

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

CAPITAL PARAPROFESSIONALS ASSOCIATION,	:	
DSEA/NEA,	:	
	:	REPRESENTATION PETITION
AND	:	
	:	<u>No. 01-04-314</u>
CAPITAL SCHOOL DISTRICT.	:	

**RE: Bus Drivers and Bus Paraprofessionals**

APPEARANCES

*For Capital Paraprofessionals Assn., Jeffrey M. Taschner, Esq.*

*For Capital School District, David H. Williams, Esq.*

*Morris, James, Hitchens & Williams*

**Background**

The Capital School District (“District”) is a public school employer within the meaning of section 4002(n) of the Public School Employment Relations Act (“PSERA”), 14 Del.C. Chapter 40 (1982, 1989).

The Capital Paraprofessionals Association, DSEA, NEA, (“CPA”) is a labor organization within the meaning of 14 Del.C. §4002(m). It is the exclusive bargaining representative of District employees in the bargaining unit defined by DOL Case 181, which includes:

All full-time and part-time paraprofessionals including Chapter 1 Aides, Library Aides, Release Time Aides, Orthopedic Aides, Classroom Aides, Instructional Aides, Reading Aides, Special Education Aides and Special Service Aides, excluding Monitors.

The Capital School District and the Capital Paraprofessionals Association are parties to a current collective bargaining agreement with a term of July 1, 1999 through June 30, 2002.

On April 16, 2001, CPA filed a modification petition with the Public Employment Relations Board (“PERB”) seeking to modify the existing bargaining unit to include Bus Drivers

and Bus Paraprofessionals.<sup>1</sup> The District opposed the proposed modification of the unit, asserting these employees are not appropriate for inclusion in the existing bargaining unit.

A hearing was held on June 6, 2001, at which time the parties were afforded full opportunity to present evidence and argument in support of their respective positions. The record closed with the receipt of oral argument that afternoon. This decision results from the record thus created by the parties.

### **Issue**

Are Bus Drivers and Bus Paraprofessionals employed by the Capital School District appropriate, under the criteria set forth at 14 Del.C. §4010(d), for inclusion in the bargaining unit of paraprofessional employees as defined by DOL Case 181?

### **Positions of the Parties**

#### **Association:**

The Association argues the issue presented is whether the proposed modified bargaining unit meets the statutory criteria for appropriateness, not whether the unit is the most or only appropriate bargaining unit. It asserts the critical criteria in this case are the similarities of duties, skills, and working conditions, and the effect of overfragmentation on the efficient administration of government. The Association asserts there is a community of interest between this unique group of employees who are responsible for transporting handicapped children on specialized buses as they support the educational process, much as do the other paraprofessionals currently in the unit who perform support or adjunct functions.

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<sup>1</sup> The Job Descriptions provided by the District for the positions in question are titled, “Orthopedic Bus Driver” and “Bus Aide”, respectively. There is no dispute that these are the same positions. For purposes of this decision, these positions shall be referred to as “Bus Driver” and “Bus Paraprofessional”.

The Association argues the creation of a fifth, small bargaining unit comprised exclusively of Bus Drivers and Bus Paraprofessionals would constitute over-fragmentation of units and would not support the efficient operation of either the District or the Association.

District:

The District argues this petition is inadequate and should be dismissed under PERB Regulation 3.4(8) because it does not meet the criteria set forth in that section for modifying a bargaining unit. The District asserts the Bus Driver and Bus Paraprofessional positions are not new positions, that there has been no substantial change in the duties or responsibilities of these positions, and that there are no compelling circumstances which support consideration of this modification request.

The District also argues the positions of Bus Driver and Bus Paraprofessional are fundamentally different from the paraprofessional positions in the existing bargaining unit who provide “school-centered instructional assistance and service.” The Bus Drivers and Bus Paraprofessionals supply transportation services and assistance to students but are not involved in any student instructional services either in or out of the schools. To support the argument that these employees do not share a community of interest, the District points to such differences as the annual physicals and random drug testing required only of Bus Drivers, the split work day of the Drivers and Bus Paraprofessionals, their eleven (11) month employment as hourly rather than salaried employees, the physical location of their work, and their separate supervision by the District’s Transportation Supervisor.

The District does not contest that these employees have the right to be represented, but asserts that placing them within the existing bargaining unit is not appropriate under the PSERA.

**Opinion**

The Rules and Regulations of the Delaware Public Employment Relations Board provide:

3.4(8): Modification of a Bargaining Unit: In the event there is a substantial modification in the nature of the duties and working conditions of a position within the bargaining unit, or a new position is created which is not covered by the existing bargaining unit definition, or there is some other compelling reason for the Board to consider modifying the designated bargaining unit, the public employer and/or the exclusive bargaining representative may file a petition with the Board ...

PERB has previously held that compelling reason exists for PERB to consider a modification petition when unrepresented public employees seek to exercise their statutory right to choose to be represented within an existing bargaining unit for purposes of collective bargaining. Dover Police Dept. Lieutenants and FOP Lodge 15, Del. PERB, Rep. Pet. 98-08-242, III PERB 1831 (1999); *citing* Battalion Chiefs of the City of Wilmington Fire Department, Del. PERB, Rep. Pet. 95-06-142, III PERB 1253 (1995).<sup>2</sup> This holding is particularly applicable where a petition concerns positions which have not been considered in a prior representation determination.

The factors to be considered in determining whether the proposed modified unit is appropriate are set forth in §4010(d) of the PSERA:

In making its determination as to the appropriate bargaining unit, the Board or its designee shall consider such factors as the similarity of duties, skills and working conditions of the employees involved; the history and extent of the employee organization; the recommendations of the parties involved; the effect of overfragmentation of bargaining units on the efficient administration of government; and such other factors as the Board may deem appropriate.

The statute does not require that all positions within an appropriate unit perform the identical functions but does require that the determination of appropriateness be tailored to the unique circumstances of the particular employment relationship. Caesar Rodney School District Instructional Aides, Del.PERB, Rep. Pet. 92-03-070, II PERB 821 (1992).

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<sup>2</sup> Prior PERB rulings decided under the Public Employment Relations Act, 19 Del.C. Chapter 13 (1994) and /or the Police Officers and Firefighters Employment Relations Act, 19 Del.C. Chapter 16 (1986), are controlling to the extent that the relevant portions of those statutes are identical to those of the Public School Employment Relations Act, 14 Del.C. Chapter 40 (1982, 1989).

Consideration of the statutory factors in this matter supports the conclusion that Bus Drivers and Bus Paraprofessionals share a community of interest with and are appropriate for inclusion in the bargaining unit with other paraprofessionals employed by the Capital School District.

#### Similarities of Duties, Skills, and Working Conditions

This petition concerns a group of employees who work in teams to transport handicapped children. It is undisputed these employees do not serve a general school population, nor are they “traditional” bus drivers or bus aides. The District contracts out for all student transportation services except for these employees who are serving a specialized student population. The District hosts the Kent County Community School which serves students from throughout Kent County who have orthopedic limitations. Because this school serves the entire county, bus rides can range from 40 minutes to 2 hours for these students. Most of the students on these buses are transported to and from the Kent County Community School. A lesser number of handicapped students are also transported on these buses to Dover High School, Central Middle School, and East Elementary School.

Testimony established these employees work in eleven 2-member teams of one Bus Driver and one Bus Paraprofessional. It is undisputed their passengers have a variety of specialized needs, and the buses have been referred to as “hospitals on wheels”. These employees deliver students to and from the front doors of their homes and schools. They have direct contact with classroom personnel and parents, to the unusual extent that parents are provided with Bus Drivers’ home telephone numbers. These employees are responsible for monitoring and reporting on the safety, health and physical well-being of their passengers at both ends of the trip. They are required to be aware of the specific needs of each passenger and to keep medical information on file in the bus at all times, in case an emergency should arise. They are required to have CPR and First Aid training.

In addition to transporting the children to school, these teams also support this special population of students by providing transportation for field trips. Testimony established these employees also help during field trips and at regular school drop-off and pick-up by pushing wheelchairs, transporting medical equipment, and generally helping to insure smooth transitions for their passengers.

The statute does not require that all bargaining unit positions perform identical functions, but rather that there be an identifiable community of interest within an appropriate bargaining unit. In this case, it is clear the existing paraprofessional unit includes a variety of positions which work in support of the educational process. While some of the positions have limited instructional responsibilities, the common thread between the positions appears to be that all are responsible at some point during the school day for supervising students. Many of these positions also include responsibilities which could be characterized as “support” functions, such as preparing the physical environment, performing routine paperwork and record keeping, operating ditto and copier machines, and filing in for staff (both instructional and clerical) during lunch periods.

Although the Bus Drivers and Bus Paraprofessionals do not have instructional responsibilities, the testimony and job descriptions indicate a number of bargaining unit positions also do not have instructional responsibilities. Like Release-Time Paraprofessionals, Bus Drivers and Bus Paraprofessionals are responsible for monitoring student behavior, safety and welfare during the period that the students are under their care. Similar to Special Education and Orthopedic Paraprofessionals, Bus Drivers and Bus Paraprofessionals are responsible for meeting the physical needs of students while they are in their custody.

Although the Bus Drivers and Bus Paraprofessionals typically work a “split work day” of five to six hours, the bargaining unit currently includes both full-time and part-time employees. Testimony established that some of the bargaining unit positions also work only part of a school

day. The existing collective bargaining agreement clearly covers both full-time and part-time employees who work schedules which vary by school as well as by position and assignment.

There is no question but that differences do exist in the duties and working conditions of the employees in question. Bus Drivers and Bus Paraprofessionals report to the District Transportation Supervisor, whereas the bargaining unit paraprofessional positions report to individual building Principals. Bus Drivers and Bus Paraprofessionals perform their duties on buses, whereas other paraprofessionals work within school buildings. Testimony established, however, that Bus Drivers and Bus Paraprofessionals do work closely with and in support of the classroom personnel in meeting the needs of the students they transport. The CPA witness testified they are treated as part of the school team, and parents and school staff expect the same level of care and attention from these employees while they are responsible for the students as they do from classroom staff. Bus Drivers are required to meet special requirements related to their being licensed to operate buses, such as annual physical examinations and random drug testing. When considered within the totality of the record in this case, however, these differences do not negate the community of interest created by their direct responsibility to supervise students for limited periods of time during the school day between these groups of employees.

History and Extent of Employee Organization:

The District argues the Bus Driver and Bus Paraprofessional positions were in existence at the time the paraprofessional bargaining unit was originally certified in 1988, and that these positions have continued to exist at all times since. Employees in these positions did not petition to be included in the unit at the time of original certification or at any time since.

The CPA's witness, an Orthopedic Bus Driver for more than ten years, testified these employees did approach the District's former Superintendent an unspecified number of years ago seeking information on becoming part of the bargaining unit. He testified the inquiring

employees were told they were not eligible for representation; consequently, they did not further pursue the issue at that time.

The PSERA provides public school employees with the right to be represented by representatives of their choosing for purposes of collective bargaining. 14 Del.C. §4001; §4003. The District would preclude modification of bargaining units to include positions that existed but were not included as part of the petition or in the original certification, unless there was some change to the positions or other circumstances. This argument would be more persuasive where positions were specifically considered and then excluded in a prior determination of unit appropriateness. In RE: Division of Mental Retardation Community Nurses, Del.PERB, Rep. Pet. 95-06-146, II PERB 1247 (1995). To preclude the consideration of modification in a case where the appropriateness of including specific positions was not considered in a prior petition is inconsistent with the statutory right of public school employees to petition to be represented by representatives of their choosing.

Consequently, there is no prior history of representation of the Bus Driver and Bus Paraprofessional positions to consider in this matter.

#### Recommendations of the Parties:

The District and CPA are opposed in their recommendations for the placement of Bus Drivers and Bus Paraprofessionals. This agency has held that where the recommendations of the parties are in opposition, the appropriateness of the unit proposed by the petition will be evaluated first. If that proposed unit is found not to meet the statutory criteria for appropriateness, the appropriateness of the proposed alternative will then be evaluated. FOP Lodge 7 and University of Delaware Dept. of Public Safety, Del.PERB, Rep. Pet. 00-10-292, III PERB 2137 (2001).

#### Overfragmentation of Bargaining Units:

Overfragmentation is a relative consideration depending upon the individual

circumstances presented by a petition. FOP Lodge 7 and University of Delaware, Supra @ 2148. The efficient administration of government dictates PERB certify the fewest number of bargaining units as is consistent with the statutory right of public employees to organize and choose a representative for meaningful and effective representation. Dover Police Lieutenants, Supra. @ 1831.

The District argues the dissimilarity in duties, skills and working conditions between paraprofessionals working within the “four walls” of the schools and the Bus Drivers and Bus Paraprofessionals overrides an overfragmentation concern. It asserts the creation of a separate unit for these employees would not negatively impact District operations. CPA argues creating an additional and separate unit for this small group of employees would lead to unnecessary duplication of effort in negotiations, unit governance, and contract administration.

The District employs approximately twenty-two employees in the Bus Driver and Bus Paraprofessional positions, collectively. Currently there are four certified bargaining units of Capital School District employees, all of which have existing collective bargaining agreements, including: 1) a unit of professional employees which includes classroom teachers, guidance counselors, school nurses, librarians, visiting teachers, psychologists, and other professional personnel who do not hold administrative positions; 2) a secretarial and clerical unit which includes clerks, secretaries, senior secretaries, financial and administrative secretaries; 3) a custodial and maintenance unit; and 4) the paraprofessional unit at issue here.

Under the circumstances of this petition, creating a small fifth bargaining unit comprised exclusively of Bus Drivers and Bus Paraprofessionals creates unnecessary duplication, given the prior conclusion that these employees share a community of interest with other employees in the paraprofessional bargaining unit. A separate unit in this case would constitute overfragmentation and would be inconsistent with facilitating efficiencies through creation of the fewest number of units.

**Decision**

WHEREFORE, based on the circumstances presented by this petition, it is determined that Orthopedic Bus Drivers and Bus Paraprofessionals are appropriate for inclusion in the existing bargaining unit.

An election will be scheduled forthwith to determine whether Orthopedic Bus Drivers and Bus Paraprofessionals desire to be represented for purposes of collective bargaining as part of the paraprofessional bargaining unit currently represented by Capital Paraprofessionals Association, DSEA, NEA.

IT IS SO ORDERED.

/s/Deborah L. Murray-Sheppard  
DEBORAH L. MURRAY-SHEPPARD  
Hearing Officer  
Delaware Public Employment Relations Bd.

DATED: 12 July 2001