

VERMONT LABOR RELATIONS BOARD

PERSONNEL DESIGNATION DISPUTE)	DOCKET NO. 87-7
OF WAYNE CALDERARA, AHS)	
FEDERAL PROGRAMS ANALYST)	

FINDINGS OF FACT, OPINION AND ORDER

On January 16, 1987, Wayne Calderara and the Vermont State Employees' Association ("VSEA") filed a notice of dispute concerning the designation of Calderara, Agency of Human Services Federal Programs Analyst, as a "confidential" employee. The notice of dispute requested that the Board determine that Calderara was not confidential under 3 VSA §902(17) and that Calderara occupied a position belonging in the Non-Management bargaining unit represented by VSEA.

A hearing was held before Board members Charles H. McHugh, Chairman, Catherine L. Frank and Dinah Yessne on September 3, 1987, in the Labor Relations Board hearing room in Montpelier. Michael Seibert, Assistant Attorney General, represented the State of Vermont ("Employer"). Michael Zimmerman, VSEA Staff Attorney, represented VSEA and Calderara. At the hearing, the parties stipulated that the deposition of Claude Magnant, Director of Personnel Operations for the State Department of Personnel, would be taken and admitted into evidence in lieu of the testimony of Magnant. The deposition was filed on September 24, 1987. The parties filed memoranda on September 18, 1987.

FINDINGS OF FACT

1. VSEA is the exclusive bargaining representative of employees in all bargaining units of classified employees of the State of Vermont, including employees in the Non-Management Unit.

2. Until August 11, 1986, Wayne Calderara occupied the position of Mental Health Medicaid Programs Coordinator in the Agency of Human Services, Department of Mental Health. The position was in the Non-Management Unit. In this position, Calderara performed administrative and coordinating work involving the operation of Vermont's Medicaid Program within the Department of Mental Health. Work was performed under the general supervision of the Deputy Commissioner of Mental Health (Employee Exhibits 1 and 4).

3. Effective August 11, 1986, the Employer abolished the position of Mental Health Medicaid Programs Coordinator and created a new position entitled AHS Federal Programs Analyst. The Department of Personnel designated the position as "confidential" pursuant to 3 VSA §902(17) and 3 VSA §906. Calderara was placed in that position (Employee Exhibits 6, 7).

4. As AHS Federal Programs Analyst, Calderara reports to the AHS Federal Programs Administrator, Carol Butterfield, rather than the Deputy Commissioner of Mental Health. The position involves analytical, monitoring and coordinating work involving the operation of Vermont's Medicaid Program and federal block grant programs within the Agency of Human Services. His scope of responsibilities is broader than in his former position, where his involvement was solely with Medicaid funds as they related to a single department within the Agency, the Department of Mental Health (Employee Exhibits 2,5).

5. As AHS Federal Programs Administrator, Carol Butterfield formulates policies for, plans and monitors the operations of Vermont's Medicaid and federal block grant programs within the Agency of Human Services under the general direction of the Secretary of Human Services. Calderara assists her in this work (Employee Exhibit 3).

6. The federal block grants with which Butterfield and Calderara are involved total approximately 30 million dollars on an annual basis. Included among the areas covered by such grants are day care, adult services, foster care, legal aid, health programs, family planning, independent living, weatherization, resource and referral programs, alcohol and drug abuse, mental health, preventative health and low income home energy assistance.

7. Since he has occupied the Federal Programs Analyst position, Calderara has monitored the departments within the Agency of Human Services to ensure that federal block grant programs are administered according to stated policies. He ensures that departments keep within budgetary figures attached to goals.

8. The position description for the Federal Programs Analyst position includes the following under "Examples of Work Performed:"

"Reviews current use and suggests strategies for optimizing grant monies to achieve the greatest program impact. Makes recommendations regarding the use of federal block grant funds in the development of the Agency budget and program allocations..."

(Employee Exhibit 2)

9. As of the date of the hearing in this matter, Calderara has not been involved in strategies for optimizing grant monies and has not been involved in making recommendations regarding the use of

federal block grant funds in the development of the Agency budget and program allocations. Calderara has not been involved in any Agency discussion concerning staffing levels.

10. If the federal government makes any changes in block grants, Calderara becomes aware of them through review of the Federal Register. His position requires him to inform the affected department of the changes and indicate how the changes will affect the department budget. In one instance, Calderara informed the Alcohol and Drug Abuse Division Director of additional funds available to his division. Calderara was not involved in Agency discussion regarding implementation of these monies.

11. Prior to Calderara and Butterfield assuming their current positions, decreases in federal block grants resulted in employee positions being eliminated. Since they have been in their positions, no decreases have occurred in federal block grant programs.

12. Butterfield has not provided Calderara access to all confidential matters she otherwise would have because of the pending dispute herein. Since he has been in his new position, Calderara also has not fully performed all duties required by his position because he is still in the process of acquiring the necessary expertise in the area of Federal block grants.

13. If Calderara was determined to be a confidential employee, he would work on suggesting ways to channel monies to meet the needs of the Agency which could affect staffing and, in the event of decreases in federal block grant funding, would have access to planning concerning decreases in funding. Such decreases could result in layoffs or transfers of employees and elimination of positions. Calderara would be involved in the discussions concerning these personnel matters.

14. Full performance of the duties required of his position will not require Calderara to directly participate in the development of the Agency budget but he will be required to determine the cost of developing new programs and will be required to make recommendations concerning how best to spend monies on areas funded by the budget.

OPINION

At issue is whether Wayne Calderara, Federal Programs Analyst for the State Agency of Human Services, is a "confidential employee" under the State Employees Labor Relations Act (SELRA), 3 VSA §901 et seq. VSEA and Calderara dispute that designation, claiming Calderara should be designated "non-management". SELRA excludes confidential employees from the definition of employees eligible to be members of a collective bargaining unit. 3 VSA §902(5)(K). "Confidential employee" is defined in §902(17) of SELRA as:

An employee finally determined by the Board as having responsibility or knowledge or access to information relating to collective bargaining, personnel administration or budgetary matters that 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).

We are persuaded by the evidence that such divided loyalties would be the likely result if we declined to rule that Calderara was a confidential employee. It is apparent to us that the full performance of the duties of the position occupied by Calderara will require him to act in a confidential capacity to Agency of Human Services managers who formulate, determine and effectuate management policies in personnel administration and budgetary matters.

He will be required to determine the cost of developing new programs and make recommendations concerning how best to spend monies on areas funded by the budget. Such activities likely will impact on staffing patterns within the Agency through the budgetary process. Additionally, although it has yet to happen, decreases in Federal block grant funds could result in layoffs, transfers and elimination of positions. Calderara would be involved in the discussions concerning these matters. These duties affecting staffing are matters of personnel administration with which VSEA would be directly concerned. Agency managers must be able to confidentially consider all options which affect their programs and staffing and should be able to rely on their program analyst without any reservation about that analyst's ability to be objective.

While we are somewhat hesitant to exclude Calderara from the bargaining unit represented by VSEA based upon duties he has yet to perform, we conclude it would be unreasonable and prejudicial to the Employer to allow Calderara to remain in the bargaining unit until the full performance of his duties include work of a confidential nature as delineated in the job description. City of Burlington and Local 1343, AFSCME, 9 VLRB 116, 122 (1986). The likely result of such a

ruling would be to inhibit the Employer from legitimately assigning duties to Calderara. Moreover, the VSEA and Calderara have the right to petition the Board in the future pursuant to Article 14 of the Board Rules of Practice (effective December 1, 1987) if actual experience demonstrates Calderara is not performing confidential duties.

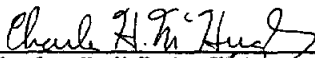
ORDER

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


Wayne Calderara, Federal Programs Analyst for the State Agency of Human Services, is excluded from the Non-Management bargaining unit represented by the Vermont State Employees' Association as a confidential employee as defined in 3 VSA §902(17).

Dated this 10th day of December, 1987, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Catherine L. Frank


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