

VERMONT LABOR RELATIONS BOARD

In re: UNIT DETERMINATIONS of)	
)	
Windham Northeast Support Staff)	
Association, Local 720, VEA/NEA)	
)	
and)	Docket No. 79-94R
)	
Board of School Directors Bellows)	
Falls Union High School District No. 27;)	
)	
and)	
)	
Windham Northeast Support Staff)	
Association, Local 720, VEA/NEA)	
)	
and)	Docket No. 79-93R
)	
Board of School Directors Town of)	
Rockingham School District)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On December 14, 1979, the Windham Northeast Support Staff Association, Local 720 VEA/NEA, (hereinafter the "Association") filed two Petitions for Election of Collective Bargaining Representative with the Vermont Labor Relations Board (hereinafter, the "Board"): one with respect to the Town of Rockingham School District (Docket No. 79-93R) and one with respect to the Bellows Falls Union High School District No 27 (Docket No. 79-94R). These petitions represent two, distinct, unit determination cases for collective bargaining representatives at each of the named school districts.

The Association claims as the appropriate bargaining unit in both petitions, "one bargaining unit composed of secretarial, clerical, para-professional and custodial employees."

By letter dated December 26, 1979, filed with the Board on December 27, counsel for both employing school districts represented that questions of unit determination exist and requested a hearing before the Board.

A hearing was held on March 27, 1980, in Montpelier, Vermont, before Board members Kimberly B. Cheney, William G. Kemsley, Sr., and Robert H. Brown. The Association was represented by Perry Kacik, VEA UniServ Director, District III. The school districts (the "Employers") were represented by Attorney Frederick Pope, Jr.

At the hearing, the parties agreed as to those employees who would be excluded as confidential employees from the proposed bargaining units. The parties also agreed to separate certain "Title I" employees from inclusion in the instant petitions where those personnel are employed by the Windham Northeast Supervisory Union.

With their consent, the Board ordered that the parties file stipulations for each case by April 8, 1980, as to: 1) the distinction between "full year" and "school" year employees; 2) the nature of work performed by a "teaching aide," "teaching assistant," "secretary," and "custodian"; and 3) the number of each respective class of employees employed at each of the named school districts.

It was agreed between the Employers and the Association at the hearing that the sole unresolved issue in both cases under Dockets No. 79-94R and 79-93R concerns whether the appropriate bargaining units should include custodial employees in a general employee unit or whether those employees should constitute a separate unit.

Memoranda of Law were filed with the Board by the Association and the Employers on April 14, and April 16, 1980, respectively.

FINDINGS OF FACT

Based on the stipulations of fact and the facts represented by the parties in their memoranda, we find the following facts.

I

REGARDING EMPLOYEES OF BOTH THE TOWN OF ROCKINGHAM SCHOOL DISTRICT and the BELLOWS FALLS UNION HIGH SCHOOL DISTRICT No. 27

1. An employee who is employed on a full year basis is employed for fifty-two (52) weeks a year.
2. An employee who is employed on a school year basis is employed for not more than two hundred (200) days a year; specifically, those days during the year when school is in session and students are in attendance, and a number of days immediately prior to the opening of school in September and after the closing of school in June.
3. An employee who is employed as a custodian performs custodial and maintenance work in and around the school buildings and is in no way involved in the instruction of the students.
4. An employee who is employed as a teaching aide or as a teaching assistant works with or under the supervision of a teacher in a classroom or laboratory and is engaged in the instruction of students.
5. An employee who is employed as a secretary performs secretarial or clerical work, generally for a principal or other administrator, and is not involved in the instruction of students.
6. The teaching aides, assistants, secretaries and custodians of each school in the districts share the same general work location.
7. The same supervisory "chain of command," consisting of school board directors, superintendent and school principals exists in both school districts. While there are head custodians at Rockingham Middle School

and Bellows Falls Union High School, their function is to serve as a foreman of the custodians and those positions are subordinate to the principal and his superiors.

8. The Board has reviewed the petitions and authorization cards submitted in these cases pursuant to 21 V.S.A. §1724(b) and finds not less than thirty percent of the proposed bargaining unit at each district desires to be represented by the Association for the purposes of collective bargaining.

II

EMPLOYEES OF BELLOW FALLS UNION HIGH SCHOOL DISTRICT No. 27

1. As of April 7, 1980, the date of stipulation to these facts, the Bellows Falls Union High School Board employs five (5) custodians, four (4) of whom are employed on a full year basis and one (1) of whom is employed on a school year basis.

2. As of that same date, the Bellows Falls Union High School Board employs six (6) teaching aides and assistants, all of whom are employed on a school year basis; and three (3) secretaries, one (1) of whom is employed on a full year basis and two (2) of whom are employed on a school year basis.

III

EMPLOYEES OF TOWN OF ROCKINGHAM SCHOOL DISTRICT

1. As of April 7, 1980, the date of stipulation to these facts, the Town of Rockingham School Board employs seven (7) custodians, five (5) of whom are employed on a full year basis and two (2) of whom are employed on a school year basis.

2. As of that same date, the Town of Rockingham School Board employs seventeen (17) teaching aides and assistants, all of whom are employed on a

school year basis; and two (2) secretaries, both of whom are also employed on a school year basis.

OPINION

On these facts, the only issue we are required to decide in both cases is whether the custodians of each district should be included in a general employee unit with teaching aides, assistants and secretaries; or are their "interests, needs and general conditions of employment" [21 V.S.A. §1724(1)] sufficiently divergent and dissimilar as to require a separate bargaining unit?

The Employers argue that two bargaining units in each district are appropriate: one for the teacher aides, teacher assistants and secretaries; and a second unit for the custodians. It is the Employers' position that the custodians do not share a community of interests with the other employees by virtue of their full year as opposed to school year term of employment, generally, the "blue collar" nature of their work, and consequently different modes of compensation and levels of fringe benefits.

On the other hand, the Association maintains any separation of the single units as proposed in their petitions would result in overfragmentation of collective bargaining units. The Association claims the overfragmentation would be to such a degree as to adversely affect its ability to represent those employees.

Furthermore, the Association claims that the fact all custodial, clerical and paraprofessional employees at each district are directed by the same supervisory chain of command and the fact that they share the same workplace are convincing evidence that the general conditions of employment

of these classes of employees is more similar than divergent, especially when the relatively small size of the proposed employee unit is considered.

As is often the case, we must strike a balance among the contentions of the parties and reconcile potentially disparate criteria on a particular set of facts pursuant to 21 V.S.A. §1724.

A schematic representation of the parties' positions aids in determining their respective affect on unit size, and thus the issue of overfragmentation.

UNITS AS PROPOSED BY THE PARTIES

	Employers' Position	Association's Position
I. Bellows Falls Union High School District, (Docket No. 79-94R)	2 units: 1) a five member custodian unit; and 2) a nine member aide, assistant, and secretary unit	one, fourteen member general employee unit
II. Town of Rockingham School District, (Docket No. 79-93R)	2 units: 1) a seven member custodian unit; and 2) a nineteen member aide, assistant, and secretary unit	one, twenty-six member general employee unit

The determination of whether or not overfragmentation would result from the creation of separate bargaining units for the custodians is a question of fact. Would a five or seven member bargaining unit be so small as to adversely affect the Association's ability to represent those employees?

The Board has considered this question on a similar set of facts in the unit determination case of Educational Support Personnel Unit of the Missisquoi Valley Education Association and Missisquoi Valley Union High School Board

of School Directors, 1 VLRB 70 (1977). In that case, the Board found that overfragmentation would result from the division of teacher aides and custodians into bargaining units of two (2) and five (5) employees. We feel the same conclusion applies here, where the separation of units in these districts would establish units of five and seven employees. In a larger school district with substantially more employees, a determination of bargaining units by job classification might be more appropriate. Here, however, the relatively small number of employees in all job classifications creates a probability of a high level of interaction among all workers. As was the case in Missisquoi, supra, a community of interests exists between the employees here as well, by virtue of their common work locations; common supervision and organizational structure; and contact with each other, the public and the students. See Columbus School District, 1 NPER 51-10088, Wisconsin Employee Relations Commission decision, 9/13/79, (Unit consisting of teacher aides, secretarial, clerical, food service, and custodial staff was appropriate based on common supervision, common workplace and common fringe benefits); and Centre County Child Development Council, 1 NPER 40-10276, Pennsylvania Labor Relations Board decision, 10/10/79 (A general employee unit was appropriate where those employees all dealt with the children and their needs at the Centre).

We have considered ordering a separate vote be taken among the custodians, pursuant to 21 V.S.A. §1724(c)(1) and as requested by the Employers, to determine whether or not they wished to be included in the proposed bargaining unit. While the authorization cards do indicate a desire for collective bargaining through the Association, they are silent on this issue specifically. Nonetheless, we decline to schedule such a vote, feeling that the overfragmentation resulting from separate bargaining units would produce

more of an adverse effect on effective employee representation than any possible divergence of community of interests here. We note in passing that the custodians themselves have met the thirty percent requirement of interest for forming a collective bargaining unit and selecting a representative. Without such an expression of interest, we might reach a different result.

ORDER

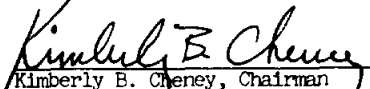
NOW, THEREFORE, it is hereby ORDERED pursuant to 21 V.S.A. §1724 that:

1. A collective bargaining unit for custodians, secretaries, teacher aides and teacher assistants is appropriate in the Bellows Falls Union High School District and the Town of Rockingham School District; with the exception of those employees excluded by stipulation of the parties as confidential employees; and that

2. A secret ballot election shall be conducted by this Board on the same day at each district, 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 Windham Northeast Support Staff Association, or no union.

Dated this 1 day of ^{May}~~April~~, 1980, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


Robert H. Brown