

VERMONT LABOR RELATIONS BOARD

ORANGE SOUTHWEST SUPERVISORY)	
UNION, RANDOLPH UNION HIGH SCHOOL)	
BOARD, RANDOLPH VILLAGE SCHOOL)	
BOARD, BRAINTREE SCHOOL BOARD AND)	
BROOKFIELD SCHOOL BOARD)	
)	
and)	DOCKET NO. 88-27
)	
ORANGE SOUTHWEST TEACHERS')	
ASSOCIATION)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On May 24, 1988, the Orange Southwest Supervisory Union, Randolph Union High School Board, Randolph Village School Board, Braintree School Board, and Brookfield School Board ("Employers") filed a petition to clarify the support staff bargaining unit represented by the Orange Southwest Teachers' Association ("Association"). Employers sought the exclusion of the following six employees from the bargaining unit certified by the Board on November 5, 1987, on the grounds that they are confidential as defined in 21 VSA §1722(6): Barbara Ennis, secretary to the principal of Randolph Union High School; Betty Russell, secretary to the principal of Brookfield Elementary School; Margery Hatch, secretary to the principal of Randolph Elementary School; Dawn Hutchinson, secretary to the director of the Vocational Center; Julia Bowen, bookkeeper for Orange Southwest Supervisory Union; and Dianne Chan, secretary/bookkeeper for Orange Southwest Supervisory Union.

A hearing was held before Charles McHugh, Chairman; Catherine Frank and Dinah Yessne on July 21, 1988, in the Labor Relations Board hearing room. Attorney Dennis Wells represented the Employers.

Philip Becker, Vermont-NEA UniServ Director, represented the Association. At the hearing, the Board granted a Motion filed by the Employers on July 15, 1988, to change the Employer's petition to exclude Barbara Angell, bookkeeper at the Randolph Union High School, from the bargaining unit instead of Barbara Ennis. The Board denied a motion made by the Employers at the hearing to exclude a position in the central office of the Orange Southwest Supervisory Union which was to be created. The parties filed memoranda on July 28, 1988.

FINDINGS OF FACT

1. On February 12, 1987, the Association filed two petitions with the Board for Election of Collective Bargaining Representatives. One petition requested an election among the six secretary /clerical /bookkeepers and the six teacher aides /technicians/paraprofessionals employed by the Randolph Union High School District (Board Docket No. 87-13). The other petition requested an election among the three secretary/clerical/bookkeepers and the 12 teacher aides/ paraprofessionals employed by the Orange Southwest Supervisory Union (Board Docket No. 87-14).

2. On September 1, 1987, the parties filed a stipulation with the Labor Relations Board which provided in pertinent part as follows:

1) That the two petitions shall be combined and amended to include the two employers mentioned above and also Randolph Village School Board, Braintree School Board and Brookfield School Board;

2) That the two petitions shall be amended and combined to include the following employee titles: administrative staff, paraprofessional staff, custodian, kitchen staff, and bus driver;

3) That the position of administrative assistant/secretary to the superintendent was a "confidential employee" and was excluded from the unit; and

4) That the Board conduct a representation election upon verifying a 30 percent showing of interest in the expanded unit.

3. The Board conducted a consent election on October 20, 1987. The election was won by the Association. As a result, on November 5, 1987, the Board issued an order certifying the Association as exclusive bargaining representative of the administrative staff (including secretaries, secretary/bookkeepers, secretary/receptionist, bookkeepers and guidance secretary, but excluding the administrative assistant/secretary to the superintendent); paraprofessional staff (including aides, lab technicians, building aides, primary aides, Chapter I aides, CT resource aide); custodians, kitchen staff (including school lunch staff, lunch agent, cook's helper); and bus drivers employed by the Randolph Union High School Board, Randolph Village School Board, Orange Southwest Supervisory Union, Braintree School Board and Brookfield School Board.

4. The bargaining unit includes employees from seven different schools in the Randolph area: Randolph Union High School; Randolph Area Vocational Center, Randolph Village School, Randolph Center School, East Randolph School, Braintree School and Brookfield School. These schools comprise the Orange Southwest Supervisory Union ("OSSU").

5. Within the Orange Southwest Supervisory Union, there are four separate school districts (i.e. Randolph Union High School District, Randolph Village School District, Braintree School District

and Brookfield School District). Each district is a separate entity which is governed by its own board of school directors. The Vocational Center is governed by the Randolph Union High School Board.

6. The Orange Southwest Supervisory Union, of which Roger Bourassa is superintendent, provides services to member districts and performs coordinating and supervisory functions over each of the individual districts.

7. The Orange Southwest Supervisory Union itself employs no teachers. All teachers are employed by the individual board of school directors for whom they work.

8. Each school district has a special education unit. A special education coordinator is employed by the Supervisory Union and works out of the Supervisory Union central office. The coordinator is responsible for the implementation of special education programs in each of the school districts. The coordinator is responsible for developing a special education budget for each of the school districts. The budget developed incorporates what each of the boards project for salary increases. The coordinator does performance evaluations and is involved in possible disciplinary actions to be taken against special education teachers.

9. The special education coordinator has one employee working directly for him. As of the date of this hearing, that person was Dianna Chan, secretary/bookkeeper for the Supervisory Union. However, Chan was scheduled to terminate her employment with the Supervisory Union within a week following the hearing.

10. As secretary/bookkeeper, Chan worked half-time as payroll clerk for the Supervisory Union and half-time under the supervision of

the special education coordinator. Chan typed performance evaluations of special education teachers and any correspondence concerning possible disciplinary action against such teachers for the special education coordinator. She was also involved with the coordinator in the special education budget development process. Chan had access to employees' personnel files.

11. On the Tuesday prior to the hearing before the Board in this matter, the Supervisory Union Board of Directors approved the creation of a new position in the Supervisory Union. The intent is that, as a result of this new position, there would be one full-time position reporting solely to the special education coordinator and one full-time position for payroll responsibilities for the Supervisory Union. However, the actual duties of the two positions are unclear and yet to be fully determined.

12. The Supervisory Union central office is located in a two-floor building. Supervisory Union staff are the only tenants in that building. On the first floor are the offices of the superintendent, administrative assistant to the superintendent, business manager for the Supervisory Union, and the bookkeeper for the Supervisory Union. On the second floor are the offices of the special education coordinator and the secretary/bookkeeper. There also is a conference room on the second floor (Employers' Exhibit 2).

13. Dorothy Thurston, administrative assistant to the superintendent, is excluded from the bargaining unit as a confidential employee. Presently, she is the only support staff employee excluded from the bargaining unit as a confidential employee. Due to her workload, it would not be feasible for Thurston to assume additional duties performed by other employees in the central office.

14. Subsequent to the Labor Relations Board order certifying the Association in November, 1987, a new computer system was installed within the Supervisory Union. Seventeen computer terminals now exist in the various districts and the Supervisory Union central office. These terminals are all networked together.

15. Prior to the installation of the new computer system, Karen Snyder, the Supervisory Union business manager, entered all projected budget information into the computer.

16. Under the new computer system, employees who use the 17 terminals have a main password by which they can gain access to the computer. In order to access budgetary information, an employee must have a budget option password. The budget option password allows the employee access to all aspects of the budget, including projected salary and benefit increases.

17. Julia Bowen is the Supervisory Union's bookkeeper in the central office. Subsequent to the installation of the new computer software system, Bowen became more involved in assisting the business manager with data entry functions relating to the entire budget.

18. Bowen has in the past entered salary data into the computer system during collective bargaining negotiations. In January, 1988, Bowen entered into the computer budgetary information for the four schools within the Supervisory Union, which entry included projected salary increases for employees.

19. Bowen has access to employees' personnel files for the purposes of processing and filing employees' insurance information forms and answering employees' questions relating to insurance.

20. In two and one-half years as the bookkeeper, Bowen has never typed employee evaluations, grievance responses or letters of discipline.

21. The Randolph Elementary School, Randolph Union High School and Brookfield Elementary School each have a principal as their chief executive officer. Each principal has the authority to make effective recommendations on the hiring and firing of employees. Each principal is responsible for developing the budget for their schools, which includes projecting salary increases based upon proposed percentage increases relayed to them by their respective school boards. Each principal develops a budget in conjunction with the Supervisory Union business manager. Each principal has the authority to do performance evaluations of employees and to discipline them. Each principal is the first step of the grievance procedure for all employees.

22. Personnel files for employees of the various districts within the Supervisory Union are maintained in the Supervisory Union central office except for current year files, which are maintained by the principals in their offices.

23. Margery Hatch works as bookkeeper for the principal of Randolph Elementary School. Hatch has served in that capacity for three years. During that time, Hatch has typed no letters of discipline except for one letter of reprimand, and has not typed any responses to grievances. She has typed three employee evaluations during the past two years. No personnel files are kept in Hatch's office and she does not have access to personnel files. Hatch's involvement with the school budget is limited to entering supply items and purchase orders into the computer.

24. If the principal is speaking in a normal tone of voice, Hatch cannot overhear conversations the principal is having in his office.

25. Barbara Angell works as secretary/bookkeeper for the principal of Randolph Union High School. Angell has served in that capacity for five years. During that time, Angell has not typed evaluations of teachers or support staff, and she has typed only a few letters of reprimand. Angell has no access to employee personnel files. Angell has entered no information concerning projected salary increases into the computer. Angell's office is at the other end of the building from the office of the principal.

26. No specific evidence was presented concerning the duties of the secretary to the principal of Brookfield Elementary School.

28. The Director of the Randolph Area Vocational Center has responsibilities similar to the district principals with respect to budget development, disciplinary matters, hiring decisions, performance evaluations and grievances.

29. Dawn Hutchinson has worked as secretary/bookkeeper for the Vocational Director for three and one-half years. During that time she has typed no grievance responses or letters of reprimand. Although she does not type teacher evaluations because they are handwritten by the Vocational Director, Hutchinson does type performance evaluations of herself and two other non-teaching employees.

30. The duties of Hutchinson with respect to involvement in the budget have not changed since the Labor Relations Board issued the Order of Certification in November, 1987. The Vocational Director has

been handwriting confidential correspondence relating to collective bargaining, which he would give to Hutchinson to type if she was classified as confidential, but this does not hinder the efficient operation of the vocational Center.

31. The Association and the Employer presently are in negotiations for a collective bargaining contract covering employees included in the Labor Relations Board Order of Certification issued November, 1987, including the six positions at issue here.

OPINION

We first address the motion filed by the Association to dismiss this unit clarification petition on the grounds that the Labor Relations Board certified bargaining unit presently is in place, that the disputed positions are currently the subject of contract negotiations, and that the Employers have been attempting to change the responsibilities associated with these disputed positions.

No specific time-frame has been established by the provisions of the Municipal Employee Relations Act (MERA) or the Board Rules of Practice to limit the right of employers to petition for the removal of employees from a bargaining unit as confidential. However, §1724(a)(2) of MERA does limit the type of petition employers can file in providing as follows:

a) A petition may be filed with the board...

2) By the employer alleging that one or more individuals or employee organizations have presented to him a claim to be recognized as representative for purposes of collective bargaining, or that the presently certified bargaining agent is no longer supported by 51 percent of the employees of the bargaining unit, or that the presently certified bargaining unit is no longer appropriate under board criteria.

A petition to remove employees from existing bargaining units as confidential would fall under the third option; "that the presently certified bargaining unit is no longer appropriate under board criteria." This is a statutory recognition that circumstances may change in the duties of a position which would warrant that position being removed from a bargaining unit. City of St. Albans and Local 1343, AFSCME, AFL-CIO, 7 VLRB 48, 54 (1984). We interpret this provision to mean that a unit clarification petition such as filed here is appropriate only when an employer is alleging that there have been changes in an employee's job responsibilities since the employee was included in an approved bargaining unit. Here, it is evident that the change in the computer system, after the Board Order of Certification in November 1987, potentially affected the involved six employees' positions to at least call into question whether the employees now were confidential employees.

We turn to addressing the merits. At issue is whether the six employees from the support staff bargaining unit are confidential employees and, thus, excluded from eligibility to belong to the bargaining unit under 21 VSA §1722(12)(D). 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).

In previous cases interpreting this language, we have ruled that employees who have access to confidential information as part of their regular duties meet this definition, 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); but that employees whose duties require only occasional access to confidential material which the employer could reassign or employees who occasionally substitute for confidential employees do not meet the definition of "confidential" employee. Vermont Education Association and Rutland City School Department, 2 VLRB 108 (1979). Vermont Education Association and Windsor Town School District, 2 VLRB 295 (1979).

Given this analytical framework, we consider the specific employees in question. In first reviewing the two involved employees in the Supervisory Union district office, we conclude that one of the two employees is confidential. Julia Bowen, the Supervisory Union's bookkeeper, has unlimited access to all employees' personnel files and enters confidential salary data in the regular course of her duties. It is evident that the business manager is entitled to rely on Bowen to perform these confidential duties without concern that Bowen would be subject to divided loyalties as part of the bargaining unit. Bowen

has duties relating to personnel administration and budgetary matters which makes membership in, or representation by, the Association incompatible with her official duties. Further, it is evident that these duties comprise an essential part of her job and cannot be reassigned feasibly.

However, on the present state of the evidence, we decline to exclude the secretary/bookkeeper position, formerly held by Dianna Chan, from the bargaining unit as confidential. It is clear from the evidence that this position is now in a state of flux, with the duties not clearly defined. It is evident from the Supreme Court's decision, In re Local 1201, AFSCME and Rutland Department of Public Works, 143 Vt. 512 (1983), that substantial evidence must be presented to exclude a position as confidential. The Employers have failed to present such evidence here.

We also conclude that the three employees serving as bookkeeper/secretary to school principals are not confidential. No extended discussion is necessary with respect to the secretary/bookkeeper at the Brookfield Elementary School since the Employer presented no specific evidence on the duties of that employee. Thus, insufficient evidence was presented by the Employer to exclude that employee as confidential. In re Local 1201, AFSCME and Rutland Department of Public Works, supra. It is evident that the remaining two secretary/bookkeepers, Marjery Hatch and Barbara Angell, have only occasional access to confidential material through very infrequent typing of either performance evaluations or disciplinary actions. Such occasional access to confidential material does not make membership in, or representation by, an employee organization

incompatible with their official duties. It is evident that the Employers' business would not be seriously interrupted by denying them access to this information. VEA and Windsor Town School District, supra, at 300-301.

We reject the Employers' contention that these employees should be excluded from the bargaining unit as confidential employees because their access to budgetary information on the computer means they could gain access to confidential collective bargaining information such as proposed salary increases. It is evident that their actual job functions with respect to the budget are limited to non-confidential data entry. We are extremely reluctant to exclude employees from collective bargaining units because an employer's computer software is not sophisticated enough to limit employee access to information. Such an argument ultimately could result in many employees being denied collective bargaining rights due to technological shortcomings even though employees' job duties are not of a confidential nature.

Finally, we discuss the secretary to the Director of the Vocational Center, Dawn Hutchinson. We conclude that there are no grounds for concluding that Hutchinson is a confidential employee since the evidence indicates no change in Hutchinson's job responsibilities since she was included in an approved bargaining unit by agreement of the Employer.

Also, there is no evidence that the position occupied by Hutchinson need be any different than it ever has been. While we recognize that the Director of the Vocational Center has been handwriting confidential collective bargaining correspondence which he would give to Hutchinson to type if she was a confidential employee,

the evidence does not indicate this has hindered the efficient operation of the vocational center.

This case is distinguished from the holding of the Board in Personnel Designation of Calderara, 10 VLRB 261 (1987). There, the Board excluded an employee from a bargaining unit as confidential based upon duties he had yet to perform, on the grounds that the full performance of the newly-created position occupied by the employee would require the employee to act in a confidential capacity to managers responsible for personnel administration and budgetary matters. In this case, Hutchinson has occupied the position for several years and it is apparent that she has been fully performing the essential duties of her position. No compelling need has been demonstrated by the Employer to necessitate giving her confidential duties.

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Order of Certification issued by the Labor Relations Board on November 5, 1987, is AMENDED to exclude the bookkeeper for the Orange Southwest Supervisory Union, Julia Bowen from the bargaining unit represented by the Orange Southwest Teachers' Association as a confidential employee pursuant to 21 VSA §1722(6), §1722(12)(D) and §1724(a)(2).

Dated this 4th day of October, 1988, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh
Charles H. McHugh, Chairman

Catherine L. Frank
Catherine L. Frank

Dinah Yessne
Dinah Yessne