

VERMONT LABOR RELATIONS BOARD

VERGENNES UNION HIGH SCHOOL)	
)	
and)	
)	
CUSTODIAN/MAINTENANCE)	DOCKET NO. 01-4
WORKERS/SECRETARIES/)	
PARAEDUCATORS ASSOCIATION)	
OF VERGENNES UNION HIGH)	
SCHOOL)	
FERRISBURG CENTRAL SCHOOL)	
BOARD)	
)	
and)	DOCKET NO. 01-5
)	
FERRISBURG EDUCATIONAL)	
SUPPORT PERSONNEL)	
ASSOCIATION)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On February 6, 2001, Vergennes Union High School filed a unit clarification petition to remove the secretary to the school principal from the bargaining unit represented by the Custodians / Maintenance Workers / Secretaries / Paraeducators Association of Vergennes Union High School. Also on February 6, 2001, the Ferrisburg Central School Board filed a unit clarification petition to remove the secretary to the Ferrisburg Central School principal from the bargaining unit represented by the Ferrisburg Educational Support Personnel Association. In both cases, the Employers contend the secretaries should be removed from the bargaining units as confidential employees. On March 5, 2001, the Association filed responses to the unit clarification petitions, contending that the secretaries are not confidential employees.

A consolidated hearing was held on both cases on April 26, 2001, in the Labor Relations Board hearing room in Montpelier before Board Members Catherine Frank, Chairperson, and John Zampieri. Attorney Anthony Lamb represented the Employers. Vermont-NEA Organizer Ellen David Friedman represented the Associations. The Associations and Employers filed post-hearing briefs on May 10 and 11, 2001, respectively.

FINDINGS OF FACT

1. Vergennes Union High School and Ferrisburg Central School are part of the Addison Northwest Supervisory Union. The superintendent is Ellen Keane. The Supervisory Union central office staff are not represented by an employee organization for collective bargaining.

2. The Custodians / Maintenance Workers / Secretaries / Paraeducators Association of Vergennes Union High School represents support staff employees at Vergennes Union High School, including the secretary to the principal. The Ferrisburg Educational Support Personnel Association represents support staff employees at Ferrisburg Central School, including the secretary to the principal. In a 1989 decision, the Vermont Labor Relations Board determined that the secretary to the principal at Ferrisburg Central School was not a confidential employee. 12 VLRB 199.

3. Vergennes Union High School has approximately 640 students in grades 7 through 12. The school has the full-time equivalent of 48 teachers, and approximately 40 education support staff. The teachers are represented for collective bargaining purposes by an association. The school principal is Peter Coffee. The secretary to the principal for the past six years has been Glory Martin. The offices of the principal and secretary are

adjacent, and a person must go through the secretary's office to get to the principal's office. Martin can overhear conversations in the principal's office.

4. Teachers at Vergennes generally have to do a growth plan and review it with the principal every three years. Each fall, Coffey has Martin inform him which teachers need to be evaluated that year. Coffey has Martin contact teachers to set up a meeting with him on their growth plan. Teachers are aware of the evaluation process, and should know when they are to be evaluated. Beginning teachers at the school are at Level I for the first two years of employment. Teachers move to Level II after two years. They remain at Level II unless their performance needs improvement, in which case they are placed in a warning period at Level III. Teachers can remain at Level III for up to two years. If their performance improves sufficiently, they are returned to Level II. If not, then they are moved to Level IV and are dismissed from employment. Martin is aware of whether teachers are at Level II or Level III. Whether a teacher is on Level II or III is not public information. The teachers' association is not aware of any individual teacher's level unless that information is revealed by the involved teacher.

5. Martin files the performance evaluations on teachers done by administrators. The evaluations may note areas in which teachers need to improve their performance. Coffey types most of the performance evaluations he conducts. Martin proofreads the evaluations done by Coffey and puts them in proper form. The associate principal at the school types most of the evaluations he does. This year the Vergennes guidance director had Martin type the two evaluations he did on guidance counselors. Prior to this year, the secretary to the guidance director typed the evaluations done on guidance counselors.

6. Support staff at the Vergennes school are evaluated by their direct supervisor. Martin places the evaluations in personnel files she maintains in her office for each employee.

7. Staff are allowed to review their own personnel file at any time. They are not allowed to review other employees' personnel files. If staff wish to review their file, they ask Martin for the file. The files in Martin's office are not the official personnel files for staff; those files are kept in the central office of the Addison Northwest Supervisory Union. In the six years Martin has been secretary to the principal, she has never been asked questions by support staff and teachers on evaluations other than their own.

8. Coffey verbally reprimands an employee approximately three times a year on average. Martin generally is aware of the verbal reprimand through overhearing Coffey's conversation with the involved employee and direct communications she has with Coffey. Coffey generally issues one to two written reprimands to employees a year. Coffey types these written reprimands on his word processor. He asks Martin to proofread and copy the written reprimands. Two support staff at the high school have been dismissed in the three years Coffey has been principal. Martin typed the letters notifying the employees of their dismissals. As provided for in the collective bargaining contract, copies of these letters were sent to the Association at the same time they were mailed to the involved employees (Association Exhibits 1 – 4).

9. Teachers have been dismissed at Vergennes Union High School during the past two years. Superintendent Keane has taken the action to dismiss these teachers after consultation with Coffey. There is no evidence that Martin has been involved in these dismissals.

10. Martin screens telephone calls for the principal. Coffey asks Martin to obtain as much information as she can if a parent calls with a complaint. Martin relays this information to Coffey. If the superintendent calls to speak with Coffey, and Coffey is unavailable, the superintendent may leave a message on a confidential issue with Martin. Although Martin is in the bargaining unit represented by the support staff association, Superintendent Keane divulges confidential information to Martin because she believes Martin is trustworthy.

11. Coffey approves leave requests for employees. Martin maintains a record of available leave days for employees. She informs Coffey if employees do not have enough available leave to take the leave they are requesting. The guidelines for leave are set forth in the collective bargaining contract. Martin prepares time reports and overtime records to be sent for approval to the supervisory union central office based on information presented to her by staff. Martin does not change any time information presented to her unless she obtains the approval of the principal or the direct supervisor of the involved employee. Martin handles accounts payable. She prepares purchase orders and forms to pay bills approved by the school board.

12. Coffey is involved in the preparation of the budget. Coffey asks Martin how much was expended in various areas in past years, and which areas exceeded or underspent their budgeted amounts. Coffey discusses options with Martin concerning moving funds within the budget. Coffey also discusses options with the superintendent, associate principal and school board. In the early part of the budget process, teachers develop a list of budget requests, which are reviewed by department coordinators. Drafts of budgets become public once they are considered at a meeting of the school board.

13. During the most recent school year, the proposed budget was rejected by voters and Coffey sent reduction in force letters to staff. Martin typed these letters. Pursuant to the collective bargaining contract, copies of the reduction in force notices were sent simultaneously to the involved employee and the association. The standards concerning reductions in force and notices of possible reductions in force are governed by the collective bargaining contract. Coffey also had Martin type documents to present to the school board on alternatives concerning where funding reductions could be made in the budget, including possible reductions in force. These materials were confidential until presented to the school board. Teachers asked Martin about possible reductions in force and she told them she could not reveal anything.

14. Coffey has little direct involvement in negotiations between the school board and the teachers association, or negotiations between the school board and the support staff association. Martin is not involved in the Employer's collective bargaining process.

15. The fax machine is in Martin's office. She receives faxes, some of which are confidential, and gives them to Coffey if applicable. Martin opens all mail addressed to Coffey, including mail marked "confidential" (Vergennes Exhibit 1).

16. In the six years that Martin has been secretary, she has been aware of only one grievance other than one that involved her. Her only involvement in this grievance was opening correspondence addressed to Coffey (Association Exhibit 5).

17. Ferrisburg Central School has approximately 240 students in grades kindergarten through 6th grade. The school has the full-time equivalent of 19 teachers, and approximately 20 education support staff. The teachers are represented for collective

bargaining purposes by an association. Don Marcus has been the school principal for the past year. Loretta Lawrence has been the secretary to the principal for the past sixteen years. The offices of the principal and secretary are adjacent. A person may enter the principal's office by either going through the secretary's office or entering through a door off the outside hallway.

18. The Ferrisburg Central School secretary has been included in the support staff bargaining unit represented by the Association since support staff employees voted to be represented by the Association in a 1989 election conducted by the Labor Relations Board. Prior to the election, the Labor Relations Board determined in a unit determination proceeding that the secretary was not a confidential employee. 12 VLRB 199. Lawrence has been active in the Association since the 1989 certification of the Association as bargaining representative. Lawrence has served as co-president of the Association and has been on the Association negotiation team for collective bargaining contracts.

19. Lawrence has been secretary to seven principals over 16 years. She has typed classroom observations and performance evaluations in the past for some principals, but does not do so for Marcus. Marcus does all of his own typing.

20. Lawrence does not copy or file performance evaluations. Marcus has employee personnel files in his office. Lawrence does not access these files.

21. Marcus is involved in preparation of the budget. Lawrence is one of the persons he consults in preparing the budget. There are times where Lawrence has been involved in shifting of funds in the budget due to certain areas being depleted of funds.

There is no information gained by Lawrence in performing budget duties that impacts on collective bargaining negotiations.

22. Lawrence has not typed a letter of reprimand to an employee in ten years. In her position as secretary, she has not been involved in reductions of force, grievances or collective bargaining negotiations. She has been involved in these areas as an Association representative.

23. Lawrence handles correspondence and telephone calls among parents, teachers, staff, the principal and supervisory union central office administrators. Lawrence has never opened correspondence to the principal marked “confidential”.

24. There are times when Marcus has to decide whether to involve Lawrence in discussions of confidential matters. Superintendent Keane is restrictive in confidential information she provides to Lawrence because of her role with the Association.

OPINION

At issue is whether the secretaries to the principals of Vergennes Union High School and Ferrisburg Central School are confidential employees. A “confidential employee” is defined in 21 V.S.A. Section 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 . . 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).

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, which could be reassigned, do not meet the definition of "confidential" employee. Vermont Education Association and Rutland City School Department, 2 VLRB 108 (1979). Further, an employer must demonstrate not only access to confidential information, but that such access would adversely impact on the employer's conduct of its labor relations policies if employees are included in a bargaining unit. Colchester Education Association, Vermont-NEA and Colchester Supervisory District Board of School Directors, 12 VLRB 60, 78 (1989).

We first discuss the secretary to the principal at Vergennes Union High School. We are persuaded that the secretary's involvement in personnel administration and budgetary matters as part of her regular duties make her a confidential employee. In assisting the principal's evaluation of teachers, the secretary is aware of which teachers are in performance warning periods. She maintains personnel files of employees that contain confidential information, and controls access to such files. She is aware of reprimands issued to employees through overhearing the principal's conversation with the involved employee and direct communications she has with the principal. This results

in the secretary having responsibility, knowledge and access to confidential information relating to personnel administration. Colchester, 12 VLRB at 75-76. Village of Essex Junction and Local 1343, AFSCME, 12 VLRB 211, 218-19 (1989).

The secretary also is privy to confidential information relating to budgetary matters. In past cases, the Board has excluded employees from bargaining units where the employees were privy to confidential information relating to the budget as part of their regular duties, when such information was not available to the public and the union. Colchester, 12 VLRB at 75-76. Washington South District Teachers Association, Vermont-NEA and Washington South Supervisory Union Board of School Directors, 12 VLRB 22 (1989). The Vergennes principal confidentially discusses budget options with the secretary before those options are made public, and has had her type confidential documents on alternatives concerning where funding reductions could be made which include possible reductions in force.

When the secretary's involvement in personnel administration and budgetary matters is considered together, we conclude that she serves in a confidential capacity to the principal. In this regard, it also is noteworthy that she receives confidential faxes, opens confidential mail, and transmits other confidential communications addressed to the principal. It is evident that the increasing demands on the Vergennes school principal concerning human resource issues have resulted in the secretary to the principal assuming increased confidential responsibilities. In sum, the secretary has responsibility, knowledge and access to information relating to personnel administration and budgetary matters which would make membership in and representation by the Association incompatible with her official duties. As part of her regular duties, she assists in a

confidential capacity to an administrator responsible for labor relations policies. Her inclusion in the unit would adversely impact on the Employer's conduct of its labor relations policies.

We conclude otherwise with respect to the secretary to the principal at Ferrisburg Central School. The Employer contends that the secretary's duties involving personnel administration and budgetary matters make her a confidential employee. In a 1989 decision, the Board determined that the secretary was not a confidential employee. Addison Northwest Education Association, Vermont-NEA and Ferrisburg Central Board of School Directors, 12 VLRB 199. The Employer has the burden of demonstrating that circumstances have changed sufficiently with respect to the duties of the secretary since the Board included the secretary in the bargaining unit to now warrant a different result. South Burlington Police Officers' Association and City of South Burlington, 18 VLRB 116, 126 (1995).

We conclude that the evidence presented by the Employer is insufficient for us to conclude that she has involvement in confidential matters as part of her regular duties. The secretary does not type for the principal as the principal performs all of his own typing. She does not copy or file performance evaluations, and does not have access to employee personnel files.

The secretary is one of the persons the principal consults in preparing the budget, and there have been times when the secretary has been involved in shifting of funds in the budget due to certain areas being depleted of funds. Nonetheless, there is no information gained by the secretary in performing budget duties that impacts on collective bargaining negotiations.

In sum, the Employer has not demonstrated that the employee is performing sufficient confidential work to warrant her exclusion from the bargaining unit, and has not demonstrated the need to have her do such work. It is evident that any involvement by the Ferrisburg secretary in confidential matters is too infrequent to result in a designation of her as a confidential employee. Unlike the Vergennes secretary, the Ferrisburg secretary does not have access to confidential information as part of her regular duties and does not meet the definition of “confidential employee”.

ORDER

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

1. The secretary to the principal at Vergennes Union High School is a confidential employee, and thus is excluded from the bargaining unit represented by the Custodian/Maintenance Workers/Secretaries/Paraeducators Association of Vergennes Union High School; and
2. The secretary to the principal at Ferrisburg Central School is not a confidential employee, and thus remains included in the bargaining unit represented by the Ferrisburg Educational Support Personnel Association.

Dated this 16th day of July, 2001, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank, Chairperson

John J. Zampieri