

STATE OF VERMONT
LABOR RELATIONS BOARD

TEAMSTERS, CHAUFFEURS AND)	
WAREHOUSEMEN, LOCAL 597)	
)	
Petitioner)	Docket No. 78-47R
)	
v.)	
)	
CHITTENDEN COUNTY TRANSPORTATION)	
AUTHORITY)	
)	
Employer)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case.

This is a unit determination matter brought before the Board by petition of the Teamsters, Chauffeurs and Warehousemen, Local 597 (the "Union") dated January 24, 1978.

The Union was named the collective bargaining representative for certain full-time drivers of the Chittenden County Transportation Authority ("CCTA") by Certification Order of this Board dated June 24, 1975. At the time of the 1975 certification, the Union and CCTA had agreed that the composition of the bargaining unit was to include fifteen specific positions. Subsequently, in September, 1977, the parties agreed to include two additional positions in the bargaining unit.

In its petition, the Board claimed that the characteristics of the work force at CCTA and personnel needs within the bargaining unit had changed radically since the 1975 Certification Order. The petition requested that Board "clarify" the bargaining unit at CCTA and include an additional eighteen persons within the bargaining unit.

The management of CCTA objected to the expansion of the bargaining unit as proposed by the Union, claiming that the excluded positions were properly excluded as "part-time" and citing economic hardship if the excluded personnel were included in the bargaining unit.

For the reasons set forth below, the Board holds that any driver employed by CCTA who regularly works over twenty hours per week is a "full-time" employee who must be recognized as a member of the bargaining unit certified in the above-referenced Certification Order of June 24, 1975. The Board directs that the parties confer in good faith to identify what specific positions should be included within the bargaining unit in accordance with the standards specified below. The Board retains jurisdiction to consider the parties conclusions and to resolve any dispute in the identification procedure.

Findings of Fact.

1. By order of this Board dated June 24, 1975, the Union was certified pursuant to 17 VSA § 1724 as the exclusive collective bargaining representative of the full-time drivers employed by CCTA.

2. Fifteen drivers were included in the bargaining unit so certified on June 24, 1975, by agreement of the parties. The parties later agreed, on September, 1977, that two additional persons were to be added to the bargaining unit.

3. CCTA and the Union are parties to a Collective Bargaining Agreement

dated July 1, 1977, representing the negotiated hours, wages and conditions of employment for the members of the bargaining unit. This Collective Bargaining Agreement does not define the bargaining unit except by reference to Certification Order of June 24, 1975.

4. CCTA entered into an Agreement dated March 22, 1977, with the State of Vermont (Department of Highways) and the Chittenden County Regional Planning Commission to operate a rural highway public transportation demonstration project. CCTA continues to operate under this Agreement, serving as a contractor to provide certain transportation services.

5. CCTA was required to expand its work force to carry out its obligations as contractor under the rural demonstration project agreement. The drivers so hired to carry out the rural demonstration project work ("RDP drivers") are employees of CCTA, not some other agency. RDP drivers are paid by CCTA funds and are directed in their work by CCTA management.

6. RDP drivers were told by CCTA at the time of their hiring that they were hired as "part-time" drivers for the RDP project and were advised that the project would terminate in two years or sooner.

7. Prior to filing the instant petition for clarification of the bargaining unit, persons hired as RDP drivers were routinely asked by CCTA to fill in for absent or ill drivers on the regular staff who were members of the bargaining unit. When filling in, RDP drivers drive the same buses over the same routes as do the bargaining unit members whom they replace.

8. Numerous RDP drivers regularly have worked in excess of twenty hours per week, on the average, for several consecutive months.

9. The Union claims that seven persons hired by CCTA to work as RDP drivers should be included in the bargaining unit. CCTA management claims

that these persons should be excluded and, at the present time, CCTA does not recognize RDP drivers as members of the bargaining unit. RDP drivers are employed under terms and conditions of employment less advantageous than those provided for Union-represented drivers in the Collective Bargaining Agreement described above.

10. A representation election was held among RDP drivers on December 14, 1977, for formation of a bargaining unit separate from the unit certified on June 24, 1975. Six drivers voted against Union Teamster representation and one voted in favor.

11. In addition to the RDP drivers, numerous other CCTA drivers, not now recognized by CCTA as members of the bargaining unit, appear from CCTA payroll records in evidence to work frequently in excess of twenty hours per week. A lengthy and detailed review of all pertinent records would be required to state with precision how many drivers are within this category and to identify the appropriate individuals.

12. No CCTA drivers, whether or not recognized as members of the collective bargaining unit at issue, are "on-call" except to the extent that they are available on short notice to substitute for the scheduled drivers who fail to begin or complete their shift due to illness or similar reasons.

13. The evidence suggests that CCTA may have changed certain individuals' working hours since the Union filed its petition in this matter.

Conclusions of Law and Opinion.

14. CCTA is a "municipal employer" as defined in 21 VSA § 1722 (B) subject to this Board's jurisdiction.

15. The bargaining unit certified by this Board on June 24, 1975,

includes all CCTA's full-time drivers as the term "full-time" is used in 21 VSA § 1722 (12)(C). The unit therefore included all drivers who, exclusive of on-call time, work over twenty hours per week.

16. Being "on-call", as defined in 21 VSA § 1722 (12)(C) is not a primary feature of employment of any CCTA driver under the circumstances of this case.

17. There are numerous drivers now working in excess of twenty hours per week who should be included in the bargaining unit but whom CCTA management has refused to recognize as included. The task remaining is to identify these individuals.

18. The Board is not in the best position to identify by name the individuals who belong to the unit. The Board feels that the parties are better situated to negotiate original determinations of membership in the unit because of their more intimate familiarity with the business, procedures and records of CCTA. The Board will, however, specify the criteria to be considered and will retain jurisdiction to resolve disputes that parties cannot resolve by themselves.

19. The time period to be reviewed to determine whether specific individuals have met the average, hourly criterion should be a period free from any possible taint of manipulation by the parties with this proceeding in mind. The time period should also be of sufficient length to represent fairly the drivers' typical work-week. The Board is not prepared on the present state of the evidence to make a firm finding as to the period which would be appropriate for this purpose. For the parties' guidance the Board does suggest, however, that the parties consider using the three-month period immediately preceding the filing of the petition in the instant matter.

20. The election by the RDP drivers on June 24, 1975, is not relevant to this proceeding under the terms of 21 V.S.A. § 1724 (h) since a different bargaining unit is at issue in this proceeding than was the subject of that election.

Order.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Teamsters, Chauffeurs and Warehousemen, Local 597, and the Chittenden County Transportation Authority shall each forthwith appoint one or more representatives to carry out the provisions of this Order.

2. The representatives so appointed shall forthwith meet and confer in good faith to identify by name all individuals who are members of the bargaining unit consisting of the full-time drivers employed by the Chittenden County Transportation Authority. Identification shall be made consistent with the terms of this Order. In making this identification, the representatives of the Union and CCTA shall include all persons who are employed as drivers by the CCTA whose average weekly work time exceeds twenty hours per week over an appropriate period to be agreed upon by the parties.

4. The parties shall report to the Board in not more than forty-five days from the date of this Order as to the results of their efforts as required above. The Board shall retain jurisdiction to conduct such further proceedings as are appropriate following the receipt of this information from the parties or upon motion of either party.

DATED this 28th day of June, 1978.

VERMONT LABOR RELATIONS BOARD

John S. Burgess, Chairman

Robert Brown

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William Kemsley

*Appeal
Dismissed
by Stip 10/6/79*