

VERMONT LABOR RELATIONS BOARD

WASHINGTON SOUTH DISTRICT TEACHERS'	)	
ASSOCIATION, VERMONT-NEA	)	
	)	
and	)	DOCKET NO. 88-57
	)	
WASHINGTON SOUTH SUPERVISORY	)	
UNION BOARD OF SCHOOL DIRECTORS	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On November 3, 1988, the Washington South District Teachers' Association, Vermont-NEA ("Association") filed a Petition for Election of Collective Bargaining Representative, requesting an election among all secretaries and paraprofessionals employed by the Washington South Supervisory Union Board of School Directors ("Employer") with the exception of the secretary to the superintendent. On November 16, 1988, the Employer filed an answer to the petition, raising questions of unit determination.

A hearing was held on December 1, 1988, before Labor Relations Board Members Dinah Yessne, Acting Chair; William Kemsley, Sr., and Catherine Frank in the Labor Relations Board hearing room in Montpelier. Ellen David Friedman, Vermont-NEA organizer, represented the Association. Attorney Peter Monte represented the Employer.

At the hearing, the parties agreed to the exclusion of two secretaries, Paula Ricker and Sandra Perkins, from the proposed bargaining unit as part-time employees. One position remained in dispute, the bookkeeper/secretary to the business manager. The Employer contends that the bookkeeper/secretary should be excluded from the bargaining unit as a confidential employee.

The parties filed Proposed Findings of Fact and Memoranda of Law on December 8, 1988.

#### FINDINGS OF FACT

1. The bookkeeper/secretary to the business manager works in the Employer's central office. The desk of the bookkeeper/secretary is located in a central room, as is the desk of the secretary to the superintendent. The superintendent and business manager each have offices adjacent to the central room.

2. The bookkeeper/secretary is the personal secretary of the business manager. As such, the bookkeeper/secretary has access to all of the business manager's files; types all reports and other correspondence of the business manager; opens, reads and sorts all mail of the business manager; and handles the payroll and other bookkeeping functions of the office of the business manager.

3. The bookkeeper/secretary has access to personnel files for all employees of the Employer and member school districts, which files are located in the central room of the central office. In connection with payroll responsibilities, the bookkeeper/secretary occasionally obtains information from personnel files if a question arises concerning contract rates of pay, eligibility for course reimbursements and status of vacation time, sick leave and other absences. The present bookkeeper/secretary, Norma Luce, has obtained information from two or three files in the past five months.

4. Personnel files include not only information necessary for payroll purposes but all information relevant to the Employer and member school district employees' employment status. For example,

performance evaluations, letters of discipline, letters of commendation, and other documentation relevant to the employment relationship is included in each employee's personnel file.

5. The business manager has a critical role in the formulation of budgets for the Employer and its member school districts. The business manager is responsible for preparing preliminary budgets for review by the applicable school board, makes repeated revisions to those budgets at the request of the applicable school board, and prepares reports explaining to the school board each proposed budget and possible alternatives. Proposed salaries for teachers and other staff are included in this budget review, and there may be three or more different salary figures proposed during this period. The bookkeeper/secretary is involved in the budget process. The bookkeeper/secretary has access to all of the business manager's files, although she has not yet gone into them. These files contain proposed budgets and worksheets and notes from executive sessions at which the budget is considered by the school boards. The bookkeeper/secretary has access to the computer on which proposed and final budget information is entered, compiled and stored by the business manager. The bookkeeper/secretary types reports to school boards for budget explanations and alternatives.

6. As part of the budget process, the business manager solicits from adjoining school districts information concerning their salary and benefit levels for all employees. The school districts routinely respond to these requests by written correspondence which is received and opened by the bookkeeper/secretary and is kept in files available to the bookkeeper/secretary.

7. The budget process normally begins in mid-November or early December of each year and the final budget is typically made public the following January. Only the final budget is made public.

8. The school district does not make public the alternatives which were considered in the budgeting process, or in the so-called "cut-list". The cut-list is the prioritization of certain budget expenditures in the order in which they will be deleted if the full budget is not approved at Town Meeting. When the budget is made public, a figure is included for teacher and non-teaching staff salaries although the actual salaries have not yet been determined through negotiations or otherwise. If actual salary increases are higher than contained in the budget, the money has to come from elsewhere in the budget or borrowed. The Employer does not make public the parts of the budget from which the money for salaries will come.

9. Through involvement in the budget process, the bookkeeper/secretary gains knowledge of the following information which is not otherwise made public:

a. The reserved fund for salaries and benefits for each category of employees;

b. Optional expenditures which the district decided to incorporate into the final budget which have the effect of reducing the fund available for salaries and benefits; and

c. the so-called "cut-list".

10. The bookkeeper/secretary to the business manager is hired to carry out the foregoing duties with respect to payroll and the budgeting process. There are no other available confidential employees to whom any significant portion of the payroll or budgeting

tasks of the bookkeeper/secretary may be feasibly reassigned without hardship on the Employer. The business manager does not have time in her schedule to perform these tasks on her own. The only other available employee in the office, the secretary to the superintendent, has a full schedule of work performing her own duties and is unable to assume any significant portion of these duties now assigned to the bookkeeper/secretary.

11. Luce has been employed as a bookkeeper/secretary only since July 1, 1988. As of the hearing in this matter, she had not yet performed any of the budgetary duties described herein.

#### OPINION

At issue is whether the secretary/bookkeeper to the business manager of the Employer is a confidential employee. 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, 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). 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).

The Employer contends that the bookkeeper/secretary's access to personnel files and her involvement in the budget process make her a confidential employee.

We conclude that the bookkeeper/secretary's access to personnel files in connection with her payroll responsibilities is insufficient in its frequency for us to conclude that she requires such access as a regular part of her duties. Given the limited number of times such access is required, the Employer could have the secretary to the superintendent or the business manager access the files for the necessary payroll information without unduly burdening them.

However, we conclude that the bookkeeper/secretary's expected involvement in the budget process means she has responsibility, knowledge and access to budgetary matters, as an integral part of her

duties, which would make membership in or representation by the Association incompatible with her official duties.

The bookkeeper/secretary is expected to be involved in and have knowledge of confidential budgetary information such as proposed salary increases, where funding cuts will be made if the proposed budget is not approved and from what areas of the budget monies for unbudgeted salary increases may come. This is information unknown to the public and the Association. The business manager is entitled to rely on the bookkeeper/secretary to perform these confidential duties without concern that she would be subject to divided loyalties as part of the bargaining unit. Further, it is evident that these duties comprise an essential and substantial part of her job and cannot be feasibly reassigned.

We recognize that the present bookkeeper/secretary, Norma Luce, had been employed for only five months as of the date of this hearing, and had not as of yet performed these confidential budgetary duties since she had not been employed during a budget cycle. The Association has the right to petition the Board in the future, pursuant to Article 34 of the Board's Rules of Practice, if actual experience demonstrates Luce is not performing confidential duties. Personnel Designation Dispute of Calderara, 10 VLRB 261, 266-267 (1987).

#### ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons and pursuant to the stipulation and agreement entered into by the parties on December 1, 1988, it is hereby ORDERED:

1. Norma Luce, the bookkeeper/secretary to the business manager of the Washington South Supervisory Union

Board of School Directors, is excluded from eligibility to belong to a bargaining unit as a confidential employee pursuant to 21 VSA §1722(6) and §1722(12)(d); and

2. A representation election shall be conducted by the Labor Relations Board among the teacher aides employed by the Washington South Supervisory Union Board of School Directors to determine whether they wish to be represented by the Washington South District Teachers' Association, Vermont-NEA, or no Union.

Dated this 6th day of January, 1989, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Dinah Yessne  
Dinah Yessne, Acting Chair

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

Catherine L. Frank  
Catherine L. Frank