

VERMONT LABOR RELATIONS BOARD

VERMONT EDUCATION ASSOCIATION	)	
	)	
-and-	)	DOCKET NO. 79-65R
	)	
WINDSOR TOWN SCHOOL DISTRICT	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On August 24, 1979, the Vermont Education Association (hereinafter "VEA") petitioned the Vermont Labor Relations Board (hereinafter "Board") for an election of a collective bargaining representative for an employee unit in the Windsor Town School District. The proposed bargaining unit would include 3 secretaries, 7 custodians and 6 kitchen workers. The Windsor Town School District (hereinafter "Employer") filed an answer to the petition for representation on September 27, 1979, requesting a hearing before the Board on the appropriateness of certain employees for inclusion in the bargaining unit. A unit determination hearing on this matter was held on November 8, 1979, before Board members Kimberly B. Cheney, William G. Kemsley, Sr., and Robert H. Brown. The VEA was represented by Steven R. Adams, UniServ Director of VEA/NEA District V. The Employer was represented by Attorney Trine Bech. Briefs were filed by the Employer and the VEA on November 16 and November 27, 1979, respectively.

#### FINDINGS OF FACT

1. The Town of Windsor School District is a municipal employer within the meaning of the Vermont Municipal Labor Relations Act, 21 VSA §1721 et seq.
2. There are 16 employees in the proposed bargaining unit, including: 3 secretaries, 7 custodians and 6 kitchen workers.
3. Ramona Lasure is the personal secretary to the principal at the Windsor High School. Her principle duties are to answer the telephone, prepare the attendance register, and type correspondence for the principal and the assistant principal.
4. These letters in the past have never concerned matters relating to collective bargaining.
5. The high school principal's secretary does not have access to staff personnel files.
6. Departmental budget requests are submitted to the principal by members of the teachers' bargaining unit. The secretary to the high school principal is then given the annual budget in a preparatory stage to type before submission to the superintendent of schools.
7. The high school principal's secretary also types memoranda for the principal to teachers and to the school board. These memoranda do not contain confidential material relating either to personnel administration or collective bargaining.
8. Mary Brothers is the personal secretary to the principal of the State Street Elementary School. Her principle duties in this position include: answering the telephone, maintaining the attendance register, typing most of the correspondence for the elementary school principal, and maintaining student files.

9. The secretary to the elementary school principal does not have access to staff personnel files.

10. The responsibilities of the secretary of the elementary school with respect to budgetary matters are generally the same as those of the secretary to the principal of the high school.

11. In both the high school principal's office and the elementary school principal's office a telephone system is established that enables the principal to communicate directly with the superintendent on a line which his personal secretary does not have access to.

12. The principals of both schools, as a matter of their own administrative policy, do not share information related to personnel administration or budgetary matters and information pertinent to collective bargaining strategy with their personal secretaries. Such information is transmitted directly from the principal's to the superintendent's office.

13. The Employer has developed an evaluation procedure whereby the evaluations of teaching staff will be prepared by the principals and will then be given to their personal secretaries for the typing of narrative comments. No evidence before the Board would suggest that knowledge of the content of personnel evaluations would affect collective bargaining.

14. Ellen Bandy is the Food Service Manager. In this capacity, she is also the head cook, and sole supervisor of all the kitchen personnel at the high school and elementary school.

15. She makes all budget requests and monitors all budget expenditures relative to the hot lunch and breakfast programs.

16. She is involved in the hiring of kitchen personnel and often is the only person interviewing applicants. Her hiring recommendations

have never been rejected by the School Board. She hires all temporary help without consulting anyone.

17. She has never fired any kitchen personnel, but there was evidence that the Food Service Manager could effectively terminate a kitchen employee.

18. Philip Turgeon is the Maintenance Supervisor. He is responsible for the maintenance and cleaning of both schools. He trains new custodial staff, makes all routine work assignments, and has the authority to assign overtime.

19. He is involved in the hiring of custodial staff and has, in the past, hired custodians who have started work before any confirmation was given by the School Board.

20. Temporary maintenance workers are interviewed and hired by him without consulting the principal or superintendent. Permanent positions are now interviewed by him in consultation with the principals, and a joint decision is reached.

21. The Maintenance Supervisor makes all budget requests and monitors budget expenditures relative to the maintenance of both schools.

#### OPINION

Here we are asked to determine the appropriateness of the inclusion of certain employees in the proposed bargaining unit as submitted by the VEA. Two issues were proposed by the parties at the hearing. First, are the personal secretaries to the high school principal and elementary school principal "confidential employees", thus barred from inclusion in the proposed bargaining unit under 21 VSA §1722(12)(D)? Second, are the Maintenance Supervisor and Food Service Manager "supervisory" employees and

thus barred from inclusion in the proposed bargaining unit under 21 VSA §1722(12)(B)?

I

The Secretaries

A confidential employee", as defined in 21 VSA §1722(6), means:

"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."

We conclude, for the reasons which follow, the secretary to the principal of the Windsor High School, and the secretary to the principal of the State Street Elementary School, are not confidential employees under 21 VSA §1722(6). Therefore, they are eligible for inclusion in the proposed bargaining unit, along with the administrative secretary to the guidance department, whose eligibility is not at issue here.

Requisite elements of "confidential employee" status present in previous decisions by this Board are not in evidence here. Unlike the unit determination of American Federation of Teachers and Washington Central Supervisory Union, Union 32 High School Board of Directors 1 VLRB 288 (1978), the secretaries in question in this matter do not have "unlimited access" to employees' personnel files in the course of their duties. In Union 32, supra, the secretary to the principal was privileged to information normally not made available to the bargaining unit. Such is not the case here. Neither the secretary to the high school principal nor the secretary to the elementary school principal has access to existing or proposed bargaining unit member personnel files. On the contrary, both administrators here maintain those personnel files directly in their own desks within their respective offices.

The Employer argues controlling Board precedent can be found in Vermont Education Association and Rutland City School Department 2 VLRB 108 (1979), where "first line" secretaries, that is, those immediately supervised by chief administrators, were excluded from the bargaining unit (by the parties' stipulation) as confidential employees, and certain other "second line" administrative secretaries were not. Those "second line" secretaries were determined eligible for inclusion in the bargaining unit because their regular duties did not involve secretarial services of a confidential nature, including access to personnel administration and budgetary information pertinent to collective bargaining negotiations. While those "second line" administrative secretaries in VEA and Rutland School Dept., supra, did on occasion function as "first line" secretaries to principals on a substitute basis, and therefore may have had access to confidential information infrequently, we did not feel it proper to exclude those employees from the bargaining unit. Their jobs required only occasional access to confidential material, and the employer's business would not be seriously interrupted by denying these persons access to that information.

The facts pertinent to these positions are more similar to those related to the "second line" secretaries than the excluded "first line" secretaries in the Rutland case. Each unit determination decision must rest on the specific facts of each case, not job titles, or placement in a table of organization.

We look to the nature of the work performed, lines of authority, and organization patterns in reaching our decision. We think a person's free choice of a bargaining unit should be respected unless that choice is "incompatible" with their work. Here we find little evidence that

information needed to make management decisions would be impeded, or that other management functions would be jeopardized by our decision.

In their capacity as personal secretaries to the elementary and high school principals, access to confidential personnel matters is at present limited to infrequent typing of largely minor disciplinary correspondence from the principal's office to staff, and may increase somewhat with the typing of annual narrative evaluation comments under the supervision of their respective administrators. Moreover, the telephone lines and office space arrangements are such that the principals can maintain confidentiality of all communications with the central office. This historic pattern is evidence of management's own view of the division of loyalty that may exist in the school system.

For the most part, these secretaries are excluded from confidential personnel administration and collective bargaining budgetary and strategy matters to a sufficient degree, so that their membership in, or representation by, an employee organization will not impede their performance and reliability in their official duties. Evidence of their employment relationships with their immediate supervisors does not convey a feeling of unity with management, but instead an identification with other proposed and existing bargaining unit members.

While the VEA argues the Board should follow its decision in Custodians' Unit of the St. Albans City Education Association and St. Albans City Board of School Directors, VLRB Opinion, May 4, 1976, wherein the head custodian was designated as a non-supervisory employee, we are not inclined to do so. There the evidence indicated the head custodian lacked the real authority to act independently that exists here.

II  
The Maintenance Supervisor and Food Service Manager

A supervisor", excluded from the proposed bargaining unit by 21 VSA §1722(12)(B), is defined in 21 VSA §1502(13) as:

"an individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, 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."

We find the Maintenance Supervisor and the Food Service Manager of both the elementary and high schools are "supervisors" within the meaning of the Municipal Employee Relations Act; and as such, are excluded from eligibility for inclusion in the proposed bargaining unit.

Inherent in both of these positions are capacities to exercise independent judgment, in the interest of the Employer, in the direction of their respective operations of the school district.

Specifically, as Maintenance Supervisor, incumbent employee Philip Turgeon is solely responsible for the training and daily work assignments, including the authorization of overtime, for six full-time custodians at both schools. Although a principal of either school may occasionally direct individual custodians regarding their work, the customary chain of command is for each principal to address maintenance related matters to the Maintenance Supervisor who is directly responsible for job performance evaluations on a regular basis. Likewise, although the Maintenance Supervisor technically may not hire permanent personnel without consulting the principal and superintendent, his recommendations are regularly affirmed and thus have the effect of hiring authority.



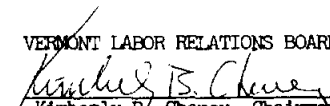
The Food Service Manager in this case also has virtually a "free hand" in running the hot lunch and breakfast programs at both schools. Her relationship with both principals and the superintendent are not unlike the Maintenance Supervisor's, including her assumed, or "defacto" hiring authority. We think it significant that her recommendations for hiring or discipline if needed, would be followed implicitly. As with the Maintenance Supervisor, she alone is responsible on a continual basis for the provision of major school district service and exercises that responsibility in an independent manner.

ORDER

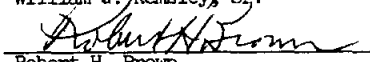
Now, therefore, for all the foregoing reasons, it is hereby ORDERED pursuant to 21 VSA §1724 that a collective bargaining unit for secretaries, custodians and food service employees employed by the Windsor Town School District is appropriate, with the exception of the positions of Maintenance Supervisor and Food Service Manager; and that a secret ballot election shall be conducted by the Vermont Labor Relations Board within 30 days, or as the Board may determine by its further order.

Dated this 13<sup>th</sup> day of December, 1979, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Kimberly B. Cheney, Chairman

  
William G. Kemsley, Sr.

  
Robert H. Brown