

Office - FYI

1997

P018

BEFORE THE
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of:)	
)	
BART PROFESSIONAL CHAPTER,)	
Service Employees International)	
Union, AFL-CIO,)	
)	
Petitioner,)	Proposed
)	
and)	Interim Decision
)	
BAY AREA RAPID TRANSIT DISTRICT, and)	
BART CHAPTER, Service Employees)	
International Union Local 790,)	
AFL-CIO,)	
)	
Respondents.)	
)	
)	

I

INTRODUCTION

This matter involves the petition of the BART Professional Chapter (BPC) of the Service Employees International Union (SEIU) for Clarification/Redesignation of the 1973 Unit Determination. A conference of interested parties was held on June 16, 1997, for the purposes of ascertaining the positions of the parties, exploring reasons whether and why the change being proposed by BPC should be considered, and whether there should be an evidentiary hearing on the petition.

BPC was present and represented by a number of its

officers, the principal spokesperson being its president, Suzanne Angeli. The Bay Area Rapid Transit District (BART) was represented by Sherwood Wakeman, its General Counsel. The BART Chapter (BC), Local 790, SEIU was represented by its attorney, Vincent A. Harrington, Van Bourg, Weinberg, Roger & Rosenfeld. Notice of the conference had been served also on Amalgamated Transit Union Local 1555, a union that represents one of the bargaining subunits at BART, but no one from that union was present.

.II

THE BACKGROUND

By this petition, BPC seeks to sever itself from the existing BART clerical and maintenance "subunits" and to establish BPC as a separate subunit with continued representation by SEIU Local 790. BART does not oppose the petition. BC does. A brief discussion of the history is in order.

Upon the inauguration of BART service in the early 1970s, a number of unions were in contention for the representation of BART's employees. The result of a 1973 hearing presided over by Sam Kagel was the recommendation, adopted by the Director, that an "umbrella unit" of maintenance, clerical and transportation employees be established for bargaining purposes and that the umbrella unit consist of transportation, maintenance, and clerical "subunits." SEIU Local 790 was elected as the representative of the maintenance and clerical subunits, and ATU Local 1555 was elected as the representative of the

transportation employees.

Among the employees in the clerical subunit, and perhaps a few within the maintenance subunit, are certain administrative and professional employees who, over time, have perceived that their bargaining interests do not always coincide with those of the other employees represented by BC. Seeking a separate identity, they organized themselves into what became the BART Professional Chapter and, in 1996, achieved recognition within SEIU as a separate "chapter." There remains a dispute within SEIU as to exactly what BPC's separate chapterhood means when it comes to collective bargaining. BPC asserts that, because of its disparate interests, it is entitled to a separate place at the bargaining table, with authority to present and negotiate its own proposals. BC, on the other hand, maintains that BPC remains a component of the clerical and maintenance subunits for bargaining purposes and that BPC's bargaining goals must be merged into and harmonized with those of the existing SEIU subunits.

With that background, and given the presumptive appropriateness of a single-location bargaining unit (see, Frisch's Big Boy, 147 NLRB 551, 56 LRRM 1246 (1964)), the inquiry becomes whether, in support of its petition, BPC can establish the factors necessary for a unit severance.¹

¹ In 1991, BART filed a petition for unit clarification seeking to modify the 1973 umbrella unit determination by excluding certain supervisory employees from a non-supervisory unit. The Director, whose final decision was unsuccessfully challenged in judicial writ proceedings taken by BART, refused to

III

DISCUSSION

The principal consideration in determining whether a group of already represented employees should be severed from a larger bargaining unit is whether that group has a community of interests that sets them apart from the other employees. The factors utilized by the NLRB in deciding whether such a community of interests exists are:

- Whether there is a difference in the method of wages or compensation;
- Whether there are different hours of work;
- Whether there are different employment benefits;
- Whether there is different supervision;
- The degree of dissimilar qualifications, training and skills;
- Differences in job functions and amount of working time spent away from the employment situs;
- The infrequency or lack of contact with the other employees;
- Lack of integration with the work functions of other employees or interchange with them;
- The history of bargaining;

modify the umbrella unit. In a footnote, however, he observed that, if the petitioner had been able to show a substantial change in the job duties of the positions sought to be removed from the unit, there might have been a basis for reexamining the 1973 unit determination. That is the point of departure for the present case.

- The degree of departmental identity;
- Desires of the employees.

See, Kalamazoo Paper Box Corp., 136 NLRB 134, 48 LRRM 1715 (1962); Globe Machine and Tamping Co., 3 NLRB 294, 1-A LRRM 122 (1937); Stephens Produce Co., 214 NLRB 131, 88 LRRM 1363 (1974).

The foregoing list is not exhaustive, nor is any one factor dispositive. Any employment related factor that tends to support or detract from a community of interests may be brought to bear on either side of this dispute, and the determination will be made on the basis of the prevailing weight of the factors.²

IV

FURTHER PROCEEDINGS

On the premise that, at least at the threshold, the question whether there should be a unit severance is a question of law, the parties are directed as follows:

- Within 30 days after the receipt of the Director's decision adopting this proposed interim decision, BPC shall lodge with the hearing officer and serve

² Subsumed in the question whether severance from the existing unit is appropriate is whether, as the name BART Professional Chapter implies, the employees involved are truly professionals as that term is defined in section 2(12) of the LMRA. As observed by counsel for BC, although the LMRA (section 9(b)(1)) makes a bargaining unit containing both professionals and nonprofessionals presumptively inappropriate, the statutes governing BART's labor relations do not contain an equivalent provision. Thus, a showing that BPC's constituents are "statutory" professionals does not per se require severance. Nevertheless, evidence that the BPC employees are true professionals can be used to support a showing of community of interests.

upon all interested parties an OFFER OF PROOF in the form of a memorandum of points and authorities, supported by appropriate legal authority, declarations under penalty of perjury and documentation. The OFFER OF PROOF shall set forth the evidence BPC would be prepared to submit in support of its petition relating to the factors recited in Part III of this decision in the event an evidentiary hearing were to be held in this matter.

- Within 30 days after service of BPC's OFFER OF PROOF, BC shall lodge with the hearing officer and serve upon all interested parties its RESPONDING OFFER OF PROOF, likewise in the form of a memorandum of points and authorities, supported by appropriate legal authority, declarations under penalty of perjury and documentation. BC's RESPONDING OFFER OF PROOF shall state the grounds upon which it opposes BPC's petition and set forth the evidence supporting its opposition.
- Within 15 days after service of BC's RESPONDING OFFER OF PROOF, BPC shall, if it deems it necessary, lodge with the hearing officer and serve upon all interested parties a REPLY MEMORANDUM answering the points raised in BC's RESPONDING OFFER OF PROOF.

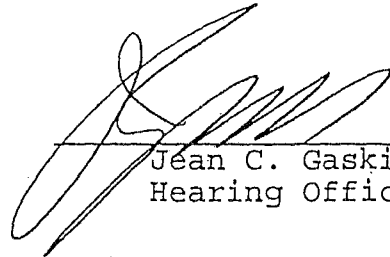
- BART and any other interested party may, within 15 days after service of BC's RESPONDING OFFER OF PROOF, lodge with the hearing officer and serve upon all other interested parties a MEMORANDUM stating its support for or opposition to BPC's petition and the grounds therefor.

At the conclusion of the foregoing briefing schedule, the hearing officer will make a determination whether the matter can be decided on the papers submitted or whether an evidentiary hearing shall be held and will make a recommendation to the Director.

In the meantime, the BPC and BC are directed by means of mediation and conciliation to attempt to resolve their differences.

Date:

June 18, 1997



Jean C. Gaskill
Hearing Officer