

VERMONT LABOR RELATIONS BOARD

TWINFIELD STAFF ASSOCIATION, VEA/NEA)	
LOCAL #430)	
)	
and)	DOCKET NO. 80-17
)	
BOARD OF SCHOOL DIRECTORS OF THE)	
TWINFIELD UNION SCHOOL DISTRICT #33)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On February 27, 1980, the Twinfield Staff Association, Vermont Education Association, National Education Association, Local #430 (hereinafter, the "Petitioner"), filed a Petition for Election of Collective Bargaining Representative with the Vermont Labor Relations Board pursuant to 21 V.S.A. §1724(a)(1). The employee unit the Petitioner seeks to represent is composed of the custodians, bus drivers, and custodian-bus drivers combined employed by the Board of School Directors of the Twinfield Union School District #33 (hereinafter, the "Employer").

By letter dated March 12, 1980, filed with the Board on March 13, 1980, the Employer indicated a question of unit determination exists and requested a hearing.

On May 22, 1980, a hearing was held at the Board hearing room in Montpelier. Members Robert H. Brown and William G. Kemsley, Sr. were present. Chairman Kimberly B. Cheney was absent and Member Brown presided as Acting Chairman. Allan T. Stook, VEA/NEA UniServ Director, District #12, represented the Petitioner. John E. O'Brien, Superintendent of Schools, represented the Employer.

Requests for findings of fact and memorandum were filed by the Employer on June 3, 1980. The Petitioner filed no requests or memorandum.

FINDINGS OF FACT

1. The Employer is a "municipal employer" within the meaning of 21 V.S.A. §1722(13).

2. Those employees included in the proposed unit are named on Petitioner's Exhibit #1, which lists the incumbents of four combined custodian-bus driver positions, five bus driver positions, and two custodian positions.

3. The Employer concedes that the following seven positions and incumbents are "municipal employees" within the meaning of 21 V.S.A. §1722(12) and appropriate for inclusion in the proposed unit (See Petitioner's Exhibit #1):

4 Custodian-Bus Drivers;

John Armstrong,
Richard Bagley,
Ralph Lunge,
Lee Stone,

1 Bus Driver;

Thomas Corbett, and

2 Custodians;

Silvio Cerutti, and
Raymond Grout.

4. Those positions and incumbents the Petitioner seeks to include in the unit which the Employer contends are not appropriate are as follows:

4 Bus Drivers;

Barbara Bickford,
Lois Burnham,
Greta Sayers, and
Ramon Spooner.

5. 21 V.S.A. §1722(12) in combination with 21 V.S.A. §1722(12)(c) states, in pertinent part, that a:

"Municipal employee" means any employee of a municipal employer ... except ... individuals who have been employed on a probationary, provisional or other non-permanent status, or on a temporary, seasonal, on call or part-time basis. "Part-time" means 20 hours per week or less. "Seasonal" means fewer than 100 working days in any calendar year.

6. It is the Employer's position in contesting the inclusion in the unit of the four bus drivers listed in finding #4, infra, that bus drivers Bickford, Burnham, and Sayers should be excluded because they are "part-time employees" and that bus driver Spooner should be excluded because he did not sign a contract for this past year (1979-1980).

7. Bus driver Corbett, admitted by the Employer as appropriate for inclusion in the bargaining unit, drives more than twenty hours per week regularly.

8. Bus drivers Burnham, Bickford, Sayers and Spooner drive twenty hours or less hours per week. Specifically, each bus driver at issue drives the following number of hours, pursuant to the daily "dry road conditions" schedule of hours indicated on Petitioner's Exhibit #3:

<u>Bus Driver</u>	<u>Hours per Week</u>
Lois Burnham	13.75
Barbara Bickford	12.50
Greta Sayers	20.00
Ramon Spooner	15.00

9. In addition to receiving compensation for actual hours driven on their normal routes, bus drivers receive a certain amount (currently \$2.00, half the hourly rate) for each time they appear at the school to start their route. This compensation is termed an "appearance fee."

10. Each driver is credited with two "appearance fees" daily on normal full school days. At some point during the day, the driver is required to

clean and refuel the bus. Immediately preceding each run (normally two times a day), each driver is responsible for starting and allowing the bus to warm up for a period of approximately fifteen to twenty minutes, during which time the driver will conduct an equipment safety check. At some point during the day, bus drivers may need to spend time on discipline problems with their riders and the school principal.

11. While there is insufficient evidence to determine exactly how long it took, testimony indicated the time required to complete non-driving bus driver responsibilities varies from driver to driver and that time is likely to exceed one half hour daily.

12. Bus drivers are called upon occasionally to drive for school field trips and sporting events. This extra duty is normally not available to combined custodian-bus drivers, except Mr. Bagley, but is assigned to drivers Spooner, Burnham, Bickford and Sayers on a voluntary basis. Mr. Bagley's contract does require him to do some extra-curricular driving (See Petitioner's Exhibit #4).

13. Bus driver Spooner volunteers for and receives most of the extra-curricular driving assignments, as bus drivers Burnham, Bickford and Sayers prefer not to. Also, the Employer prefers to assign Mr. Spooner to extra-curricular trips rather than pay overtime to Mr. Bagley, a full-time custodian-bus driver.

14. Bus drivers are appointed on an annual basis for a ten month period coinciding with the academic year. Individual contracts are issued by the Employer to the regular bus drivers which set forth the terms and conditions of employment for that period. This has been the practice for at least the past three years, 1977-1978, 1978-1979, and 1979-1980.

15. Bus drivers Burnham, Sayers and Bickford all signed individual ten-month contracts for the 1979-1980 school year. Bus driver Spooner refused to do so, because he wanted the freedom to take a mid-winter Florida vacation.

16. The Employer agreed to hire Spooner without a contract. Bus driver Spooner did, however, drive regularly and was unavailable to drive only during that period he did, in fact, take a two week vacation in Florida. In all other respects, bus driver Spooner performed the same duties daily as the other drivers on contract.

17. In years prior to 1979-1980, Ramon Spooner has served as a substitute bus driver for the Employer, driving only occasionally.

18. Petitioner's Exhibit #2 represents a tally of the hours Ramon Spooner has worked outside of his normal route. The figures represent hours of driving for extra-curricular trips from the beginning of the school year to the May 21, 1980, hearing date on this matter. Assuming a 180 day school year, which in turn is a 36 week school year, and subtracting approximately 4 or 5 school weeks remaining after the hearing date, Ramon Spooner drives about 8.5 hours extra per week on a regular basis. Therefore, bus driver Spooner drives 15 hours a week on his regular route plus 8.5 hours a week on extra-curricular trips for an average of approximately 23.5 hours per week.

19. There is insufficient evidence on record to determine the actual hours of extra-curricular driving per week for the remaining bus drivers, but testimony of Driver Spooner and Superintendent O'Brien indicated Mr. Spooner assumed the greatest proportion of this type of work because it suited his schedule well.

20. Bus driver Sayers is scheduled to drive 20 hours per week regularly. She also works at least an additional 2.5 hours per week, during which time she cleans the bus, checks the equipment, refuels and tends to discipline matters. Bus driver Sayers works a minimum of 22.5 hours a week.

OPINION

Here we are required to decide if certain bus drivers employed by the Twinfield Union School District are "municipal employees" pursuant to 21 V.S.A. §1722(12) and therefore are appropriate for inclusion in the bargaining unit proposed by the Twinfield Staff Association. The Employer agrees to the appropriateness of other staff included in the petition, two full-time custodians, four combined custodian-bus drivers, and one full-time bus driver. The Employer's objection to the inclusion of the four bus drivers at issue here — Barbara Bickford, Lois Burnham, Greta Sayers, and Ramon Spooner — is premised on 21 V.S.A. §1722(12)(c). That section of the statutory definition of "municipal employee" excludes:

individuals who have been employed on a probationary, provisional, or other nonpermanent status, or on a temporary, seasonal, on-call, or part-time basis.
"Part-time means 20 hours per week or less. "Seasonal" means fewer than 100 working days in any calendar year.

The major exception to "municipal employee" status pertinent here is "part-time" status. The Employer argues that bus drivers Bickford, Burnham, and Sayers should be excluded because they are employed on a part-time basis. The Employer argues bus driver Spooner should be excluded for reasons less clear, but mainly because he has been employed on an "as needed" basis without a contract.

The test of part-time status is set forth in the statute. We need only determine whether a particular employee at issue works in excess of twenty hours per week. In another unit determination case involving part-time

status and bus drivers, Teamsters, Chauffeurs and Warehousemen, Local 597
and Chittenden County Transportation Authority, 1 VLRB 454, 460 (1978), this
Board noted that:

The statute does not state whether the "twenty hour or less" criterion is an arithmetic mean, median, mode or what. In the absence of more definite statutory guidelines, this Board will determine that the criterion of twenty (20) hours or less shall be determined by dividing the total number of hours worked for a given period by the number of weeks in the period.

Where the parties admitted into evidence without objection Petitioner's Exhibit #3 which represents the daily driving schedule, we presume those figures to be an accurate representation of the number of bus driving hours for a normal school day. No evidence was introduced to suggest the number of hours spent driving the regular routes varied substantially over a greater period of time except for the general conclusion that if road conditions were adverse, driving time would be likely to increase. Based on this information, plus the testimony of bus driver Spooner and custodian-bus driver Bagley who testified as to the non-driving responsibilities required of bus drivers, we conclude that bus driver Greta Sayers works in excess of 20 hours per week regularly. Ms. Sayers' actual driving time, excluding any extra-curricular trips, is 20 hours per week (See finding #8, infra). Assuming she spends a minimum of 30 minutes daily cleaning her bus, refueling, conducting safety checks and dealing with discipline problems, she works 22.5 hours per week. Actually, that figure is probably low because testimony indicated non-driving duties may consume an additional 40 to 60 minutes a day. We find that Mrs. Sayers should be included in the unit as a full-time "municipal employee."

Bus driver Ramon Spooner, as well, should be included in the proposed bargaining unit. We do not find, as the Employer contends, that he has been most recently employed on an "ad hoc or as needed" basis. Nonexistence of

a written employment contract is not a statutory reason for exclusion from "municipal employee" status.

The record shows that bus driver Ramon Spooner, with the exception of a two week, pre-announced, mid-winter vacation, reported to work every school day in the same manner and at the same rate of pay as those bus drivers who had consented to sign contracts issued by the Employer for the 1979-1980 school year. If in fact Mr. Spooner drove on an "as needed" basis, his services were needed virtually every school day. Mr. Spooner was not literally "called in" to drive on those days, but instead reported to work independent of any communication with the Employer. He was not a substitute bus driver as he had been in prior years with this Employer.

However, the fact that Mr. Spooner was not employed on an "as needed" basis, standing alone, does not lead us to conclude that his position should be in the unit. What does confer full-time and thus "municipal employee" status here is the fact that Ramon Spooner has been working in excess of 20 hours per week for the Employer on a regular basis this 1979-1980 school year. Had it not been for the average 8.5 hours per week of driving for extra-curricular trips, we would find that Mr. Spooner was instead a part-time employee (15 hours per week of actually driving time on a regular daily route plus an estimated 2.5 to 5 additional hours per week spent on non-driving responsibilities equals 17.5 to 20 hours per week). But, when the 8.5 hours per week of extra-duty driving time is added to a regular work week of close to twenty hours, Mr. Spooner clearly has been carrying a full-time workload. We are not persuaded that the fact Mr. Spooner volunteered for much of the extra duty hours changes our classification of his work status where the record revealed that none of the other bus drivers (not custodian-bus drivers) would volunteer for such duty. Furthermore, the Employer admitted that Mr. Spooner's services were utilized most often in

order to prevent costly overtime payments to full-time custodian Richard Bagley. While that may be sound management practice, it does not, in turn, deprive Mr. Spooner full-time employee status if that is how he is being utilized. Mr. Spooner testified that he had indicated to the Employer prior to the opening of the school year that he would accept as many extra hours as were available in the ensuing year in order to boost what he perceived was a low salary. In our view, he apparently "volunteered" generally for as many hours as possible as a condition, albeit informal, of his employment. The record shows the Employer met that "condition" or at the very least, that expectation of Spooner.

In closing, because we find insufficient evidence of additional hours worked which would similarly increase the hours of bus drivers Barbara Bickford and Lois Burnham, we find they are part-time employees and are not appropriate for inclusion in the proposed bargaining unit.

ORDER

Now, therefore, for all the foregoing reasons and based on the foregoing findings of fact, it is hereby ORDERED pursuant to 21 V.S.A. §1724 that:

1. A collective bargaining unit consisting of the full-time custodian-bus drivers, custodians, and bus drivers employed by the Twinfield Union School District #33 as listed below is appropriate:

Custodians-Bus Drivers

John Armstrong
Richard Bagley
Ralph Lunge
Lee Stone

Bus Drivers

Thomas Corbett
Greta Sayers
Ramon Spooner

Custodians

Silvio Cerutti
Ramond Grout

With the exception of:

Bus Drivers

Barbara Bickford
Lois Burnham

and

Supervisor of Transportation and Maintenance

James Goslant

and that

2. A secret ballot election shall be conducted by the Board within 30 days (or as the Board may order) to determine whether these employees wish to be represented by the Twinfield Staff Association or No Union.

Dated this 26th day of June, 1980, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Robert H. Brown, Acting Chairman


William G. Kemsley, Sr.