

VERMONT LABOR RELATIONS BOARD

CHAMPLAIN VALLEY UNION HIGH
SCHOOL STAFF ASSOCIATION,
VEA/NEA LOCAL 325

and

CHAMPLAIN VALLEY UNION HIGH
SCHOOL DISTRICT NO. 15
BOARD OF SCHOOL DIRECTORS

DOCKET NO. 80-50

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On June 18, 1980, the Champlain Valley Union High School Staff Association (the "Union"), Local 325 of the Vermont Education Association and the National Education Association, filed a Petition for Election of Collective Bargaining Representative with the Vermont Labor Relations Board. In that petition, the Union seeks to represent a bargaining unit comprised of the secretaries, cafeteria workers, instructional and non-instructional aides and an attendance officer employed by the Champlain Valley Union High School, District No. 15, Board of Directors (the "Employer").

By letter dated July 24, 1980, filed with the Board on July 25, 1980, the Employer notified the Board that questions of representation existed, contending the only appropriate unit was one in which all non-teaching support staff were included. The Employer would add the bus drivers and custodians to the proposed unit, and exclude from the unit all confidential, supervisory, and part-time employees. Also in its letter of July 24, the Employer indicated that the position of attendance officer had been abolished. Thereafter, the Union withdrew its petition for representation of that particular position in the proposed unit.

A hearing to determine the appropriateness of the unit and confidential and supervisory employee designations was held on September 25, 1980, at the Board hearing room in Montpelier. Board members Kimberly B. Cheney, William G. Kemsley, Sr., and Robert H. Brown were present. Peter R. Hicks, Esq., represented the Employer. Norman P. Bartlett, UniServ District No. 1 Director, VEA/NEA, represented the Union.

At the hearing, both parties maintained their position as to the appropriateness of the petitioned-for unit. However, several stipulations were entered into the record which substantially reduced the number of issues presented to the Board: a) the Employer stipulated to the jurisdiction of the Board over the case pursuant to the Municipal Employee Relations Act, 21 V.S.A. §1721-1735; b) the Union stipulated to all of the exclusions presented by the Employer in its letter of July 24, 1980; and c) the parties stipulated that the overall unit of all non-teaching staff requested by the Employer was an appropriate unit for bargaining, involving employees with a community of interests.

Requests for findings of fact and memoranda were filed with the Board by both parties on October 27, 1980.

FINDINGS OF FACT

1. Champlain Valley Union High School ("CVU") is located in Hinesburg, Vermont. It is a high school for approximately 1,050 students in grades 9 through 12.

2. CVU is part of the Chittenden South Supervisory School District ("CSSD"), a union school district under 16 V.S.A. §701(c), which includes CVU and four elementary schools located in the towns of Shelburne, Williston, Charlotte, and Hinesburg. CVU is operated by the Employer, the Champlain Valley Union High School Board of School Directors, and as such is a municipal employer as defined in 21 V.S.A. §1722(a)(13).

3. By letter dated July 24, 1980, the Employer stated its position that the appropriate unit should consist of the job classifications requested by the Union, plus the classifications of custodian and bus driver. The Employer also stated that the following positions should be excluded as either supervisory or confidential under 21 VSA §1722(12), §1722(12)(B), and §1722(12)(E).

<u>Position</u>	<u>Basis of Exclusion</u>
Secretary to Principal	Confidential
Secretaries to Associate Principals (2)	Confidential
Supervisor of Maintenance	Supervisor
Night Supervisor (Maintenance)	Supervisor
Cafeteria Agent/Manager	Supervisor
Bookkeeper	Confidential

4. At the hearing before the Board, the Union stipulated to all of the exclusions requested by the Employer in its letter of July 24, 1980, in the event the Board found the unit proposed by the Employer to be the appropriate staff unit at CVU.

5. The Union also stipulated at the hearing that the larger unit proposed by the Employer was an appropriate unit for collective bargaining, involving employees with a community of interests.

6. No evidence was submitted to differentiate between the units proposed by the Union and the Employer which would indicate an overriding community of interests existed among the aides, secretarial/clerical (hereinafter, "secretaries") and cafeteria employees, which did not exist between those same employees and the bus drivers and custodians.

7. Personnel and labor relations for all the schools which comprise the CSSD are the responsibility of and are centrally monitored by the Director of Personnel Services, James Rice, at the CSSD Superintendent's office. His overall responsibilities are accurately set forth in Employer's Exhibit #2 and include generally contract negotiations and wage and

personnel policy administration throughout all the district schools. He reports to the CSSD school board which, in turn, is responsive to various local school boards, and promulgates policy made by the CSSD school board.

8. The organizational structures and processes for: hiring, supervising, evaluating, disciplining, suspending, and discharging all the CVU employees material to this case are the same. Essentially, the employee's immediate supervisor, such as the supervisor of maintenance or cafeteria manager is the first line Employer representative in the supervisory chain of command, who, in turn, effectively recommends final personnel action taken by the principals at CVU. In some instances, a first line supervisor must first initiate personnel actions through an associate principal who, in turn, makes a recommendation to the school principal. The associate principal or principal is both the first line and final decision-making supervisor of his personal secretary.

9. The current wage rates applicable to the employees included in the unit proposed by the Union and the bus drivers and custodians are forth in Employer's Exhibit #7 (Recommended Hourly Rate Ranges for CSSD Hourly Employees) and are as follows:

<u>Position</u>	<u>Hourly Rate</u>	
	(minimum)	(maximum)
Bus Drivers	\$ 4.60	\$ 5.40
Custodians	3.90	5.10
Typist-Clerk-Receptionist	3.90	5.10
Secretaries-General Office	4.20	5.50
Aides (classes 1 - 4, class and pay are commensurate with degree of student involvement)	3.35	4.80
Cook or Baker	3.90	5.10
Assistant Cook or Baker	3.65	4.85
Laborer or General Kitchen Help	3.35	4.00

10. The Employer considers "full-time" employees to be "those hired and scheduled to work at least 35 hours per week, 52 weeks per year" (Employer's Exhibit #8). All others are considered "part-time" employees. Under the Employer's definition, CVU bus drivers, cafeteria workers, most of the secretarial and clerical workers, and about 1/3 of the petitioned-for aides are CVU "part-time" employees. The remaining aides, secretaries and custodians are considered "full-time" CVU employees under the CVU personnel policy (Employer's Exhibit #8).

11. Generally, full-time CVU employees are entitled to more types and better levels of fringe benefits.

* 12. While all classes of employees in both the Employer proposed and petitioned-for units share the same general workplace and working conditions, some classes of employees in the course of their jobs interact with certain classes of employees relatively more frequently than others. For example, there is daily contact between custodial and cafeteria employees by virtue of their common responsibility to clean the cafeteria. Another group of employees, the bus drivers, aides and secretaries, all participate in a two-day workshop relating to student discipline and care before school opens in September. Some bus drivers, aides and secretaries then serve with other CVU employees on a "leadership team" which meets twice a month throughout the year to discuss student-related problems.

13. CSSD on behalf of its member union schools, negotiates collective bargaining contracts with certified teaching staff at CVU, Williston, Shelburne, Charlotte, and Hinesburg. VEA/NEA represents all but the Williston teachers' unit (which is represented by another teachers'

union, the American Federation of Teachers). There are currently no recognized bargaining units within the CSSD involving non-certified staff.

14. The Employer is currently required to negotiate only with the one recognized bargaining representative at CVU, the CVU certified teachers' union.

15. The Employer currently meets separately with the aides, secretaries cafeteria workers, bus drivers, and custodians to discuss wages and working conditions.

16. The Board takes official notice of the fact that the petitioner party to this case previously sought in 1979 to represent the same group of employees it seeks to represent here: the CVU instructional and non-instructional aides, secretaries and cafeteria workers. However, after an investigation into the matter by a board agent to determine whether any question of the appropriate unit or representation existed, the parties agreed to an appropriate unit which also included the CVU bus drivers and custodians.

17. A consent election was held on September 6, 1979, the results of which resulted in an order of non-certification of the petitioner here as bargaining representative of the agreed upon employee group. The vote was: 24 - no union, 20 - Champlain Valley Union High School Staff Association.

18. If, as a result of these current unit determination proceedings, the Board ordered that two appropriate units existed, or alternatively, that the petitioned-for unit was the only appropriate unit here, it is possible that the Employer could be required at some point in time to negotiate with at least two and possibly three non-certified employee

units. It is also possible, if the administrators at CVU also unionized, that the Employer could be required to bargain with as many as five employee units.

19. One major estimated additional cost to the Employer of bargaining with two non-certified employee units, in addition to bargaining with the CVU teachers' unit, would be \$12,000. That amount represents the salary of a 1/2-time labor relations professional to assist the CSSD Director of Personnel Services in the negotiations and contract administration of an additional collective bargaining unit. The Director of Personnel Services currently spends 50 percent of his time engaged in negotiation-related activities.

20. The Employer's administrators, in addition to the CSSD Director of Personnel Services, would also be affected by the increase in bargaining units at CVU. In the event that two or three non-certified employee units were formed rather than one, there would be additional burdens in matters of contract administration (such as grievance procedures) to the extent that each unit's contract differed.

21. Potential added costs resulting from excessively competitive bargaining ("whipsawing") between two or three non-certified employee units could plausibly develop, but are incalculable on the state of the record here.

OPINION

This case differs from our prior unit determination cases because the Union wants a unit of less than all employees while the Employer insists that if there is to be a union, it should be "wall to wall" and include all employees in the unit. Doubtless each party is maneuvering

for partisan electoral advantage, but we are concerned with establishing a policy which fosters productive labor management relations. With this in mind, we decide whether the unit should include instructional and non-instructional aides, secretaries, cafeteria workers, bus drivers, and custodians; or whether it would be appropriate to exclude the bus drivers and custodians as requested by the Association.

The conflict here is between representational democracy, and bargaining efficiency. Our question is whether the policy of the Labor Act is best carried out by allowing those who wish to unionize to do so even if many small units are created. In attempting to resolve this question our earlier cases are not compelling. In those, the usual pattern has been one in which the Association has sought a large unit and the Employer has tried to fractionalize it. c.f. Windham Northeast Support Staff Association and Board of School Directors, Bellows Falls Union High School, Town of Rockingham, 3 VLRB 167 (1980). No conflict between the principles that concern us here occurs in that type of case, since we were able to give effect to the representational wishes of employees and a policy of bargaining efficiency by approving the larger unit.

Therefore, in resolving this question, we look closely at our Municipal Employee Relations Act 21 V.S.A. §1721 et seq., which in §1724 directs us to consider the interactions of three factors: community of interest, the deleterious effects of overfragmentation, and the extent of employee organization.

No evidence was submitted in this case sufficient to support a finding that there is any distinct community of interest unique to secretaries, aides, and cafeteria workers which does not exist among all the non-certified CVU employees. All these employees have a common

workplace, similar general conditions of employment, same supervisory chain of command, non-professional employee status and commensurate level of pay. The Association made no effort to distinguish the two groups and, indeed, conceded their homogeneity. Hence, on the community of interest criteria alone, no reason exists to certify the unit petitioned for.

On the other hand, we think this record does support a finding that the division of a single non-certified employee bargaining unit would result in fragmentation producing some degree of adverse effect on the Employer's operation. As a minimum, the Employer will either be required to hire additional people to assist with negotiations and contract administration, or else reassign duties of existing staff to these functions. Some additional cost will be incurred. It is probable that differences in rules governing organized workers as distinguished from those who choose not to organize will produce conflicts requiring management time to reconcile. Possibly an entirely different union will organize these employees asked to be excluded today, requiring management to accommodate not only to new contracts, but also to new union administrators as well. On another record these factors might have little significance, but where, as here, there are no facts in the community of interest realm pulling the other way, they are decisive.

Their decisive character derives from a strong public policy favoring the broadest possible unit in the public sector. See generally Kheel, LABOR LAW (1977), Vol. 18I §49.02[2] and §49.03[2] at 49-39 - 49-41. The case against proliferation of public sector bargaining units includes at least these considerations: 1) the difficulty the employer would have in maintaining a tradition of uniformity in the wages, benefits, and working conditions provided to similarly-situated employees; 2) possible adverse

effects of excessive competition among rival employee organizations which results in Balkanization of employee groups and whipsaw bargaining; and 3) institutional complications of bargaining with a multiplicity of units in view of the need to incorporate the financial impact of negotiated agreements into the budgetary process of the governmental unit, which is usually put to the voters on one statutory date. The Massachusetts Labor Relations Commission quoting the leading case in that state against overfragmentation, Jordan Marsh v. M.L.R.C., 316 Mass. 748, 56 N.E.2d 915 (1944), has stated:

Bargaining units must, as far as is reasonably possible in view of all pertinent factors, be adopted to the manner in which the Employer's business is habitually carried on and stress must be laid upon securing groups of employees who have common interests in the more important matters which are likely to become subjects of collective bargaining, so that they can speak with a common voice in such matters. It is also incumbent upon us to gather into each of such groups the largest number practically possible of employees having such common interests in order that discord may be minimized, and that the Employer may not be continually hampered by the jealousies and conflicting or competitive claims of a large number of small rival units which must work together for the Employer, but which may choose to be represented by different and possibly antagonistic unions. As cogently expressed in the Jordan Marsh case, the Employer ought not to be Balkanized. Town of Cohasset, 1 MLC 1184, 1187 (1974).

We find these considerations worthy of respect.

Here we find no distinct community of interest between the two groups, coupled with a proposed unit which would produce some adverse effect upon the operation of the municipal employer referenced in 21 V.S.A. §1724(c)(2). We are mindful that management may perceive any union at all as an adverse effect. However, the Act's policy is to regard unionization itself as beneficial. But where management advances some cogent reasons there must be some evidence to contradict asserted adverse effects if we are to disregard them. If on this record, then, we were to decide that the proposed unit is "an appropriate unit", we would

possibly be faced quickly with the question of whether the bus drivers and custodians were also another "appropriate unit". That aside, if we must accept the petitioner's unit, we come perilously close to making the extent of employee organization the controlling factor, something we are prohibited from doing under 21 V.S.A. §1724(d).

We think the policy provisions of the Act "to protect the rights of individual employees to self-organization" are to be given great weight, but we are also required to "protect the rights of the public in connection with labor disputes." 21 V.S.A. §1721. We think public rights are protected by larger units. This is not to say that smaller units will not be sanctioned, but it is to say that evidence is required to support that result on the facts of each particular case. Absent such evidence, here we approve the larger unit.

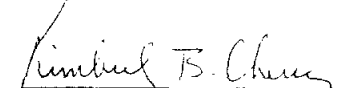
ORDER

NOW, THEREFORE, it is hereby ORDERED pursuant to 21 V.S.A. §1724 that:

1. a collective bargaining unit for instructional and non-instructional aides, secretarial/clerical employees, cafeteria workers, bus drivers, and custodians is appropriate at Champlain Valley Union High School; with the exception of those employees to which the parties have agreed are confidential or supervisory under the Act; and that
2. a secret ballot election shall be conducted by this Board within thirty days (or as the Board may order) to determine whether or not these employees wish to be represented exclusively for collective bargaining purposes by the Champlain Union High School Staff Association, or no union.

Dated this 18th day of December, 1980, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


Robert H. Brown