

VERMONT LABOR RELATIONS BOARD

IBEW LOCAL 300	)	
	)	
and	)	DOCKET NO. 91-65
	)	
MORRISTOWN POLICE DEPARTMENT	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On October 28, 1991, IBEW Local 300 ("Union") filed a Petition for Election of Collective Bargaining Representative, requesting an election among the patrol officers and the secretary/dispatcher employed by the Morristown Police Department ("Employer"). On November 15, 1991, the Employer filed an answer to the petition, contending that the secretary/dispatcher was a confidential employee and should be excluded from the bargaining unit.

A hearing on this issue was held on February 10, 1992, before Labor Relations Board Members Charles H. McHugh, Chairman; Leslie G. Seaver and Carroll P. Comstock in the Board hearing room in Montpelier. Don Anderson, Chair of the Morristown Select Board, represented the Employer. Ernest Robbins, Union Business Manager, represented the Union. The parties elected not to file post-hearing briefs.

FINDINGS OF FACT

1. The Morristown Police Department employs the following full-time employees: a Chief, five patrol officers and a secretary/dispatcher. The Department also employs a part-time secretary.

2. The secretary/dispatcher works from 7:00 a.m., or 8:00 a.m., to 4:00 p.m., Monday through Friday. In addition to her dispatching duties, she performs some typing duties for the Chief. Donna Phelps has been secretary/dispatcher for 13 years. During that period, she possibly has typed one, but no more than one, letter in which the Chief was disciplining an employee.
3. The secretary/dispatcher performs no duties with respect to preparing the Police Department budget, with the exception that the Chief may ask her for information concerning supplies for the Department. The secretary/dispatcher has no knowledge of or access to confidential information relating to the budget.
4. The part-time secretary employed by the Police Department also performs typing duties for the Chief. The part-time secretary types the proposed Department budget prepared by the Chief. The Chief presents the contents of this proposed budget to the Town Select Board in open public session.
5. The final Department budget adopted by the Select Board is typed by the bookkeeper employed by the Town.
6. The proposed Police Department budget prepared by the Chief, which will be acted on by the Select Board at the Town Meeting in March, 1992, proposes that the part-time secretary position be eliminated effective July 1, 1992. If such position actually is eliminated, it is the intent of the Employer to have the secretary/dispatcher perform the typing responsibilities with respect to the budget which have been performed by the part-time secretary.

### OPINION

At issue is whether the secretary/dispatcher of the Morristown Police Department 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 materials and which duties 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 involvement of the secretary/dispatcher in disciplinary and budgetary matters makes her a confidential employee. We conclude that the secretary is not a confidential employee.

The secretary/dispatcher is responsible for typing letters of discipline. However, she has typed, at most, one disciplinary letter in thirteen years. Such rare access to confidential material does not make membership in, or representation by, the Union incompatible with her official duties. Addison Northwest Education Association. Vermont-NEA and Ferrisburg Central Board of School Directors, 12 VLRB 199 (1989). Colchester Education Association Association. Vermont-NEA and Colchester Supervisory District Board of School Directors, 12 VLRB 60, 79 (1989).

Also, it is evident that the secretary/dispatcher has no involvement with respect to the budget which makes her membership in, or representation by, the Union incompatible with her official duties. Her duties in this regard are limited to providing the Chief of Police with information concerning supplies for the Police Department.

We note that, even if the part-time secretary position in the Police Department is eliminated in the near future and the secretary/dispatcher assumes the duties of the part-time secretary with respect to typing the proposed department budget, it is apparent that this will not make her a confidential

employee. In past cases, the Board has excluded employees from bargaining units as confidential employees where the employees were privy to confidential information relating to the budget as part of their regular duties, which information was not available to the public and the union. Colchester Education Association, Vermont-NEA and Colchester Supervisory District Board of School Directors, 12 VLRB 60 (1978). Washington South District Teachers Association, Vermont-NEA and Washington South Supervisory Union Board of School Directors, 12 VLRB 22 (1989). However, in this case, the typed budget materials at issue constitute public information discussed in open session at Select Board meetings.

ORDER

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

1. The secretary/dispatcher of the Morristown Police Department is not a confidential employee and, thus, is eligible to be included in the proposed bargaining unit in this matter; and
2. A representation election shall be conducted by the Labor Relations Board among the patrol officers and secretary/dispatcher employed by the Morristown Police Department to determine whether they wish to be represented by IBEW Local 300 or no union.

Dated this 27<sup>th</sup> day of February, 1992, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Charles H. McHugh  
Charles H. McHugh, Chairman

/s/ Leslie G. Seaver  
Leslie G. Seaver

/s/ Carroll P. Comstock  
Carroll P. Comstock