STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

In the matter of

STATE OF CONNECTICUT

-and-

CONNECTICUT STATE EMPLOYEES ASSOCIATION

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES', COUNCIL #4, AFL-CIO

Case No. SE-10,813

Decision No. 2652

June 30, 1988

APPEARANCES:

Ellen Carter, Attorney
for the State of Connecticut

Robert Krzys, Attorney
for the Petitioner

J. William Gagne, Jr. Associates
By: Barbara J. Collins, Attorney
for the Intervenor

DECISION and
DIRECTION OF ELECTION

Statement of the Case

On August 31, 1987, the Connecticut State Employees Association, hereinafter called the Petitioner, filed with the Connecticut State Board of Labor Relations, hereinafter called the Board, a petition pursuant to Section 5-275 of the Connecticut General Statutes, requesting modification of the existing bargaining unit, Education Professions (P-3B), to "include the classifications of Vocational Rehabilitation Assistant Counselor (Blind), Vocational Rehabilitation Counselor (Blind), Vocational Rehabilitation Senior Counselor (Blind), Vocational Rehabilitation Supervisor (Blind)." The claimed employees are part of the Social and Human Services P-2 Bargaining Unit. The bargaining agent for the P-2 Unit is the American Federation of State, County and Municipal Employees, Council #4, AFL-CIO, hereinafter called the Intervenor.
After the requisite administrative steps had been duly taken, the matter came on for hearing before the Board on January 13, 1988, in the Labor Department Building, 200 Folly Brook Boulevard, Wethersfield, Connecticut, at which all parties appeared and were represented. Post hearing briefs subsequently were filed.

Findings of Fact

1. The State of Connecticut is an employer within the meaning of the Act Concerning Collective Bargaining for State employees.

2. The Connecticut State Employees Association (CSEA) is an employee organization within the meaning of the Act.

3. The American Federation of State, County and Municipal Employees (AFSCME) is an employee organization within the meaning of the Act.

4. CSEA has been the exclusive bargaining agent for the P-3B bargaining unit of state service since 1977. (Exhibit 3).

5. AFSCME has been the exclusive bargaining agent for the P-2 bargaining unit of state service since 1979. (Exhibit 4).

6. There has been a P3B contract in existence between the CSEA and the State, which was originally to run from July 1, 1985 to June 30, 1988. Subsequently, the CSEA and the State agreed to extend the term of the contract to June 30, 1989.

7. There has been a P-2 contract in existence between the AFSCME and the State which runs from July 1, 1985 to June 30, 1988.

8. The Petitioner filed the petition which is the subject of this decision on August 31, 1987, the last day of the “window period” of the initial contract between CSEA and the State and the last day of the “window period” of the existing contract between AFSCME and the State.

9. In 1980, the Connecticut State Board of Labor Relations dismissed a similar petition suggesting that the CSEA's petition would have been timely filed had it been filed during the window period for the P-3B unit, because if election results required removal of the employees into the P-3B unit, it would “thrust on the State the burden of negotiating terms and conditions for these employees” through midterm impact bargaining.

10. The CSEA's position is that the petition was timely filed within the window period, that the extension of the P-3B contract through agreement of the State and CSEA should not unfairly burden the employees wishing to exercise their desire to change to the P-3B unit, and that there is a major community of interest between the P-3B unit and the claimed employees.

11. AFSCME's position is that the petition should be dismissed as untimely, as the appropriate window period has been changed by the extension of the contract covering the P-3B unit, and that there is not the requisite community of interest between the P-3B unit and the claimed employees.
12. The State's position is that if the contract extension does not create a new window period which must be adhered-to, then the structuring of any Board orders should not result in the burden of midterm impact bargaining; that although the P-2 unit is an appropriate bargaining unit for the VRC (Blind) classifications, the P-3B unit would not be a totally inappropriate unit for these classes.

Discussion

The parties to this petition have thoroughly presented arguments concerning both the appropriate timing of the window period and the question of the appropriateness of the P-3B bargaining unit for the claimed employees. We find that CSEA's petition was filed within the appropriate window period, so the petition is not barred by 5-275(a)(3) of the Connecticut General Statutes. Although the P-2 unit is appropriate for the claimed employees, we find that there also is requisite community of interest between the P-3B appropriate unit and the claimed employees. The job specifications are similar in terms of paperwork, case management, and vocational rehabilitation duties; counselors from both units attend the same conferences; they have the same federal representatives as supervisors; they are affiliated with the same national associations; they work toward the same certification, master's degrees and share the same professional training in general; and they work with the same federal agencies.

Section 5-273-10 of our regulations established the window period for filing representation petitions under the Act and provided a narrow exception to the window period for "compelling reasons." Section 5-273-10 of the regulations states:

A notification will be considered timely if it is filed between July 1 and August 31 inclusive of the year prior to the expiration of the collective bargaining contract covering the employees who are the subject of the petition. . . . . . . . The Board may consider petitions filed at other times if compelling reasons are shown for deviation from the above rule.

Section 5-273-10.

In a previous case concerning the same bargaining units and the same claimed employee class, we suggested a situation which would meet the "compelling reason" standard.

The present petition seeks to transfer 12 employees from one bargaining unit (P-2) to another (P-3B). This will mean that two contract-bars and two window periods may have to be considered. Those of the unit from which the transfer is sought clearly must be. But the situation to which transfer is sought may be even more critical. Contract bar rules seek to assure unions of some stability in their relationship to bargaining units they represent but that is not their only function; they also seek to protect employers and assure them that they will
not have to renegotiate basic terms and conditions for the period of a contract. If, then, the employees covered by the present petition would not be automatically covered by the contract currently effective for the P-3B unit, any order of this Board adding them to that unit will thrust on the State the burden of negotiating terms and conditions for these employees. This is likely to be a more serious disadvantage than any disruption of the P-2 unit (by the removal of a few employees from the coverage of its contract). We think, therefore, that the window period for the P-3B unit may be more important than that for the P-2. If these two window periods do not coincide, there may be "compelling reasons" for disregarding that for the P-2 unit if the petition is filed during the window period for the P-3B unit.


The complicating factor, of course, in this case, is the extension of the contract between the State and the CSRA concerning the P-3B unit and the creation of a new P-3B window period. If we were to insist that the extended, new P-3B window period be adhered to, in spite of the claimed employees having filed within the window periods of the original P-3B contract and the P-2 contract, the employees will be unnecessarily delayed in their attempts to achieve self determination. "The very essence of [the State Labor Acts] is the right of employees to decide for themselves whether they want to be represented in bargaining by a labor or employee organization and, if they do, to choose their own representative." City of Bridgeport, Decision No. 1440 (1976).

We will not frustrate an employee group’s attempts to gain self determination when they have attempted to comply with both statutory requirements and special decision in State of Connecticut, Decision No. 1913, supra, concerning the same parties and employee groups. On the other hand, we cannot ignore the repercussions of placement of the claimed group of employees into the P-3B unit immediately after an election and prior to negotiations for a successor collective bargaining agreement. The State is rightly concerned about the burdens placed on its resources should it be required to enter into time consuming midterm impact negotiations, and we will not require the parties to do so prior to the time of negotiations for a successor collective bargaining agreement.

Balancing the right of self-determination for employees to choose their bargaining representatives and the need to preserve stability and avoid unnecessary burdens to the bargaining relationship, we structure our order similarly to our decision in State of Connecticut, 1686-D (1979). Should the claimed employees vote to be included in the P-3B unit, CSEA will be their exclusive bargaining representative (1) at the time negotiations begin for the purpose of negotiating a successor to the existing contract between the State and the P-3B unit, and (2) from and after July 1, 1989 for all other purposes, including the collection of union dues.
As to the issue of whether there are a sufficient number of objective community of interest elements in common between the employees sought to be included and the unit into which these employees seek to be placed, we find that community of interest exists between the claimed employees and the Vocational Rehabilitation Counselor Series in the P-3B job classes. The objective elements traditionally bearing on determination of community of interest include common work sites, common job functions, lines of supervision, common facility and equipment use, job interaction, job interchange and training. City of Groton, Decision No. 1928 (1980); Town of Orange, Decision No. 2236 (1983); State of Connecticut, Department of Mental Retardation, Decision No. 2585 (1987). Although the two groups do not share common work sites, this one differentiating factor does not preclude the claimed employees inclusion into the P-3B unit. The fact that the two groups have common job functions, common lines of supervision at the federal level, job interaction, and common job training, is sufficient to find that the P-3B unit is objectively an appropriate bargaining unit for the placement of the claimed employees.

Where there exist two units which are objectively appropriate for inclusion of a classification, it has been our settled practice to let the employees involved choose the bargaining unit into which they should be placed. Thus the subjective community of interest factor of self determination will determine the unit into which these employees will be placed. State of Connecticut, Decision No. 2117 (1982); City of Bridgeport, Decision No. 1440 (1976), aff'd in Council 4, AFSCME, AFL-CIO v. Conn. State Board of Labor Relations, Dk. No. 114261 (Superior Court, Fairfield J.D. at Bridgeport, February 14, 1980), Hull, J.; Town of Cheshire, Decision No. 1483 (1977); Norwalk Board of Education, Decision No. 1559 (1977). We therefore order an election to be held among these employees to permit them to vote on the question whether they wish to be included in the P-3B unit or the P-2 unit.

Direction of Election

By virtue of and pursuant to the powers vested in the Connecticut State Board of Labor Relations by the Act Concerning Collective Bargaining for State Employees, it is hereby

ORDERED and DIRECTED, that

I. An election by secret ballot be conducted under the supervision of the Agent of the Board within thirty (30) days of the issuance hereof, among employees holding the positions of Vocational Rehabilitation Assistant Counselor (Blind), Vocational Rehabilitation Counselor (Blind), Vocational Rehabilitation Senior Counselor (Blind), Vocational Rehabilitation Counselor Supervisor (Blind), who are in such positions on the date of this decision and who continue to be in such positions on the date of the election, to determine whether they desire to be included in the P-2 Social and Human Services bargaining unit represented by Council #4, AFSCME, AFL-CIO, or the P-3B Education unit represented by Connecticut State Employees Association.
II. In the event a majority of said employees voting in said election choose to be in the P-3B Education Unit represented by Connecticut State Employees Association, such change in unit will not be effective until July 1, 1989, and until that date:

(a) Said employees will remain in the P-2 unit, under the collective bargaining agreement covering that unit, AFSCME will provide contract administration services to said employees, and said employees will be responsible for payment of agency fees to AFSCME as provided by the Act;

(b) CSEA will be responsible for negotiating the terms of the collective bargaining agreement which will cover said employees as part of the P-3B unit.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

BY  

s/ Craig Shea  

Craig Shea

s/ Ann M. McCormack  

Ann M. McCormack

s/ Lee Terry  

Lee Terry