

STATE OF CALIFORNIA

GEORGE DEUKMEZIAN Governor

DEPARTMENT OF INDUSTRIAL RELATIONS

Office of the Director

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San Francisco, CA 94100

October 10, 1990

Mr. Peter Kutras, Jr.
Director of Personnel and Labor Relations
County of Santa Clara
County Executive
Office of Labor Relations
County of Government Center, East Wing
79 West Hadding Street, 8th Floor
San Jose, CA 95110

William J. Flynn, Esq.
NEVHART, ANDERSON, REILLY & FREITAS
568 Howard Street
San Francisco, CA 94105

RE: PETITION FOR CLARIFICATION OF THE EXISTING BARGAINING UNIT
(AMALGAMATED TRANSIT UNION, DIVISION 265 VS. SANTA CLARA
TRANSIT DISTRICT) C.S.H.C.S. CASE NO. 88 1 049

Gentlemen:

I have reviewed the proposed decision by the Hearing Officer, William R. Riker, in this matter. I find no reason not to concur with the Hearing Officer. I hereby adopt, as my own, the Hearing Officer's recommendation.

Therefore, my decision and order is:

The Petition for Clarification of the Existing Bargaining Unit is hereby granted, based on the totality of all the facts and all of the circumstances present in this matter. Based upon the record, it is my decision that the classification of Fare Inspector shall, by accretion, be a part of the existing bargaining unit represented by Division 265 of the Amalgamated Transit Union.

Sincerely,


 Ron Rinaldi
Director

RR/aa

cc: Edward W. Allen.

WILLIAM E. RIKER
ARBITRATOR
10 SANTA PAULA AVENUE
SAN FRANCISCO, CALIFORNIA 94107

TELEPHONE
415/644-1525

August 9, 1990

Edward W. Allen, Supervisor
Department of Industrial Relations
State of California
State Mediation/Conciliation Service
P. O. Box 603
San Francisco, CA 94101

RE: Petition for Clarification of the Existing
Bargaining Unit (Amalgamated Transit Union,
Division 265 vs. Santa Clara Transit District)
C.S.M.C.S. Case No. 88 1 049

Dear Mr. Allen:

Enclosed is the Factfinding Report with recommendations
for Director Rinaldi's perusal. Attached with the report is
the transcript, exhibits and pertinent correspondence.

I appreciate having the opportunity to be of service in
this matter.

Sincerely,


William E. Riker
Arbitrator

WER/sr

Encl.

cc: Peter Kutros
William Flynn

William E. Riker
Hearing Officer
15 Santa Paula Avenue
San Francisco, California 94127
(415) 554-1538

August 9, 1990

R. T. Rinaldi, Director
Department of Industrial Relations
State Mediation and Conciliation Service
P. O. Box 603
San Francisco, California 94101

SUBJECT: Petition for Clarification of the Existing
Bargaining Unit (Amalgamated Transit Union,
Division 265 vs. Santa Clara Transit District)
C.S.H.C.S. Case No. 88 1 049

The above subject was heard on Tuesday, February 15th, Friday,
February 23rd and Tuesday, February 27, 1990.

William E. Riker presided as hearing officer. The Santa Clara
Transit District, hereinafter the "District" was represented by
Peter Kutras, Jr., Director of Labor Relations for the County of
Santa Clara. The Amalgamated Transit Union, Division 265, here-
inafter the "Union" was represented by William J. Flynn, Attorney
from the firm of Neyhart, Anderson, Reilly and Freitas, 568 Howard
Street, 5th Floor, San Francisco, California 94105. Also present
was Michele A. Wayland, Principal Labor Relations Representative,
County of Santa Clara; Eugene F. Simmons, Chief, Protective Ser-
vices Department Santa Clara County Transit District, and William
McLean, President and Business Agent of Division 265, Amalgamated
Transit Union.

The parties were afforded full opportunity for presentation of
their respective positions. This included direct and cross-ex-
amination of witnesses, introduction of exhibits and argument.
At the close of the hearing the parties decided to submit post
hearing briefs to the hearing officer. After two extensions the
agreed upon submission date was set as June 29, 1990. The hearing
officer has received the post hearing briefs, determined that the
briefs were submitted in a timely manner, and after reviewing the
entire record submits his findings and recommendations to the Di-
rector of Industrial Relations.

1. Pursuant to Title 8, California Administrative
Code, Section 15805 (c) the Union petitioned for
clarification of the bargainint unit.
2. The clarification proposed is the inclusion of
the fare inspectors into the current bargaining unit.

3. The hearing was conducted in accordance with Section 100301 of the Public Utilities Code with respect to the Santa Clara Transit District. In accordance with this provision the relevant federal law and administrative practice developed under the Labor Management Act of 1947, as amended, was applied.
4. In deciding unit clarification questions the principal criterion is "community of interest." A unit clarification petition should be granted where the employees in the petitioned for classifications constitute an accretion to the existing bargaining unit. The National Labor Relations Board has established guidelines for determining whether the employees should be accreted to the existing unit. The guidelines consider the presence or absence of a variety of factors such as: (a) the degree of interchange among employees, (b) geographical proximity, (c) integration of operations, (d) integration of machinery and product lines, (e) centralized administrative control, (f) similarity of working conditions, skills and functions, (h) common control over labor relations, (i) collective bargaining history and (j) number of employees in existing unit. The Great Atlantic & Pacific Tea Company, 104 NLRB 1011 (1963).
5. The facts that developed from the testimony and evidence discloses the following:
 - a. The Union has represented public transit employees in the Santa Clara Valley since its charter was issued in 1902. Originally, these employees operated streetcars which typically required two person crews, a motorman and a conductor. In 1938, the predecessor companies to the District ceased streetcar operations in San Jose and operated only buses. The predecessor companies were replaced by the District which began operations in 1973. The Union continued to represent the employees of the District, in both operations and maintenance.
 - b. The Union was certified in 1973 as representing a unit consisting of: "All employees in production, operation and maintenance activities of the Santa Clara County Transit District, including drivers, dispatchers and maintenance personnel, and excluding clerical, guards, supervisors not presently covered by a collective bargaining agreement with the Santa Clara County Transit District."

- c. The parties collective bargaining agreement contains a jurisdiction section placing a limitation on subcontracting.
- d. In 1986 the parties entered into a Light Rail Implementation Agreement which included the following section: "VI. Operations -
 - 9. Fare Collection - If the District creates a specialized job classification for fare collection then the District will meet with the Union, prior to allocation of this class to a bargaining unit to discuss the bargaining unit allocation and the impact on the Union."
- e. The light rail operator is in the front of the car and does not check the fares of the boarding passengers.
- f. The fare system on the light rail requires the passengers to purchase their tickets before boarding from a ticket machine that is located at each stop. The fare inspector randomly boards trains and checks the fares of passengers. If the passenger has not paid, the fare inspector has the option of asking the passenger to leave the train or write a ticket which carries with it a fine for non-payment of the fare.
- g. The District subcontracts its fare compliance, patrol and yard security to a security contractor.
- h. The District contention is that in accordance with 9 (b) (3) of the National Labor Relations Act guards are prohibited from being placed in a non-guard bargaining unit. "...provided that the Board shall not... 3. decided that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against other employees and other persons, rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or it's affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

6. The District submitted for the hearing officer's consideration their arguments that the Union's petition for unit clarification should be denied both procedurally and on its merits.
 - a. The fare compliance officers are guards within the meaning of the LMRA. They are charged with and required to enforce all California Penal Code provisions, Transit District Ordinances and District Rules and Regulations against employees and the public as well as protect the safety of persons on the employer's property.
 - b. The Union did not represent guards before light rail and the District has continued the longstanding status quo of guards being outside of the unit.
 - c. The fare compliance officers are employed by a private employer and are not District employees. There is currently a dispute between the security firm, its employees and the union of security officers. Since the National Labor Relations Board is conducting hearings regarding the dispute between the three parties (employees, company and union of security officers) the Union's petition is defective in that the CPUC and CAC provisions are not the appropriate forum to modify or decertify the bargaining unit of a private employer and another union. The petition should be denied and the Union directed to the appropriate forum, which is the NLRB.
 - d. The fare compliance officers do not have and do not share any community of interest, nor history of representation with the Union. The community of interest is shared with yard guards, revenue protection officers and patrol officers employed by the private employer and represented by the union of security officers.
 - e. The Sacramento unit clarification (Rinaldi decision letter of June 29, 1988) is not applicable. There is no evidence that the critical issue of excluding guards from non-guard bargaining units was presented or reviewed by the Director. Secondly, the phrase "concurrence of the parties" seems to suggest that a settlement of accommodation was made

between that District and the Union. The third reason is that the petition involved employees of the District and not as in the situation of the Santa Clara Transit District employees of a private employer.

- f. The Clarification petition is procedurally defective because the Union failed to include the information that the fare compliance officers were the employees of a private employer. Not including this information to the state had the effect of keeping pertinent information from the CSMCS in the early stage of the handling of the petition. The defect is prejudicial to the District and consequently the Union petition should be denied as procedurally defective and because of the procedural nature of the defect the Union should be denied the opportunity to correct the defect.
 - g. The prevailing practice, as demonstrated through exhibits and testimony, is that in similar light rail systems the majority of districts do not have the fare evasion function (guard type classes) in the same bargaining unit as the drivers and mechanics.
7. The Union submitted for the hearing officer's consideration their arguments as to why their petition for unit clarification should be sustained.
- a. The fare inspectors are not guards which are excluded from the unit. A guard within the meaning of the LMRA has a specialized meaning. It generally includes "plant guards" from its own employees. The language of 9 (b) (3) states that a guard must be one who enforces rules to protect property of the employer against employees and other persons. Therefore, the requirement that he enforces rules against employees is a statutory requirement. The act was to prevent dual loyalties among guards in time of industrial disputes. The fare inspectors have no duties of protecting the property of this employer from the actions of unit employees. They do not sit as spotters to report on the actions or non-actions of the bus drivers or streetcar operators. They do not have a responsibility to report to supervisors the violation of any rules by ATU employees. Under normal circumstances, they only enforce the rule against

riding without having paid a fare. That same rule is enforced in the bus division by the drivers. Insofar as they are protecting the employer's property (fares), the bus drivers have equal responsibility.

- b. The patrol officers are armed, carrying both batons and pistols. The fare inspectors do not carry either. They, like the bus drivers or streetcar operators, carry only mace. Their regular duty is to check for fare compliance. The patrol officers do not do so as a regular part of their duties but the bus drivers do. While they may occasionally be called upon for other duties their principal duty is not that of a guard but rather it is for fare checking.
- c. The Director of Industrial Relations found in the Sacramento case that the fare inspectors at Sacramento are most appropriately placed in the existing ATU unit. The telephone conversation on the third day of hearing with the Sacramento Transit District Employee Relations Manager demonstrated that the duties in Sacramento of the fare inspectors are quite similar to that at the District. It would be inconsistent for the Director to find that the fare inspectors in Sacramento should be in the ATU unit while those at Santa Clara should not. The duties are nearly identical and the law to be applied is the same.
- d. The fare inspectors share a community of interest with the ATU unit. There is only one rank and file unit at Santa Clara. The unit certification includes all employees in production, operation and maintenance. The fare inspectors are clearly a part of the operations of the District. The fare inspectors are an integral part of the light rail vehicles. A new position has been created and it should be included in the ATU wall-to-wall unit.
- e. The fare inspector is a modern day conductor. The fare inspector has less variety of duties than the streetcar conductor, but fare checking, its duty, is a traditional duty of conductors and a traditional duty of ATU bus drivers.

8. After reviewing the record including the parties post-hearing briefs, and taking the opportunity of riding the light rail systems and viewing how the fare collection procedure is handled at Santa Clara and the Sacramento Transit Districts, it is the considered opinion of the hearing officer that the Union's petition has merit.

The persons employed in fare enforcement/collection for the light rail system at Santa Clara Transit share a sufficient community of interest with the ATU employees working in both the bus and light rail systems which warrants a finding and recommendation to the Director that the positions and duties involved constitute an accretion to the existing bargaining unit represented by the Amalgamated Transit Union, Division 265.

- a. The Union and Transit District have had a long history of collective bargaining.
- b. The collective bargaining agreement includes all employees in production, operation and maintenance activities of the Santa Clara District (excluding guards, etc.).
- c. The jurisdiction section of the parties collective bargaining agreement identifies those kinds of activities that may be subcontracted.
- d. In 1986 the District and Union entered into a light rail implementation agreement in accordance with 13.c of the Urban Mass Transportation Act. In the document, under Section VI Operations, Subpart 9. Fare Collection, the parties provided a provision which states the following: "If the District creates a specialized job classification for fare collection then the District will meet with the Union, prior to allocation of this class to a bargaining unit, to discuss the bargaining unit allocation and the impact on the Union."
- e. Traditionally, the fare enforcement/collection has been the responsibility of members of the ATU bargaining unit and currently that responsibility on the other Santa Clara Transit systems is performed by members of the unit.
- f. The majority of the Transit employees are ATU members (1500 plus) covered by the bargaining

agreement and the size of the staff checking fares is approximately 15 to 20 which supports the petition.

- g. The Union's arguments have been persuasive as they relate to the definition of guards under the Labor-Management Relations Act of 1947.

The hearing officer concurs that the traditional rationale for excluding guards in the same unit is to avoid the conflict of members of the same bargaining unit being required to protect the employer's property against brother members in situations of industrial conflict. The fare enforcers employed at the District are primarily limited in jurisdiction to be responsible for enforcement of the employer's rules affecting passengers of the Transit system.

- h. Whether a person wears a uniform consisting of a white shirt and blue trousers or a uniform that gives the appearance of a law enforcement officer is not germane. It is the duties and responsibilities which are reviewed. The activities and duties of the classification at issue primarily is for the purpose of assuring that passengers are riding in accordance with the District's policies and procedures. Those policies and procedures are equally enforced by bus drivers, conductors on the streetcars or fare enforcement personnel on the light rail system.

- i. Contrary to the District's view, the classification is more akin to the role of past conductors rather than that of law enforcement officers involved in the District's security system and police officers. The classification while having the authority to issue a citation does not allow for carrying firearms or batons. The scope of authority is limited to that of assuring the District its passengers are paying the appropriate fare. The ATU operating personnel have the same limited authority.

- j. It is the considered opinion of the hearing officer that the modernization of mass transit has as its primary purpose the more efficient utilization of manpower and equipment. The ability of the public to get a ticket from a machine or to purchase a monthly pass helps to facilitate the

City's and Transit District's efforts in their attempts to relieve congestion from highways and streets. Whether a member of the public purchases a ticket from a machine, conductor or operator is not material.

The issue is whether the classification engaged in checking fares and enforcing appropriate payment for fares is outside the scope of the ATU unit.

The evidence points to the contrary in that the primary duties of the classification in question traditionally had been the duties performed by members of the contract bargaining unit.

RECOMMENDATION

The petition for clarification be granted.

DATED

August 9th 1990


WILLIAM E. RIKER
HEARING OFFICER