensive amount

of overtime compensation during the winter. This includes frequently being called in to work on weekends and holidays. Once employees work over eight hours on a regular workday, they receive one and one-half their regular rate of pay for all additional time. If they work on holidays, they receive overtime compensation in addition to their regular rate of pay.

8. TMW's and other highway and maintenance employees who have mandatory snow removal responsibilities are placed on "snow season status" from December through March. Pursuant to Article 68 of the collective bargaining contract between the State and VSEA for the Non-Management Unit ("Contract"), this means an employee "must be immediately reachable by telephone and must report to work within 30 minutes or their normal commute, whichever is greater, upon being reached". Employees on snow season status receive a stipend of \$600, or a prorated amount, for the snow season due to being on such status. The social activities of employees on snow season status are restricted due to the unpredictability of their schedules and the requirement to be immediately reachable by telephone. They also are restricted in their consumption of alcohol during off-duty hours because they may on short notice be called upon to drive or operate heavy equipment.

9. Storekeepers A and B are responsible for keeping "stores" in district garages stocked with needed parts and tools for maintaining snowplows, vehicles and other equipment in the garage. Motor Equipment Mechanics depend on Storekeepers to provide them the parts necessary to repair Class 17 and other vehicles in the event of a breakdown. This means that, during snow season, Storekeepers may have to open their

stores at any time. Storekeepers fill in as plow drivers in the absence of regular drivers, and are placed on snow season status (State's Exhibit 6).

10. The job responsibilities of Motor Equipment Mechanics A, B and C, and Motor Equipment Mechanic Specialists include repairing a variety of vehicles or equipment such as trucks, plows, loaders, bulldozers, graders, cars, chain saws, hand tools and hydraulic pumps (State's Exhibit 6).

11. Bridge Maintenance Mechanics are responsible for the repair and maintenance of bridges throughout the state. Their bridge work includes performing major structural and minor repairs to bridges, curbs and guard rails; repairing holes on an emergency basis; paving; and pouring and cutting concrete forms for culverts, headwalls and drain inlets. They regularly use torches, air compressors and welders. They perform bridge repairs as needed in all weather conditions. Most of their duties are performed outdoors. TMW's assist Bridge Maintenance Mechanics at times in performing their duties. The Bridge Maintenance Mechanics supervise the TMW's on the job. Bridge Maintenance Mechanics also perform building maintenance work at garages such as plumbing, making cabinets and construction projects (State's Exhibit 6).

12. Bridge Maintenance Mechanics face safety hazards due to the nature of their work. They are frequently exposed to traffic. They routinely use equipment and materials that can cause burns and other injuries. They also are exposed to unusual heights, and risk of electrocution from fallen power lines.

13. The Transportation District Traffic Shop Coordinator is stationed at the Central Garage in Montpelier. Most of the Coordinator's duties are performed outdoors on state roads. The Coordinator's primary duties include pavement marking, and

installing and maintaining road signs. TMW's may assist the Coordinator in performing these duties. Equipment used includes fork lifts, sign post pounders, pickup trucks and painting trucks. The Coordinator is required to have a commercial driver's license, and is subject to random drug testing. The Coordinator may volunteer to plow during snow season, and as such is subject to the restrictions of snow season status (State's Exhibit 6).

14. Transportation Maintenance Mechanic A's are responsible for the construction, structural maintenance and repair of buildings, grounds and utilities. They perform a variety of tasks, ranging from construction and carpentry, to electrical work, to the maintenance and repair of machines and equipment. They may operate snow removal, salting and sanding equipment, and as such are subject to the restrictions of snow season status (State's Exhibit 6).

15. Transportation Parts Specialists A and B are responsible for the inventory and control of a variety of parts and supplies used at Agency of Transportation garages throughout the State. This includes items such as automotive, winter maintenance and construction equipment parts and supplies, building materials and janitorial supplies (State's Exhibit 6).

16. There are positions outside of AOT in state government that are similar to positions in the proposed bargaining unit. The Department of Buildings and General Services has Maintenance Mechanic A's. The Department of Public Safety and the Department of Buildings and General Services employ Motor Equipment Mechanic B's. The Department of Public Safety employs Motor Equipment Mechanic C's. The Departments of Buildings and General Services, Employment and Training, and Forests, Parks and Recreation have Storekeepers B's (State's Exhibit 2).

17. Negotiations between VSEA and the State for collective bargaining contracts are carried out on both “master” and unit levels. Master negotiations deal with the most significant economic issues, such as salaries and benefits, and generic issues. At unit level negotiations, specific issues unique to employees in the unit are addressed. Unit bargaining has increased as the contracts have matured, so that more time and resources are devoted to unit bargaining than master bargaining.

18. The VSEA and the State typically negotiate two-year agreements expiring on June 30. Negotiations commence in the late summer prior to the year the contract expires, and often conclude by late February or early March, although sometimes a contract has not been finalized until near the end of the legislative session in April or May. There are between 7 to 15 VSEA members on each unit team. There are 15 members on the Non-Management Unit bargaining team, one of whom is an AOT highway and maintenance employee. The average number of bargaining and caucus days per round of negotiations for each unit team is approximately 16-20 days. Employees on unit teams are paid their regular wages for this time pursuant to a “release time” provision negotiated in the contracts.

19. The VSEA and the State have negotiated various provisions in the Contract directed exclusively or primarily at AOT highway and maintenance employees. These include: Article 7, Section 7(a) (AOT Maintenance Division specified for attention by special labor-management committee on increasing workload issue); Article 33, Section 2(b) (special workers compensation payments for AOT employees injured in a highway accident); Article 56, Section 2 (special clothing for certain AOT employees, including those in the proposed bargaining unit); Article 57 (provision applying to AOT

employees, as well as other employees, for storage of employee hand tools, tool allowance, and extent of state liability for losses from theft or fire); Article 68 (special snow season status); and Appendix H (commercial driver's license program) (State's Exhibit 7).

20. The snow season status provisions of the Contract developed from sidebar negotiations in which a sub-committee, consisting exclusively of AOT highway and maintenance employees on VSEA's side, made recommendations which were accepted by the Non-Management Unit bargaining team and the State's representatives in unit negotiations. When negotiations took place on the commercial driver's license program and drug testing, AOT employees were primarily involved for VSEA.

21. There are several issues of concern specific to AOT highway and maintenance employees that employees would like addressed in negotiations. These include improvements in compensation for snow season status, increased staffing, allowed accrual of more compensatory time, uniformity of management policies in each district, and use of cell phones or pagers by employees.

OPINION

The issue before us is whether to grant the petition filed by VSEA to remove AOT highway and maintenance employees from the Non-Management Unit represented by VSEA and organize them into a separate bargaining unit. We need to decide whether this is an appropriate unit. The relevant statutory provisions in appropriate unit cases under the State Employees Labor Relations Act ("SELRA"), 3 V.S.A. Section 901 *et seq.*, are:

Section 902(3) - "Collective bargaining unit" means the employees of an employer, being either all of the employees, the members of a department or

agency or such other unit or units as the board may determine are most appropriate to best represent the interest of employees.

Section 927 - (a) The board shall decide the unit appropriate for the purpose of collective bargaining in each case and those employees to be included therein, in order to assure the employees the fullest freedom in exercising the rights guaranteed by this chapter.

(b) In determining whether a unit is appropriate under subsection (a) of this section, the extent to which the employees have organized is not controlling.

(c) The board may decline recognition to any group of employees as a collective bargaining unit if, upon investigation and hearing, it is satisfied that the employees will not constitute an appropriate unit for purposes of collective bargaining or if recognition will result in over-fragmentation of state employee collective bargaining units . .

Section 941 - . . . (f) In determining the appropriateness of a collective bargaining unit the board shall take into consideration but not be limited to the following criteria:

- (1) The authority of governmental officials at the unit level to take positive action on matters subject to negotiation.
- (2) The similarity or divergence of the interests, needs, and general conditions of employment of the employees to be represented. The board may, in its discretion, require that a separate vote be taken among any particular class or type of employees within a proposed unit to determine specifically if the class or type wishes to be included.
- (3) Whether over-fragmentation of units among state employees will result from certification to a degree which is likely to produce an adverse effect on effective representation of state employees generally, or upon the efficient operation of state government.

This language demonstrates a clear legislative intent to allow employees freedom in selecting the composition of the unit which will best represent their interests as long as the unit is appropriate and will not result in over-fragmentation of units. Petition of VSEA re: Separate Bargaining Unit for Community Correctional Center Employees, 5 VLRB 82, 92 (1982); *Affirmed*, 143 Vt. 636 (1983). The unit need not be the most appropriate unit, only an appropriate unit. Id. 143 Vt. at 642-43, 646. In analyzing this case, we examine considerations of community of interest, overfragmentation, and

whether officials at the unit level have the authority to take action on matters subject to negotiations.

The Board has considered the following factors relevant in determining whether a community of interests exists among employees: differences and similarities in method of compensation, hours of work, employment benefits, supervision, qualifications, training, job functions, and job sites; and whether employees have frequent contact with each other and have an integration of work functions. Petition of VSEA (re: Bargaining unit for Department of Corrections), 13 VLRB 287, 304-305 (1990). A group of employees must at least be a readily identifiable and homogenous group apart from other employees to support a determination that a community of interests exists among them. AFSCME and Town of Middlebury, 6 VLRB 227, 231 (1983).

We conclude that a community of interests exists among AOT highway and maintenance employees in the proposed unit. The bulk of employees in the proposed unit maintain state roads and bridges, while the remaining employees in the proposed unit repair, maintain and supply the vehicles, equipment and buildings which support this maintenance work. Most face similar conditions of employment concerning working outside in all types of weather, working extensive overtime, and being exposed to safety hazards and risk of injury. The employees in the proposed unit have frequent contact with each other and a high degree of integration of work functions. Their qualifications, training, and job functions are similar and interrelated. They are a sufficiently distinct group apart from other employees in the Non-Management Unit to support a determination that a community of interests exists among them.

Nonetheless, their similar community of interests is not sufficient to justify a conclusion that they constitute an appropriate bargaining unit. The community of interests criterion must be considered together with whether overfragmentation of units will result to a degree which is likely to produce an adverse effect on the effective representation of other employees or upon the efficient operation of the employer. Teamsters Local 597 and University of Vermont, 19 VLRB 64 79; *Affirmed*, 167 Vt. 564 (1997).

Board policy generally favors broader units to guard against the potential problems which may arise given a multiplicity of units – Balkanization, whipsaw bargaining and institutional complications of dealing with a multiplicity of units. *Id.* at 81. In addition, in cases such as this where involved employees have been included in a bargaining unit with extensive bargaining history, we are reluctant to disturb an existing bargaining unit if there is evidence of a meaningful and effective history of negotiations for all unit employees. Petition of VSEA re: Separate Bargaining Unit for Community Correctional Center Employees, 5 VLRB at 96-97.

In balancing these considerations against the community of interests criterion, we conclude that overfragmentation of units will result to a degree which is likely to produce an adverse effect on the effective representation of other employees and upon the efficient operation of the Employer. Large groupings of state employees typically would be appropriate in balancing community of interest, overfragmentation, and other considerations in making bargaining unit determinations. The proposed unit, consisting of employees of a division of an agency of state government, is too small a grouping to be appropriate. The four existing units in state government are organized on no less than a

department-wide basis. If we were to allow a divisional bargaining unit such as is proposed here, the precedent established would create the potential of setting into motion a significant expansion of bargaining units in state government and resulting complications of dealing with a multiplicity of units.

VSEA has not presented a compelling case to justify disrupting the existing unit structure in state government. VSEA has not demonstrated that the interests of AOT highway and maintenance employees have not been adequately accommodated through the existing negotiation process. Although AOT highway and maintenance employees only have one representative on the Non-Management Unit bargaining team, there are various provisions in the Contract directed exclusively or primarily at AOT highway and maintenance employees. VSEA's contention that the issues important to the highway and maintenance employees become submerged in negotiations is not supported by specific evidence.

For example, the snow season status provisions of the Contract developed from sidebar negotiations in which a sub-committee, consisting exclusively of AOT highway and maintenance employees on VSEA's side, made recommendations which were accepted by the Non-Management Unit bargaining team and the State's representatives in unit negotiations. When negotiations took place on the commercial driver's license program and drug testing, AOT employees were primarily involved for VSEA. This specific evidence illustrates that the interests of AOT highway and maintenance employees have been addressed in negotiations.

We recognize that highway and maintenance employees may not be entirely satisfied with the specifics of contract provisions negotiated on issues of concern to them.

However, this does not justify placing them in their own unit. The complete satisfaction of all who are represented is hardly to be expected in the give and take of the negotiation process. Lary v. Upper Valley Teachers' Association, 3 VLRB 416, 420-21 (1980). Legacy v. Southwestern Vermont Education Association, Educational Support Personnel Unit, Vermont-NEA, NEA, 17 VLRB 181, 185-86 (1994). Moreover, the evidence does not demonstrate that the existing unit structure unduly hinders the future improvement of wages, hours and other conditions of employment of specific concern to highway and maintenance employees. We are reluctant to disturb the existing bargaining unit structure absent specific evidence that highway and maintenance employees have not been effectively represented in negotiations.

The final issue is whether officials at the unit level have the authority to take positive action on matters of negotiations pursuant to 3 V.S.A. Section 941 (f)(1). We consider this statutory criterion along with 3 V.S.A. 905(a), which provides that the “(t)he governor, or a person or persons designated by the governor . . . shall act as the employer representatives in collective bargaining negotiations and administration”. A review of this criterion demonstrates the deficiency of the bargaining unit proposed at the division level of the AOT. The head of the Maintenance and Aviation Division is levels removed from having the authority to take positive action on matters of negotiation. The Maintenance Division Director has to compete with other AOT division directors and the Commissioner of the Department of Motor Vehicles to gain support from the Secretary of Transportation and Governor on matters of negotiation. Given these institutional realities, creating a unit structure at the division level would unduly complicate the negotiation process.

In sum, we conclude that the proposed unit of AOT highway and maintenance employees is not an appropriate bargaining unit. In so ruling, we are neither diminishing the unique functions, interests and conditions of employment of highway and maintenance employees nor downplaying the difficult nature of their work. We simply conclude that the grouping of such employees in a bargaining unit at a divisional level is not appropriate.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is hereby ordered that the petition of the Vermont State Employees' Association to organize Agency of Transportation ("AOT") highway and maintenance employees into a separate bargaining unit is dismissed.

Dated this 21st day of February, 2001, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Edward R. Zuccaro, Acting Chairperson

Carroll P. Comstock

John J. Zampieri