

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
PULASKI BUS DRIVERS ASSOCIATION
Involving Certain Employees of
PULASKI COMMUNITY SCHOOL DISTRICT

Case 139
No. 65103
ME-1153

Decision No. 33033

Appearances:

Melissa M. Thiel Collar, Legal Counsel, Wisconsin Education Association Council, 2256 Main Street, Green Bay, Wisconsin 54311-5330, appearing on behalf of Pulaski Bus Drivers Association.

John E. Thiel, Attorney at Law, 5601 Grande Market Drive, Suite "K", Appleton, Wisconsin 54913, appearing on behalf of Pulaski Community School District.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER CLARIFYING BARGAINING UNIT**

On September 15, 2009, Pulaski Bus Drivers Association (Association) filed a unit clarification petition with the Wisconsin Employment Relations Commission asking that the Early Childhood and Special Education Van Drivers (Van Drivers) be included in a bargaining unit of Pulaski Community School District (District) employees that it represents for the purposes of collective bargaining.

The parties' attempts to reach a voluntary resolution of the matter were unsuccessful. A hearing was held on the petition on December 18, 2009 in Pulaski, Wisconsin before Examiner Peter G. Davis. The record was completed on February 19, 2010 with receipt of the District's reply brief.

No. 33033

Having reviewed the record and being fully advised in the premises, the Commission hereby makes and issues the following

FINDINGS OF FACT

1. Pulaski Community School District, herein the District, is a municipal employer with offices at 143 West Green Bay Street in Pulaski, Wisconsin.

Other than the Early Childhood and Special Education Van Drivers, herein van drivers, all regular full-time and regular part-time District employees are currently represented by the following labor organizations in four collective bargaining units: 1) Pulaski Education Association- 297 employees, 2) Pulaski Cook/Custodial Association- 65 employees, 3) Pulaski Educational Support Personnel Association- 89 employees, and 4) Pulaski Bus Drivers Association- 33 employees.

2. Pulaski Bus Drivers Association, herein the Association, was voluntarily recognized by the District in 1987 as the collective bargaining representative of a bargaining unit described in the parties' 2008-2010 collective bargaining agreement as:

All employees of the Pulaski Community School District employed as bus drivers, excluding Head Bus Mechanic and any part-time or seasonal employees.

This bargaining unit has always consisted solely of drivers of school buses. "School bus" is statutorily defined in Sec. 340.01(56), Stats.

3. From the time the Association bargaining unit was recognized in 1987 through the 2008-2009 school year, the District contracted with an outside vendor to provide transportation services to special needs students in vans that fall outside the statutory definition of "school bus" and within the definition of "alternative vehicles" found in Sec. 121.555, Stats.

In August 2009, prior to the start of the 2009-2010 school year, the District decided that it would be cost effective to operate its own van transportation service rather than contracting with the outside vendor. The District implemented this decision by purchasing six vans from the outside vendor and hiring nine individuals to drive the vans.

4. The District maintains a facility referred to as the "bus garage" that houses the District's transportation department, including the District's fleet of buses, vans, and cars. Employees who are stationed at the bus garage include the transportation supervisor, head mechanic/fleet coordinator, bus drivers, van drivers, assistant bus mechanics, and part-time office assistant. The bus garage serves as the central location where bus and van drivers park their personal vehicles, report to work, access a common break room and restrooms, access a

mailbox assigned to them for distribution of work-related communications, and retrieve keys to their bus or van.

5. Bus and van drivers are required to clean their vehicles and observe safety regulations and laws. Bus and van drivers are dispatched through the same central dispatching system. Bus and van drivers are not required to wear a uniform or use a time clock to report their hours of work.

6. Bus drivers are required to obtain and maintain a valid Commercial Driver's License (CDL) and an "S endorsement" on their driver's license. Van drivers are required to obtain and maintain a valid Wisconsin Driver's License. Three of the nine van drivers hold CDLs and are qualified to drive students in buses. The District has sponsored CDL training for van drivers.

Some van drivers who have obtained the requisite licenses serve as substitute bus drivers.

Bus and van drivers are required to undergo criminal and driver's records background checks and are prohibited from driving a vehicle transporting children if the driver has been convicted of a qualifying offense.

7. Wages and benefits for bus drivers during the 2009-2010 school year were set through the collective bargaining process. The base hourly rate for bus drivers is \$15.83. The 2009-2010 hourly wage for van drivers was unilaterally set by the District at \$14.25. Bus drivers receive fringe benefits in accordance with the collective bargaining agreement. Van drivers do not receive fringe benefits.

8. Bus drivers represented by the Association have either double routes or single routes. Twenty-six bus drivers cover a double route which involves making two morning route runs and two afternoon route runs and work from between 5.0 hours and 7.75 hours per day. Seven bus drivers cover a single route which involves making one morning route run and one afternoon route run and work from between 3.5 hours and 4.75 hours per day. Seven bus drivers also cover mid-day routes transporting 4K students. Mid-day routes take from between 1.25 hours and 1.75 hours to complete.

Van drivers have various morning, mid-day, and afternoon routes and work from between 1.88 hours and 4.12 hours per day.

9. Bus routes remain relatively constant and are generally assigned to the same bus driver from year-to-year. However, bus routes can have minor day-to-day deviations such as when students who live in isolated areas are going to be absent from school. Van routes undergo more frequent day-to-day deviations based on changes in the special needs of van passengers.

10 Most of the District's school buses have a passenger capacity of between 65 and 83 passengers. One school bus is smaller and has a capacity of no more than 28 passengers. The capacity of the District's vans is limited to no more than nine passengers. Bus and van drivers are assigned to particular vehicles that they drive on a regular basis, but they are also assigned to other vehicles when the need arises.

11. Bus and van drivers are supervised by the transportation supervisor, Tracy Szymanski. Ms. Szymanski has the authority to hire, evaluate, discipline, and recommend termination of the bus and van drivers. Ms. Szymanski also serves as the liaison between the bus drivers and District officials when there are issues with students on the bus.

12. Some students in the District have Individualized Educational Programs (IEPs) which are developed, pursuant to federal law, to address certain special needs of students and find the least restrictive method of accommodating those special needs. Some students with IEPs are able to ride a school bus with no accommodation, while other students with IEPs are able to ride a school bus while accompanied by a bus aide, and other students with IEPs are unable to ride school buses at all and are transported in the District's vans where they can be more closely monitored. Van drivers only transport special needs children while bus drivers transport a mix of special needs children and non-special needs children. Some bus drivers operate vans on certain routes that do not serve special needs students.

13. The bus drivers' work does not require knowledge typically acquired through a four-year specialized degree.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. The bus drivers employed by the District are not professional employees within the meaning of Sec. 111.70 (1) (L), Stats.

2. The Early Childhood and Special Education Van Drivers are appropriately placed in the Pulaski Bus Drivers Association bargaining unit described in Finding of Fact 2.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

The Early Childhood and Special Education Van Drivers are hereby included in the Pulaski Bus Drivers Association bargaining unit described in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of May, 2010.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

PULASKI COMMUNITY SCHOOL DISTRICT

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER CLARIFYING BARGAINING UNIT**

The issue before us is whether the newly hired Early Childhood and Special Education Van Drivers are appropriately clarified into the existing bus driver collective bargaining unit.

As the parties have noted, the Commission (with Court approval) looks to seven factors in determining whether it is appropriate to include employees in an existing bargaining unit: a general “community of interest,” such that the employees participate in a “shared purpose” in their employment; a commonality of duties and skills; a similarity in wages, hours, and working conditions; a commonality of supervision; a shared work place; whether excluding the employees would offend the statutory directive against unit fragmentation; and bargaining history. *ARROWHEAD UNITED TEACHERS ORGANIZATION V. WERC*, 116 Wis. 2d 580, 591-92 (1984); *MARATHON COUNTY, DEC. NO. 19129-G (WERC, 5/04)* These factors differ in weight, combination, and significance depending on the circumstances of each particular case. *MARATHON COUNTY, supra*, and cases cited therein.

Factor 1 – Community of Interest/Shared Purpose

As mentioned above, the central question when evaluating this factor is to determine whether the employees in question participate in a shared purpose while engaged in their employment activities. The District focuses on the differences between the “community” of students who ride in the buses versus those who ride in the vans, the physical differences between vans and buses, the different licensing requirements for van and bus drivers, and asserts that the van drivers might share more of a community of interest with the bus aides. The Association argues that the purpose of both the van and bus drivers when performing their employment duties is “to safely get [students] from home to school and from school to home.” The bus driver position description describes the job goal of bus drivers to be to “[p]rovide safe and efficient transportation of Pulaski Community School District students.”

We find that the van and bus drivers participate in a shared purpose in their employment. Neither van nor bus drivers would be employed by the District but for the need to transport students between their homes, school, and other facilities. While the differences between the details of how that shared purpose is carried out by the van and bus drivers is relevant in other areas of the analysis, we do not find it relevant to our determination that the van and bus drivers participate in a shared purpose – safely transporting students between home and educational facilities.

Factor 2 – Duties and Skills

The primary duty of both van and bus drivers is to safely transport students between home and an educational facility. Although similar in many respects, there are some differences in how that duty is carried out by van and bus drivers. Bus drivers have some added responsibilities to conduct pre and post trip mechanical checks on buses. Van drivers only transport students with IEPs that require them to be transported by van and therefore generally require more patience and closer supervision. Van drivers are only required to maintain a regular driver's license while bus drivers must maintain a CDL license with an S certificate, indicating that there are special skills required to drive buses that are not required to drive vans.¹

Both van and bus drivers are required to have the temperament necessary to maintain order on their vehicles, clean their vehicles, clear ice and snow from their vehicles, report defects to the head mechanic, and refuel their vehicles.

While there are some differences in the duties and skills of the van and bus drivers, there is much more that is common between them than is different. They both operate multiple passenger vehicles requiring special care for the safety of their passengers, they both must exercise control over their passengers and address disciplinary issues that arise during the route, they both must take some steps to clean their vehicle and ensure that it is road-worthy.

Factor 3 – Wages, Hours, and Working Conditions

Bus drivers have a collectively bargained base hourly rate of \$15.83. Van drivers have an hourly rate of \$14.25 that was set unilaterally by the District. Bus drivers receive collectively bargained fringe benefits. The District does not offer fringe benefits to van drivers.

Both van and bus drivers operate varied combinations of morning, mid-day, and afternoon routes, resulting in significantly different total daily hours worked per individual. None work more than eight hours per day. Bus drivers work from between 3.5 and 7.75 hours per day while van drivers work from between 1.88 and 4.12 hours per day. The timing of routes is substantially similar between the bus and van routes and is dictated by the requirements of the school schedule and not by whether the employee drives a van or a bus. Both are required to report to the bus garage 15 minutes prior to the scheduled start time for the route.

¹ The District argues that because bus drivers must have a CDL, they are professional employees within the meaning of Sec. 111.70 (1) (L), Stats. and thus that the van drivers cannot be included in the bus driver unit unless the bus drivers so vote. See Sec. 111.70 (4) (d) 2. a., Stats. Professional employee status under Sec. 111.70(1)(L), Stats. requires among other matters that the knowledge necessary to perform the employee's work be typically acquired through a four year specialized degree. CITY OF STEVENS POINT, DEC. NO. 30941 (WERC, 6/04). There is nothing in the record that warrants a conclusion that the knowledge needed to obtain a CDL is typically acquired through a four year specialized degree. Thus we reject this District argument.

Van drivers operate vehicles that carry no more than nine passengers. Bus drivers operate vehicles that carry up to 83 passengers. Although van drivers carry fewer passengers, those passengers are students who have severe enough special needs that federal law requires them to be transported in a van. Bus drivers carry far more students, some with no special needs and some with special needs that are not severe enough to prevent them from riding a school bus. Bus aides are assigned to assist certain special needs students and will sometimes ride on either buses or vans. Bus and van drivers generally operate the same vehicle on a day-to-day basis, but are sometimes assigned to different vehicles. They both drive routes that are set by their supervisor, but bus drivers have more “ownership” of their route than do van drivers. Both expect minor changes in their set route on a day-to-day basis to accommodate the needs of their passengers-although change is more prevalent for van drivers.

As was true for our analysis of the employees’ duties and skills, we find that the wages, hours and working conditions of bus drivers and van drivers reflect more commonality than difference.

The wage difference between the bus and van drivers is not overly significant and is of limited weight as the rate for van drivers was not established through collective bargaining and the bus drivers must maintain a special license as a requirement of their position. Work hours and schedules are very similar. Van and bus drivers work schedules are tied to the hours set by the District for the student school day. Although the van drivers work, on average, fewer hours per day than the bus drivers, no one works more than eight hours in a day. And there are some van drivers who work more hours per day than some bus drivers.

The working conditions experienced by the van and bus drivers are likewise substantially similar. As mentioned above, both spend most of their working hours operating a multi-passenger vehicle transporting students to and from school. While van drivers must deal with individual students with more severe special needs than bus drivers, they have substantially fewer students overall. Bus drivers deal with students who have no special needs or less severe special needs, but they must deal with substantially more of them. While there are undoubtedly some differences in handling the different ability levels and quantities of passengers, the overall concerns – maintaining an orderly and safe ride to an educational facility – are basically the same.

Factor 4 – Supervision

Bus and van drivers both report to the transportation supervisor who has the authority to hire, discipline, evaluate, and recommend termination. The transportation supervisor is in charge of much of the day-to-day supervision of key aspects of van and bus drivers’ employment, including dispatching, setting routes, acting as liaison between the drivers and District management regarding issues that arise on the bus or van, and delivers official District communications. The District offered some evidence that van drivers have some interaction with District personnel outside of the Transportation Department and the Association countered by providing evidence that bus drivers also have interactions with other District personnel.

None of the evidence suggests that either van or bus drivers are directly supervised in any meaningful way by any person other than the transportation supervisor.

Factor 5 – Workplace

Bus and van drivers share the same central workplace – the bus garage. The bus garage is where they are required to park their personal cars, report to work, retrieve official communications, utilize a common break room, use the restroom, obtain keys to their work vehicle and interact with their supervisor and co-workers.

Factor 6 – Fragmentation²

The District collectively bargains with four separate units represented by different local unions. The Association represents 33 District bus drivers, the Pulaski Education Association represents 297 employees, the Pulaski Cook/Custodial Association represents 65 employees, and the Pulaski Educational Support Personnel Association represents 89 employees. The nine van drivers are the only employees of the District that are eligible to be represented by a union for collective bargaining purposes but are not yet organized for that purpose.

While creation of an additional bargaining unit of van drivers might not be inappropriate within the meaning of Sec. 111.70 (4)(d) 2.a., Stats., inclusion in an existing bargaining unit is more consistent with the statutory admonition to avoid proliferating bargaining units.

Factor 7 – Bargaining History

The parties agree that this factor is not relevant to the analysis of this case since the van drivers are new to the District.

CONCLUSION

Taking all the factors into consideration, we conclude that the collective bargaining unit represented by the Association is an appropriate unit in which to place the Early Childhood and Special Education Van Drivers. The van and bus drivers participate in a shared purpose in their employment. While there are some differences in the duties, skills, wages, hours and working condition of the van and bus drivers, there is much more that is common between

² The District argues that because there are some differences between van and bus drivers, their competing interests will create internal fragmentation in the unit. This argument misconstrues the statutory Sec. 111.70(4)(d)2.a., Stats. fragmentation issue which is only concerned with limiting the number of units. To the extent there are competing interests between van and bus drivers, this is a reality in many collective bargaining units as it is a common for employees with different job duties to be included within the same unit. In fact, the District itself contains at least one such unit – the Pulaski Cook/Custodial Association – which includes food preparation workers and janitorial workers within the same unit.

them than is different. They share the same direct supervision and workplace. Inclusion in an existing unit is consistent avoiding fragmentation of bargaining units. Therefore, we have granted the Association's petition to clarify the unit and order that the van drivers be included in the unit represented by the Association without a vote.³

Dated at Madison, Wisconsin, this 11th day of May, 2010.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

³ The District argues that including the van drivers in the bus drivers' unit without a vote would violate the van drivers' First Amendment rights because said employees have not been provided an opportunity to "have a voice" in the matter. The District cites no law in support of this argument but contends that the unit clarification process is a "fundamentally flawed process, albeit legal."

We have consistently rejected the contention that a vote is legally required in the context of unit clarification proceedings where, as here, the number of employees potentially being added does not call into question the collective bargaining representative's continuing majority status. OCONOMOWOC SCHOOLS, DEC. NO. 31059 (WERC, 8/04); MADISON SCHOOLS, DEC. NO. 12654-E (WERC, 1/02); CITY OF CUDAHY, DEC. NO. 21887-B (WERC, 1/90); DANE COUNTY, DEC. NO. 15696-A (WERC, 12/88); PORTAGE COUNTY, DEC. NO. 18792 (WERC, 6/81); DODGE COUNTY, DEC. NO. 8733-B (WERC, 7/79). Once a union has acquired the status of the exclusive collective bargaining representative (typically through a secret ballot election), that union has an ongoing presumption that it continues to enjoy majority support among the represented employees. MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 25143 (WERC, 2/88). Just as a new employee hired into a bargaining unit position is not entitled to vote on whether he or she wishes to be represented by the union, employees added to a bargaining unit through a unit clarification proceedings have no such entitlement unless the number added calls into question the union's continuing majority status.