

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case Nos. RCM-12/16-93

(PETITION FOR CERTIFICATION AFTER SCHOOL DISTRICT MERGER)

VALE EDUCATION ASSOCIATION)
OEA/OACE/NEA,)

Petitioner,)

v.)

VALE SCHOOL DISTRICT,)

Respondent.)

Case No. RCM-12-93;)

OREGON SCHOOL EMPLOYEES)
ASSOCIATION,)

v.)

VALE UNION HIGH SCHOOL)
DISTRICT #3,)

Respondent,)

Case No. RCM-16-93.)

RULINGS,
FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

Submitted to this Board on a fact stipulation prepared by Board Agent William Greer, Jr., and executed by the parties' representatives.

Monica Smith, Attorney at Law, Bennett & Hartman, 851 S.W. Sixth Avenue, Suite 1600, Portland, Oregon 97204-1376, represented Vale Education Association.

Michael J. Tedesco, General Counsel, Oregon School Employees Association, P.O. Box 3011, Salem, Oregon 97302-0011, represented Oregon School Employees Association.

David Turner, Attorney at Law, Oregon School Boards Association, 1201 Court Street NE, Salem, Oregon 97308, represented Vale School District.

On March 18, 1993, Vale Education Association/OEA/OACE/NEA (VEA) filed Case No. RCM-12-93, a petition under OAR 115-25-090 seeking certification as exclusive representative of a bargaining unit of "all certified and classified personnel" of four merging school districts. On April 14 and 21, 1993, Vale School Districts No. 3 and No. 15 filed objections to the petition.

On April 6, 1993, Oregon School Employees Association (OSEA) filed Case No. RCM-16-93, a petition under OAR 115-25-090 seeking certification as exclusive representative of a bargaining unit of "all regular full-time and regular part-time classified personnel" of Vale Union High School District No. 3. On April 19, 1993, Vale School Districts No. 3 and No. 15 filed objections to the petition. On April 22, 1993, VEA filed an objection to the petition.

Board Agent William Greer, Jr., scheduled a hearing for June 29, 1993, regarding the petitions and objections. Prior to that date, the parties all executed a fact stipulation prepared by the board agent, in which they agreed that the stipulation was accurate and contained all of the evidence to be considered by this Board in these matters; withdrew their respective objections to the petitions; and waived hearing. VEA and the District filed post-stipulation briefs by July 7, 1993. OSEA did not file a brief.

RULINGS

The board agent made no rulings.

FINDINGS OF FACT

1. Brogan Elementary School District No. 1, Vale Elementary School District No. 15, Willowcreek Elementary School District No. 42, Vale Union High School District No. 3, and Vale School District No. 84 are public employers.

2. VEA and OSEA are labor organizations.

3. In Case No. RCM-12-93, VEA proposes the following bargaining unit:

"All certified and classified personnel employed by the school district, excluding supervisory and confidential employees."

4. In Case No. RCM-16-93, OSEA proposes the following bargaining unit:

All regular full-time and regular part-time classified personnel, excluding supervisory and confidential employees."

Merger of districts

5. On March 18-19, 1993, the State Board of Education approved the extension of the course of study by the Vale Union High School District to include its component elementary districts. The merging school districts are: Brogan Elementary School District No. 1, Vale Elementary School District No. 15, Willowcreek Elementary School District No. 42, and Vale Union High School District No. 3. The districts were merged effective July 1, 1993. The merged district is named Vale School District No. 84.

Personnel

6. The merging districts employed the following number of full-time equivalent (FTE) personnel in the 1992-93 school year:

District	Certified employees	Classified employees
Brogan Elementary	1	1
Vale Elementary	34	36.9
Willowcreek Elem.	5.5	9.6
Vale Union High	22	16.15
Total	62.5	63.65

The classified employee figures include 13 FTE bus drivers employed by Vale Union High and Vale Elementary. Those employees are subject to an agreement with the two districts that is separate from the agreement of other classified employees.

7. The personnel employed by the districts include employees in the following classifications: secretary I, teacher aide, library aide, food services supervisor (head cook), food services assistant, dishwasher, custodian, maintenance supervisor, transportation supervisor, bus mechanic, bus maintenance assistant, bus driver, classroom teacher, counselor, learning resource center teacher/coordinator, librarian/coordinator.

8. The employment of personnel in the merging districts has been essentially the same as the employment described in the following Board decisions: *Welches Education Assn. v. Welches School Dist. No. 13*, 12 PECBR 304 (1990), *affirmed*, 116 Or App 564, 842 P2d 437 (1992), *review denied*, 316 Or 529 (1993); *Elgin Education Association/OEA/NEA v. Elgin School District No. 23*, Case No. RC-6-90, 12 PECBR 514 (1990); *McLoughlin Education Association/OEA/NEA v. McLoughlin Union High School District*

No. 3 and Oregon School Employees Association, Case No. RC-16-90, 12 PECBR 680 (1991).

Labor representation and current agreements

9. Vale Elementary is party to an agreement with Vale Education Association, the exclusive representative of a bargaining unit of Vale Elementary certified personnel. The agreement is effective by its terms from July 1, 1991 through June 30, 1994.

VEA disaffiliated with OEA in 1989 or 1990.

10. Vale Elementary is party to an agreement with "the Collective Bargaining Committee representing the Classified Employees in the bargaining unit * * *." The title of the agreement states that it applies to "Vale Elementary Classified Employees including those affiliated with O.S.E.A. 1991-94 school year." The agreement provides that the District will "deduct from the wages of each OSEA member the dues of the association" and transmit such to OSEA. The agreement also provides that OSEA may use the facilities of the district, have access to work areas outside employee working hours, and post materials. Predecessor agreements were effective in the 1980-81, 1988-89, and 1990-91 school years.

In 1987, the ERB conducted a representation election in *Oregon School Employees Association v. Vale School District #15*, Case No. RC-54-87. The Board issued a certification of results on June 9, 1987, that stated that a majority of the valid ballots had been cast for no representation.

11. Vale Union High School District is party to an agreement with Vale Union High School Education Association (VUHSEA), the exclusive representative of a bargaining unit of "all certified and classified personnel employed by the [Vale Union High School] District [excluding] substitutes, transportation employees, and confidential and supervisory employees * * *." The agreement is effective by its terms from July 1, 1991 through June 30, 1993. A predecessor agreement was effective in 1989-91.

VUHSEA affiliated with OEA/OACE in 1989.

12. Vale Elementary and Vale Union High are parties to an agreement with "the Collective Bargaining Committee representing Vale Districts #UH3 and #15 Bus Drivers * * *." The title of the agreement states that it applies to "bus drivers employed by Vale Union High and Vale Elementary including those affiliated with O.S.E.A. 1992/93 school year." The agreement provides that the District will "deduct from the wages of each OSEA member the dues of the association" and transmit such to OSEA. A predecessor

agreement between Vale Union High and "Vale High School Bus Drivers Including Those Drivers Affiliated with the OSEA" was effective July 1, 1988 to June 30, 1989.

13. Willowcreek School District No. 42 is party to an agreement with Willowcreek Education Association (WEA), the exclusive representative of a bargaining unit of "all certified personnel employed by the District [excluding] substitutes and confidential and supervisory personnel * * *." The agreement is effective by its terms from July 1, 1991 (except salary and insurance, which were effective September 1, 1991) through June 30, 1993.

Appropriate bargaining units

14. The parties agree that a wall-to-wall bargaining unit, certified employee bargaining unit, and classified employee bargaining unit are all appropriate and that a vote of the employees will be determinative.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over these parties and the subject matter of this dispute.

2. Under the circumstances presented by this case, it is appropriate to hold separate elections for the certified and for the classified employees. The certified employees shall vote to be represented by the VEA or for no representation. The classified employees shall vote to be represented by OSEA or by VEA or for no representation.

The first petition affecting these employees was filed by VEA and sought an all-employee bargaining unit. Subsequently, OSEA filed a petition seeking representation of a classified employee unit.

The parties disagree concerning the design of a ballot. VEA urges that classified employees have the opportunity to vote to be represented by VEA in an all-employee unit. The District argues that certified employees also should be allowed to vote on the configuration of the bargaining unit(s); that is, whether they desire to be represented in a teacher-only unit or a unit of all employees. We reject both options offered.

There is no question but that separate units of certified and classified employees are appropriate for bargaining under this Board's precedents, and the parties have so stipulated. Even though, as the parties also acknowledge, an all-employee unit also would be appropriate, we do not believe it would be efficacious in this case to allow the employees to vote on the configuration of the bargaining unit, as we did in the *Welches*

School District case, *supra*. In *Welches*, the employees were comprised within two established bargaining units, and in neither unit was there an intervening labor organization. Under the different circumstances presented here, this Board believes that the complicated balloting and certification process that would be necessary in order to allow employees to vote on various unit configurations would unduly distract the voters from the more important issues they must decide: whether to be represented for purposes of collective bargaining and, if so, by whom.¹

It is this Board's practice, where we describe a bargaining unit differently from the description included in a representation petition, to conclude that the petition nevertheless raises a question of representation, so long as the showing of interest submitted with the original petition is sufficient for the newly-described unit. VEA submitted a showing from both certified and classified employees and so qualifies for placement on both ballots. OSEA qualifies for inclusion on the classified unit ballot only.

ORDER

1. This Board's Elections Coordinator, as soon as is practicable after the commencement of the 1993-94 school year,² shall conduct secret mail ballot elections for the certified and for the classified employees of the District. The ballots shall be as described above.

2. The eligible voters shall be those persons employed by the District on September 7, 1993, and on the date of the election, and who are included in the description of either bargaining unit.

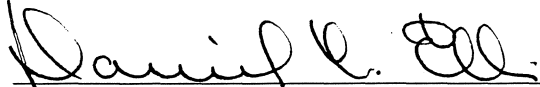
3. The District, no later than September 17, 1993, shall provide this Board with alphabetized lists of the names, home addresses and position titles of eligible voters in each


¹If VEA is certified as the exclusive representative in both units, it could create an all-employee unit by merging the two units under OAR 115-25-005(5). A section (5) petition would be timely any time before a contract is executed. See OAR 115-25-005(5) and 115-25-015(4). The desires of the employees for such a unit would be established by the requirement of a showing of interest from more than 50 percent of the members of each unit. An all-employee unit would be presumptively appropriate under our prior cases, a fact the District already has stipulated to.

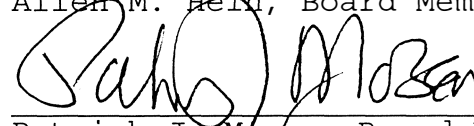
²Barring unusual circumstances not present in this case, this Board's practice is to not conduct representation elections among school district employees during a summer recess.

bargaining unit. The District shall simultaneously provide VEA with both lists and OSEA with the list for the classified unit.

DATED this 16th day of July 1993.


Daniel C. Ellis, Chairman


Allen M. Hein, Board Member


Patrick J. Mosey, Board Member

Because further proceedings are pending before this agency, this Order may not be appealed pursuant to ORS 183.482.

Reconsideration of this Order will be granted if any party files a petition pursuant to OAR 115-10-100. If oral argument before this Board also is requested, it will be held at 9:45 a.m. on August 19, 1993, in Salem, Oregon.