

DECISION OF THE
STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



SAN DIEGO UNIFIED SCHOOL DISTRICT,)
)
Employer,) Case No. LA-R-167X
)
and) PERB Decision No. 170
)
CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION, CHAPTER 600,) June 25, 1981
)
Employee Organization.)
_____)

Appearances: Ralph D. Stern, Attorney for San Diego Unified School District; Madalyn J. Frazzini, Attorney for California School Employees Association, Chapter 600.

Before Gluck, Chairperson; Jaeger and Moore, Members.

DECISION

The San Diego Unified School District (hereafter District) excepts to a hearing officer's determination that a unit consisting only of hourly bus drivers is appropriate for collective bargaining. The Board finds the proposed unit to be inappropriate and denies the petition filed by the California School Employees Association, Chapter 600 (hereafter CSEA).

FACTS

In 1977, the Educational Employment Relations Board (hereafter EERB)¹ established a classified operations-support

¹Prior to January 1, 1978, the Public Employment Relations Board was called the Educational Employment Relations Board.

unit in the District which included, "maintenance, warehousing, and transportation employees; food service employees; building services employees." Part-time hourly bus drivers were excluded from the unit.²

On January 10, 1980, CSEA filed a request for recognition with the District, seeking to represent the "temporary, hourly pupil transportation department drivers." The employer, doubting the appropriateness of the unit, denied the request, and the matter was adjudicated by an agent of the Public Employment Relations Board (hereafter PERB or Board).

There are five separate classifications of bus drivers in the District: the monthly type I and II, substitute hourly, temporary hourly, and trainee. The latter three groups comprise the unit that CSEA now seeks to represent. All of the drivers work at the same location, receive the same training, are under the same line of supervision, except the trainees, and perform the same function, transporting pupils in buses and vans. All drivers are paid at the same rate, with the hourly drivers receiving a percentage of the full-time pay. About one-half of the monthly drivers are promoted from the ranks of

²San Diego Unified School District (2/18/77) EERB Decision No. 8. This decision defined the unit as that described in the petitions filed by the Classified Employees Association and Service Employees International Union. Both petitions excluded the drivers covered by the instant petition.

the hourly drivers. The hourly drivers receive no fringe benefits, sick leave, or vacation.

DISCUSSION

In contesting the appropriateness of a separate unit of hourly bus drivers, the District argues that PERB must consider the community of interest that the hourly drivers share with the monthly drivers in the existing unit. CSEA, on the other hand, argues that our Arcadia Unified School District decision (5/17/79, PERB Decision No. 93) restricts the inquiry to whether the unit petitioned for is appropriate standing alone, without regard to a possible community of interest employees may have with those in a pre-existing unit. In Arcadia, supra, the Board declared that it would "not disturb an existing unit when its composition is not at issue.

. . . [w]hen the only issue before the Board is whether one particular requested unit is appropriate, the Board must decide whether that proposed unit, standing on its own, meets the statutory criteria for an appropriate unit for bargaining."
(pp. 12-13).

The facts in Arcadia, supra, differ from the case before us now. At issue there was the placement of counselors, psychologists, nurses, and speech and reading specialists who had been excluded from the certificated unit by a voluntary recognition. While precedent indicated a preference for including pupil support service personnel in teachers'

units,³ under the unique circumstances presented by the case, the Board found that those employees could comprise a separate appropriate unit. Unlike the hourly bus drivers, the pupil support personnel constituted an occupation distinct from teachers and performed different functions in the employer operations. In short, Arcadia does not require the Board to determine a unit without regard to relevant information as to the unit's appropriateness.

More recently in Pleasanton/Amador (6-25-81) PERB Decision No. 169, we noted:

It is not suggested here that the Board can or will accommodate the interests of every nonrepresented group of school employees. Where and under what conditions the Board will or will not grant additional units, small or otherwise, is best left to case-by-case determination.⁴

The facts of this case justify denying the petition.

First and perhaps most importantly, the hourly bus drivers perform the same work as the monthly drivers. Both have virtually identical conditions of employment. Irrespective of

³Los Angeles Unified School District (11/24/76) EERB Decision No. 5; Grossmont Union High School District (3/9/77) EERB Decision No. 11; Oakland Unified School District (3/28/77) EERB Decision No. 15.

⁴In Pleasanton-Amador, *supra*, the Board granted a unit of psychologists who were originally excluded from the unit pursuant to the District's assertion that the psychologists were managerial employees. Unlike the drivers here, psychologists constituted a distinct occupation, none of whom were in the preexisting unit.

their differences in job titles, they are in the same occupation. The hourly drivers' community of interest with the monthly drivers in the overall operations unit is indisputable.

That the hourly drivers also have a community of interest among themselves need not be disproved but that does not end the inquiry into appropriateness of a unit. Every classification possesses a community of interest among its members. Janitors, undisputedly, have more in common with other janitors than they do with gardeners, but we have yet to find a separate unit of only janitors appropriate, absent unusual circumstances. The Educational Employment Relations Act⁵ requires that this Board consider, *inter alia*, the effect of its determination on the efficient operations of the employer.

⁵Government Code section 3540 et seq.

Section 3545(a) states:

In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

An overly fragmented work force would detrimentally affect the employer's operations as we stated in Sweetwater Union High School District (11/23/76) EERB Decision No. 4, p. 11:

It is a legitimate concern that excessive fragmentation of negotiating units may burden an employer with multiple negotiating processes and postures and with a variety of negotiated agreements difficult to administer because their provisions differ. Interorganization competition may increase demands made upon the employer by an employee organization. The employer may have to give the benefits of the "best" settlement in each area of negotiations to all employees to avoid employee unrest or the administrative inconvenience caused by multiple agreements.

To allow the hourly drivers a separate unit would split what is essentially a single work classification into two representation units. The employer would be placed in the position of negotiating over employees doing the same work, not only in two different units, but possibly with two different representatives. This presents a potential for "whipsawing" the employer by competing organizations or for the filing of unfair practice charges against an employer who seeks a single set of employee policies for both groups of drivers. In addition, attempting to manage employees doing the same work under different sets of personnel programs presents a burden on management which this Board finds unacceptable.

Accordingly, the petition is DENIED.

By: ~~Harry~~ Gluck, Chairperson

~~John W. Jaeger~~, Member

Barbara D. Moore, concurring:

I join in the majority's decision with one exception. I do not agree with the view that Arcadia, supra, may be distinguished on the basis that the instant case involves splitting an occupational grouping. See my dissent in Pleasanton-Amador, PERB Decision No. 169, issued this date for a discussion of my views on this issue.

Barbara D. Moore

PUBLIC EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA



SAN DIEGO UNIFIED SCHOOL DISTRICT,)
Employer,) Representation
and) Case No. LA-R-167X
CALIFORNIA SCHOOL EMPLOYEES,) PROPOSED DECISION
ASSOCIATION, CHAPTER 600,) (11/4/80)
Employee Organization.)

Appearances: Ralph D. Stern, Attorney for San Diego Unified School District; Michael Heumann, for California School Employees Association, Chapter 600.

Before Irene Cordoba, Hearing Officer.

PROCEDURAL HISTORY

On January 10, 1980, the California School Employees Association and its San Diego Unified Chapter 600 (hereafter Association or CSEA) filed a request with the San Diego Unified School District (hereafter District) for recognition as the exclusive representative of "temporary, hourly pupil transportation department drivers". No other employee organization intervened. On February 25, 1980 the District filed a Denial of Recognition with the Public Employment Relations Board (hereafter PERB or Board), doubting the appropriateness of the proposed unit.

An attempt to reach voluntary settlement was made at an informal conference held on March 31, 1980. The attempt was unsuccessful and a formal hearing was conducted on

May 29, 1980. The parties jointly requested an extension of time in which to file briefs. Final briefs were filed on October 3, 1980.

ISSUE

Whether a unit of temporary hourly pupil transportation department bus drivers is an appropriate unit for meeting and negotiating under the Educational Employment Relations Act¹.

FINDINGS OF FACT

In 1979 the District had a total K-12 enrollment of 112,309 students. There are 194 educational facilities including 120 elementary, 19 junior high and 13 senior high schools. The District is budgeted for 3,515 classified positions.

At the hearing the parties stipulated that CSEA is an employee organization within the meaning of section 3540.1(d) and the District is an employer within the meaning of section 3540.1(k). They also stipulated that the District is not a merit system employer, within the meaning established by Article 5, Chapter 3 of Division 10 of the Education Code.

Official notice was taken of the Board's decision in San Diego Unified School District² which established appropriate bargaining units for certain classified employees

¹Government Code section 3540 et seq. All future references are to the Government Code unless otherwise indicated.

²San Diego Unified School District (2/18/77) EERB Decision No. 8.

of the District. Specifically, the Board established an office-technical and business services unit, currently represented by the Classified Employees Association and an operations-support unit, currently represented by the Service Employees International Union, Local 102, (hereafter SEIU). The operations support unit includes all permanent monthly paid bus drivers in the District. SEIU was noticed of all proceedings in this case but did not appear.

The District employs a total of 375 bus drivers. Of these 34 are classified monthly drivers and 341 are hourly paid drivers. Eighty-five percent of all drivers are employed in two district programs; the voluntary integration program and the state master plan for special education. Both monthly and hourly drivers are used without distinction in these programs.

The state mandated licensing requirements as well as the training requirements are the same for all bus drivers. All but five of the bus drivers work out of the bus yard in the transportation department. The remaining five are assigned to school sites.

Promotion from hourly to monthly driver is not automatic. When monthly positions open, hourly drivers must compete against any other qualified candidates. Approximately half the monthly bus drivers now employed by the District were formerly hourly drivers.

During the course of their work, all bus drivers have contact with students, teachers and parents. In addition, drivers interact with each other and with other employees in the transportation department. Several transportation employees are included in the operations-support unit; others are in the office-technical and business services unit.

Classified monthly drivers are divided into two classifications, type 1 and type 2 drivers. Type 1 drivers handle large buses, holding 24-79 passengers, and usually transport pupils, teachers and staff on field trips or on other assigned routes. Type 2 drivers normally use smaller vehicles to transport physically and mentally retarded children to and from school.

To qualify for their position, in addition to the necessary license, all monthly drivers must have one year prior commercial driving experience. Most monthly drivers work a standard 8 or 6 hour day. They are all on the same salary schedule and receive health and welfare benefits as outlined in the negotiated agreement between SEIU and the District. Monthly drivers have three levels of supervision within the transportation department. There are five bus operations supervisors, each in charge of a number of monthly and hourly drivers. The bus operations supervisors report to the pupil transportation supervisor who in turn reports to the transportation services director. Promotions for monthly drivers are governed by the District's merit system rules for classified employees.

There are three hourly bus driver classifications; substitute hourly, temporary hourly and trainee hourly. The District employs 21 substitute hourly drivers. These drivers may be used to replace monthly or other hourly drivers, in any of the district programs. Substitute drivers must meet the same training and experience requirements as monthly bus drivers. Substitutes are typically given a five to seven hour shift assignment. Their salary is an hourly rate based on the "A" step rate for monthly drivers. They have the same line of supervision as monthly drivers. Substitutes do not receive health or welfare benefits and are not covered by the District's merit system rules for purposes of retention and promotion.

The District employs 288 temporary hourly drivers. These drivers operate type I or type II school buses. Their primary function is to transport pupils to and from school under the District's voluntary integration program. Applicants for these positions must be currently enrolled college students carrying six or more units of college courses. Temporary drivers must meet the same training and certificate requirements as monthly and substitute drivers, but do not need any prior on-the-road experience. Temporary drivers typically have a 2 to 6 hour shift assignment. They are paid 80 percent of the substitute driver rate and have the same line of supervision as monthly and substitute drivers. Temporary drivers do not receive health or welfare benefits

and are not covered by the District's merit system rules for purposes of retention and promotion.

The District employs 34 trainee hourly drivers. These drivers are pursuing a course of study in order to qualify for a California School Bus Driver Certificate. After gaining the certificate they may be employed as either monthly or hourly bus drivers. The training course entails 62 hours total, 20 hours on the road and 42 hours in the classroom. Training schedules are often set up at the convenience of the trainee. Typically, trainees are on the road for about 4 hours during the day, and have class in the evenings. Trainees earn about 50 percent of the hourly rate paid substitute bus drivers, and have a line of supervision different from other drivers. They report first to one of four driver instructors, all of whom report to the transportation safety and training supervisor who in turn reports to the transportation services director. Trainees do not receive health or welfare benefits and are not covered by the District's merit system rules.

Testimony regarding other hourly compensated employees revealed no similarity among them or between them and hourly bus drivers.

CONCLUSIONS OF LAW

The Association contends a unit of all hourly bus drivers is appropriate.

The District argues the requested unit is inappropriate because (1) the Board has historically included all bus drivers

in an operations-support services unit,³ and (2) the Board has already established an operations-support services unit, including classified monthly bus drivers in the District. See San Diego, supra.

The District's position fails to recognize the difference in circumstances which distinguish this case from those cited by the District. Classified units were not in place in early decisions where the Board included bus drivers in operations-support units. In the case at issue, classified units have been in existence since 1977. In dealing with situations where established units could arguably include subsequently requested classifications, the Board has stated that it will not, on its own motion, disturb a unit in place. Arcadia Unified School District (5/17/79) PERB Decision No. 93 p. 12. Therefore, in the absence of a request for unit modification,⁴ the question of including hourly bus drivers in the operations-support services unit cannot be considered here.

The Board has also made it clear that a unit need not be the most appropriate unit in order to be an appropriate unit

³See: Sweetwater Union High School District (11/23/76) EERB Decision No. 4 and Fremont Unified School District (12/16/76) EERB Decision No. 6.

⁴Under PERB Regulations, California Administrative Code, title 8, section 33261, only a recognized or certified employee organization may file a petition to add classes to an established unit. (Emphasis added.)

for meeting and negotiating.⁵ In Palo Alto Unified School/Jefferson Union High School District (1/9/79) PERB Decision No. 84, a separate unit of substitute teachers was found to be appropriate where the Board had previously indicated substitutes should be included in a unit with regular full-time teachers.⁶ The Board chose not to apply a previous precedent where such application "... would clearly carry with it potential for disruption." See Palo Alto/Jefferson, supra, p. 8.

In Arcadia, supra, a separate unit of pupil support services personnel was found to be appropriate in the face of a long standing Board policy including such employees in an overall unit of classroom teachers⁷. In so doing the Board said ". . . the fact that the majority has, in previous decisions, found an overall certificated unit appropriate does not preclude the Board from finding a separate unit of non-instructional certificated employees appropriate under the circumstances of this case."

⁵See Antioch Unified School District (11/7/77) EERB Decision No. 37.

⁶See Peralta Community College District (11/17/78) PERB Decision No. 77.

⁷See Los Angeles Unified School District (11/24/76) EERB Decision No. 5; Grossmont Union High School District (3/9/77) EERB Decision No. 11; Oakland Unified School District (3/28/77) EERB Decision No. 15; Pleasanton Joint Elementary School District (9/12/77) EERB Decision No. 24; Placer Union High School District (9/12/77) EERB Decision No. 25; Washington Unified School District (9/14/77) EERB Decision No. 27; Paramount Unified School District (10/7/77) EERB Decision No. 33.

As in Palo Alto/Jefferson and Arcadia, the only real issue in this case is whether the proposed unit, standing by itself, meets the statutory criteria for an appropriate unit.

Government Code section 3545(a) provides:

In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

In its brief the District contends that finding a unit of hourly bus drivers appropriate would lead to a proliferation of small fragmented units having an adverse affect on the efficiency of operations. The District's argument is unsubstantiated by the record⁸ and therefore does not bar finding a unit of hourly bus drivers to be appropriate. All other evidence presented by the parties was directed toward the community of interest criteria.

The Board in several early decisions⁹ has defined the factors used to determine community of interest, these include: qualifications, training and skills, job functions,

⁸ In addition to the two classified units established in San Diego, supra, the District has a unit of security officers. There are no other petitions for District employees pending at this time and any future request would be considered on its own merit.

⁹See Sweetwater, supra at footnote 3, Los Angeles Unified School District (11/24/76) EERB Decision No. 5, Santa Clara County Superintendent of Schools (7/19/78) PERB Decision No. 59.

compensation, hours of work, fringe benefits, supervision, and frequency of contact with other employees.

Applying these factors to the facts in this case it is evident that hourly bus drivers display a community of interest. Employees in all three hourly classifications have the same skills and must meet the same licensing and training requirements. They perform the same basic function, that of providing transportation for school children. They work out of the same location and have contact with the same employees. Due to the nature of their work, their hours vary; however, their rates of compensation are all related. They receive no fringe benefits and, with the exception of the trainees, their line of supervision is the same.

Based on all of the above and considering the record as a whole, it is clear that hourly bus drivers possess a community of interest.

PROPOSED ORDER

It is the proposed order that the following unit is appropriate for the purpose of meeting and negotiating, provided an employee organization becomes the exclusive representative:

All temporary, hourly pupil transportation department bus drivers including: Bus Driver (Hourly), Bus Driver (Substitute Hourly) and Bus Driver Trainee.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on November 24, 1980 unless a party files a

timely statement of exceptions and supporting brief within twenty (20) calendar days following the date of service of this decision. Such statement of exceptions and supporting brief must be actually received by the Executive Assistant to the Board at the headquarters office in Sacramento before the close of business (5:00 p.m.) on November 24, 1980 in order to be timely filed. See California Administrative Code, title 8, part III, section 32135. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, section 32305 (as amended).

Upon notice that this Proposed Decision and Order has become final, the regional director shall conduct an election in a unit of hourly bus drivers as herein described unless the employer grants voluntary recognition. Voluntary recognition requires proof of majority support in all cases. See Government Code sections 3444 and 3544.1.

DATED: November 4, 1980

Irene H. Cordoba
Hearing Officer