

VERMONT LABOR RELATIONS BOARD

WINDHAM NORTHEAST SUPPORT STAFF)	
ASSOCIATION, LOCAL 720, VEA/NEA)	
)	
and)	DOCKET NO. 80-25
)	
WINDHAM NORTHEAST SUPERVISORY UNION)	
DISTRICT BOARD OF SCHOOL DIRECTORS)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On March 27, 1980, the Windham Northeast Support Staff Association, Local 720, VEA/NEA (hereinafter, the "Association") filed a Petition for Election of Collective Bargaining Representative with the Vermont Labor Relations Board. In that petition, the Association seeks to represent a bargaining unit comprised of the full-time paraprofessional aides and teaching assistants employed by the Windham Northeast Supervisory Union (hereinafter, the "Supervisory Union") at several schools throughout that district.

By letter dated May 15, 1980, the Supervisory Union notified the Board of its position that questions of representation, Board jurisdiction and an appropriate unit existed and requested then that a hearing be held on those matters.

A hearing was held on June 26, 1980, at the Board hearing room in Montpelier. Board members Kimberly B. Cheney, William G. Kemsley, Sr., and Robert H. Brown were present. Attorney Frederick Pope, Jr. represented the Supervisory Union. Perry Kacik, VEA/NEA Director of UniServ District III, represented the Association.

Memoranda were filed by Mr. Kacik and Mr. Pope on July 17 and 21, 1980, respectively. Included with the Association's brief were three additional exhibits (Association Exhibits #1, 2 and 3) to which the Supervisory Union agreed to admit at that time.

FINDINGS OF FACT

1. The Windham Northeast Supervisory Union (hereinafter "Supervisory Union") is comprised of five individual school districts pursuant to 16 V.S.A. §261. Those five districts include the school districts of the towns of: Athens, Grafton, Rockingham and Westminster, and the Bellows Falls Union High School District No. 27.

2. The Supervisory Union Board of Directors, pursuant to 16 V.S.A. §262, is comprised of appointed representatives from each member school district, who in turn, were elected school directors for their respective districts.

3. The Supervisory Union receives federal funds from the Education Division of the U.S. Department of Health, Education and Welfare, to administer the provision of certain auxiliary and ~~remedial~~ education services at each of its five member school districts.

4. To provide these special educational services funded by federal grant money, the Supervisory Union employs a number of paraprofessional aides and teaching assistants which work in each of the five school districts within the Supervisory Union.

5. In addition to providing these services to the five public school districts within the Supervisory Union, the Supervisory Union is required by federal program regulations to provide those services to any private schools within that same area.

6. The Supervisory Union does provide those educational services enabled by Title I federal funds to two private schools: Kurn Hattin Homes and Vermont Academy. Only the provision of those services to Kurn Hattin and the employment of paraprofessional aides and teaching assistants there is material to this case.

7. Association Exhibit #3, the Education Division General Administrative Regulations, acronymed EDGAR, is the compilation of general regulations issued by the HEW Education Division which apply to all direct grant and State administered programs of the Education Division, including the Title I program services provided by the employees represented in the petitioner's proposed unit here.

8. The State of Vermont Department of Education is the direct recipient of federal funds for the Title I program services material here and as such is termed the "grantee" of such funds.

9. The State of Vermont Department of Education, in turn, funnels these Title I funds to the Supervisory Union, the "subgrantee."

10. Association Exhibit #3, EDGAR, specifically address the relationship and respective responsibilities of a subgrantee (the Supervisory Union) and a private school (Kurn Hattin).

11. Section 100b.659, p. 22525, of those regulations (Association's Exhibit #3) provides that

A subgrantee may use program funds to make public personnel available in other than public facilities —

(a) To the extent necessary to provide equitable program benefits designed for students enrolled in a private school; and

(b) If those benefits are not normally provided by the private school.

[20 U.S.C. 1221e-3(a)(1)]

12. Under Section 100b.651(a)(3), p. 22524, of those regulations (Association's Exhibit #3) the Supervisory Union is requested to

... maintain continuing administrative direction and control over funds and property that benefit students enrolled in private schools.

13. All paraprofessional aides and teaching assistants employed for the purpose of providing the Title I services, including those aides and assistants whose work location is Kurn Hattin school, are issued a standard employment contract (Employer's Exhibit #5) with the Supervisory Union.

14. The Supervisory Union determines and establishes a uniform wage scale for the Title I employees. That scale sets employee compensation rates for all the aides and assistants, including those at Kurn Hattin school. Progression through the three grade level wage scale is contingent on the paraprofessional certification level of each employee. Employees with the same certification level qualifications are compensated equally, irrespective of their work location.

15. Program continuation from year to year, in the event funds are appropriated by Congress for such purposes and funds are then allocated to the State of Vermont, is contingent upon the completion of a grant application and program proposal by the Supervisory Union.

16. Because Title I program services are provided to Kurn Hattin as well as the five public school districts within the Supervisory Union, the Supervisory Union is required to consult with representatives of Kurn Hattin to consider in its application how individual students in that school will be identified and what their special program needs are. (EDGAR, Section 100b.652, p. 22525, Association's Exhibit #3)

17. Once the program objectives are determined for Kurn Hattin, are then included in the Supervisory Union grant proposal, and are subsequently

approved, the Supervisory Union as grant administrator is responsible for implementing those objectives in accordance with the approved proposal.

18. The Supervisory Union determines annually in preparing the proposal the weekly number of hours for each grant program employee and changes those amounts annually as program needs demand.

19. Changes to Employer's Exhibit #1, a list authored by the Supervisory Union of Title I program aides and assistants and their respective work locations and weekly hours, are based upon changes in identified student needs and available program resources. Various personnel employed by the districts within the Supervisory Union and Kurn Hattin assist in this assessment process.

20. Day to day on site supervision of all Title I employees rests with the teachers and administrators of each school in which they are placed (See Employer's Exhibit #5, lines 3 and 4). The Supervisory Union retains, however, the responsibility for ensuring that all Title I program employees retain paraprofessional certification and a satisfactory level of instructional performance as assessed by the public school district or Kurn Hattin administrators.

21. Kurn Hattin selects those Title I employees who will work at Kurn Hattin, irrespective of the fact those employees will then execute standard employment contracts with the Supervisory Union.

22. Title I employees working at Kurn Hattin are utilized in the same manner as Title I aides and professionals working throughout the Supervisory Union district schools; that is: they are responsible for providing their services to certain special needs students in the manner specified by the program grant proposal.

23. At the hearing on this matter, the Association and the Supervisory Union agreed with the admission into evidence of Employer's Exhibit #1, on record, that only sixteen of the twenty-six Title I aides and assistants employed by the Supervisory Union during the 1979 school year were full-time employees eligible for inclusion in the proposed unit. Those employees and their respective work locations are as follows:

Gifford Lowe	Athens
Shirley Largess	Westminster
Giovanna Patalano	Rockingham
Anne Stickney	Rockingham
Grace Saville	Rockingham
Frances Streeter	Rockingham
Roberta Streeter	Rockingham
Sandra Knowles	Rockingham
Susan Smith	Rockingham
Christine MacLeod	Rockingham
Olive Davis	Rockingham
Jeanne Beam	Rockingham
Wendy Marsh	Kurn Hattin
Nancy Wright	Kurn Hattin
Margaret Reinhardt	Kurn Hattin
Nora Kacik	Kurn Hattin

24. Without conceding its position as a matter of law that no bargaining unit of the above listed employees (finding #21, infra) is appropriate under the collective bargaining provisions of Title 16 or 21 for teachers and municipal employees, the Supervisory Union admitted, on record, that should the Board confer jurisdiction and determine those employees to be municipal employees, it (the Supervisory Union) would challenge only the inclusion of the four full-time Kurn Hattin employees and two others in the unit, Susan Smith and Gifford Lowe.

25. The challenges of Smith and Lowe are based on the Supervisory Union's position that these employees, effective September, 1980, would be working substantially less than twenty hours weekly.

OPINION

In this unit determination case, the issues raised are two-fold. First, are the Title I paraprofessional aides and teaching assistants in the proposed unit "municipal employees" under 21 V.S.A. §1722(12), and not exempted under 21 V.S.A. §1722(12)(E). And second, are those full-time aides and assistants whose work location is Kurn Hattin Homes, a private school, exempted from "municipal employee" status by virtue of the fact Kurn Hattin Homes is not a "municipal employer" under 21 V.S.A. §1722(13).

It is the Supervisory Union's position that it is not required to negotiate with the aides and assistants the Association seeks to represent under either the collective bargaining laws of the Teachers Labor Relations Act, 16 V.S.A. §1981 et seq., or the Municipal Employee Relations Act, 21 V.S.A. §1721 et seq. With regards to the nonapplicability of 16 V.S.A. §1981 et seq., the Supervisory Union contends these aides and assistants here are not "teachers," as that term is defined in 16 V.S.A. §1981(5) as "any person certifiable as a teacher." Nor are the aides and assistants "municipal employees," under the Municipal Act, not because the Supervisory Union denies "municipal employer" status, which it admits [contra VEA v. Washington West Supervisory Union, et al., 3 VLRB 157 (1980)], but because these employees hold paraprofessional (as opposed to teacher) certifications and should be excluded under 21 V.S.A. §1722(12)(e) as "certified employees of school districts."

The Supervisory Union does deny, however, that it is the employer of the aides and assistants servicing Kurn Hattin students, contending the substantive supervisory functions involving those employees (for example, on site supervision, evaluation, and hiring) establish the controlling employment relationship with Kurn Hattin.

The Association, in response to the employer's challenge of Board jurisdiction of certified paraprofessional employees, points to a previous Board decision where that same issue was addressed, VEA and Rutland City School Department, 2 VLRB 108 (1979), and urges us to rule similarly here. In that case, the Board held:

In our opinion the statutory reference in §1722(12)(E) to "certified employees of school districts" refers to employees who are required to be certified by agency regulation. The reason for this is that in order to construe statutes together the same definition of a term which has been used in one section of the statutes must be applied when that term is used in another section of the statutes. Teachers are the only employees of school districts who are required to be certified by statute (16 V.S.A. §1694) and they are, therefore, the only employees of school districts who are excluded as certified employees under §1722(12)(E). We find, therefore, that certified paraprofessionals of school districts are municipal employees and are appropriate members of the proposed bargaining unit.

The second issue, that of the appropriateness of the proposed bargaining unit, the Association contends revolves around the standard collective bargaining concept of "community of interest" between employees, citing statutory authority specifically in 21 V.S.A. §1724(c)(1) and (2). The Association then points out the following common employment factors shared by the employees in question: 1) a common contractual employment agreement with the Supervisory Union (Employer's Exhibit #5); 2) a uniform wage scale established by the Supervisory Union; 3) a common educational mission in providing those Title I services in accordance with specific program goals; 4) program continuation and changes based on Supervisory Union initiatives; and 5) a similar structure of supervision, with full legal responsibility for program supervision and administration resting with the Supervisory Union.

We concur with the Association on both issues, for those same reasons. First, we see no reason on these facts to rule any differently than in Rutland, supra, regarding "municipal employee" status of these certified paraprofessionals. The issue and the result are indistinguishable. Admittedly, the second issue is more complex, but may be answered by determining who has control over those employer-employee functions traditionally associated with an employment relationship, a test we applied in VEA v. Washington West Supervisory Union, supra at 165.

We conclude that control rests with the Supervisory Union here. True, there is evidence that some important functions, namely hiring authority and direct employee supervision, have been delegated to Kurn Hattin Homes. While this is a substantial delegation of authority, the fact remains that the superintendent is the public official responsible for administering public funds, and he is ultimately accountable for all action using these funds. A voluntary abrogation of authority for purposes of comity is not equivalent to a legal divorce of power to supervise and control these employees. In our view, the superintendent has both the duty and authority to see that public funds are utilized properly. Moreover, the fact that Kurn Hattin directly supervises its Title I aides and assistants in the classroom does not distinguish it from the public schools. Similar delegations of authority have been made by the Supervisory Union throughout the five public school districts. Both public and private employment contracts (Employer's Exhibit #5) issued to all Title I employees provides that the aide or assistant "reports to: teacher responsible for child" and is "supervised by: building principal or head teacher."

In addition to the evident community of interests shared by the Title I aides and assistants servicing the public schools and Kurn Hattin Homes, we

find a more compelling reason to include the Title I employees at Kurn Hattin in the same unit as the others. The Supervisory Union alone "holds the purse strings" in the employment relationships of all Kurn Hattin Title I aides and assistants. To deny those employees at Kurn Hattin the opportunity to negotiate their wages, a most significant condition of employment, would controvert the purposes of the Act set forth in 21 V.S.A. §1721. That section provides that municipal employees shall have the right to form and join an employee organization for the purpose of collective bargaining. If we were to concur with the employer, a substantial number of aides would be denied the benefit of the Act. Kurn Hattin Homes is not an employer entity in this case with which the Title I aides and assistants working there can negotiate. It has no funds for this program. Employment contracts are between the Title I employees and the Supervisory Union, without exception. Likewise, the Supervisory Union determines all Title I employee wages. These significant facts compel no other result than to conclude the proposed unit is appropriate.

ORDER

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

- 1) a collective bargaining unit comprised of the full-time Title I program paraprofessional aides and teaching assistants employed by the Windham Northeast Supervisory Union at Kurn Hattin Homes and throughout the following school districts of Athens, Grafton, Rockingham, Westminster, and the Bellows Falls Union High School District No. 27 is appropriate; and 2) that a secret ballot election shall be conducted by this Board within thirty days (or as the Board may determine by further order).

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

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


Robert H. Brown