

date. The matter was heard before the undersigned hearing officer on June 3, 1998, at which time the record of the hearing was closed.

FINDINGS OF FACT

1. Kearsarge Regional School District (District) employs teachers and support staff in the operation of its school system and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. Teamsters Local 633 (Union) seeks certification as the exclusive representative for a bargaining unit to consist of all bus drivers employed by the District.
3. Records submitted by the District indicate that there are employed twenty-four drivers with twenty-four different daily routes in the seven towns covered by the District. (District Exhibit No. 2). In addition, there are ten drivers with special driving assignments carried out on a daily basis and there are eighteen drivers listed as substitute drivers.
4. All drivers are employed through letters of agreement which set the terms and conditions of each driver's employment. Many terms and conditions vary from driver to driver depending on the circumstances of the route. All letters include an hourly rate for field trips/athletic events and a daily rate for the regular route, individually figured for each driver. The letter of agreement also enumerates benefits. (District Exhibit No. 1)
5. The benefits do not vary among the route drivers. Benefits include three personal/sick days, one half day's pay for a storm day, and \$25 bonuses, one paid if the bus passes a "White Glove Test" for cleanliness and another paid if the driver maintains perfect attendance. Also, there is an energy reimbursement sum paid if the diesel bus is kept at the driver's residence with the heating element connected to the home's energy supply. There are no health insurance or vacation benefits.
6. Jean Richards is the Superintendent of the Kearsarge

Regional School District. She testified that letters of agreement are sent in July to inform drivers of their routes and to inform them of the benefits they will accrue and the wages they will be paid for the 180 day school year. Six criteria are considered in setting the *per diem* rate for each driver. These include the length of the route and student management problems (District Exhibit No. 3). The *per diem* sum for a driver can change year to year depending on changes in the route and related circumstances.

7. Superintendent Richards averred that drivers are not always hired for the following year and that drivers not offered a contract will be aware of the reason. At the same time, there is no actual notice given that such a driver will not be rehired.
8. Clyde Benedict testified that he has driven for the District since 1993. He works an average of five hours a day, five days a week. He may work as many as forty-five hours a week when he drives his regular route and also drives to athletic events. When he drives students to special events, the hourly rate given in the letter of agreement applies.
9. Mr. Benedict agreed that he is not assured he will be extended a letter of agreement for the next year but it is expected. On the other hand, he would feel it necessary to give notice if he knew that he would not be returning the following year. If he were ill and unable to work, he would notify Roberta Geoffrion, Director of Transportation, who would assign a substitute or spare driver to cover the route.
10. Four or five spare or substitute drivers are recently employed drivers. Spare drivers may have special requirements such as working Monday and Tuesday only or driving only in the afternoons during the month of June.
11. Among the ten drivers with special assignments, some drive for students with special needs and some provide daily transportation for special needs students to Concord or elsewhere. The latter may drive a feeder

route transporting students living in inaccessible areas to and from the school bus.

DECISION AND ORDER

RSA 273-A:8 authorizes the Public Employee Labor Relations Board to determine and certify bargaining units. The legislature has set certain criteria to be considered, when making a determination that a bargaining unit is or is not appropriate. RSA 273-A:8 I, II. Also, certain categories of employees are to be excluded, RSA 273-A:1 IX.

The District objects to the certification of a bargaining unit of bus drivers because the drivers are employees under individual contracts with differing conditions of employment and because they work varying hours on a part-time basis, circumstances which the District likens to casual employment. RSA 273-A:1 IX (d). The Union counters that the drivers' letters of agreement are similar to teachers' letters of agreement and that these bus drivers are regular part-time employees who may organize for bargaining purposes.

It is common for school systems to issue individual letters of agreement and to enter into a collective bargaining agreement for a group of employees such as teachers. The collective bargaining agreement covers those terms and conditions of employment which are common to all. Letters of agreement are offered to individual employees and cover those aspects of employment which are not common to all. Teachers may be paid a higher salary because of a teaching specialty or paid an additional sum for coaching or supervising the yearbook staff. A bus driver will be paid more for a difficult route. The comparison drawn by the Union is apt. The letter of agreement and collective bargaining agreement are compatible for hiring both categories of employees.

All those in the proposed unit work for the same employer performing the same tasks of driving vehicles on the public ways in the course of transporting students to and from their places of education. RSA 273-A:8 I (a), (c), (d). The part-time nature of employment, in and of itself, is not reason to declare that an appropriate unit may not be organized. This is not the rare case in which a part-time employee may be shown outside the community of interest shared among full-time employees. Varying part-time hours among these regular employees is the norm and the right to

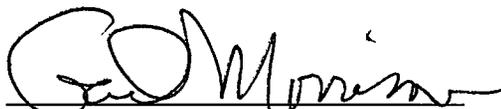
organize is not thereby impaired. Manchester School Bus Drivers Association and Manchester Transit Authority, PELRB Decision No. 1988-044 (1988).

Three groups of drivers are differentiated on the 1997-98 Transportation Department roster: route drivers who have charge of their vehicles, regular special education drivers and substitute drivers. (District Exhibit No. 2) Among the substitutes are those drivers who are probationary and so may not be included in a bargaining unit of regular employees and those who are "on call" for occasional field trips but who do not substitute for route drivers at all. RSA 273-A:1 IX (d). Also, among the substitute drivers are those under letter of agreement who are regularly called to drive when route drivers are ill and so are necessary for the operation of the transportation system. Rollinsford Police Association v. Town of Rollinsford Selectmen, PELRB Decision No. 1989-042 (1989)

The Director of Transportation/Transportation Manager is excluded, as petitioned, because of the supervisory nature of her employment. RSA 273-A:8 II. A bargaining unit of District bus drivers may be certified. The appropriate unit shall consist of all route drivers and special education bus drivers, as well as those substitute route drivers who averaged one day of driving or more per week during the prior school year and so were necessary for functioning of the District's transportation system.

So ordered.

Signed this 7th day of July, 1998.



Gail C. Morrison
Hearing Officer