

VERMONT LABOR RELATIONS BOARD

COLCHESTER EDUCATION ASSOCIATION,)	
VERMONT-NEA)	
)	
and)	DOCKET NO. 88-41
)	
COLCHESTER SUPERVISORY DISTRICT)	
BOARD OF SCHOOL DIRECTORS)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On September 26, 1988, the Colchester Education Association, Vermont-NEA ("Association") filed a Petition for Election of Collective Bargaining Representative, requesting an election among educational support personnel employed by the Colchester Supervisory District Board of School directors ("Employer"). On October 11, 1988, the Employer filed a response to the petition and sought the exclusion of various employees from the bargaining unit as being outside the definition of "municipal employee" pursuant to 21 VSA §1722(12).

The Association subsequently amended its petition to exclude certain employees and the parties reached agreement as to various exclusions from the bargaining unit. The parties also agreed that the systems analyst/programmer was a professional employee and, as such, would be given an opportunity to vote on whether she wished to be included in the bargaining unit.

As a result, there remained 10 employees being challenged by the Employer. The Employer contends that Robert Clifford, the head chef, is a supervisory employee. The Employer contends that the following nine employees are confidential employees:

Assistant Bookkeeper	Kathleen Landry
Accounts Payable Bookkeeper	Caroline Ford
Special Education Secretary	Rosemary Racine
Principal's Secretary, High School	Jean Carpenter
Principals Secretary, Junior High School	Ruth Morgan
Assistant Principal's Secretary, Junior High School	Anne Riddell
Principal's Secretary, Malletts Bay School	Peg Chamberlain
Principal's Secretary, Union Memorial School	Linda Goldman
Principal's Secretary, Porter's Point School	Claire Bouchard

Hearings were held on November 14, December 2 and December 12, 1988, before Board Members Charles H. McHugh, Chairman; William G. Kemsley, Sr.; and Catherine L. Frank. The Association was represented by Organizer Ellen David-Friedman. The Employer was represented by Attorneys Dennis Wells and Robert Miller. The Association filed Proposed Findings of Fact and Conclusions of Law on December 22, 1988. The Employer filed Proposed Findings of Fact and Conclusions of Law on December 28, 1988.

FINDINGS OF FACT

1. The Association is the collective bargaining representative for all teachers in the Colchester Supervisory District.
2. The Colchester Supervisory District consists of five schools: Malletts Bay Elementary School, Porter's Point Elementary School, Union Memorial Elementary School, Colchester Junior High School and Colchester High School.
3. The District is the third or fourth largest school district in Vermont, consisting of approximately 2,380 students, 170 teachers, 140 support staff and 12 administrators.
4. The Colchester Supervisory District central office is located separate and apart from the five school buildings. The office consists of a front room which serves as a reception area and contains

the desks of central office supervisor Regina O'Leary and central office secretaries Mary Beth Bouvier and Monica Larrow. The parties have agreed that O'Leary, Bouvier and Larrow should be excluded from the proposed bargaining unit. The personnel files of all district employees are adjacent to the secretaries' desks. Administrative bookkeeper Abigail McIntosh also has a desk in the front room separated by a movable partition. The Association is not seeking to include McIntosh in the proposed bargaining unit.

5. The desks of assistant bookkeeper Kathleen Landry and accounts payable bookkeeper Caroline Ford are located in an adjacent room. A doorway leads from this room to McIntosh's workspace. This door does not close. The desk of Ford is located next to the office printer for all documents produced on the office word processing system. Various files relating to payroll matters are also kept in this room.

6. In the middle of the office and directly across the hall from the work stations of Landry and Ford is a conference room. This conference room is used for weekly meetings among the central office administrators, building principals and other administrators. The conference room is also used for grievance discussions, budget preparation, preparation for labor negotiations, executive session board meetings and meetings with legal counsel. The central office in general, and the conference room in particular, served as the central location and meeting room for the school board during the 1985 teachers' strike. When the door to the conference room is closed, employees working adjacent to the conference room cannot hear the content of

conversations in the conference room. If they walk by the conference room, they may be able to hear conversations.

7. The offices of superintendent Richard Grimley, assistant superintendent Mary Ellen Ham and business manager Roger Derby are located behind the conference room along a back hallway. The Association is not seeking to include any of these employees in the bargaining unit. Systems analyst/programmer Judy Miller's desk is located behind a temporary partition in the superintendent's office.

8. Landry has been employed as assistant bookkeeper in the central office since February, 1988. Her job duties include the maintenance of student files and the bi-weekly preparation of teacher and support staff payroll and assisting McIntosh in areas relating to the finances of the district.

9. A significant part of Landry's duties involve the bi-weekly preparation of payroll. This process takes her approximately four working days every two weeks. It involves receiving and verifying time sheets, payroll pre-lists and absentee reports and transmitting that information into a computer. This information is not confidential.

10. At times, Landry needs to search personnel files of teachers and support staff employees to verify date of hire or some other employment information which may trigger a pay increase or some other adjustment to income. On average, she needs to search one personnel file per pay period, although during the beginning of the school year she may search personnel files a dozen times per payroll period.

11. Landry has yet to be employed during a full budget cycle for the district, and has had no involvement in the budget preparation

process. McIntosh potentially may call upon Landry to assist in the budget preparation process, which may result in Landry having knowledge of drafts of budget proposals and other budgetary materials which are confidential, but as of the date of the hearings in this matter this has not been done.

12. Ford is employed as accounts payable bookkeeper in the central office, and has been so employed for six years. Her job duties include the maintenance of the vendor file, payment of district bills, distributing paychecks, and serving as backup on other work performed in the financial office.

13. Ford needs to search employee personnel files once or twice a month for employee addresses and other miscellaneous reasons. On an average of approximately once per year, Ford has assisted McIntosh in the preparation of draft annual budget proposals prior to their disclosure to the public. Ford has never had knowledge of or access to discussions or materials relating to proposed salary increases.

14. Landry and Ford share responsibility for detaching sheets which come off the mainframe computer's printer, identifying who ordered the document, and placing the document in the appropriate mailbox. All prospective teacher salary schedules and support staff wage lists are generated by business manager Roger Derby on his own computer and printed on his own printer, both of which are located in his private office. Neither Landry nor Ford have access to these documents.

15. Landry, Ford and McIntosh have developed a work system by which some job duties overlap and are shared. The purpose of this system of shared duties is to keep service flowing smoothly at all

times and to have a system of checks and balances on accounting personnel. This system is approved by the District's auditors as being in line with good accounting principles.

16. The principals of the schools have supervisory responsibility over the teaching and support staff and are responsible for administering the teachers' collective bargaining agreement. They have the authority to take disciplinary action against staff and to make effective recommendations as to the non-renewal, suspension or dismissal of the staff. They are responsible for hearing and deciding first level grievances under the teachers' collective bargaining agreement.

17. One secretary in each of the five schools in the district has primary responsibility for compiling forms which relate to payroll, and the process within each school is the same, and is as follows: employees fill out their own time sheets for each payroll period, indicating numbers of hours worked each day and whether any days have been taken as leave; these sheets are signed either by the supervisor or the principal; they are then collected and checked by the secretary against the daily absentee records for that period, given to the principal for approval and sent to the central office to be processed; the payroll prelist form lists both teachers and support staff employees in each respective school; the absentee form is filled in by the secretaries each day, indicating whether an absence is due to sick leave, personal leave, professional leave, disability leave, bereavement leave, or vacation; employees complete a leave request form prior to taking a leave, which must be signed by their supervisor or principal; employees on sick leave must complete a report form on

their return; the secretary verifies information on the payroll forms against these documents; both the payroll prelist and the absentee reports are signed by the principal before being sent to the central office for processing. The information contained in these documents is not confidential.

18. One secretary in each of the five schools has primary responsibility for typing budget proposals for their respective school. The process for generating annual budget proposals is generally the same in each school, as follows: the school principal, working initially off of the current year budget, seeks input from teachers and support staff as to budget requests, which may cover materials and personnel needs; the principal formulates a budget proposal for his or her school, brings it to a conference with central office administrators, revises it, and submits a final proposal which is incorporated into the final budget proposal submitted to the school board for consideration. This process generally runs from January through March. During this period, there may be several revisions in the principal's budget proposal and the secretary may type several versions. The final budget proposal is typed by the secretary. The budget proposals from principals do not contain salary proposals of any sort, neither for support staff nor teachers. School secretaries, in the course of their jobs, have no knowledge or access to information about proposed salaries for employees. The budget proposals may contain requests for new positions or requests to delete positions, or requests to increase or decrease hours of existing positions. Generally, teachers and some other staff are aware that proposals are being made to add or delete positions, or increase or decrease hours.

19. In all but one of the schools, secretaries type annual performance evaluations of teachers and/or support staff done by principals or assistant principals. The process varies in each school, but the aspects of the process which are uniform throughout the district are as follows: written evaluations are not used for recommending wage and salary increases; evaluations may be used as tools to improve employee performance, if necessary, and are an aid in determining whether contracts will be renewed; the district policy for both teachers and support staff requires that all evaluations must be maintained in the official personnel files, located in the central office; evaluations of employees generally are seen only by the involved employee, the principal and assistant principal, if applicable, and the secretary who types the evaluation.

20. Jean Carpenter has occupied the position of secretary to the high school principal for approximately 13 years. Carpenter is one of four secretaries at the high school. She performs the payroll reporting duties described in Finding #17. She types the annual school budget proposal described in Finding #18. Once in 13 years, she was asked to type a memorandum containng recommendations from the principal for a wage increase for support staff employees in the school. Carpenter types annual evaluations on teachers, teachers' aides and nurses, averaging approximately 25 a year. In 21 years, she has typed approximately 10 letters or memoranda that pertained to informal or formal grievances. She has typed few disciplinary letters. Carpenter and the high school principal each file documents in and retrieve documents from the principal's working files on employees.

21. A system of department chairpersons is in use in the high school. All department chairpersons are teachers who carry a

classload as well as some administrative duties, and all are members of the collective bargaining unit represented by the Association. Most teachers in the high school are assigned to departments which have department chairpersons. All department chairpersons perform written classroom observations and/or annual evaluations of teachers within their department. Additionally, several departments have a system of peer review in which teachers observe other teachers and make written reports of the observation. Both peer evaluations and department chairpersons' evaluations may be incorporated in the annual evaluation developed by either the assistant principal or principal.

22. Mary Beth Dickinson is the secretary of the department chairpersons at the high school, and is in her second year of employment in this position. She typed approximately 85 classroom observations for department chairpersons during the 1987-88 school year. She also has responsibility for typing "back-up" budget sheets for department chairpersons, which she maintains in her own files. Her position has not been challenged as confidential by the Employer.

23. Ruth Morgan is secretary to the principal of the junior high school and has held this position for approximately 28 years. Morgan performs the payroll reporting duties described above in Finding #17. She types budget proposals as described in Finding #18, including a narrative budget rationale written by Principal Bernard Fitzgerald. She types approximately 25 annual performance evaluations of teachers, or about half of the teaching staff in the school. She does not type any evaluations on support staff employees, as these are done in longhand by Fitzgerald. Morgan types classroom observations of teachers performed by Fitzgerald. Morgan has typed no disciplinary letters in 28 years and has typed one letter involving a grievance.

24. Anne Riddell is the secretary for the junior high school assistant principal. She shares an office with Morgan. Riddell types approximately 20 annual performance evaluations of teachers in addition to classroom observations for the assistant principal. She does not type support staff evaluations. She does no typing of budget proposals, and no typing of documents relating to grievances or discipline.

25. Peg Chamberlain has been secretary to the principal of the Malletts Bay School since 1984. She has been on extended medical leave from her job since mid-September. Chamberlain performs the payroll reporting duties described above in Finding #17. She types budget proposals as described above in Finding #18. She does not type evaluations of teachers or support staff, as they are typed by the principal on her own word processor. At times, Chamberlain does copy evaluations and return them to the principal for distribution. Chamberlain has never typed materials pertaining to discipline or grievances during her tenure. She has no access to personnel files.

26. When Chamberlain went on a leave of absence, she was replaced by Pat Hagadown. Hagadown performs the same payroll reporting duties and typing of budget proposals as did Chamberlain. Hagadown has typed classroom observations of teachers for the principal.

27. Claire Bouchard is the secretary to the principal of the Porter's Point School, and she has held this position for approximately nine years. She performs the payroll reporting duties described above in Finding #17. She types budget proposals described above in Finding #18 done by the principal. She types approximately

20-25 annual evaluations per year, for both teachers and support staff. The principal types some evaluations himself. During her nine-year tenure, Bouchard has typed for the principal two disciplinary letters, two teacher performance improvement program memoranda, several memoranda pertaining to performance problems of a custodian, and a response to a complaint from a parent regarding a teacher. She has typed no correspondence relating to grievances.

28. Linda Goldman is the secretary to the principal of the Union Memorial School. She shared this position with another employee for two years, and is now the sole and full-time secretary. Goldman performs the payroll reporting duties described above in Finding #17. She types budget proposals described above in Finding #18. On an average, the principal imposes two to three disciplinary actions a year. Goldman has never typed materials pertaining to discipline or grievances, and in the past, the principal has typed many of these documents. The principal prepares approximately 30 teacher and support staff evaluations per year. The principal has typed the majority of evaluations himself on his word processor, and he had the person sharing the position with Goldman type the remaining ones and copy all of them. Goldman types some of the principal's responses to complaints made by parents against teachers and support staff. Goldman has access to the working files of the principal containing confidential information about employees, but has never actually gone into those files.

29. The special education coordinator supervises and evaluates the performance of all special education personnel in the district, including teachers and teacher aides. As with the principals, the

coordinator completes an annual evaluation for each employee and has authority to discipline special education personnel as well as authority to effectively recommend the suspension, non-renewal or dismissal of such employees. The special education coordinator is responsible for developing and drafting a proposed budget for the special education department. At the time of the hearings in this matter, this position had been vacant since October 1988.

30. Rosemary Racine is the secretary to, and is supervised by, the special education coordinator. She is entering her second year of employment, and her office is located in the special education office which is presently in the junior high school. Racine types budget proposals as described above in Finding #18. Racine types annual performance evaluations of special education teachers and aides. She has typed few, if any, materials relating to grievances or discipline. On occasion Racine has retrieved information from the coordinator's working files on employees.

31. Robert Clifford has been employed as head chef of the Colchester Supervisory District since August, 1987. He reports to the food service supervisor, Noreen Snyder, and is responsible for the supervision of seven high school cafeteria employees. He also provides technical guidance regarding the overall operation of District kitchens and cafeterias. Clifford is responsible for the production and distribution of food for all five of the Colchester school buildings. In the course of managing food production, Clifford maintains inventory and orders supplies, completes report forms for the State, and plans menus.

32. Clifford oversees the preparation of meals for all five school buildings from the centralized kitchen located in the

Colchester high school. All menus are planned and all meals are prepared under the supervision of Clifford at the high school, with the exception of baked foods which are prepared at the junior high school.

33. Clifford supervises approximately six kitchen helpers and one assistant head chef. Clifford follows a management philosophy of performing the same tasks as employees under his supervision, including food preparation, cleaning and serving. Clifford gathers, checks and signs the timesheets of the seven employees every two weeks. He has the authority to reprimand employees for tardiness or absenteeism, and can recommend more serious disciplinary action to Snyder. Clifford also evaluates the performance of each of his employees on an annual evaluation report. If a discipline problem arises, he may complete additional evaluations during the school year. Clifford has not authorized any overtime for employees. He has no authority to authorize any kind of leave for employees. If an employee is sick, he or she calls Snyder and Snyder arranges for a substitute to come in.

34. Since being hired in August, 1987, Clifford has been actively involved in restructuring the operation of the high school cafeteria and in altering the job functions of kitchen helpers to improve productivity and efficiency. There has been a net reduction in the number of kitchen helpers employed at the high school as a result.

35. Clifford was instrumental in creating the position of assistant head chef for the school district. It was his idea to create this position so that he would have an assistant to supervise the operation of the kitchen while he occasionally oversees operations in the other four school buildings. Clifford was also instrumental in

obtaining increased benefits for the position of assistant head chef. His recommendation to create the position and provide increased benefits was eventually accepted by Business Manager Roger Derby.

36. Since Clifford assumed the position of head chef in August, 1987, the District has hired three or four new employees to work under Clifford as kitchen helpers. Although applications were solicited by Snyder, Clifford had the effective authority to recommend to Snyder whether those employees would be retained after a trial period in his kitchen. Clifford also is involved in the initial hiring process for kitchen helpers under his supervision. Clifford has been able to deny interviews to persons whose applications failed to satisfy his judgment of necessary work experience. In addition, Clifford has interviewed at least one applicant for the kitchen helper position and, finding her unsuited for the job, effectively recommended that the hiring process go no further. The application process ended on his recommendation.

37. Clifford has effectively recommended the transfer of two employees. In December, 1987, Clifford drafted a written evaluation of a kitchen helper, stating that she was not performing her duties and that he had problems with her attitude and professionalism. Based on his recommendation that the employee be transferred, the employee was transferred to a position at the junior high school. In another case, as a result of the reorganization of the high school kitchen described above, Clifford recommended the transfer of an employee whose work was now superfluous. Snyder transferred the employee to the junior high school.

38. Clifford has the effective authority to adjust hours of employees, and has done so on occasion. Also, he has the effective authority to recommend increases in hours for employees. On at least one occasion, his recommendation resulted in a substantial increase in hours for an employee.

39. The junior high school and the three elementary schools each maintain their own kitchen, staffed by a head cook and several food service workers. Head cooks at the four schools have not been challenged by the Employer for exclusion from the proposed bargaining unit.

OPINION

The first and main issue before us is whether nine employees of the Employer are confidential employees. The Employer contends that the following employees should be excluded from the proposed bargaining unit as confidential employees: accounts payable bookkeeper and assistant bookkeeper in the central office, six school secretaries and the secretary to the special education coordinator.

The term "confidential employees" 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, we have ruled that employees who have access to confidential information as part of their regular duties meet these tests. 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). 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. Vermont Education Association and Rutland City School Department, 2 VLRB 108 (1979). Vermont Education Association and Windsor Town School District, 2 VLRB 295 (1979).

We first discuss the assistant bookkeeper and the accounts payable bookkeeper in the central office. We are persuaded that the assistant bookkeeper's unlimited access to personnel files in connection with her payroll responsibilities, including a frequent need to go into those files in the first part of the school year, makes her a confidential employee when considered together with her potential budget preparation responsibilities. The administrative bookkeeper may call upon the assistant bookkeeper to assist in the budget preparation process, which may result in her having knowledge of drafts of budget proposals and other budgetary materials which are confidential.

Her unlimited access to the personnel file of all employees of the Employer and potential involvement in the budget process means she has responsibility, knowledge and access to information relating to personnel administration and budgetary matters which would make membership in or representation by the Association incompatible with her official duties. As part of her regular duties, she assists in a confidential capacity to administrators of the Employer who are responsible for labor relations policies.

We conclude otherwise with respect to the accounts payable bookkeeper. Her duties of a confidential nature are limited to searching employee personnel files once or twice a month and assisting the bookkeeper in the preparation of draft annual budget proposals on an average of once a year. Thus, her duties require only occasional access to confidential material, which can be feasibly reassigned to the assistant bookkeeper. Also, it is apparent that the shared responsibility she has with the assistant bookkeeper of handling and distributing material which comes off the mainframe computer's printer can be taken away, and reassigned solely to the assistant bookkeeper if the Employer is concerned about confidentiality.

We turn to discussing the school secretaries and the secretary to the special education coordinator. The nature of the work performed by these seven secretaries and the confidentiality claims of the Employer are similar enough so that these employees can be discussed together.

The activity engaged in by these employees which constitutes the most frequently performed duty, with respect to those duties which the Employer relies on for confidential status, is the typing of classroom

observations and performance evaluations. In past cases, the Board has considered whether typing of performance evaluations contributes to the confidential status of an employee, and has reached different conclusions depending on the specific facts of each case. VEA and Windsor Town School District, 2 VLRB 295 (1979).¹ City of Burlington and Local 1343, AFSCME, 9 VLRB 116 (1986).² Orange Southwest Supervisory Union, et al and Orange Southwest Teacher's Association, 11 VLRB 285 (1988).³

However, this is the first case where typing of performance evaluations has constituted such a substantial portion of claimed confidential work. The secretaries herein type 15 to 25 evaluations a year in most cases. In closely examining our precedents and the Vermont Supreme Court decision In re Local 1201, AFSCME and Rutland Department of Public Works, *supra*, in light of the facts of this case, we conclude that the secretaries' typing of classroom observations and performance evaluations does not require their exclusion from the bargaining unit as confidential employees.

¹Secretary to high school principal not confidential where access to confidential matters was limited to infrequent typing of largely minor disciplinary correspondence and typing of annual narrative performance evaluations.

²Secretary to public works director's typing of disciplinary letters, performance evaluations and management responses in negotiations made her a confidential employee, given the large number of employees (70) the public works director had under his direction.

³School secretaries not confidential where they had only occasional access to confidential material through very infrequent typing of either performance evaluations or disciplinary actions.

This is so despite the fact that the typing of performance evaluations relates to personnel administration and generally the only persons with access to the evaluations are the involved employee, the principal or assistant principal who performed the evaluations, the secretary who typed the evaluations and confidential central office employees. In Rutland, supra, the Vermont Supreme Court cited with approval the US Supreme Court decision, NLRB v. Hendricks County Rural Electric Membership Corp., 454 US 170 (1981). In Hendricks, the Court held that all employees with access to confidential information are not necessarily excluded from membership in bargaining units as confidential employees. The Court adopted the labor-nexus rule, where a person must assist or act in a confidential capacity in relation to personnel who formulate, determine and effectuate management policies in the field of labor relations to be classified confidential.

Thus, it is apparent that the 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. In this case, the Employer has not demonstrated any harm which would result to the Employer in its labor relations dealings, or any undue benefit which would accrue to the Association, if individual secretaries who type classroom observations and performance evaluations are included in the bargaining unit.

Further, we conclude that no other duties performed by the secretaries make them confidential employees. They have no access to employees' personnel files and it is apparent that the Employer's operations would not be unduly hindered by denying them access to their supervisor's working files of employees which may contain

confidential information. Their duties of compiling forms which relate to payroll are similar to the duties of the dispatcher in Rutland, supra, of recording and maintaining the reports that indicate actual hours worked by employees, which the Supreme Court found to be not confidential. Their duties are essentially clerical and routine, and there is no discretion in tabulating the results. Id., at 515-517.

The typing of budget proposals, likewise, does not result in confidential status. The secretaries gain access to no information performing this duty which would make membership in or representation by the Association incompatible with their duties. They gain no knowledge or access to information about proposed salaries for employees. Information on budget proposals with respect to requests to increase or decrease positions or employee hours are generally known to teachers and some other staff.

Finally, the secretaries' typing of disciplinary letters or correspondence relating to grievances is infrequent. Such occasional access to confidential material does not make membership in, or representation by the Association, incompatible with their official duties. It is evident that the Employer's business would not be seriously interrupted by denying them access to this information. Orange Southwest, supra, at 296-297. VEA and Windsor Town School District, supra, at 300-301. Given the number of employees excluded from the bargaining unit; it is reasonable to assume that the Employer would not be unduly hindered by assigning any confidential work to those employees excluded from the bargaining unit.

The final issue before us is whether Robert Clifford, the head chef for the Employer's food service operation, is a supervisory

employee and, thus, ineligible to belong to a bargaining unit pursuant to 21 VSA §1722(12)(B).

Supervisor is defined in 21 VSA §1502(13) as:

An individual having authority in the interest of the employer to hire, transfer, suspend, layoff, 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.

In order to be considered a supervisor, an employee must pass two tests: 1) the possession of any one of the listed powers in the statutory definition; and 2) the exercise of such powers "not of a merely routine or clerical nature but requiring the use of independent judgement". Firefighters of Brattleboro, Local 2628 v. Brattleboro Fire Department, Town of Brattleboro, 138 Vt. 347 (1980). The statutory test is whether or not an individual can effectively exercise the authority granted him or her; theoretical or paper power will not make one a supervisor. Nor do rare or infrequent supervisory acts change the status of an employee to a supervisor. Brattleboro, supra, at 351.

We conclude that Clifford possesses a number of the listed powers in the statutory definition and, thus, is a supervisor. He has authority to assign employees and to responsibly direct them. This is demonstrated most notably by his active involvement in restructuring the operation of the high school cafeteria and in altering the job functions of kitchen helpers to improve productivity and efficiency, which resulted in a net reduction in the number of kitchen helpers. He further possesses the authority to effectively recommend the hiring

of employees. The most notable example of this is his successful advocacy of the creation of an assistant chef position and the placement of the person in that position. Also, he has the authority to effectively recommend the transfer of employees, since his recommendations for transfers in the two cases in evidence were followed. In all these instances, the exercise of supervisory authority is not of a merely routine or clerical nature but requires the use of independent judgment.

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, and pursuant to stipulations reached by the parties, it is hereby ORDERED:

1. The assistant bookkeeper employed by the Colchester Supervisory District Board of School Directors ("Employer") is a confidential employee and the head chef of the District is a supervisory employee and, thus, are ineligible to be included in a bargaining unit represented by the Colchester Education Association, Vermont-NEA ("Association");

2. The following employees of the Employer are not confidential employees and, thus, are eligible to be included in a bargaining unit represented by the Association:

Accounts Payable Bookkeeper
Special Education Secretary
Principal's Secretary, High School
Principal's Secretary, Junior High School
Assistant Principal's Secretary, Junior High School
Principal's Secretary, Malletts Bay School
Principal's Secretary, Union Memorial School
Principal's Secretary, Porter's Point School

3. A representation election shall be conducted by the Labor Relations Board among the following employees of the Employer, who work more than 20 hours per week, to determine whether they wish to be represented by the Association or no union:

- All bus drivers, with the exception of substitute drivers and the Transportation Director;

- All secretaries, including the Central Office accounts payable bookkeeper, with the exception of the Superintendent's Administrative Assistant, Central Office secretaries Mary Beth Bouvier and Monica Larrow, and the Central Office assistant bookkeeper;

- All cafeteria employees, with the exception of the Food Services Director and the Head Chef;

- All paraprofessionals and aides, including both special education and classroom aides and library aides; and

- All custodians and maintenance employees, but excluding the Maintenance Director;

4. The systems analyst/programmer of the Employer shall be given the opportunity to cast one ballot at the election. The ballot shall provide:

Do you wish to be included in the same bargaining unit with non-professional employees of the Colchester Supervisory District Board of School Directors.

Yes

☒

No

☐

This ballot shall be segregated from other ballots cast during the course of the election. Once polls have been closed, the Board agent conducting the election shall tabulate the ballots cast by non-professional employees to determine whether the Association shall be the bargaining representative of those employees. If the Association loses, the system analyst/programmer's ballot shall not be reviewed. If the Association wins the election, the Board agent shall review the ballot cast by the systems analyst/programmer to determine whether the systems analyst/programmer has voted to be included in the unit with the non-professional employees. The systems analyst/programmer's ballot shall have no effect on whether the Association has achieved majority status as exclusive bargaining agent.

Dated this 4th day of April, 1989, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh
Charles H. McHugh, Chairman

William G. Kemsley, Sr.
William G. Kemsley, Sr.

Catherine L. Frank
Catherine L. Frank