

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LOS ANGELES UNIFIED SCHOOL DISTRICT,)	
)	
Employer,)	
)	Case No. LA-S-115
and)	(LA-R-1C)
)	
BUSDRIVERS ASSOCIATION FOR UNITY,)	Administrative Appeal
)	
Petitioner,)	PERB Order No. Ad-250
)	
and)	November 22, 1993
)	
SERVICE EMPLOYEES INTERNATIONAL)	
UNION, LOCAL 99,)	
)	
Exclusive Representative.)	

Appearances: O'Melveny & Myers by Michael I. Stockman, Attorney, for Los Angeles Unified School District; Victor Wightman for Busdrivers Association for Unity; Taylor, Roth, Bush & Geffner by Hope J. Singer, Attorney, for Service Employees International Union, Local 99.

Before Blair, Chair; Hesse and Garcia, Members.

DECISION

BLAIR, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal of a Board agent's administrative determination dismissing a severance petition filed by the Busdrivers Association for Unity (BAFU) for a unit of bus drivers in the Los Angeles Unified School District (District).

The Board has carefully reviewed the entire record in this case and upholds the Board agent's dismissal of the severance petition.

FACTUAL BACKGROUND

The relevant facts are as follows: The bus drivers are currently part of the operations and support unit of classified employees of the District, which is represented by the Service Employees International Union, Local 99 (SEIU). BAFU filed a petition to sever the bus drivers from the existing unit and create a unit consisting exclusively of bus drivers. The petition was opposed by both the District and SEIU.

In support of its severance petition, BAFU contends that SEIU has not represented the bus drivers fairly, that the bus drivers have a separate and distinct community of interest, and that the bus drivers have an overwhelming desire to have their own unit.

SEIU contends that the petition seeks an inappropriate unit. This contention is based on PERB precedent and the fact that there have been no material changes in the bus drivers' duties, working conditions, labor relations or community of interest since a similar petition was filed by another association in 1983. (Los Angeles Unified School District (1985) PERB Decision No. HO-R-105 (Los Angeles)). That petition was dismissed for failure to show that the petitioned-for unit was more appropriate than the existing unit.

The District supports SEIU's position.

BOARD AGENT'S ADMINISTRATIVE DETERMINATION

The Board agent addressed two issues:

1. Does BAFU have a right to a formal hearing?

2. Has BAFU shown cause why the severance request should not be dismissed?

As to the first issue, the Board agent determined that BAFU failed to show that there were any material facts in dispute so as to justify a formal hearing.

As to the second issue, the Board agent points out that, in Sweetwater Union High School District (1976) EERB Decision No. 4 (Sweetwater),¹ the Board established three classified units which have come to be considered "presumptively appropriate." Those units are instructional aides, office-technical and business services, and operations-support services. The Board determined that a strong community of interest generally exists among employees in these groups. Furthermore, the Board held, in Antioch Unified School District (1977) EERB Decision No. 37, that such a unit reflects,

. . . a proper balance between the harmful effects on an employer of excessive unit fragmentation and the harmful effects on employees and the organizations attempting to represent them of an insufficiently divided negotiating unit or units.
(p. 7.)

Bus drivers are typically included in the operations-support services, as they currently are in the Los Angeles Unified School District. The Board agent goes on to say that, where variant units are sought, the Board has determined that they will not be awarded unless the petitioned-for unit is more appropriate than

¹Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.

the Sweetwater configurations. Additionally, she states that in the case of a request for severance, as opposed to an initial unit determination, it is important to consider the negotiating history so as to avoid disturbing a stable negotiating relationship.

The Board agent finds that BAFU presented essentially the same facts as those before PERB's hearing officer in Los Angeles. She finds that those facts again fail to indicate either a lack of community of interest with other unit members or that their interests have been ignored by SEIU. Thus, the severance request was dismissed.

APPEAL

The District and SEIU contend that BAFU's appeal should be dismissed for failure to timely serve the parties.

BAFU's appeal contends that the Board agent's failure to grant a hearing on this matter and dismissal of the petition were unlawful.

SEIU's response to BAFU's appeal reiterates that BAFU has failed to meet the Sweetwater standard.

The District reiterates that BAFU has failed to show that its proposed unit is more appropriate than the existing unit. It also states that the number of bargaining units with which it has to bargain has increased from six to eight since 1985 when Los Angeles was filed and that adding another bargaining unit would burden the District with additional negotiations.

DISCUSSION

In April 1992, both the District and SEIU moved to dismiss the appeal of the administrative determination on the grounds, inter alia, that the appeal was not timely served on all parties as required by PERB Regulations 32140 and 32360(b).² In the alternative, both parties requested 30 days from the date of the Board's decision on the motion to file written opposition to BAFU's appeal. The Board itself took the motion under submission and on May 17, 1993, the PERB appeals assistant granted the parties' alternative request and ordered BAFU to properly serve the District and SEIU. As a threshold matter, we deny the motion to dismiss because neither the District nor BAFU showed prejudice due to the late service. The deficiency was cured and both the District and BAFU were allotted sufficient time to file their statements in opposition to the appeal as they had requested. (See Santa Monica-Malibu Unified School District (1987) PERB Order No. Ad-163 and San Diego Community College District (1988) PERB Decision No. 662 affirmed in part San Diego Adult Educators v. Public Employment Relations Bd. (1990) 223 Cal.App.3d 1124 [273 Cal.Rptr. 53].)

As stated in the administrative determination, Sweetwater held that there are three appropriate classified units under the Educational Employment Relations Act. In Foothill-DeAnza Community College District (1977) EERB Decision No. 10, the

²PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Sweetwater units were made presumptively appropriate. In Compton Unified School District (1979) PERB Decision No. 109 (Compton), the Board held that a variant unit will not be granted unless it is more appropriate than the Sweetwater unit based upon a separate and distinct community of interest among employees in the variant unit or other section. Moreover, the Board has specifically held that school bus drivers may not have separate units, because they share a community of interest with other "operations-support services" unit employees.³ In Livermore Valley Joint Unified School District (1981) PERB Decision No. 165, the Board recognized that a request for severance is factually different from an initial unit determination because negotiating history must be considered as an important factor along with the other criteria used to determine the appropriateness of a unit.

The burden is on the petitioner to show that there has been a change of circumstances sufficient to justify a variation of an established unit. The petitioner must overcome the standards articulated in Sweetwater and Compton. Pursuant to PERB

³See Shasta Union High School District (1977) EERB Decision No. 34 (bus drivers have overlapping duties and interchangeable functions with other maintenance employees); Sacramento City Unified School District (1977) EERB Decision No. 30 (community of interest of transportation employees not dissimilar from other operations-support employees); Fremont Unified School District (1976) EERB Decision No. 6 (combined unit of school operations, skilled trades and crafts, and transportation employees appropriate); see also San Diego Unified School District (1981) PERB Decision No. 170 (separate unit of hourly bus drivers unjustified because they share community of interest with monthly drivers, perform same work and have virtually identical employment conditions).

Regulation 32786,⁴ in order to determine if a sufficient change of circumstances has occurred, the Board agent will use his discretion in deciding whether a hearing is necessary in addition to an investigation.

In this case, the Board agent decided that a hearing was not necessary since the bus drivers' community of interest with the existing unit had been previously examined and BAFU did not allege any changes in the bus drivers' duties, responsibilities or working conditions since the time the unit was originally established or since the Los Angeles hearing. Consequently, there were no factual disputes to be resolved in a hearing. We find the Board agent's determination on this issue to be proper.

For essentially the same reasons, the Board agent determined that BAFU had not shown cause why the severance request should not be dismissed. Because the existing unit was a presumptively appropriate unit under Sweetwater and because BAFU alleged no change in circumstances, the Board agent properly found that the unit was appropriate and the severance request should be dismissed.

⁴PERB Regulation 32786 states, in pertinent part:

- (a) Upon receipt of a petition for unit modification, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary in order to decide the questions raised by the petition and to ensure full compliance with the provisions of the law.
(Emphasis added.)

CONCLUSION

We find that BAFU has failed to show that a separate unit of bus drivers would be more appropriate than the existing unit and thus has failed to overcome the Sweetwater presumption. We also find that the Board agent was correct in determining that BAFU was not entitled to a formal hearing on this matter because no change in circumstances was alleged which would have justified conducting a hearing.

ORDER

Based on the entire record in this case, the Board agent's determination is affirmed and it is ORDERED that the severance petition filed by the Busdrivers Association for Unity be DISMISSED.

Members Hesse and Garcia joined in this Decision.