

VERMONT LABOR RELATIONS BOARD

UNITED STEELWORKERS OF
AMERICA, AFL-CIO

and

TOWN OF BARRE

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DOCKET NO. 04-13

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On March 25, 2004, the United Steelworkers of America, AFL-CIO (“Union” or “Steelworkers”) filed a Petition for Election of Collective Bargaining Representative seeking to represent the administrative assistants, secretaries, clerical employees, clerk, bookkeeper, assistant town clerk, assistant town treasurer, and payroll and accounting employees in the Town of Barre Manager’s office, Assessor’s office, Planning and Zoning office, Clerk’s office and Treasurer’s office. On April 14, 2004, the Town of Barre (“Employer”) filed an answer to the petition, contending that the executive secretary and bookkeeper in the town manager’s office are confidential employees and should be excluded from the bargaining unit.

The Labor Relations Board conducted a hearing on these issues in the Board hearing room in Montpelier on September 2, 2004, before Labor Relations Board Members Richard Park, Chairperson; John Zampieri and Edward Zuccaro. Union representative George Magnan represented the Union. Attorney Dennis Wells represented the Employer. The parties filed post-hearing briefs on September 17 and 20, 2004, respectively.

FINDINGS OF FACT

1. Currently, 35 of the 51 employees of the Employer - police officers and clerk dispatchers, public works employees and emergency medical technicians - are in three bargaining units represented by unions other than the Steelworkers, and are covered by collective bargaining agreements. In the petition before us, the Union is seeking to represent the administrative assistants, secretaries (including the Executive Secretary to the Town Manager), clerical employees, clerk, bookkeeper, assistant town clerk, assistant town treasurer, and payroll and accounting employees in the Town of Barre Manager's office, Assessor's office, Planning and Zoning office, Clerk's office and Treasurer's office. There are nine employees in the bargaining unit proposed by the Union.

2. The Town Manager, Executive Secretary to the Town Manager and Bookkeeper are in a common office area separated from other employees and offices in the Town office building. The Town Manager has a private office within this space, while the other two employees are both in the outer office area. The Town Manager, Executive Secretary and Bookkeeper each have access to the files in the outer office area and the Town Manager's office.

3. Diane Galway has been Executive Secretary to the Town Manager for 29 years. She has reported directly to Carl Rogers, the current Town Manager, for the past 13 years. Rogers did not have a word processor or typewriter in his office for the first eight of those years, and during that period the Executive Secretary typed documents for him. Rogers has had a word processor for the most recent five years. He is a slow typist, and continues to rely on the Executive Secretary to type for him except when she is on vacation or the document is informal and brief.

4. The Employer is typically represented in collective bargaining negotiations with the unions representing employees by a bargaining team composed of the Town Manager, the head of the involved department and two Selectboard members. Before negotiations begin, the Town Manager solicits comments and suggestions for negotiation proposals from the bookkeeper, the involved department head and Selectboard members. The Executive Secretary types the Town Manager's request for comments and suggestions and the summaries of responses from the bookkeeper and department heads (Exhibits I, K and R).

5. The Executive Secretary has typed documents on existing wages and benefits of Town employees in preparation for negotiations. The Employer also typically seeks wage and benefit data from other area municipalities when preparing for negotiations. The Executive Secretary has been involved in soliciting and summarizing this wage and benefit data. The members of the Employer's bargaining team rely on the data when developing their bargaining positions. The wage and benefit data obtained in these surveys is public information under the Vermont Public Documents law. However, it has been collected and assembled in a format for presentation as part of the Employer's collective bargaining preparations, and is not a public document (Exhibits A, B and M).

6. The Town Manager develops draft bargaining proposals of the Employer prior to the commencement of negotiations and during negotiations. The Selectboard considers these draft proposals and sometimes revises them prior to the proposals being presented to the Union. The Executive Secretary types the draft proposals and revised proposals (Exhibits C, G, N and S).

7. The Executive Secretary has typed correspondence from the Town Manager to department heads discussing the Employer's views on negotiation proposals (Exhibit S, pages 2-3).

8. The Executive Secretary types confidential memoranda from the Town Manager to Selectboard members before Selectboard meetings. The information contained in these memoranda includes confidential personnel information involving hiring decisions and disciplinary matters (Exhibits W, X, Y and Z).

9. The Executive Secretary is responsible for opening the mail in the Town Manager's office. She also takes telephone messages for the Town Manager.

10. Virginia Breer has been Bookkeeper for the Employer the past 17 years. During that time, the Employer has not employed a person whose duties have been specifically dedicated to human resources or personnel administration. In the absence of such an individual, the Bookkeeper has performed wage and benefit administration duties for the Employer.

11. The Bookkeeper has been involved in the preparation of the Employer's proposals for negotiations with the unions representing employees in the Town's three bargaining units. In response to the Town Manager soliciting input prior to negotiations, the bookkeeper has made recommendations for changes in the collective bargaining contracts. Her input has included suggestions concerning sick leave bonus, death benefits for the families of employees, method for the accrual of vacation time, definition of holiday pay and the application of shift differential pay. Some of her suggestions have been included in the Employer's bargaining proposals (Exhibits K, R & S).

12. The Bookkeeper has prepared summaries of existing wage and benefit information for Town employees that have been used by the Employer in preparation for,

and during, negotiations. The wage and benefit data summarized by the Bookkeeper is public information. The document prepared by the bookkeeper, containing certain information in a certain format, is not a public document (Exhibits A, B, J and O, pages 1-4).

13. The Bookkeeper prepared a document at the Town Manager's request during negotiations involving public works employees detailing the financial effect of a proposal to change how overtime was calculated (Exhibit O, pages 5-6).

14. The Bookkeeper, at the request of the Town Manager, has gathered information on available health insurance plans to be used by the Employer during collective bargaining negotiations (Exhibits D, F & T).

15. The Bookkeeper has developed worksheets preliminary to the development of the annual Town budget that contain data on actual and estimated employee benefit costs (Exhibit V).

MAJORITY OPINION

At issue is whether the Executive Secretary to the Town Manager and the Town Bookkeeper are confidential employees. A "confidential employee" is defined in 21 V.S.A. Section 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 . . . 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). The essential issue is whether the challenged employees have such a close relation to the employer's management of labor relations that the employer would be prejudiced by their inclusion in a bargaining unit with other employees. Harwood Union High School District and Harwood Education Association, 172 Vt. 167 (2001). 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). Further, an 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 Education Association, Vermont-NEA and Colchester Supervisory District Board of School Directors, 12 VLRB 60, 78 (1989).

We first discuss the Executive Secretary to the Town Manager. In several cases, the Board has examined whether a secretary employed by a municipality is a confidential

employee. In applying the standards delineated above, in some cases the Board has found confidential duties to be absent, or only rarely performed, and has concluded the secretaries were not confidential. AFSCME Council 93, Local 1201 and Rutland Housing Authority, 18 VLRB 1 (1995). IBEW Local 300 and Morristown Police Department, 15 VLRB 66 (1992). In other cases, the Board has concluded that secretaries' access to confidential information as part of their regular duties warranted a confidential designation. Village of Essex Junction and Local 1343, AFSCME, 12 VLRB 211 (1989). City of Burlington and Local 1343, AFSCME, 9 VLRB 116 (1986).

We conclude that the Executive Secretary acts in a confidential capacity to the Town Manager, who formulates, determines and effectuates the Employer's labor relations policies. This is most evident with respect to her typing confidential documents for the Town Manager involving collective bargaining negotiations. Her regular duties include typing summaries of suggestions for negotiations proposals from department heads and the Bookkeeper, typing draft negotiations proposals and revised proposals of the Employer, and typing correspondence in which the Employer's views on negotiations proposals are discussed. These duties providing her access to confidential collective bargaining information of the Employer, which cannot be reasonably reassigned, suffice to exclude her from the proposed bargaining unit as a confidential employee.

Further, her soliciting and summarizing of wage and benefit data from other municipalities for the Employer, in preparation for negotiations, constitute confidential responsibilities. Although the data itself is public information, it is collected and assembled in a format for presentation that sheds light on the Employer's confidential collective bargaining strategy. In essence, she is aware of the manner in which the Employer will "spin" the data when it is presented to the Union.

Moreover, the Executive Secretary has duties relating to personnel administration that support a determination that she is a confidential employee. She types confidential memoranda from the Town Manager to Selectboard members which include confidential personnel information involving hiring decisions and disciplinary matters.

In sum, the Executive Secretary's responsibilities relating to collective bargaining and personnel administration as part of her regular duties make her a confidential employee within the meaning of 21 V.S.A. Section 1722(6). There would be an adverse impact on the Employer's conduct of its labor relations policies, such that the Employer would be unfairly prejudiced, if the Executive Secretary is included in a bargaining unit with other employees.

We reach the same conclusion with respect to the Bookkeeper. The Board has often examined for confidential status employees serving in a fiscal role, such as bookkeepers, accountants, financial analysts, payroll clerks or accounts payable clerks. In many cases, the Board concluded that the employees were privy to confidential information as part of their regular duties, which information was not available to the public and the union, that would make membership in, or representation by, a union incompatible with their duties. Colchester, supra. Washington South District Teachers' Association, Vermont-NEA and Washington South Supervisory Union Board of School Directors, 12 VLRB 22 (1989). Orange Southwest Supervisory Union and Orange Southwest Teachers' Association, 11 VLRB 285 (1988). AFSCME Local 490 and Town of Bennington, 11 VLRB 89 (1988). Personnel Designation Dispute of Calderara, 10 VLRB 261 (1987). United Steelworkers of America, Local 8774 and City of Barre, 5 VLRB 3 (1982). Rutland City School Department, supra. However, employees with fiscal duties who need only occasional access to confidential materials, which duties can

be reasonably reassigned, have been held not to be confidential employees. Essex Junction, supra. Colchester, supra. Orange Southwest, supra.

In performing wage and benefit administration duties for the Employer in the absence of another position specifically dedicated to human resources or personnel administration, the Bookkeeper serves in a confidential capacity to the Town Manager. Most prominent in this regard is her involvement in the preparation of the Employer's proposals for negotiations with the three unions representing Town employees. In response to the Town Manager soliciting her input, she has made recommendations for wage and benefit changes in the collective bargaining contract that have been included in the Employer's bargaining proposals.

Further, the Bookkeeper is a resource for the Town Manager in preparing for negotiations and during negotiations. She has prepared summaries of existing wage and benefit data, gathered information on available health insurance plans, and detailed the financial effect of a bargaining proposal. As is the case with the Executive Secretary, although much of the information itself in this regard is public information, it contains information in a certain format for presentation that sheds light on the Employer's confidential collective bargaining strategy. Again, it is an issue of the employee having knowledge and information as to how the Employer will "spin" the data when it is presented to the Union.

In sum, the Bookkeeper's responsibilities relating to collective bargaining make membership in or representation by the Union incompatible with her official duties. The evidence does not indicate that these confidential duties can be reasonably reassigned. There would be an adverse impact on the Employer's conduct of its labor relations

policies, such that the Employer would be unfairly prejudiced, if the Bookkeeper is included in a bargaining unit with other employees.

The Town Manager is entitled to rely on both the Executive Secretary and the Bookkeeper to serve in a confidential capacity in assisting him in labor relations responsibilities.

Richard W. Park, Chairperson

Edward R. Zuccaro

MINORITY OPINION

I concur with my colleagues that the Executive Secretary should be excluded from the bargaining unit as a confidential employee. However, I disagree with their conclusion that the Bookkeeper is a confidential employee.

An employer needs to present substantial evidence of confidential responsibilities before an employee is excluded from a bargaining unit as a confidential employee. In re Local 1201, AFSCME, Rutland Department of Public Works, 143 Vt. 512 (1983). Here, the Employer has failed to present sufficient evidence that there would be a substantial adverse effect on the conduct of its labor relations policies if the Bookkeeper is included in a bargaining unit and represented by a union.

This is not a case where evidence exists of an employee serving in a fiscal role performing confidential collective bargaining responsibilities such as costing out proposed salary increases or varying levels of benefits. That evidence is noticeably absent here. The bulk of the Bookkeeper's duties relied on by the Employer for confidential status involve public information. The only duties that do not involve public information

– making limited suggestions for changes in the collective bargaining contract – are not of sufficient significance to the Employer’s conduct of its labor relations policies to warrant denying the Bookkeeper the important right of being represented by a union.

John J. Zampieri

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered:

1. The Executive Secretary to the Barre Town Manager and the Bookkeeper of the Town of Barre are confidential employees and thus are ineligible to be included in a bargaining unit represented by United Steelworkers of America, AFL-CIO; and
2. The Vermont Labor Relations Board shall conduct a representation election among the administrative assistants, secretaries, clerical employees, clerk, assistant town clerk, assistant town treasurer, and payroll and accounting employees employed by the Town of Barre in the Assessor’s office, Planning and Zoning office, Clerk’s office and Treasurer’s office, excluding the Executive Secretary to the Town Manager and the Bookkeeper, to determine whether they wish to be represented by the United Steelworkers of America, AFL-CIO.

Dated this 19th day of October, 2004, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Richard W. Park, Chairperson

Edward R. Zuccaro