

VERMONT LABOR RELATIONS BOARD

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

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

At issue is whether the Labor Relations Board should grant a Motion to stay a Board Order, pending an appeal of the Board Order filed by the Harwood Union High School District ("Employer") on April 23, 1999. By such motion, the Employer is seeking to stay, pending appeal by the Employer to the Vermont Supreme Court, a Board Order dated March 11, 1999. Therein, a majority of the Board determined that three administrative assistants employed by the Employer are not confidential employees and are appropriately included in the bargaining unit represented by the Harwood Education Association/Vermont-NEA/NEA ("Association"). Harwood Union High School District and Harwood Education Association/Vermont-NEA/NEA, 22 VLRB 53 (1999).

The Employer filed a memorandum in support of its motion. The Union filed a memorandum in opposition to the motion. A hearing on the motion was held before Board Members Richard Park, Acting Chairperson; Leslie Seaver and John Zampieri on June 3, 1999, in the Board hearing room in Montpelier. Attorneys Steven Stitzel and Timothy Eustace represented the Employer. Vermont NEA General Counsel Joel

Cook represented the Union. The Association and the Employer filed post-hearing briefs on June 17 and June 21, 1999, respectively.

FINDINGS OF FACT

1. The Employer reorganized its administrative structure during the 1997 - 1998 academic year and created four administrative positions: principal, high school administrator, middle school administrator and special services coordinator. All four administrators have secretarial support. There is no dispute that the administrative assistant to the principal is excluded from the bargaining unit.

2. During April 1998, the Employer offered individual contracts to members of the bargaining unit. Such contracts stated that "all conditions of employment shall be as provided for in the Master Contract between" the Employer and the Association which was in effect from July 1, 1996 to June 30, 1999 (Employer Exhibit E-1).

3. During April 1998, the Employer also offered individual contracts to the administrative assistants to the principal, the high school administrator, the middle school administrator and the special services coordinator. Such contracts did not make reference to the Master Contract and provided for specific salaries and benefits which were only slightly different than those salaries and benefits under the Master Contract. For example, the administrative assistants were offered six hours of professional development credits; the Master Contract provides three hours of professional development credits. At least one administrative assistant received more annual leave than she would have received under the Master Contract (Association Exhibit A-1; Employer Exhibit E-1).

4. Article 8.15 of the collective bargaining agreement in effect from July 1, 1996 to June 30, 1999 states in pertinent part:

Both parties recognize that Harwood is currently involved in a complex structuring process that may necessitate changes in organizational structure, relocation of staff resources, and conditions of employment (Article 8). In the event that changes are needed and/or desired, during the life of this contract both parties agree to discuss in good faith those proposed changes in a timely fashion and to implement changes as soon as is practical (Association Exhibit A-1).

5. The Association filed an Article 8.15 grievance over the Employer offering individual contracts to the administrative assistants to the high school administrator, middle administrator and special services coordinator, claiming that the Employer had made a unilateral change in a condition of employment and did not engage in good faith discussions with the Association (Association Exhibit A-2).

6. Subsequent to the Association's filing of a grievance, the Employer filed the unit clarification petition with the Labor Relations Board. The parties agreed to hold the grievance in abeyance until the unit clarification petition was heard before and decided by the Labor Relations Board. The Board issued the decision on March 11, 1999.

7. During the 1998 - 1999 academic year, the three administrative assistants performed the duties set forth in the Findings of Fact of the March 11, 1999, Board decision. Id. at 57 - 62.

8. If the administrative assistants are included in the bargaining unit, the Employer will alter the role of the administrative assistants in typing, preparing, distributing or maintaining personnel-related matters. However, the Employer will

not dismantle the overall administrative structure it established during the 1997 – 1998 academic year.

9. If an employee violates a directive not to disclose confidential matters, such employee could be disciplined whether or not he or she is covered by a collective bargaining agreement.

MAJORITY OPINION

We consider the Employer's request for a stay pursuant to 21 V.S.A. Section 1729(d), which provides that a Board order "shall not automatically be stayed pending appeal", and that the Board "may stay the order or any part of it". In determining whether to grant a stay, we apply the following three-part test: 1) whether the party seeking the stay will suffer irreparable harm if the stay is not granted, 2) whether issuance of the stay will substantially harm the other party, and 3) by what result will the interests of the public best be served. Chauffeurs, Teamsters, Warehousemen, Helpers Union Local 507 and University of Vermont, 19 VLRB 326; *Affirmed*, Sup.Ct. Doc. No. 96-254. Grievance of McCort, 16 VLRB 248, 249-51 (1993); *Affirmed*, Sup.Ct. Doc. No. 93-370, April 5, 1994 (unpublished decision). Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO and Vermont State Colleges, 11 VLRB 1 (1988); *Affirmed*, Sup.Ct. Doc. No. 87-224, April 5, 1988 (unpublished decision).

The Employer contends that it will suffer irreparable harm if the stay is not granted because it will have to remove personnel-related duties from the administrative assistants and redefine the working relationship between the three administrative assistants and their administrators, thus resulting in inefficient use of

the Employer's personnel.

We are not persuaded that the Employer will suffer irreparable harm if the stay is not granted. We previously examined the roles of the administrative assistants and we concluded that their duties were not sufficient to warrant their exclusion from the bargaining unit. *Id.* Although the Employer contends that it must now shield these employees from teacher and staff personnel-related information, we previously concluded that the Association was already privy to this information. *Id.* If the Employer elects to redefine the administrative assistants' positions and eliminate these duties, it is free to do so. However, given our decision on the merits, we believe such redesigning of their duties is unnecessary and unwarranted. Further, if an administrative assistant violates a directive not to divulge certain information, she could be disciplined whether or not she is in the bargaining unit.

We also conclude that the harm done to the Association in granting this stay outweighs the harm to the Employer. We recognize that there is some harm to the Employer. However, a stay would, in effect, reverse our earlier decision during the period the decision is on appeal to the Supreme Court.

Finally, we believe the public service would best be served if the stay is not granted. The Employer acknowledged that it will not change the overall administrative structure of the school if this stay is not granted. We believe the public interest will best be served by remaining consistent in our rulings.

/s/ Leslie G. Seaver
Leslie G. Seaver


/s/ John J. Zampieri
John J. Zampieri

DISSENTING OPINION

A majority of the Board concluded that the limited personnel-related duties the administrative assistants performed were not sufficient to warrant their removal from the bargaining unit. Harwood, 22 VLRB at 65. However, given the Employer's determination to reassign duties and redefine the relationship between the administrative assistants and their administrators, I conclude that redefining such duties prior to appeal would most likely be irreparably harmful to the Employer because it would result in the inefficient use of personnel. The possibility that the Employer might feel compelled to make personnel changes now, and then reverse them should the majority's opinion be reversed, is doubly harmful.

I also conclude that the irreparable harm done to the Employer outweighs the harm to the Association. The Association's representation of these employees has been in dispute since April 1998 and the Association was not persuasive in demonstrating that it would be harmed by waiting for a final decision on their representation.

Moreover, the public interest is best served by granting this stay and allowing these employees to continue performing the duties they performed during 1998- 1999. The Employer is making significant efforts to improve the quality of education by observing and evaluating its teachers. Granting the stay will ensure that the same working relationship between the administrative assistants and the administrators who evaluate the teachers will continue, allowing the Employer to continue its efforts to improve the quality of education in its school.


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 Harwood Union High School's Motion to Stay the Order issued by the Labor Relations Board on March 11, 1999, is DENIED.

Dated this 30th day of July 1999, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Leslie G. Seaver
Leslie G. Seaver

/s/ John J. Zampieri
John J. Zampieri