

VERMONT LABOR RELATIONS BOARD

VERMONT EDUCATION ASSOCIATION,	)	
Petitioner	)	
	)	
-and-	)	DOCKET NO. 78-107R
	)	
RUTLAND CITY SCHOOL DEPARTMENT,	)	
Employer	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On November 29, 1978 the Vermont Education Association petitioned the Vermont Labor Relations Board for election of collective bargaining representative for an employee unit in the Rutland City School Department. The proposed unit would include secretaries, teacher aides and reading tutors. The City of Rutland filed an answer to the petition on January 8, 1979. A hearing was held on the matter on February 15, 1979 in Montpelier, Vermont. All members of the Board were present. The Vermont Education Association was represented by Steven R. Adams, Director, VEA/NEA UniServ District V. The City of Rutland was represented by its attorney, Robert E. Broderick, Esquire.

FINDINGS OF FACT

1. The Rutland City School Department is a municipal employer within the meaning of the Vermont Municipal Labor Relations Act.
2. There are 59 employees in the proposed bargaining unit, including: 23 secretaries, 22 teachers aides, 8 library aides and 6 tutors, all of whom are employed by the Rutland City School Department.
3. Sufficient interest has been shown by the employees in the proposed bargaining unit in that over 30% of the employees have signed authorization cards which were submitted to the Board with the petition.
4. Teacher aides, library aides and reading tutors are certified by the Vermont State Department of Education as paraprofessionals. Certification of paraprofessionals is required by State Board regulation.

5. Paraprofessionals are defined in the State Board Policy for Certification as:

"Educational personnel in the public schools hired to assist professionally certified personnel in the teaching-learning process." (City of Rutland Exhibit #1)

6. The parties stipulated at the hearing that the following secretarial positions should be excluded from the proposed bargaining unit: the administrative secretary at the Rutland High School (incumbent: Helen Perry); the administrative secretary at the Rutland Junior High School (incumbent: Alice Fee); the administrative secretary at the Rutland Area Vocational Center (incumbent: Alberta Romano) and the secretary II at the Elementary Education Office (incumbent: Nancy Burgess).

7. Dorothy Betz is the administrative secretary to the chief of maintenance who supervises all of the custodians and maintenance personnel in the School District. She has complete access to staff personnel files. She assists the administration in the preparation and typing of the annual budget and monitors budget expenditures including personnel costs. She types confidential personnel material including disciplinary letters of reprimand.

8. Maintenance employees are represented by a unit of the American Federation of State, County and Municipal Employees and are not included in the proposed bargaining unit for secretaries, teachers aides, library aides and tutors.

9. Jane Paul is a secretary at the Rutland Junior High School. Her supervisors are the principal of the high school and his administrative secretary, Alice Fee. Mrs. Paul substitutes for Alice Fee when Mrs. Fee is absent or when the workload is excessive. When she is substituting for Mrs. Fee, Mrs. Paul is occasionally requested to type material which is confidential.

10. Eileen Herbert is a secretary at the Rutland High School and is supervised by the principal and by Helen Perry, his administrative secretary. Mrs. Herbert substitutes for Mrs. Perry when Mrs. Perry is absent or the workload is excessive. When she is substituting for Mrs. Perry, Mrs. Herbert is occasionally asked to type material which is confidential.

11. June Bishop is a secretary at the Rutland Area Vocation Center. Her supervisors are the principal and Alberta Romano, his administrative

secretary. Mrs. Bishop substitutes for Alberta Romano when Mrs. Romano is absent or when the workload is excessive. When she is substituting for Mrs. Romano, Mrs. Bishop is occasionally asked to type material which is confidential.

12. Elsie Graziano is a bookkeeper at the Central Office. Her supervisor is the business manager. She has general responsibility for accounts payable and has complete access to the school budget and confidential information with regard to decisions by the School Board as to salaries and benefits. She also substitutes for the secretary to the superintendent.

13. In the absence of any evidence submitted by the Employer on the issue of community of interest, we find that there is a sufficient similarity of interests, needs and general conditions of employment of all employees within the proposed bargaining unit.

#### OPINION

The Employer has raised several issues with regard to the appropriateness of the proposed bargaining unit. The first issue is whether certified paraprofessionals (i.e. teachers aides, library aides and tutors) are municipal employees within the meaning of the Municipal Labor Relations Act. Under 21 V.S.A. §1722(12)(E), certified employees of school districts are excluded from the definition of a "municipal employee" except as otherwise provided in section 1735 of the Act.

In our opinion the statutory reference in §1722(12)(E) to "certified employees of school districts" refers to employees who are required to be certified by statute, not to employees who are required to be certified by agency regulation. The reason for this is that in order to construe statutes together the same definition of a term which has been used in one section of the statutes must be applied when that term is used in another section of the statutes. Teachers are the only employees of school districts who are required to be certified by statute (16 V.S.A. §1694) and they are, therefore, the only employees of school districts who are excluded as certified employees under §1722(12)(E). We find, therefore, that certified paraprofessionals of school districts are municipal employees and are appropriate members of the proposed bargaining unit.

The second issue raised by the Employer is that the teachers aides, library aides and tutors qualify as "professional employees" and may not be included in the unit unless a majority of those persons vote for inclusion therein pursuant to statute. Section 1724(c)(1) of the Act provides in pertinent part:

"No bargaining unit shall include both professional employees and other municipal employees unless the majority of such professional employees vote for inclusion in such unit."

Professional employees are defined in 21 V.S.A. §1502(11) [which provision is made applicable to the Municipal Labor Relations Act by §1722(12)] as follows:

"Any employee engaged in work;  
(i) predominantly intellectual and varied in character as opposed to routine, mental, manual, mechanical or physical work,  
(ii) involving the consistent exercise of discretion and judgment in its performance,  
(iii) of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time,  
(iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes;"

A determination as to whether the statutory definition of a professional applies to the paraprofessionals in this case would require findings of fact as to the duties of the library aides, teachers aides and tutors in the Rutland City School District. No evidence was presented at the hearing by either the Employer or the Employee organization as to what those duties are. Paraprofessionals, however, defined by the State Board Policy as "education personnel in public schools hired to assist professionally certified personnel in the teaching-learning process". The inference to be drawn from this definition is that paraprofessionals are assistants to professionals but do not qualify as professionals themselves. (cf. Vermont Federation of Teachers, AFT, AFL-CIO, Vermont State Colleges Staff Federation v. Vermont State Colleges, #78-83S, Opinion issued February 1, 1979)

Absent any evidence to the contrary, we find that teachers aides, library aides and tutors in the Rutland City School District do not qualify under the statutory definition of a "professional employee" and it is, therefore, unnecessary to determine whether or not a majority of these employees wish to be included in the unit. We find further that there is a sufficient similarity of interests, needs and general conditions of employment of the paraprofessionals and the secretaries within the proposed bargaining unit.

The third issue raised by the Employer is whether certain employees in the proposed unit should be excluded as supervisors as defined by 21 V.S.A. §1502. In our view aside from the employees already excluded by stipulation, no evidence has been presented to show that any of the remaining employees have supervisory duties.

Finally, the Employer raises the issue of whether the following secretarial employees should be excluded as confidential employees: Dorothy Betz, Jane Paul, Eileen Herbert, June Bishop and Elsie Graziano. In the Matter of American Federation of Teachers Local 333, AFL-CIO and Washington Central Supervisory Union, Union 32 High School Board of Directors, #78-86R, this Board ruled that a secretary to a principal in a public school who has access to confidential personnel and budgetary information should be excluded as a confidential employee as defined by 21 V.S.A. §1722(6). In our view this definition applies only to first line secretaries, in other words, the secretary whose regular daily duties involve secretarial work of a confidential nature. We do not believe that this definition should be applied to second line secretaries who occasionally substitute for first line secretaries but whose regular duties do not include access to confidential information. While this may require that a principal delay the typing of certain confidential matters on days when his secretary is ill and another secretary is substituting for her, it does not appear to us that this places an unfair burden on the employer; and, if the employer requires a high degree of confidentiality, work assignments for regular duties can be made with this factor in mind. It would be less fair to exclude secretarial employees from a bargaining unit of their choice because of the duties they perform as substitutes, or because their jobs require only occasionally access to confidential material, which the employer could reassign.

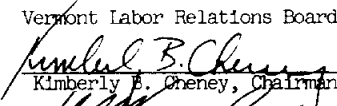
Based on the foregoing reasons we find that the administrative secretary to the maintenance office, Dorothy Betz, should be excluded from the bargaining unit because her regular duties include access to confidential, personnel and budgetary information. Although the confidential information which Mrs. Betz has access to pertains to employees who are in a different bargaining unit, we feel that there is sufficient potential for a conflict of interest to make membership in the bargaining unit incompatible with her official duties. We also find that the regular duties of the bookkeeper for the Central Office, Elsie Graziano, involve access to confidential budgetary information and we, therefore, conclude that this position should also be excluded from the proposed unit. We do not find, however, that the secretarial positions held by Jane Paul, Eileen Herbert and June Bishop are confidential and these employees are, therefore, eligible for inclusion in the proposed bargaining unit.

ORDER

NOW THEREFORE it is hereby ORDERED pursuant to 21 V.S.A. §1724 that a collective bargaining unit for secretaries, teachers aides, reading tutors and library aides employed by the Rutland City School Department is appropriate, with the exception of those administrative secretaries who are excluded by stipulation of the parties, as well as the positions of the Administrative Secretary to the Maintenance Office and the Book-keeper for the Central Office; and that a secret ballot election shall be conducted by this Board within 30 days, or as this Board may determine by its further order.

Dated this 23<sup>rd</sup> day of April, 1979 at Montpelier, Vermont.

Vermont Labor Relations Board

  
Kimberly E. Cheney, Chairman

  
William G. Kemsley, Sr.

  
Robert H. Brown