

VERMONT LABOR RELATIONS BOARD

GREEN MOUNTAIN-NEA (ESP UNIT)/)	
VERMONT-NEA/NEA)	
)	
and)	DOCKET NO. 04-33
)	
JERICOHO ELEMENTARY SCHOOL)	
BOARD)	
GREEN MOUNTAIN-NEA (ESP UNIT)/)	
VERMONT-NEA/NEA)	
)	
and)	DOCKET NO. 04-35
)	
MOUNT MANSFIELD UNION)	
HIGH SCHOOL BOARD)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On August 17, 2004, the Green Mountain-NEA (ESP Unit)/Vermont-NEA/NEA (“Association”) filed a Petition for Election of Collective Bargaining Representative in Docket No. 04-33, seeking to represent all paraeducators, secretaries, computer consultants, computer coordinators and custodians employed by the Jericho Elementary School Board. Also, on August 17, the Association filed a Petition for Election of Collective Bargaining Representative in Docket No. 04-35, seeking to represent all paraeducators, library assistants, technology assistants, computer coordinators, drivers and secretaries employed by the Mount Mansfield Union High School Board at Mount Mansfield Union High School, Camels Hump Middle School and Browns River Middle School.

On September 2, 2004, Superintendent Gail Conley of the Chittenden East Supervisory Union filed a response to the petitions on behalf of the Employers, raising

several unit determination questions. The parties informally resolved some issues in dispute. Among the agreements reached by the parties are to exclude the Mount Mansfield Union High School Secretary/Office Manager and the Mount Mansfield Union School District Technology Coordinator from the proposed bargaining unit in Docket No. 04-35. The parties disagree as to the bargaining unit status of three employees. The Employers contend that the following employees should be excluded from the proposed bargaining unit as confidential and/or supervisory employees: Jericho Elementary School Secretary, Browns River Middle School Secretary and Camels Hump Middle School Secretary. The Association contends that the employees should be included in the unit because they are neither confidential nor supervisory.

The Labor Relations Board conducted a consolidated hearing on October 28, 2004, in Docket Nos. 04-33 and 04-35 in the Board hearing room in Montpelier before Board Members Richard Park, Chairperson; and John Zampieri. Attorney Anthony Lamb represented the Employers. Vermont-NEA Organizer Ellen David Friedman represented the Association. The Employers and Association filed post-hearing briefs on November 15 and 16, 2004, respectively.

FINDINGS OF FACT

1. Jericho Elementary School, Camels Hump Middle School and Browns River Middle School are schools within the Chittenden East Supervisory Union (“CESU”). There are seven school districts within CSEU. Jericho Elementary School comprises the Jericho School District. Camels Hump Middle School and Browns River Middle School are part of the Mount Mansfield Union High School District along with Mount Mansfield Union High School. Gail Conley is the CESU Superintendent. CESU

central office staff are not represented by an employee organization. The Association is not seeking to represent them (Employers Exhibit 1).

2. The Green Mountain NEA/Vermont-NEA/NEA represents all teachers employed in schools within CESU. The negotiation teams for the employing school districts within CESU consist of Superintendent Conley and school board members. Principals of the various CESU schools are not directly involved in negotiations.

3. Personnel files for all employees in schools within CESU are maintained in the CESU central office. The CESU central office maintains seniority lists for employees in schools within CESU. If there is a dispute concerning the teachers' seniority list which impacts reduction in force decisions, Superintendent Conley works with the teachers' association to resolve the dispute. There have been reductions in teaching positions in CESU schools in recent years. The involved school principal determines the school's teaching needs and determines which teacher will lose a position, with advice from Superintendent Conley, by comparing teaching needs with teachers' qualifications and the seniority list.

4. CESU has a policy of site-based management. Under this policy, the principal of each school is given a high degree of authority in the daily operation of the school.

5. Browns River Middle School has approximately 470 students in grades 5 through 8. There are 44 teachers in the school, and 24 support staff. Nancy Guyette has been the school principal for the past six years. Diane Alexander has been secretary to the principal for the past seven years.

6. Alexander monitors the school budget. Teachers submit requisitions to her. Occasionally, Alexander recommends to Guyette areas in the budget where monies are available. When the budget is being developed, Alexander prepares charts and other materials for Guyette to present to the school board. There have been budget reductions the last few years. Information concerning possible budget reductions is confidential from the public and school at large in the early stages of the budget development process. Alexander has typed documents discussing possible budget reductions while that information is confidential. During the last two years, there was a reduction in force for 7th and 8th grade teachers. Alexander worked with Guyette in a confidential manner on these actions.

7. Alexander is responsible for hiring short-term teaching substitutes, and matching the substitutes with the grade level and class they will be teaching. Substitute teachers are not covered under teachers' collective bargaining agreements. Alexander is not involved in the hiring of long-term teaching substitutes.

8. Alexander keeps records of employee absences. Occasionally, Guyette requests that she monitor employee absences. Recently, an employee called Alexander early in the morning and indicated that he was home sick. Alexander was able to tell the employee was not calling from home due to the school's caller ID service. Alexander knew that Guyette was monitoring this employee's absences, and she reported this information to Guyette.

9. Guyette types performance evaluations of teachers herself. Guyette asks Alexander to make copies of the evaluations and send them to the CESU central office.

Guyette has typed all letters of reprimand, and other disciplinary actions, herself. Guyette and Alexander discuss personnel administration problems involving employees.

10. Guyette, Alexander and the assistant principal interviewed candidates for an assistant secretary position. Guyette informed Alexander that Alexander had effective authority to recommend which candidate would be hired for the position.

11. Alexander is the receptionist for telephone calls to Guyette. She often hears first of complaints from parents and employees. Alexander has access to Guyette's daily calendar. Alexander typically receives faxes sent to Guyette and brings them to her.

12. Alexander does not attend school board meetings. She is not involved in collective bargaining negotiations.

13. Jericho Elementary School has approximately 280 students in grades kindergarten through 4. The school has approximately 27 teachers, and approximately 20 support staff. Flora Hurteau is in her seventh year as school principal. Robin Connors has been secretary to the principal for the past five years. Christine Yates, a paraeducator at the school, also works approximately one hour a day performing secretarial duties in the office.

14. Hurteau writes evaluations on teachers. In school years preceding 2003-2004, Hurteau asked Connors to type 3 – 5 evaluations a year and proofread them. Hurteau sometimes dictated the evaluations and Connors typed them from a dictaphone. On other occasions, Connors typed from evaluations written in longhand by Hurteau. Connors did not type any evaluations during the 2003-2004 school year. Hurteau did no evaluations that year. Connors has not typed any evaluations during the current school

year. When Connors has proofread evaluations, she limits herself to making grammatical corrections. She does not edit their substantive content.

15. When Connors was first hired, Hurteau discussed with her some confidential personnel matters involving other employees. Hurteau discontinued so confiding in Connors approximately three years ago. Connors understands that Hurteau stopped confiding in her to protect her from being a source of information for teachers in these matters.

16. Hurteau has allowed Connors to use the computer in Hurteau's office when Connors has worked on typing performance evaluations and student report cards so that other persons will not be aware of the content of these matters. Connors has access to Hurteau's computer, appointment calendar and desk in her office. Connors has no reason to access Hurteau's files on her computer, and does not do so. Connors does not examine the contents of Hurteau's desk except to check her appointment calendar at times.

17. Connors has not had involvement in any disciplinary matters during her employment except for typing one letter of reprimand to an employee approximately four years ago. She has not had any involvement in grievances.

18. Connors's role in the budget generally involves keeping track of what teachers order and letting them know when they have reached their budgeted limit. She also has typed for Hurteau various classroom configurations of numbers of students and teachers based on enrollment projections. Connors is not aware how Hurteau has used this information in budget presentations to the school board. Connors is not aware of reductions in force in school in advance of other staff in the school. Connors has not typed budget proposals or budget charts for the principal.

19. Connors takes messages for the principal, opens mail, receives fax transmissions, calls substitute teachers from a list of substitutes hired by the CSEU central office, and schedules use of the building. Yates also performs these duties at times. Hurteau has waited at the fax machine to receive a fax that she knows is arriving for her. Other staff use the fax machine.

20. Connors has not been involved in any hiring decisions at the school other than participating once as a member of an interview committee for a custodian position. She was on the committee due to her involvement in scheduling use of the building during evenings when the custodian would be working. Connors does not supervise any employees.

21. Connors keeps records of leave requests and use by employees. She does not monitor employees' leave usage other than to let them or Hurteau know when they do not have sufficient leave balance for the leave requested.

22. Hurteau's office is down a hallway from Connors's office. Connors is not able to hear conversations in Hurteau's office when the door to Hurteau's office is closed.

23. Connors does not attend school board meetings. She is not involved in collective bargaining negotiations.

24. Camels Hump Middle School has approximately 420 students in grades 5 through 8. The school has approximately 45 teachers and approximately 40 support staff. Bob Goudreau has been the school principal since 1978. Betsy Smith is in her fourth year as secretary to the principal.

25. Goudreau does almost all of his own typing. He types performance evaluations and disciplinary letters. Smith has no involvement in evaluations,

observations, disciplinary letters or grievances. Goudreau asks another secretary in the school, Brenda McKeown, to proofread documents that he prepares.

26. Smith takes telephone messages for Goudreau. She is aware of Goudreau's appointment schedule. She often is the first line of communication for persons coming into the school, and screens those who visit Goudreau. Smith and McKeown share the responsibility for calling substitute teachers. Smith monitors the spending of budget monies. She has no involvement in budget preparation and does not see the budget until it is approved. She has no involvement in reductions in force.

27. Smith is not involved in collective bargaining negotiations and has no knowledge of bargaining proposals.

28. Smith does not assign work to, or direct the work of, any employee. She is not involved in the hiring of any employee.

29. Mount Mansfield Union High School has over 1000 students. The Association has agreed to exclude the secretary to the high school principal from the bargaining unit as a confidential employee. At the time the Association filed the petitions at issue in these cases, the Association also filed petitions to represent employees of Brewster Pierce Elementary School and Underhill I.D. Elementary School. The Association and the employers there agreed to include secretaries to the school principal in the bargaining units. There are between 100 – 125 students in those schools.

OPINION

At issue is whether the secretaries to the principals of Browns River Middle School, Jericho Elementary School and Camels Hump Middle 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). The essential issue is whether the challenged employees have such a close relation to the employer’s management of labor relations that the employer would be prejudiced by their inclusion in a bargaining unit with other employees. Harwood Union High School District and Harwood Education Association, 172 Vt. 167 (2001). 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 who do not have access to confidential information as part of their regular duties do not meet these tests. Employees whose duties require only occasional access to confidential material and which could be reasonably reassigned, or employees who occasionally substitute for confidential employees, do not meet the definition of "confidential" employee. 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). Vermont Education Association and Rutland City School Department, 2 VLRB 108 (1979). Vermont Education Association and Windsor Town School District, 2 VLRB 295 (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).

The Board has often examined whether secretaries to school principals and other school administrators are confidential employees. In applying the standards delineated above, in most cases the Board has found confidential duties to be absent, or only occasional or intermittent, and thus has concluded the secretaries were not confidential. Ferrisburg Central School Board and Ferrisburg Educational Support Personnel Association, 24 VLRB 104 (2001). Harwood Union High School District and Harwood Education Association/Vermont-NEA/NEA, 22 VLRB 53 (1999); *Affirmed*, 172 Vt. 167 (2001). Proctor Education Association/Vermont-NEA/NEA and Proctor School Board, 18 VLRB 174 (1995). Addison Northwest Education Association, Vermont-NEA, 12 VLRB 199 (1989). Colchester, supra. Orange Southwest Supervisory Union, et al. and Orange Southwest Teachers' Association, 11 VLRB 285 (1988). Grand Isle Staff Association, Local 136, Vermont-NEA and Alburg Board of School Directors, 6 VLRB 108 (1983). Windsor, supra. Rutland City School Department, supra. In a minority of cases, the Board has concluded that secretaries' access to confidential information as part

of their regular duties warranted a confidential designation. Vergennes Union High School and Custodian/Maintenance Workers / Secretaries / Paraeducators Association of Vergennes Union High School, 24 VLRB 104 (2001). Rutland City School Department, supra. Castleton, supra. Washington Central, supra.

We first discuss the secretary to the principal at Browns River Middle School. We are persuaded that the secretary's involvement in budgetary matters and personnel administration as part of her regular duties make her a confidential employee. 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. Vergennes, supra. 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 Browns River principal confidentially works with the secretary on budget options before those options are made public, and has had her type documents on potential budget reductions and reductions in force when that information is confidential from the public and school at large in the early stage of the budget development process. These duties mean that the secretary is privy to confidential information relating to budgetary matters as part of her regular duties.

The Browns River secretary also has confidential responsibilities relating to personnel administration. In addition to the secretary's confidential duties relating to reductions in force discussed above, the principal and the secretary discuss personnel administration problems involving employees. The principal has had the secretary monitor employee absences, and the secretary recently reported an employee abuse of

leave policies. This evidence indicates that the secretary has 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).

When the Browns River secretary's involvement in budgetary matters and personnel administration is considered together, we conclude that she serves in a confidential capacity to the principal. Our conclusion in this regard is bolstered by the evidence indicating that the secretary receives confidential faxes, opens confidential mail, and transmits other confidential communications to the principal. It is evident that the demands on the Browns River school principal concerning human resource issues, as well as the principal's trust in the secretary, have resulted in the principal using a management style that places increased confidential responsibilities on the secretary.

In sum, the Browns River secretary has responsibility, knowledge and access to information relating to budgetary matters and personnel administration 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 Jericho Elementary School. The Employer contends that the secretary's duties involving personnel administration and budgetary matters make her a confidential employee. 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.

It is evident that the Jericho secretary did have knowledge and access to confidential matters on a regular basis for a period after she was first hired five years ago. She and the principal discussed confidential personnel matters involving other employees. Nonetheless, the principal discontinued so confiding in the secretary approximately three years ago. The secretary understands that the principal stopped confiding in her to protect her from being a source of information for teachers in these matters.

This change of approach by the principal has resulted in the secretary at present not having responsibility, knowledge or access to information relating to collective bargaining, personnel administration or budgetary matters that would make membership in or representation by an employee organization incompatible with her official duties. Her responsibilities relating to budgetary matters generally involve non-confidential duties. The one exception to this – i.e., typing for the principal various classroom configurations of numbers of students and teachers based on enrollment projections – is not of great significance given that the secretary is unaware how the principal uses this information in budget presentations to the school board. Further, unlike the Browns River secretary, the Jericho secretary is not aware of reductions in force in advance of other staff in the school.

Similarly, the Jericho secretary's responsibilities relating to personnel administration generally are restricted to record-keeping without any significant confidential component. She has had no involvement in grievances, and her involvement in disciplinary matters during her five years of employment is limited to one, rare typing of a letter of reprimand. The irregular nature of any possible confidential responsibilities

she has in this regard is indicated by the fact that, although she has typed performance evaluations for the principal, she has not done so since the school year ending in June of 2003.

In a case such as this where confidential responsibilities relating to personnel administration and budgetary responsibilities are so limited, the fact that the secretary takes messages for the principal, opens mail and receives fax transmissions is insufficient to bolster a case for confidential status. This is particularly so given that another employee working part-time in the office performs similar responsibilities, and that employee is included in the proposed bargaining unit without objection. Also, the access that the secretary has to the principal's desk and computer is not indicative of confidential status. The secretary has no reason to access the principal's files on her computer and does not do so, and she does not examine the contents of the principal's desk except to check her appointment calendar at times.

In sum, the Employer has not demonstrated that the Jericho secretary is serving in a confidential capacity to the principal so that her inclusion in the bargaining unit would be prejudicial to the Employer's conduct of its labor relations policies. It is evident that any involvement by the Jericho secretary in confidential matters is too infrequent to result in a designation of her as a confidential employee. Unlike the Browns River secretary, the Jericho secretary does not have access to confidential information as part of her regular duties and does not meet the definition of "confidential employee".

The changing circumstances concerning the nature of the Jericho secretary's duties highlight the potential evolving nature of an employee's responsibilities. Our conclusion that an employee's responsibilities can change from confidential to non-

confidential could be flipped in an appropriate case. There may be a legitimate evolution of responsibilities over time so that a non-confidential employee becomes confidential.

Circumstances may change resulting in an employer perceiving the need to change a position so that confidential assignments become a regular part of the position's job duties. This would be appropriate if the employer was not acting with the intent to improperly deprive employees on union representation. The employer has the right to file a unit clarification petition with the Board pursuant to Article 34 of Board *Rules of Practice*, contending that the employee should be removed from the bargaining unit as a confidential employee. Personnel Designation Dispute of Calderara, 10 VLRB 261, 267 (1987). City of Burlington and Local 1343, AFSCME, 9 VLRB 116, 122 (1986). The Board then can act on the petition having the benefit of evidence and arguments presented by the employer and union as to whether the position is appropriately removed from the bargaining unit as confidential.

The remaining employee to examine for confidential status is the secretary to the Camels Hump Middle School principal. The contention by the Employer that this employee is confidential can be quickly addressed. The Camels Hump principal does almost all of his own typing, including typing performance evaluations and disciplinary letters. The secretary has no involvement in central personnel administration matters of evaluations, observations, disciplinary letters or grievances.

Her involvement in the budget is limited to monitoring the spending of budget monies. She has no involvement in budget preparation and does not see the budget until it is approved. She has no involvement in reductions in force. She is not involved in collective bargaining negotiations and has no knowledge of bargaining proposals. In sum,

the evidence clearly indicates that the Camels Hump secretary has no responsibility, knowledge or access to information relating to collective bargaining, personnel administration or budgetary matters that would make membership in or representation by an employee organization incompatible with her official duties.

Before concluding, we address the Employer's additional contention that the three secretaries at issue are supervisory employees. It is unclear to us the grounds for this contention since the Employer has not articulated the specifics of this claim verbally or in writing. In any event, the evidence falls well short of indicating that the Jericho secretary or the Camels Hump secretary meet the statutory definition of supervisory employee set forth in 21 V.S.A. Section 1502(13). It is unnecessary to determine whether the Browns River secretary should be excluded from the proposed bargaining unit based on supervisory status since the Board already has concluded that she is excluded from the unit as a confidential employee.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered:

1. In Docket No. 04-33, the secretary to the Jericho Elementary School principal is not a confidential employee and is eligible to be included in a proposed bargaining unit represented by the Green Mountain-NEA (ESP Unit)/Vermont-NEA/NEA. The Vermont Labor Relations Board shall conduct a representation election among all paraeducators, secretaries, computer consultants, computer coordinators and custodians employed by the Jericho Elementary School Board to determine whether they wish to be represented by the Green Mountain-NEA (ESP Unit)/Vermont-NEA/NEA; and
2. In Docket No. 04-35, the Secretary to the Browns River Middle School Principal is a confidential employee and is not eligible to be included in a proposed bargaining unit represented by the Green Mountain-NEA (ESP Unit)/Vermont-NEA/NEA. The Secretary to the Camels Hump Middle School Principal is not a confidential employee and is eligible to be included in a

proposed bargaining unit represented by the Green Mountain-NEA (ESP Unit)/Vermont-NEA/NEA. The Vermont Labor Relations Board shall conduct a representation election among all paraeducators, library assistants, technology assistants, computer coordinators, drivers and secretaries employed by the Mount Mansfield Union High School Board at Mount Mansfield Union High School, Camels Hump Middle School and Browns River Middle School; with the exception of the Secretary to the Browns River Middle School Principal, the Mount Mansfield Union High School Secretary/Office Manager, and the Mount Mansfield Union School District Technology Coordinator; to determine whether they wish to be represented by the Green Mountain-NEA (ESP Unit)/Vermont-NEA/NEA.

Dated this 16th day of December, 2004, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Richard W. Park, Chairperson

John J. Zampieri