

Vermont Labor Relations Board

CUSTODIANS ASSOCIATION OF THE]	
ADDISON NORTHWEST SUPERVISORY]	
UNION (VERGENNES ID, FERRIS-]	
BURG and UNION HIGH SCHOOL),]	
Petitioner]	
- and -]	DOCKET # 77-34R
VERGENNES ID, FERRISBURG]	
and UNION HIGH SCHOOL BOARDS]	
OF SCHOOL DIRECTORS,]	
Petitionees]	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case.

This matter was brought before the Board by the petition of the Custodians' Association of the Addison Northwest Supervisory Union dated 10 February 1977 and filed 11 February 1977, seeking the election of a collective bargaining representative under the provisions of 21 V.S.A., Section 1724. The petition was accompanied by separate petitions signed by seven of the custodians. Although no formal answer was filed by the petitioners, a letter was received under date 24 February 1977 from David A. Potter, Superintendent of Schools, Addison Northwest Supervisory Union, expressing concern about the appropriateness of the bargaining unit, especially with respect to the independence of each separate district as to its rights to bargain individually and not jointly with its employees.

A hearing was held on 11 March 1977 at 2:00 P.M. in the Aldermanic Chambers, City Hall, Rutland, Vermont. The petitioners were represented by Richard D. Lang, VEA/UNISERV Representative. Also present were John J. Kipp, Head Custodian, and Laurie B. Huse, Community Director, Vermont Education Association. The Employers were represented by Harry S. Gale, Jr., Mrs. Joy Pollender, Chairman, Vergennes ID and Addison Northwest Supervisory Union, and by David A. Potter, Superintendent of Schools, Addison Northwest Supervisory Union.

The Board investigated the interest of the petitioners as determined under the provisions of 21 V.S.A., Section 1724.
Discussion of Issues, Evidence and Credibility of Witnesses.

The issues as proposed by the parties principally revolved around the right of each Board to bargain collectively with the members of the Custodians' Unit, Addison Northwest Teachers Association. Mr. Lang contended that the vote should be district-wide and that negotiations should be carried on a district-wide basis. Mr. Gale opposed this position. The similarity or divergence of the interests of the separate members of the proposed bargaining units and the general conditions of employment and whether overfragmentation would result from the certification of the proposed bargaining unit were sub-issues considered. There was in general no conflict between the testimony presented by the various witnesses.

Findings of Fact.

1. The petition of the Custodians' Association of the Addison Northwest Supervisory Union was dated 10 February 1977 and filed 11 February 1977. The name of the petitioner as requested for the ballot was later changed to "Custodians' Unit, Addison Northwest Teachers Association". The petition sought recognition by the Board on the part of the petitioner to become the exclusive bargaining representative for approximately seven employees, all custodians employed by the various districts of the Employers, to wit, Vergennes ID, Ferrisburg and Vergennes Union High School.

2. A document was presented at the hearing (Employer's Ex. C) indicating that one Lester E. Delphia, a custodian employed by the Board of School Directors of the Vergennes School District in the elementary schools thereof no longer desired to be represented by the Petitioner.

3. It is found that the Petitioner has sufficient interest to support an election, to wit, not less than thirty percent of the members of the proposed bargaining unit having signed a petition or interest card within the meaning of 21 V.S.A., Section 1724.

4. That at all times material hereto, the following employees were employed by the various school districts, viz.: Ferrisburg, five full-time employees including three lunch workers, one secretary and one custodian; Vergennes School District (elementary), five employees, including three lunch

employees, one secretary, and one custodian; Vergennes Union High School District employed several persons, the number not appearing, but being more than six.

5. All the employees to be included in the proposed bargaining unit work as custodians, and with the exception of John J. Kipp, all are paid on an hourly basis; these custodians work in several different buildings.

6. There is no previous history of bargaining as a unit among the custodians.

7. No overfragmentation would result from certification of the Petitioner as the exclusive bargaining representative for the custodians in the various schools.

8. The head custodian at Vergennes Union High School is John J. Kipp. He supervises four other custodians and is assisted by a Supervisor for the OEO and CETA personnel. Mr. Kipp recommends the hiring of personnel, and recommends any lay-offs to the Vice Principal of the High School. He would also recommend the discharge of an employee, but not his recall to work. He handles the work assignments and confers with the employees as to disciplinary matters but has not administered punishment. Grievances are handled either by himself or the Principal or Vice Principal. The hiring of Mr. Kipp was in response to an advertisement in the Burlington Free Press during 1974 substantially as follows,

"Supervisor, Building and Grounds". There is no job description for the position. He is paid two times a month, on a salary basis.

9. The request for recognition of the petitioner was submitted to all three School Districts, Vergennes ID, Ferrisburg and Vergennes Union High School District. In each case each Board voted not to recognize the petitioning petitioner as the exclusive bargaining representative. There was no voluntary recognition and in fact a second vote took place in each district with the same results.

10. The Board is unable to find from the evidence presented as to the number of students in each district and the number of teachers and the number of employees in the Vergennes Union High School District.

11. No rival employee organization seeks to represent the same individual or employees or the same jobs or positions for which representation is being sought here.

12. The Employers herein, and each of them, are municipal employers within the meaning of 21 V.S.A., Section 1723 (13).

13. The Board is unable to find that overfragmentation of units would result from certification to a degree likely to produce an adverse effect on the effective representation of other employees of the municipal employer or upon the effective operation of the municipal employer.

14. The Board finds that John J. Kipp is a supervisory

employee within the meaning of the statute.

15. The exhibits and the transcript are made a part of these findings for purposes of review by the Supreme Court.

Conclusions of Law and Opinion.

Although no specific issue was raised by the parties as to whether or not the "head custodian" at Vergennes Union High School was a supervisor within the meaning of the law, the Board has reviewed the evidence before it in this area and on balance must conclude that the head custodian does have the effective authority, in the interest of the employer, to hire, discharge or assign the other custodians, or effectively to recommend such action.

In general, the Board finds that it would be in the best interests of the employees to be included in the proposed bargaining unit of each of the School Districts, and that an election should be held to determine whether or not these employees desire the Custodians' Unit, Addison Northwest Teachers Association, to become the exclusive bargaining agent for the custodians in each School District. The Board is of the opinion that the unit is an appropriate one within the meaning of 21 V.S.A., Section 1724 (c), with the exceptions previously noted.

Order.

NOW, THEREFORE, it is hereby ORDERED pursuant to 21 V.S.A., Section 1724 that a collective bargaining unit for the custodians is appropriate; and that a secret ballot election shall be conducted by this Board for each District

separately on 8 June 1977 in order to determine whether or not these employees wish to be represented for exclusive bargaining purposes by the Custodians' Unit, Addison Northwest Teachers Association, or No Union. The election shall take place between 1:00 P.M. and 2:00 P.M. on Wednesday, 8 June 1977, in the Head Custodian's office, Vergennes Union High School, Vergennes, Vermont.

Dated at Montpelier, Vermont this 20th day of May, 1977.

VERMONT LABOR RELATIONS BOARD

By John S. Burgess
JOHN S. BURGESS, CHAIRMAN

William G. Kemsley, Sr.
WILLIAM G. KEMSLEY, SR.

H. James Wallace
H. JAMES WALLACE