

VERMONT LABOR RELATIONS BOARD

GRAND ISLE STAFF ASSOCIATION,)	
LOCAL 136, VERMONT NEA)	
)	
and -)	DOCKET NO. 83-5
)	
ALBURG BOARD OF SCHOOL DIRECTORS)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On January 21, 1983, the Grand Isle Staff Association, Local 136, Vermont NEA ("Association") filed a petition with the Vermont Labor Relations Board requesting that the Board determine whether the secretary to the principal of the Alburg School District should be included within the Alburg nonprofessional staff bargaining unit.

A hearing was held before the full Board on March 31, 1983. Attorney Joseph Cahill represented the Alburg Board of School Directors ("School Board"). The Association was represented by Kay Trudell, Vermont NEA Uniserv District #4 Director. Requested Findings of Fact and Memoranda of Law were filed by the School Board and the Association on April 11, 1983, and April 15, 1983, respectively.

FINDINGS OF FACT

1. The School Board is the governing body for the Town of Alburg School District, within the Grand Isle Supervisory Union District.
2. On October 4, 1982, the School Board voluntarily recognized the Association as the exclusive bargaining agent for the Alburg School

District nonprofessional staff, but challenged the inclusion of the school secretary in the bargaining unit on the ground that she was a confidential employee.

3. The Alburg School District consists of one building, the Alburg Educational Center, which houses grades K-8.

4. James Mumley has been the principal of the Alburg School for the past 12 years. He has supervisory responsibility over the teaching staff and nonprofessional staff of the school. He has authority to take disciplinary action against all staff and to make recommendations as to non-renewal or dismissal of the staff to the School Board. Mumley is responsible for hearing and deciding teachers' Step I grievances. However, if the teacher and the superintendent agree, Step I may be bypassed and the grievance brought to the next Step (Exhibit A).

5. Mumley has had a secretary since he was first employed as the principal, except for the 1979-80 school year, and the duties and responsibilities of the secretary have generally stayed the same throughout Mumley's tenure as principal.

6. During the 1979-80 school year, the School Board eliminated the paid secretarial position and the position was staffed by unpaid volunteers. The volunteer did not type confidential material. Mumley typed any confidential material. The paid secretarial position was restored by the School Board for the 1980-81 school year.

7. Candy Rushlow has been the secretary since September 1981. She is the only secretary in the school and functions as the principal's

secretary and the general school secretary. She works five hours a day, 25 hours a week.

8. Rushlow's desk is in a hallway/reception area just outside of Mumley's office. Rushlow and Mumley have separate telephones but share a single telephone line. Rushlow, as well as teachers, have picked up the phone on Rushlow's desk and accidentally interrupted Mumley while he was talking on the phone in his office.

9. Mumley's office has a door on it. Rushlow cannot overhear conversations inside Mumley's office when the door is closed. When the door is open, Rushlow cannot overhear conversations carried on in a normal tone of voice inside Mumley's office unless she stops working and strains to overhear what is being said.

10. Rushlow does not have access to employees' personnel files.

11. Rushlow assists Mumley in budgetary matters to the extent that she handles all the money in the office, maintains financial records, and receives information from teachers concerning needed textbooks and supplies. Rushlow is not involved in confidential budgetary discussions, such as staff salaries, between Mumley and the Superintendent, Armand Premo, and does not type any materials on confidential budgetary matters.

12. Rushlow does not type or see evaluations done of teachers' performance.

13. Six memoranda or letters from Mumley to teachers which were typed by Mumley's secretary, covering the period January 28, 1977 - March 31, 1983, involving reprimands, counseling or recommendations of

non-renewal were admitted into evidence (Exhibits B-1 through B-6). Rushlow typed three of those letters, involving one teacher, the final letter being a recommendation of non-renewal (Exhibits B-4 through B-6).

14. Five memoranda or letters from Mumley to teachers which were typed by Mumley rather than by his secretary, covering the period October 7, 1975 - March 31, 1983, involving classroom observation reports or letters of counseling were admitted into evidence (Exhibits C-1 through C-5).

15. No general policy exists distinguishing those letters typed by Mumley and those typed by his secretary.

16. The Association is not provided copies of letters of reprimand, counseling or recommendation of non-renewal without the consent of the teachers involved.

17. It is possible that Mumley could have the superintendent's secretaries type disciplinary letters, or he could type them himself since he has done so in the past.

OPINION

The issue before the Board is whether Candy Rushlow, secretary to the Alburg School Principal, is a confidential employee and thus excluded from eligibility to belong to the Alburg nonprofessional staff bargaining unit under 21 VSA §1722(12)(D). A "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 representation in or representation by an employee organization incompatible with his official duties.

In past cases, the Board has determined whether secretaries to school principals were confidential employees. In two cases, the Board held that secretaries to school principals were confidential employees. American Federation of Teachers, Local 3333 and Washington Central Supervisory Union, 1 VLRB 288 (1978). Castleton Education Association and Castleton Board of School Directors, 1 VLRB 374 (1973).

A relevant factor in these determinations in both cases was the secretaries had access to employees' personnel files, and the only other persons who had such access were the principals and the concerned employees. Also, in one case, the secretary typed disciplinary letters. In the other, the secretary typed letters to the superintendent which contained budgetary recommendations made by the principal.

In Vermont Education Association and Windsor Town School District, 2 VLRB 295 (1979), the Board determined personal secretaries to the school principals were not confidential. There, the secretaries' access to confidential information was limited to infrequent typing of largely minor disciplinary correspondence and annual performance evaluation narrative comments. They did not have access to staff personnel files, and had neither confidential discussions with the principals nor typed confidential material relating to either personnel administration, collective bargaining or budgetary matters.

Here, Rushlow does not have access to personnel files and has no responsibility, knowledge or access to confidential matters relating to collective bargaining or budgetary matters. Her access to confidential information is limited to infrequent typing of disciplinary correspondence. As a result, this case is much more similar to the VEA and Windsor case than the other above-cited decisions of the Board, and we find Rushlow does not meet the definition of confidential employee.

Like the Windsor case, 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. Principal Mumley has typed confidential personnel letters to teachers in the past. Given an average of one to two such letters required to be typed a year, we do not believe it places an unfair burden on him to type such letters in the future. Alternatively, the superintendent's secretaries could type the letters.

We recognize that Vermont's municipal labor relations statute adheres to the rationale generally accepted in labor law that an employee should be entitled to rely upon employees who are not subject to divided loyalties and that employees should not be put in a position where they must choose between their obligation to a union and their employer. AFT and Washington Central, supra. However, the historic pattern of duties assigned to the secretary here is evidence of management's own view of the division of loyalty that may exist in the school system, VEA and Windsor, supra, and the infrequent occurrence of a potential for conflict of

loyalties does not make representation by an employee organization incompatible with the secretary's official duties.

ORDER

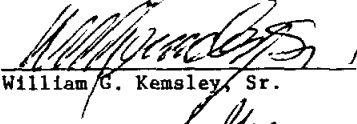
Now, therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

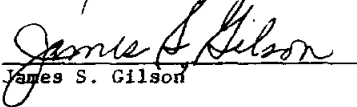
Candy Rushlow, secretary to the principal of the Alburg School District, shall be included within the Alburg nonprofessional staff bargaining unit.

Dated this 19th day of May, 1983, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


James S. Gilson