

VERMONT LABOR RELATIONS BOARD

HARTFORD SCHOOL DISTRICT)	
)	
and)	DOCKET NO. 07-22
)	
HARTFORD EDUCATION)	
ASSOCIATION/VERMONT-NEA/NEA)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On July 2, 2007, the Hartford School District (“Employer”) filed a unit clarification petition, requesting that two Technology Assistants be removed from the bargaining unit of educational support staff represented by the Hartford Education Association/Vermont-NEA/NEA (“Association”) as confidential employees. The Association filed a response to the petition on August 9, 2007, contending that the Employer’s petition should be dismissed.

The Labor Relations Board conducted a hearing on December 13, 2007, in the Board hearing room in Montpelier before Board Members Edward Zuccaro, Chairperson; Leonard Berliner and James Kiehle. Attorney John Candon represented the Employer. Vermont-NEA General Counsel James Fannon III represented the Association. The Employer and the Association filed post-hearing briefs on January 10 and 11, 2008, respectively.

FINDINGS OF FACT

1. The Labor Relations Board certified the Association in October 2000 as the exclusive bargaining representative of educational support staff of the Employer. Collective bargaining contracts negotiated by the Association and Employer for the periods July 1, 2001-June 30, 2004 and July 1, 2004-June 30, 2007 included Technology

Assistants of the Employer in the bargaining unit covered by the contracts (VLRB Docket No. 00-42, Association Exhibits 1A and 1B).

2. The technology department of the Employer is currently comprised of Kevin Fabrizio, Director of Technology and Facilities Operations; Dwayne Fitzherbert, Network Administrator; and Mitchell Goad and George Riviezzo, Technology Assistants. Fabrizio has been in charge of the department since he was hired in 1994. Fabrizio was the only information technology employee for several years. Goad was hired to assist Fabrizio in 1998 or 1999. Riviezzo was hired a few years later. Goad and Riviezzo have remained Technology Assistants to the present. Fitzherbert was hired into the newly created Network Administrator position in the fall of 2007. Fitzherbert is not in the bargaining unit of employees represented by the Association. Fitzherbert is paid more than Goad and Riviezzo.

3. In 2001, the Employer had approximately 700 - 750 computers in eight separate building-based computer networks. At that time, the Technology Assistants set up computer stations and access accounts for computer users, acted as troubleshooters to identify and solve hardware and software problems for computer users, and provided basic technical support. Fabrizio was responsible for the network servers, coordinated the technology efforts of the Employer and provided direction to the Technology Assistants. The Assistant Superintendent of the Employer performed the administrative responsibilities for the computer system (Employer Exhibit 1).

4. The Employer's computer system has evolved since 2001 to a wholly integrated system among all but one of the school district's buildings. There are approximately 1,100 computers in the integrated system. In addition to his other duties, Fabrizio assumed the administrative responsibilities of the computer system in 2006

previously performed by the Assistant Superintendent. He also has assumed other directing responsibilities with respect to facilities of the Employer. Much of the work performed by Fabrizio given his current responsibilities is not technical. Goad, Riviezzo and Fitzherbert perform the bulk of computer technical work. Fabrizio, Fitzherbert, Goad and Riviezzo have unrestricted access, including remote access, to the integrated system. They have full domain administrative rights allowing them to perform any information technology work on the integrated network. No other employees have unrestricted access.

5. The unrestricted access Goad and Riviezzo have to the computer system means they have the potential to gain access to confidential information relating to collective bargaining, personnel administration and budgetary matters on the computers of Superintendent of Schools Donald LaPlante and other employees in the Employer's central office. Goad and Riviezzo do not have the need to view such confidential information as part of their duties. Any such contact they have with this information is incidental to performing their duties. Fabrizio would expect Goad and Riviezzo to keep confidential any confidential information that they come across in performing their duties. Goad and Riviezzo could be subject to disciplinary action if they inappropriately used any confidential information to which they gained access.

6. It is possible for the Employer to restrict the access of Goad and Riviezzo to certain information on the computers of employees of the Employer. Their access can be restricted to such things as files, folders and e-mails. Such restrictions can be implemented in a way that would still permit Goad and Riviezzo sufficient access to computers to allow them to perform most of their troubleshooting and maintenance duties. They often do not access documents to fix problems. If Goad and Riviezzo were unable to perform any support functions in the central office due to restrictions on their

access, Fabrizio or Fitzherbert would have to perform these duties. It is possible to set up the Employer's computer system to monitor how computers are accessed by employees (Association Exhibit 4).

7. Fabrizio has been an officer in the Army Reserve at all times relevant. In 2004, he was deployed for 18 months. The Employer did not replace Fabrizio during his military leave. Goad and Riviezzo exclusively handled troubleshooting and maintenance on the computer system in Fabrizio's absence. An information technology teacher in the district assumed some administrative duties of Fabrizio while he was on military leave. It is likely that by May of 2008 Fabrizio will be on leave from work on another military overseas deployment. Prior to beginning his leave, Fabrizio is scheduled to be absent from work for several weeks due to his reserve duties.

OPINION

The issue is whether the two Technology Assistants of the Employer should be removed from the bargaining unit of school support staff represented by the Association. In cases such as this where the issue is whether the job duties of a position have changed so that employees previously included in a bargaining unit should be excluded as a confidential employee, the party petitioning to change the status of employees has the burden of convincing the Board by a preponderance of the evidence that circumstances have changed sufficiently with respect to the duties of the employees since they were included in the bargaining unit to now warrant a different result. International Brotherhood of Electrical Workers Local 300 and City of Burlington Electric Department, 26 VLRB 103, 110-111 (2003). South Burlington Police Officers' Association and City of South Burlington, 18 VLRB 116 (1995).

Under the Municipal Employee Relations Act, 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 . . . 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). 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, 176 (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 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 reassigned, or employees who occasionally substitute for confidential employees, do not meet the definition of "confidential" employee. Vermont Education Association and Windsor Town School District, 2 VLRB 295 (1979). Vermont Education Association and Rutland City School

Department, 2 VLRB 108 (1979). Castleton Education Association and Castleton Board of School Directors, 1 VLRB 374 (1978). American Federation of Teachers, Local 333 and Washington Central Supervisory Union, 1 VLRB 288 (1978).

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).

In one case, the Board determined whether information technology employees at each of the four campus-based colleges of the Vermont State Colleges were confidential employees. United Professions of Vermont/AFT and Vermont State Colleges, 25 VLRB 1, 41-45 (2002). The Board determined that the director of computer services, as the chief administrator of the campus computer system, and the network administrator, as the chief “hands-on” person maintaining the campus computer system and access to it, at each of the colleges effectively acted in a confidential capacity to managers carrying out labor relations policies and were confidential employees. The Board determined the remaining information technology employees at the colleges were not confidential employees.

The Employer has four information technology employees. Two of them, the Director of Technology and Facilities Operations and the Network Administrator, are not included in the bargaining unit represented by the Association. The remaining two information technology employees, the Technology Assistants, would be removed from the bargaining unit if we granted the Employer’s petition. We conclude that the Employer has not sustained its burden of convincing the Board by a preponderance of the evidence that circumstances have changed sufficiently with respect to the duties of the Technology

Assistants since they were included in the bargaining unit to now warrant a different result.

The Superintendent and other employees in the Employer's central office may have confidential information relating to collective bargaining, personnel administration and budgetary matters on their computers. They are entitled to rely on the security of any confidential communications and documents being preserved.

Nonetheless, the preservation of this security does not require that all information technology employees be removed from the bargaining unit. Two information technology employees already are excluded from the bargaining unit; this suffices to ensure that the confidentiality interests of the Employer are met. The Director of Technology and Facilities Operations can feasibly allocate work so that he or the Network Administrator performs all work in the central office that may involve access to confidential information.

We recognize that the Technology Assistants possibly could gain access to confidential information since they have unrestricted access to the integrated computer system. Nonetheless, we decline to exclude them from the bargaining unit as confidential employees. They do not need access to confidential information as part of their regular job duties since their regular job functions can be limited to non-confidential duties, and the Employer has not demonstrated that it would be impractical to limit these employees' access to confidential information. United Professions of Vermont/AFT and Vermont State Colleges, 25 VLRB at 45.

Any contact that the Technology Assistants have with confidential information is incidental to performing their duties. If the Employer is concerned about this incidental access, it is possible for the Employer to restrict the Technology Assistants' access to

such confidential information on the computers of certain employees. Their access can be restricted to such things as files, folders and e-mails. Such restrictions can be made in a way that would still permit the Technology Assistants sufficient access to computers to allow them to perform most of their troubleshooting and maintenance duties. They often do not have the need to access documents to fix problems. The Employer has not demonstrated that it would be impractical or unduly burdensome to restrict access as necessary.

We further recognize it is likely that by May of 2008 the Director of Technology and Facilities Operations will be on leave from work for another military overseas deployment, and prior to beginning his leave is scheduled to be absent from work for several weeks due to his reserve duties. However, his absence does not result in a necessary conclusion that the Technology Assistants should be excluded from the bargaining unit as confidential employees.

Confidential work can be allocated to the Network Administrator. The Employer has not demonstrated that the volume of confidential work is so great that more than one information technology employee needs to be available to perform such work. The Employer also has not demonstrated that it would be impractical to limit the Technology Assistants' access to confidential information. Moreover, it should be noted that any plan implemented by the Employer due to the temporary absence of the Director of Technology and Facilities Operations can feasibly provide for the preservation of the security of confidential information without involving the Technology Assistants.

In sum, the Employer has not demonstrated that the Technology Assistants have responsibility for, knowledge of, or access to information relating to collective bargaining, personnel administration or budgetary matters which would make

membership in or representation by an employee organization incompatible with their official duties. The Technology Assistants do not have such a close relation to the Employer's management of labor relations that the Employer is prejudiced by their inclusion in a bargaining unit with other employees.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the unit clarification petition filed by the Hartford School District is dismissed and the Technology Assistants employed by the Hartford School District shall remain in the bargaining unit of educational support staff represented by the Hartford Education Association/Vermont-NEA/NEA.

Dated this ____ day of February, 2008, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Edward R. Zuccaro

Edward R. Zuccaro, Chairperson

/s/ Leonard J. Berliner

Leonard J. Berliner, Member

/s/ James C. Kiehle

James C. Kiehle