

VERMONT LABOR RELATIONS BOARD

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| HARWOOD UNION HIGH          | ) |                    |
| SCHOOL DISTRICT             | ) |                    |
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| and                         | ) | DOCKET NO. 98 - 55 |
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| HARWOOD EDUCATION           | ) |                    |
| ASSOCIATION/VERMONT-NEA/NEA | ) |                    |

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On August 19, 1998, the Harwood Union High School District ("Employer") filed a unit clarification petition. Therein, the Employer requested that three administrative assistants be excluded from a bargaining unit represented by the Harwood Education Association/Vermont-NEA/NEA ("Association") as confidential employees. On September 10, 1998, the Association responded to the Employer's petition and contended that the three employees in questions were not confidential.

A hearing was held in the Vermont Labor Relations Board hearing room in Montpelier before Board Members Richard Park, Acting Chairperson; Leslie Seaver and John Zampieri on December 3, 1998. Attorneys Steven Stitzel and Timothy Eustace represented the Employer. Vermont NEA Organizer Ellen David Friedman represented the Association. On December 14, 1998, the Employer filed a motion to supplement the record with six additional exhibits. The Association opposed the Employer's motion. On December 18, 1998, the parties filed post hearing briefs. On December 31, 1998, the Employer filed a response to the Association's post hearing brief. The Board has not considered the Employer's December 31, 1998, reply brief, as reply briefs are not permitted under Board practices.

### FINDINGS OF FACT

1. The Harwood Union High School District is a regional school district currently operating a middle school and a high school. Both schools are in the same building in Moretown, Vermont. The middle school serves four towns and the high school serves six towns. Each school has its own separate school board and has its own operating budget (Employer Exhibit J).

2. On April 26, 1989, the Association became the exclusive bargaining representative of the secretaries, bus drivers, food service workers, aides, paraprofessionals and custodians; excluding the cafeteria supervisor, building and maintenance supervisor and the busmaster; employed by the Employer (VLRB Docket No. 89-19). The Association also is the exclusive bargaining representative of all teachers employed by the Employer.

3. In 1995, the Employer's administrative structure for the high school and middle school consisted of a principal, two associate principals and a special education department head. In 1995, there was a secretary to the high school principal, a secretary to the two associate principals and a secretary to the special education department head. The secretary to the principal was excluded from the bargaining unit and the other two secretaries were included in the bargaining unit.

4. During the 1995 - 1996 academic year, the Employer's administrative structure changed to include a high school principal, a middle school principal, a special services coordinator and a special education department head. The special services coordinator position was created to oversee a number of departments such as guidance, health services, student assistance and learning resources. The special

services coordinator and the special education department head were two part-time positions filled by one person. The part-time special services coordinator position did not have secretarial support.

5. On or about March 28, 1995, the Employer filed a unit clarification petition which resulted in the Employer and the Association reaching a July 1995 memorandum of agreement regarding certain positions in the support staff bargaining unit. The memorandum and agreement provided, in part, that the secretary to the high school principal and secretary to the middle school principal would be excluded from the bargaining unit. The secretary to the special education department head remained in the bargaining unit (VLRB Docket No. 95-19).

6. The Employer continued to reorganize its administrative team after 1995. During the 1996 - 1997 academic year, the Employer consolidated the two part-time administrative positions held by one person into one position, special services coordinator. The special education secretary assisted the special services coordinator. The other two administrative positions, the high school principal and the middle school principal, continued to exist and the two secretaries reporting to them continued to be excluded from the bargaining unit.

7. During the 1997-1998 academic year, the Employer again reorganized and created four administrative positions: chief education officer (later called principal), high school administrator, middle school administrator and special services coordinator. Under this administrative structure, which continues to exist, the principal has general oversight over the entire school operation and the other three administrators have nearly complete authority over their areas of responsibility.

During the 1997-1998 academic year, the middle school administrator did not have secretarial support. All four administrators currently have secretarial support, called administrative assistants. There is no dispute that the administrative assistant to the principal is excluded from the bargaining unit. The remaining three administrative assistant positions are in dispute.

8. Robin Pierce currently holds the position of principal and has held that position since its creation in 1997. One of the primary reasons for the 1997-1998 administrative reorganization was to place a high priority on teacher development and evaluation. Pierce developed a system whereby each administrator, including herself, is responsible for evaluating approximately 18 teachers over the course of the academic year. The evaluating administrator initially meets with the teacher and sets goals for the year. The administrator observes the teacher in the classroom four times during the year and after each observation prepares a written narrative evaluation which he or she reviews with the teacher. The written evaluation may go through more than one draft before the administrator discusses the evaluation with the teacher. The administrator meets with the teacher and discusses the evaluation. Occasionally this meeting results in further changes to the written evaluation before it is signed by the teacher. Each administrator has his or her own style for evaluating teachers and each can decide whether classroom observations are announced or unannounced to the teacher being evaluated. For example, Pierce announces her observations and prearranges the classroom observation. Teacher evaluations are confidential. However, at any step of the evaluation process, teachers may consult with an Association representative regarding their evaluation. Prior to the present

reorganization and Pierce's hire, teacher evaluations were not given a high priority and occasionally were not even performed.

9. Wendy Gilbert is the administrative assistant to high school administrator Frank Sprague. Gilbert has worked for the Employer for several years and has been the administrative assistant to the principal since 1997. Prior to that, from 1995-1997, Gilbert was the secretary to the middle school principal and was excluded from the bargaining unit as a result of the 1995 memorandum of agreement. Prior to holding that position, Gilbert was the secretary to the two associate principals and was included in the bargaining unit.

10. Sprague became the high school administrator in January 1998. Gilbert generally performs Sprague's typing, although Sprague occasionally will perform his own typing on a limited basis if Gilbert is too busy. Gilbert's office is next to Sprague's with a door connecting their offices. Gilbert answers the telephone, opens and distributes Sprague's mail, and distributes letters and memoranda into teachers' mail boxes. Gilbert maintains a locked file cabinet in her office which holds teacher personnel files. Gilbert has unlimited access to such personnel files (Employer Exhibit J).

11. Sprague drafts his teacher evaluations, and Gilbert then types and distributes them. After Sprague meets with the teacher and the teacher signs the evaluation, it is returned to Gilbert, who copies it and places it in the teacher's personnel file in the file cabinet in her office.

12. Sprague also is responsible for teacher discipline. Gilbert has typed a few letters to teachers regarding such matters as not following established

procedures or the manner in which a teacher deals with students. None of these letters have resulted in disciplinary action being taken. The issues were resolved and the letters were not placed in the teachers' personnel files in Gilbert's office.

13. Lisa Graves is the administrative assistant to middle school principal Michelle Fagan and has worked in that capacity since July 1998. Prior to that time, Graves worked full time, but in different capacities; she worked half the time as a registrar, 10 hours each week for the guidance secretary and 10 hours each week for the nurse. She moved into her present space, which is in the reception area outside of Fagan's office, in 1997. Graves maintains a locked file cabinet next to her desk which holds teacher personnel files. Such files contain performance evaluations, disciplinary letters and teacher certifications. Graves has unlimited access to such personnel files. Graves answers the telephone, collects and sorts mail and performs all of Fagan's typing (Employer Exhibit J).

14. Graves' role in teacher evaluations is similar to Gilbert. After a teacher observation, Fagan drafts the teacher evaluation for Graves to type and distribute. Fagan then meets with the teacher, who signs the evaluation. The evaluation is returned to Graves who copies it and places it in the teacher's personnel file in her office.

15. Fagan also is responsible for teacher discipline. Graves has typed one letter of discipline for Fagan, as well as notes following a disciplinary meeting. The disciplinary letter was placed in the teacher's personnel file in Graves' office.

16. Judy Harrison is the administrative assistant to special services coordinator Jean Collins and has held that position since September 1997. She also

worked for Collins during the 1995-1996 academic school year. Collins is the special education secretary. She has been included in the budget for these positions. Harrison is extensively involved in various student related activities such as arranging transportation and arranging schedules of students who are recipients of government special education funds. She also performs such duties as answering the telephone and assisting Collins in typing memoranda. She oversees everything that goes out of Collins' office. She processes some of Collins' mail, and if Collins is not available, opens the mail. Personnel files are kept in a file cabinet in Harrison's office. This academic year is the first year that Harrison has had a computer to use for typing. Harrison's office is by the library next to the learning resource room and Collins' office is near the main office (Employer Exhibit J).

17. Collins is responsible for many departments. The special education department is the largest department under her authority. Collins is responsible for evaluating approximately 36 employees, 16-18 teachers and 18-20 special education paraeducators. Collins does not announce when she will be observing her staff because of the varied nature of their work. Harrison maintains the staff schedules and helps plan for unannounced observations. She and Collins are the only individuals who know when these unannounced visits will take place. Collins types the staff evaluations, discusses the evaluation with the individual, finalizes the evaluation and gives it to Harrison to copy and place in the personnel file in her office.

18. Collins types her own letters regarding disciplinary matters. Such letters may go through various drafts and Harrison may help with a draft or see a

draft before it is sent. Harrison sends the final letter to the affected employee. A union representative would be invited to any disciplinary meetings which would lead to formal disciplinary action.

19. The number of special education positions required to serve the needs of the Employer's special education population is in a constant state of flux. Harrison assists Collins in coordinating staff in the learning resource room which is a room where special needs students come for extra help; some students are entitled to one-on-one assistance and Harrison assists Collins by ensuring that the room is appropriately staffed, depending upon the needs of the student. Harrison is very involved in coordinating students and staff and knows who may or may not receive a reduction in force ("RIF") notice before the affected individual is notified.

20. Under the present administrative structure, Gilbert and Harrison both have more responsibility in assisting their respective administrators because of the increased number of classroom observations and evaluations.

21. Pierce requested that Sprague, Fagan and Collins review the current collective bargaining agreements and offer comments on any provisions they believed to be detrimental to instructional practices, such as time usage, duties, structure, or co-curricular activities. Gilbert typed and prepared high school administrator Sprague's report. Fagan offered her comments to Pierce verbally; she also may have written a report which Graves typed for her.

22. Each administrator is responsible for assisting in the Employer's budgetary process. This is a process which starts in September each year and ends when the school boards present their budgets to the voters in March. The high school



administrator, middle school administrator and special services coordinator are each responsible for a budget plan in their respective areas of responsibility. The budget proposals go through various adjustments throughout the months until a final formal budget is reached and made available to the public. Teacher RIF notices are required to be sent and processed according to a contractual timetable and may be sent before a final budget is reached. Last school year, the Employer sent a RIF notice to a teacher which it later retracted.

23. High school administrator Sprague consults with department heads regarding enrollment, program needs and trends in enrollment. Administrative assistant Gilbert assists Sprague by typing any budgetary memoranda, which may include proposed staffing changes. Gilbert also assists Sprague by compiling statistics for him to use in his budget proposals.

24. Administrative assistant Graves assists middle school administrator Fagan by assembling various statistics and typing this information in memoranda and graph form. Such memoranda and graphs may include proposed staffing changes.

25. *Collins is required by the State of Vermont to prepare a "service plan"* for special education students. The service plan includes such information as the number of students, transportation needs and staffing needs. Collins relies on administrative assistant Harrison to gather and apply the information for such plan. Based upon last year's service plan, Collins sent six paraeducators RIF notices last Spring; however, all the paraeducators have been reemployed for this school year. Sending RIF notices to paraeducators every Spring is a common practice, but no educator has ever lost the opportunity to work as a result of a RIF because there

is a high rate of turnover. The RIF process is set forth in the collective bargaining agreement and is based on seniority.

26. The statistical information Sprague, Fagan and Collins use for their budgetary requests is publicly available. However, the way they use this information in formulating their budget recommendations is available only to their administrative assistants, the other administrators and the school board. The Board may request more information and/or analysis of staff and budget alternatives which are not public documents.

27. Stephen Skilton has worked for the Employer for 20 years as an industrial arts teacher. He has been president of the Association for two years. Lou Petit has worked for the Employer for 24 years and is the mathematics department head. Petit has been Association president and a member of the negotiating team. For the last 20 years, Petit has served as the Association grievance chair.

28. The administration has regularly consulted with Skilton and Petit about personnel issues which involve bargaining unit members prior to notifying the affected employee. Such personnel issues include disciplinary and performance issues.

29. Department heads are represented by the Association. As one of 18 department heads, Petit has been extensively involved in the budget process each year. He traditionally submits three budget recommendations to his administrator: one reflecting everything he would like, one reflecting level funding for his department and one including the elimination of positions. He and his administrator have continuing dialogues about his budget before a final budget plan is adopted.

30. Prior to the start of the present bargaining negotiations, Petit and Pierce discussed recommendations for changes in the collective bargaining agreements.

31. The collective bargaining agreement between the Association and the Employer covering teachers, effective for the period 1996 - 1999, provides that teacher class evaluation reports shall be submitted to the superintendent's office and be maintained by the superintendent.

#### MAJORITY OPINION

As a preliminary matter, we address an issue raised after the conclusion of the December 3 Board hearing and prior to the parties' submission of their post-hearing briefs. On December 14, the Employer filed a Motion to Supplement the Record. Therein, the Employer requested leave to submit as additional evidence four articles from the current Teacher Master Collective Bargaining Agreement and two articles from the current Support Personnel Collective Bargaining Master Agreement.

Section 32.17 of the Board Rules of Practice provides that "(m)otions for leave to reopen a hearing because of newly-discovered evidence shall be timely made" and that the "Board may, in its discretion . . . reopen a hearing and take further testimony at any time". The provisions of the collective bargaining agreements were not newly discovered evidence, so we are left to decide whether to otherwise exercise our discretion to reopen the hearing and allow the admission of the grievance and arbitration provisions of the agreement.

We deny the Employer's request to admit into evidence various provisions from the current collective bargaining agreements. The Employer had the opportunity

to offer any relevant evidence at the December 3 hearing, and the Employer does not allege that any new information has come to light since the hearing which was not known at the time of the hearing. Burlington Police Officers' Association v. City of Burlington, 22 VLRB 5, 11-12 (1999). Hartford Career Fire Fighters Association and Town of Hartford, 6 VLRB 337, 338 (1983). It would be prejudicial to the Association and disruptive to the orderly processing of cases before the Board to allow the Employer to present evidence on an issue which should have been fully explored at the hearing.

We turn to the issue before us, whether the administrative assistants to the Employer's high school administrator, middle school administrator and special services coordinator are confidential employees. Individuals who meet the statutory definition of "confidential employee" are ineligible to be included in a bargaining unit. The term "confidential employee" is defined 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". 21 V.S.A. §1722(6).

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). 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).

The Employer contends that the involvement of all three administrative assistants in personnel administration makes them confidential employees in that they are regularly involved in typing, copying, distributing and filing classroom observations and/or performance evaluations and disciplinary letters.

We disagree that these duties are sufficient to warrant exclusion from the bargaining unit. There have been very few letters or memoranda regarding disciplinary matters generated by administrators against employees. Although the administrative assistants to the high school administrator and the middle school administrator assist their administrators in the typing, preparation, distribution and maintenance of performance evaluations for teachers, the evidence indicates that Association representatives are already privy to such matters, as the Employer regularly consults with Association representatives about disciplinary and

performance related matters involving bargaining unit members prior to notifying the affected employee.

In two previous cases, we have concluded that secretaries who typed 15-25 classroom observations and/or performance evaluations would not be excluded from the bargaining unit as confidential employees where the Employer demonstrated no harm to the Employer or benefit to the Association if such employees were included in the bargaining unit. Colchester Education Association, Vermont-NEA, NEA and Colchester Supervisory District School Board, 12 VLRB 60, 79 (1989). Proctor Education Association/Vermont-NEA/NEA and Proctor School Board, 18 VLRB 174, 182 (1995). Here, the Employer has demonstrated no such harm or benefit as a result of the administrative assistants' involvement in the performance evaluation process.

The same conclusion is reached with respect to the administrative assistant to the special services coordinator, who has even less involvement in the performance evaluation process. The current special services coordinator primarily performs her own typing. Her administrative assistant's role in performance evaluations is limited to scheduling unannounced observations, copying the final signed evaluation and placing it in the personnel files in her office. If the coordinator needs to observe her staff on an unannounced basis, the assistant could provide dates and times for observations from which the coordinator could choose without informing her assistant which date and time she had selected. The sum of the assistant's responsibilities in the performance evaluation process are insufficient to warrant her exclusion from the bargaining unit as a confidential employee.

The Employer also contends that the three administrative assistants are involved in confidential matters relating to collective bargaining and budgetary matters which warrants their exclusion from the bargaining unit. In past cases we have decided that employees who are privy to information which was not available to the public and the union as part of their regular duties should be excluded from the bargaining unit. Washington South District Teachers' Association, Vermont-NEA and Washington South Supervisory Union, 12 VLRB 22 (1989). Orange Southwest Supervisory Union and Orange Southwest Teachers' Association, 11 VLRB 285 (1988). AFSCME Local 490 and Town of Bennington, 11 VLRB 89 (1988).

We conclude that none of the three positions in question are regularly involved in budgetary matters which would warrant their exclusion from the bargaining unit. Although the administrative assistant to the special services coordinator is extensively involved in assisting the special services coordinator in formulating her annual budget and is in a key position to know who may or may not lose their jobs during the budgetary process, no paraeducator has ever lost the opportunity to work as a result of a RIF. In addition, the RIF procedure is set forth in the collective bargaining agreement and is based on seniority.

With respect to the administrative assistants to the high school administrator and middle school administrator, it is apparent that members of the Association, such as department heads, are significantly involved in the development of the budget before it reaches its final form. Statistical information used in the budgetary process - such as classroom enrollment, trends in enrollment, classroom sizes - are all available to the public and the Association. Although the Association may not see or discuss

every draft with the administration, the process is highly consultative and there is continuous dialogue between the Association and the Employer. Given the extensive involvement of Association members in the budget proceedings, we do not believe administrative assistants' duties in this regard are sufficiently confidential to warrant their exclusion from the unit.

In analyzing involvement of the administrative assistants in collective bargaining, we conclude that such involvement is too infrequent to make representation by the Association incompatible with their official duties. Their involvement was limited to one, or possible two, administrative assistants typing recommendations by their administrators on changes in the collective bargaining agreement. These recommendations occurred this year because it is the last year of a three year contract and negotiations are underway for a successor agreement. Such rare access to confidential information does not make membership in, or representation by, a union incompatible with an employee's official duties. Proctor, 18 VLRB at 181.

Thus, we conclude that the administrative assistant to the high school administrator, the administrative assistant to the middle school administrator and the administrative assistant to the special services coordinator are not confidential employees and should be included in the bargaining unit.

/s/ Leslie G. Seaver

Leslie G. Seaver

/s/ John J. Zampieri

John J. Zampieri



### DISSENTING OPINION

I agree with the ruling denying the Employer's Motion to Supplement the Record. I turn to the issue of whether any of the administrative assistants to the Employer's high school administrator, middle school administrator and special services coordinator are confidential employees. The Employer contends that the involvement of all three administrative assistants in personnel administration makes them confidential employees. I agree and thus dissent from the majority opinion.

The administrative assistants to the high school administrator and to the middle school administrator regularly assist the administrators in the typing, preparation, distribution and maintenance of four performance evaluations each year for 18 teachers. These are not simply check-off evaluations, but are narrative in form and track a teacher's performance over the course of an academic year. They are personal and confidential documents arising from the relationship that exists between a teacher and his or her evaluating administrator. The regular performance of these activities by the administrative assistants are incompatible with their representation by the same employee organization which represents the involved teachers.

Similarly, I conclude that the administrative assistant to the special services coordinator performs duties relating to personnel administration which would warrant her exclusion from the bargaining unit. Although the current special services coordinator primarily performs her own typing, the administrative assistant assists in editing drafts. She is also extensively involved with performance evaluations by scheduling unannounced observations and maintaining the evaluations in her office. In addition, she assists the coordinator in preparing the budget and staffing

assignments. The special services coordinator is responsible for twice as many employees as the other administrators and therefore generates abundantly more confidential documents, including performance evaluations and disciplinary letters.

The Association contends that Association members already are privy to confidential personnel matters, as the Employer regularly consults with the Association about disciplinary and performance related matters involving Association members prior to notifying the affected employee. This Board should avoid denying confidential status because the Employer has chosen to seek the Association's input before proceeding with potential adverse actions against employees. In addition, the administrative assistants may see one or more drafts that the Association does not see, and the Association only sees drafts when the administration chooses to share them with the Association. In any event, it is evident the administrative assistants' involvement in the evaluation process is significantly broader and more extensive, given their close working relationships with administrators, than that of Association members .

The Association also contends that recent Board precedent favors including these positions in the bargaining unit. In two previous cases, the Board concluded that secretaries who typed 15 - 25 classroom observations and/or performance evaluations would not be excluded from the bargaining unit as confidential employees when the Employer demonstrated no harm to the Employer or benefit to the Association if such employees were included in the bargaining unit. Colchester Education Association, Vermont-NEA, NEA and Colchester Supervisory District School Board, 12 VLRB 60, 79 (1989). Proctor Education Association /

Vermont-NEA/NEA and Proctor School Board, 18 VLRB 174, 181 (1995). In the matter before us, all three administrative assistants are involved in generating and maintaining significantly more confidential documents than 15 - 25 teacher evaluations as part of their regular job duties because the Employer's evaluation process is an ongoing and involved process which takes place over the course of the academic year.

In addition, I question the standard that was used in Colchester that the employer must demonstrate adverse impact on the employer or undue benefit to the union to have employees excluded from the bargaining unit. Similarly, the union should not need to demonstrate no adverse impact on the employer or no undue benefit to the union to have employees included in the bargaining unit. My sense of fairness and the intent of the law is that the employer needs to demonstrate regular access to confidential information and that the position having such access assists managers with responsibilities in the areas of labor relations. The writers of the law were wise to not require a further burden on the employer of proof of harm. The definition of confidential employee is, with emphasis added, "responsibility or knowledge or access to information . . .", not "and". This further implies that regular access, in-and-of-itself, is sufficient to exclude. What is done with the information is not necessary to demonstrate. Who does the typing of the documents is another standard that should not have been used in the past and is even less relevant in the current work environment.

The facts of this case show the failings of such a "show harm" requirement. First, these are relatively new positions. The Association has the right to petition the

Board in the future if actual experience demonstrates that they are not performing confidential duties. Personnel Designation Dispute of Caldera, 10 VLRB 261, 267 (1987). Second, the record showed a relatively harmonious relationship between the parties in the areas of budget building and performance management. It is fortunately a district without many disciplinary letters, executive sessions, grievances, etc. To turn the facts of relatively open communications and problem solving into an impediment to the employer being able to rely on confidential assistants is a great unfairness. It implies that if you do not exercise your right, you lose it. This would make as much sense as saying that employee associations that always settle grievance at the first or second levels lose their right to the third level or to arbitrate.

If the employer is required to show harm, then the employer must be allowed to speculate on what might happen in harder times as opposed to what has happened to date. Otherwise, the employer is in a circular trap of needing to give confidential information to union members before they can be excluded from the unit for having access to confidential information. An unfettered ability to speculate, however, would compromise the purpose of the law, which is to balance the rights of employees to self-organize with the rights of the employer to rely on employees with undivided loyalties. Between "has it happened frequently in the past?" and "could it ever happen in the future?" is the balance: "is there a reasonable possibility that it could happen in the future?"

The facts of this case show that there are currently many situations in personnel administration where there is a reasonable possibility that harm would occur if the administrative assistants were in the bargaining unit. The administrative

assistants have unlimited access to and assist in preparing drafts and final documents of a significant number of observation reports and evaluations. They also are the custodians of those documents that are kept in the schools. This is information that can be highly sensitive and deals with the primary issues of ongoing problem solving between the employer and the union as reported by the union representatives.

The Employer further contends that these three employees' confidential duties are more extensive because they are involved in information relating to collective bargaining and budgetary matters and that such involvement warrants their exclusion. In past cases, we have decided that employees who are privy to information which was not available to the public and the union as part of their regular duties should be excluded from the bargaining unit. Washington South District Teachers' Association, Vermont-NEA and Washington South Supervisory Union, 12 VLRB 22 (1989). Orange Southwest Supervisory Union and Orange Southwest Teachers' Association, 11 VLRB 285 (1988). AFSCME Local 490 and Town of Bennington, 11 VLRB 89 (1988).

I agree with the majority that the administrative assistants to the middle school and high school administrators are not regularly involved in budgetary matters which would warrant their exclusion from the bargaining unit. However, I conclude that the administrative assistant to the special services coordinator is regularly involved in information relating to budgetary matters warranting exclusion from the bargaining unit on that basis. She is extensively involved in assisting the special services coordinator in formulating her annual budget. The number of special education students is constantly changing and the administrative assistant is

extensively involved in coordinating students and staff. She is in a key position to know who may or may not lose their jobs during the budgetary process. Her ongoing access to staffing plans that lead to confidential budgetary information potentially impacting on future staffing results in her duties being incompatible with representation by the union representing all the affected employees.

I agree with the majority that the involvement of all three administrative assistants in collective bargaining is too limited and infrequent to make representation by the Association incompatible with their official duties.

In summary, due to technology and other factors, the role of the secretary and administrative assistant is changing to a bigger contribution than primarily routing calls, document preparation and file maintenance. The facts of this case show that the Harwood administrative team is moving with this trend to optimize the use of these staff positions. This includes making them partners in managing the important work of the enterprise, including what was stated as the core role of these school administrators: facilitating the continuing development of the instructional staff. The positions in question; as described by the job descriptions, by the incumbents, and by their supervisors; are classic examples of persons who assist or act in a confidential capacity in relation to persons who formulate, determine, and effectuate management policies in the field of labor relations.

To rule that these positions are not confidential takes away the employer's entitlement to rely upon employees who are not subject to divided loyalties. For instance, there is no dispute that unannounced visits are a valuable part of the observation process for special education staff and that the new emphasis on

instructional development requires about four per year per teacher. The administrative assistant to the special services coordinator currently helps schedule these visits. The majority's suggestion that the assistant provide possible times from which the special services coordinator could choose without informing her administrative assistant which date and time she selected is surely the tail wagging the dog. An important function of the administrative position, not surprisingly, is the coordination and scheduling of the coordinator's time and other department events. Do we suggest creating a system where when a case worker or parent calls to find the coordinator, the administrative assistant needs to say, "I'm sorry, I don't know where she is and I don't know if she can call you back at the time you suggest; she may or may not have a meeting?"

While the open style of both budget building and performance problem management make many of the documents that these positions prepare or have access to either public (budget) or at least not private (performance reviews and disciplinary letters) at some time, the drafts of these documents are confidential, sensitive, and continuously accessed by the positions in question. Drafts often disclose the strategies and action alternatives of the drafter, who should not be constrained by their partner in preparing the drafts being a union member. Likewise, while the document may eventually become public, the timing of the release may be extremely important. Disciplinary letters may be drafted that are never sent. The administrative assistant to the special services coordinator who was allowed into the union could find herself on the negotiating team with knowledge of budget facts/options that had not yet been released to the public or the union. Any of these three positions could

be representing an employee in a grievance and know that a draft of the disciplinary letter included a lesser disciplinary action than the one in the final draft. Given the duties of these positions, these are very real possibilities that would require these employees to choose between their obligations to a union and to their employer.

If a school administrator whose primary role is to improve performance of between 18 and 36 instructional teachers and staff members cannot have one assistant excluded from the bargaining unit as a confidential employee, it is challenging to imagine just who the legislature had in mind when they passed this law in 1973, when most Vermont municipalities had less than 18 employees and performance evaluation was a much smaller part of the manager's role. The administrative assistant to the high school administrator, who was formerly excluded from the bargaining unit, testified that her current duties involved greater responsibility for confidential information than she used to have, yet the majority ruling would have us now include her in the union. If the employees in question cannot be excluded based on access to confidential personnel administration information and assisting managers who implement labor relations, then what does it take?

Most regrettably, the majority's ruling puts an artificial ceiling on the usefulness and value of these positions. Over time, this will result in less satisfying and lower paying jobs for the women who hold these positions.

Thus, I conclude that the administrative assistant to the high school administrator and the administrative assistant to the middle school administrator should be excluded from the bargaining unit as confidential employees based on their involvement in personnel administration and the administrative assistant to the



special services coordinator should be excluded from the bargaining unit as a confidential employee due to her involvement in personnel administration and budgetary matters.

/s/ Richard W. Park  
Richard W. Park, Acting Chairperson

#### **ORDER**

NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the administrative assistant to the high school administrator, the administrative assistant to the middle school administrator and the administrative assistant to the special services coordinator are not confidential employees and are included in the bargaining unit represented by the Harwood Education Association/Vermont-NEA/NEA.

Dated this 11<sup>th</sup> day of March, 1999, at Montpelier, Vermont.

#### **VERMONT LABOR RELATIONS BOARD**

/s/ Leslie G. Seaver  
Leslie G. Seaver

/s/ John J. Zampieri  
John J. Zampieri