

VERMONT LABOR RELATIONS BOARD

ADDISON NORTHWEST EDUCATION)
ASSOCIATION, VERMONT-NEA)

and)

FERRISBURG CENTRAL BOARD OF)
SCHOOL DIRECTORS)

DOCKET NO. 89-52

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On July 3, 1989, the Addison Northwest Education Association, Vermont-NEA ("Association") filed a Petition for Election of Collective Bargaining Representative, requesting an election among all non-certified, non-supervisory employees of the Ferrisburg Central Board of School Directors ("Employer") who are employed more than 20 hours per week. Specifically, the Association sought an election among aides, custodians, secretaries, food service employees and the lunch agent.

The Employer filed a response to the petition on July 25, 1989. The Employer contended that the lunch agent and the head custodian should be excluded from the proposed bargaining unit as supervisory employees, and that the principal's secretary should be excluded as a confidential employee.

A hearing was held before Board Members Charles McHugh, Chairman; William Kemsley, Sr.; and Leslie Seaver on September 6, 1989. Attorneys Dennis Wells and Richard Goldsborough represented the Employer. Ellen David Friedman, Vermont-NEA Organizer, represented the Association.

The Employer filed a brief on September 12, 1989. The Association filed Proposed Findings of Fact and Conclusions of Law on September 13, 1989.

FINDINGS OF FACT

1. Ferrisburg Central School in Ferrisburg, Vermont, is an elementary school, Kindergarten through Grade 6, in the Addison Northwest Supervisory Union.

2. The position of secretary to the school principal has been filled for the past five years by Loretta Lawrence. The principal is Margaret Van Olsen. Lawrence's office is located adjacent to the principal's office. There is a sliding glass window on the common wall between the two offices which is closed by the principal during confidential meetings. Lawrence cannot overhear conversations in the principal's office when this window is closed.

3. Lawrence regularly does typing for the principal as part of her job responsibilities, including some letters and memoranda from the principal to teachers and support staff. Lawrence types annual performance evaluations of teachers and support staff, except cafeteria workers, done by the principal. Lawrence types approximately 20 evaluations a year. In five years, Lawrence has typed one letter of discipline, which was a written reprimand imposed against a teacher by the principal (Association Exhibit 3).

4. Lawrence types budget proposals done by the principal. Typically, the proposals include requests for equipment and supplies, and may include requests that an aide position be added or that an aide be budgeted to work more hours. The budget proposed by the principal does not contain salary proposals. The principal's budget proposal is submitted to the school board.

5. Lawrence monitors the absences of non-teaching employees and handles their payroll records. This information is not confidential (Association Exhibits 1, 2).

6. Personnel files for employees of the school are kept in a locked file cabinet in the principal's office. Lawrence does not have access to these personnel files.

7. If parents call the school concerning complaints about an employee, Lawrence does not discuss the nature of the complaint with the parent and immediately refers it to the principal.

8. Eunice St. Jean has been hot lunch agent and head cook at the school for 18 years and works full-time. She is responsible for determining the lunch menu, ordering the food and supplies, and administering the kitchen budget. St. Jean is not involved in major equipment purchases for the kitchen and is not involved in determining lunch price increases.

9. Besides St. Jean, there are two other cafeteria workers. They each work 30 hours per week. In 18 years, there only has been one instance where a new employee had to be hired for the cafeteria. St. Jean was involved with the principal in the interviewing of applicants for the position, and recommended the hiring of a person for the position. The person was a relative of St. Jean. The principal and the superintendent communicated to St. Jean that she was giving unfair preference to her relative and they hired another applicant for the position.

10. The three cafeteria employees are responsible daily for preparing approximately 160 lunches. The three employees work together on preparing the lunch, serving lunch and cleaning the kitchen. They may switch tasks from day to day without St. Jean's direction. St. Jean generally does not tell the other employees what work has to be done that day, as they generally know what work has to

be done. If substitutes are called in to work, the substitutes also generally know what work has to be done without St. Jean's direction.

11. If the other cafeteria employees have problems, they initially would come to St. Jean to get them resolved. If St. Jean thought an employee was having performance problems, she would talk to the employee. If the problems could not be informally resolved in either instance, St. Jean would talk to the principal to have the problems resolved. All decisions made relative to the solution of these problems are made by the principal. There have been no problems among cafeteria employees which have resulted in disciplinary action.

12. Thomas Corcoran has been head custodian at the school for four years, and works full-time. He works a split shift, 7:00 a.m. to 1:00 p.m. and 3:00 p.m. to 5:00 p.m. There are two part-time custodians at the school. They begin work at 3:00 p.m., and work 17 and 15 hours per week, respectively,. The part-time custodians are not included in the bargaining unit proposed by the Association.

13. Corcoran was involved in interviewing applicants for one of the part-time custodian positions. He subsequently informed the principal that he would agree to the hiring of any of the applicants. Corcoran did not make the final hiring decision, or effectively recommend the applicant whom was hired.

14. Corcoran does not direct the work of custodians on a daily basis. He generally gives them directions on work to be performed only on the first day they begin employment. The part-time custodians first would come to Corcoran if they have problems, and Corcoran would point out any problems he had with their work and would recommend improvements.

15. Only once has a problem arisen which could have resulted in discipline being imposed against a part-time custodian. In that case, Corcoran and the principal talked to the custodian who eventually resigned.

16. The principal does the annual performance evaluations of all the custodians.

OPINION

The first issue before us is whether the secretary to the school principal should be excluded from the proposed bargaining unit as a confidential employee. The term "confidential employee" is defined in 21 VSA §1722(6) as:

an employee whose responsibility or knowledge or access to information relating to collective bargaining, personnel administration or budgetary matters would make membership in or representation by an employee organization incompatible with his official duties.

A finding that a person assists or acts in a confidential capacity in relation to persons who formulate, determine and effectuate management policies in the field of labor relations is a necessary element under the labor-nexus rule if an employee is to be classified as a confidential employee. In re Local 1201, AFSCME and Rutland Department of Public Works, 143 Vt. 512 (1983). Employers are entitled to rely upon employees who are not subject to divided loyalties, and employees should not be in a position where they must choose between their obligations to a union and to their employer. Vermont State Hospital Personnel Designation Disputes, 5 VLRB 60, 68 (1982).

Employees who do not have access to confidential information as part of their regular duties do not meet these tests. Employees whose duties require only occasional access to confidential material and

which could be reassigned, or employees who occasionally substitute for confidential employees do not meet the definition of "confidential" employee. American Federation of Teachers, Local 333 and Washington Central Supervisory Union, 1 VLRB 288 (1978). Castleton Education Association and Castleton Board of School Directors, 1 VLRB 374 (1978). Vermont Education Association and Rutland City School Department, 2 VLRB 108 (1979). Vermont Education Association and Windsor Town School District, 2 VLRB 295 (1979).

We conclude that the secretary to the principal is not a confidential employee. She has no access to information relating to collective bargaining. Her access to information relating to budgetary matters is limited to the typing of budget proposals made by the principal. The secretary gains access to no information performing this duty which would make membership in, or representation by, the Association incompatible with her duties.

Also, the secretary's duties with respect to personnel administration do not require her exclusion from the bargaining unit as a confidential employee. She is responsible for typing letters of discipline. However, she has typed only one disciplinary letter in five years. Such occasional access to confidential material does not make membership in, or representation by, the Association incompatible with her official duties. Colchester Education Association, Vermont-NEA and Colchester Supervisory District Board of School Directors, 12 VLRB 60, 79 (1989).

The secretary's typing of approximately 20 performance evaluations a year does not require her exclusion from the bargaining unit as a confidential employee, even though these evaluations are confidential. The Employer must demonstrate not only access to

confidential information, but that such access would adversely impact on the Employer's conduct of its labor relations policies if employees are included in a bargaining unit. Colchester, supra, at 78. In this case, the Employer has not demonstrated any harm which would result to the Employer in its labor relations dealings, or any undue benefit which would accrue to the Association, if the secretary who types performance evaluations is included in the bargaining unit. Colchester, supra, at 78. Further, no other duties performed by the secretary related to personnel administration make her a confidential employee.

The next issue before us is whether the lunch agent/head cook and the head custodian are supervisors. Supervisor is defined in 21 VSA §1502(13) as:

An individual having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees or responsibly to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

In order to be considered a supervisor, an employee must pass two tests: 1) the possession of any one of the listed powers in the statutory definition; and 2) the exercise of such powers "not of a merely routine or clerical nature but requiring the use of independent judgment". Firefighters of Brattleboro, Local 2628 v. Brattleboro Fire Department, Town of Brattleboro, 138 Vt. 347 (1980). The statutory test is whether or not an individual can effectively exercise the authority granted him or her, theoretical or paper power will not make one a supervisor. Nor do rare or infrequent supervisory acts change the status of an employee to a supervisor. Brattleboro, supra, at 351.

We conclude that neither employee is a supervisor. It is evident that the lunch agent/head cook does not possess effective supervisory authority in the hiring of employees since, in the only instance where a cafeteria employee was hired, the recommendation of the lunch agent/head cook was not followed. We further believe that she does not have effective authority to assign and responsibly direct employees because employees generally perform their duties without direction from her. There is no evidence that the lunch agent/head cook possesses any of the other listed powers in the statutory definition of supervisor. It is evident that she serves as a "lead" worker without effective supervisory authority; that effective supervisory authority resides with the school principal.

We similarly conclude with respect to the head custodian. Assuming that the two part-time custodians are "employees" within the meaning of §1502(13), the head custodian does not possess effective supervisory authority over them. The Employer has not demonstrated that he possesses effective supervisory authority in the hiring of employees. In the one hiring decision in which the head custodian was involved, he indicated he would agree to the hiring of any of the applicants, and the decision whom to hire was not made by him. His authority in assigning custodians work and directing them generally is limited to giving them direction on the first day they are employed. Such rare supervisory acts do not change the status of an employee to a supervisor. Brattleboro, supra, at 351. There is no evidence that the head custodian possesses any of the other listed powers in the statutory definition of supervisor. He too serves as a lead worker without effective supervisory authority. Such authority resides with the school principal.

ORDER

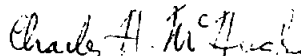
Now therefore, based on the foregoing findings of act and for the foregoing reasons, it is hereby ORDERED:

1. The secretary to the school principal at Ferrisburg Central School is not a confidential employee, and the lunch agent/head cook and head custodian at the school are not supervisory employees and, thus, are eligible to be included in a bargaining unit represented by the Addison Northwest Education Association, Vermont-NEA; and

2. A representation election shall be conducted by the Labor Relations Board among the aides, custodians, secretaries and food service employees (including the lunch agent/head cook), who work more than 20 hours per week, employed by the Ferrisburg Central Board of School Directors to determine whether they wish to be represented by the Addison Northwest Education Association, Vermont-NEA or no union.

Dated this 9th day of September, 1989, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


William G. Kemsley, Sr.


Leslie G. Seaver