



Appeal to NH Supreme Court
withdrawn on September 1,
1989, NH Supreme Court Case
No. 88-289.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MANCHESTER SCHOOL BUS DRIVERS
ASSOCIATION

Petitioner

and

MANCHESTER TRANSIT AUTHORITY

Respondent

CASE NO. M-0596

DECISION NO. 88-44

APPEARANCES

For the Manchester School Bus Drivers Association:

Rogers J. Lang, Esquire

For the Manchester Transit Authority:

Robert Christy, Esquire
Pauline Guay, Esquire

For Local 717 and Rita Layton, Member:

Thomas F. Birmingham, Esquire

BACKGROUND

This case comes before the Board in a unique posture. A unit of certain employees of Manchester Transit Authority, consisting of the bus drivers in Manchester, New Hampshire has never been before this Board for certification. Indeed, the bus drivers have been represented for collective bargaining purposes by Local 717 of the Amalgamated Transit Union for many years. However, they have not chosen to avail themselves of the rights under RSA 273-A because they believed that they received certain benefits under federal law which might not be available if they were to seek rights afforded by state statute. Now, the school bus drivers, being part-time drivers who are represented by Local 717, have requested representation rights under RSA 273-A and approach the Board to seek a separate unit comprised only of the part-time bus drivers who drive school buses. The full-time bus drivers, in the alternative, state that the unit of drivers should be comprised of all bus drivers, whether full-time or part-time. They state this proposition on the basis that school buses are driven both by part-time and full-time bus drivers, the repairs and maintenance for the buses are done at the same facility and the Manchester Transit Authority utilizes the same facilities for all of its drivers.

A hearing was held at the Public Employee Labor Relations Board offices in Concord, New Hampshire on April 14, 1988 to consider the request of the Manchester School Bus Drivers Association and the alternative suggestions of Local 717 through its member, Pauline Guay. The Manchester Transit Authority was represented by its attorneys at said hearing.

FINDINGS OF FACT AND RULINGS OF LAW

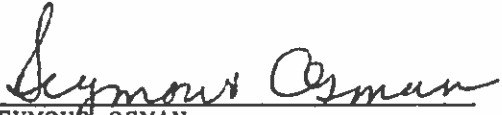
This Board is entrusted with the responsibility of determining "the appropriate unit" under RSA 273-A:8. Since the inception of the Board and the passage of law, this Board has refused to delegate that responsibility. Indeed it is the position of the Board that its responsibility to determine "the appropriate unit" can result in a different unit from that agreed upon by the parties. This is because the legislature entrusted the Board with the responsibility to determine the appropriate unit to effectuate and enhance effective and efficient governmental operations. Therefore, the Board has listened to the arguments of the Manchester School Bus Drivers Association, the Manchester Transit Authority and Local 717, in the person of Pauline Guay. It is interesting to note that the union for the full-time bus drivers has never come before this Board to avail itself of the rights afforded by RSA 273-A. The explanation given at hearing is that this is the result of other statutory rights afforded to the union, especially those afforded by federal law.


The Board has considered the various arguments before it. There is a surface appeal to the school bus drivers argument that they should be allowed a separate unit because they wish to have a separate unit and because their interests allegedly are not protected by the full-time bus drivers. The Board, however, must reject that argument. The reason for this rejection is that the part-time school bus drivers operate out of the same facility, drive the same buses and perform the same functions as full-time bus drivers perform. Because of that, they should not be allowed to be members of a separate bargaining unit. Indeed, testimony at the hearing indicates that they have a majority of the existing unit. Should they wish to assert their rights, they could elect all officers, select bargaining representatives and control the collective bargaining environment. They could therefore overcome the alleged problems of not having their rights protected in the present unit. It would be inconsistent with the purposes of RSA 273-A to create two separate collective bargaining units of drivers. Therefore, notwithstanding the position of the part-time drivers that they wish to have a unit comprised only of part-time school bus drivers, the Board finds that a unit comprised of all bus drivers at the Manchester Transit Authority is the "appropriate unit" and orders an election be held in that unit between the Manchester School Bus Drivers Association, Union 717 of the Amalgamated Transit Workers and "no representative" to determine the desires of the drivers.


In ordering this election, the Board indicates that it is not unaware of the provisions of the Urban Mass Transit Act, Section 13-C. The Board does not believe those rights will be lost by ordering this election nor is that a concern of this Board. Under the provision of New Hampshire law, the Board is required to afford public employees their rights under RSA 273-A.

ORDER

It is ordered that an election be held among all bus drivers at the Manchester Transit Authority to determine the desires of that unit for representation by the Manchester School Bus Drivers Association, Local 717 of the Amalgamated Transit Workers or "no representative".


SEYMOUR OSMAN
Sr. Management Representative


JAMES C. ANDERSON
Labor Representative


RICHARD W. ROULX
Management Representative

DISSENT

EDWARD J. HASELTINE, CHAIRMAN DISSENTING:

I must respectfully dissent from the finding of the majority of the Board in this case. RSA 273-A was established to allow representation of public employees by representatives of their choice. While I agree with the majority in their finding that RSA 273-A requires the Board to determine "the appropriate unit", and, indeed, would never surrender that right, I believe that the special circumstances of this case argue in favor of a contrary finding to that which was made by the Board. I believe the part-time school bus drivers, those who drive school buses and have nothing to do with driving the Manchester Transit Authority buses, have insufficient community of interest with the full-time bus drivers to require a single unit. They have no feeling of common interest with the full-time drivers of the Manchester Transit Authority, have no opportunity to drive other buses, have no opportunity to drive charter buses, do not enjoy the same wages or fringe benefits and frankly feel threatened by the full-time drivers. They have sought the protection of RSA 273-A by coming to this Board (while the full-time drivers have never sought the protection of this Board) and have a right to see whether the majority of their members would vote to be represented by their newly-formed group, the Manchester School Bus Drivers Association. While I have great respect for the proposition that the appropriate unit determination be made by this Board, I believe that in the circumstances of this case, the appropriate unit is that of the