

VERMONT LABOR RELATIONS BOARD

ADDISON CENTRAL EDUCATION)	
ASSOCIATION (HANNAFORD)	
REGIONAL TECHNICAL SCHOOL)	
DISTRICT SUPPORT STAFF UNIT))	DOCKET NO. 20-08
)	
and)	
)	
HANNAFORD CAREER CENTER)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

The Addison Central Education Association (Hannaford Regional Technical School District Support Staff Unit) (“Association”) filed a unit clarification petition on January 30, 2020, seeking to include the Administrative Assistant to the Business Manager of the Hannaford Career Center (“Employer”) in the support staff bargaining unit represented by the Association. The Employer filed a response to the petition on February 24, 2020, contending that the Financial Assistant to the Business Manager should be excluded from the bargaining unit as a confidential employee.

The Labor Relations Board conducted video hearings through the Microsoft Teams platform on August 19 and 24, 2020, before Board Members Richard Park, Chairperson; David Boulanger and Karen Saudek. Vermont-NEA General Counsel Wanda Otero represented the Association. Attorney William Ellis of McNeil Leddy & Sheahan represented the Employer. The Association and Employer filed post-hearing briefs on September 25, 2020.

FINDINGS OF FACT

1. On September 21, 1989, subsequent to a representation election, the Labor Relations Board issued an order certifying the Middlebury Union High School Teachers Association, Vermont-NEA, as the exclusive bargaining representative of the secretaries,

receptionist, custodians, aides (special education, teacher, resource room, human service, behavior, library, speech and rest) and parking lot attendant employed more than 20 hours per week by the Middlebury Union High School Board of School Directors, excluding the Activities Director, Physical Plant Manager, Secretary to the High School Principal, Secretary to the High School Associate Principal, Secretary to the Junior High School Principal, Secretary to the Vocational Director and the Custodian Supervisor (Employer Exhibit 1).

2. In 2004, the Hannaford Career Center became an independent school district. Previously, it had been part of the Addison Central School District. The Hannaford Career Center is one of three independent technical centers in the state. It has 35 employees. 22 teachers are in a bargaining unit represented by the Addison Central Education Association. There are six employees in a separate support staff bargaining unit represented by the Association.

3. There are four employees in the Employer's central office: Superintendent, Business Manager, Executive Administrative Assistant, and Financial Assistant to the Business Manager. None of these employees are in a bargaining unit represented by a union. The employees have separate offices adjacent to each other in the central office and can overhear each other's conversations (Employer Exhibit 6).

4. Gretchen Bailey has been employed by the Employer, and its predecessor – the Addison Central School District, since 1999. She held the position of Bookkeeper from 1999 to 2005. The Employer hired its first Business Manager in 2006. Bailey's title changed then to Administrative Assistant to the Business Manager, a title she held until 2019 (Association Exhibit C; Employer Exhibits 3, 9).

5. In June 2019, the Employer changed Bailey's job title to Financial Assistant to the Business Manager. This was in recognition of the increased job responsibilities and duties that she had assumed over time.

6. Bailey was paid a salary of \$35,424 for 209 days of work during the 2017-2018 school year. Her salary rose to \$43,792 for the 2018-2019 school year based on 230 days of work. Her days of work rose from 230 to 261 for the 2019-2020 school year, and her salary increased to \$46,207. Bailey paid five percent of her health insurance premium prior to the 2019-2020 school year. In 2019-2020, she paid 20 percent of the premium (Employer Exhibits 9, 10; Association Exhibits D, E, F).

7. The positions held by Bailey from 1999 to the present have not been recognized as being included in the support staff bargaining unit represented by the Association. The collective bargaining agreement between the Employer and the Association effective July 1, 2019, to June 30, 2020, does not list her position as included in the bargaining unit represented by the Association (Employer Exhibit 2).

8. The job description for the Financial Assistant to the Business Manager position held by Bailey lists the following "Essential Duties and Responsibilities" which accurately describe her duties and responsibilities:

- Set up and maintain accounting and budgeting software for each school year including the general fund, revolving (enterprise) accounts and Adult Education
- Serve as primary contact with financial software provider for system updates and module implementation
- Set up grant accounts to track expenses and revenues
- Generate reports for expense and revenue tracking on request
- Prepare and process all purchase orders
- Provide budget preparation assistance including budget request forms to staff
- Manage and maintain all accounts payable and receivable files including revolving (enterprise) accounts and Adult Education
- Process monthly expenditures for district reporting for all accounts including monthly reporting of accounts for board meetings

- Create and generate reports and templates for revenues and expenses
 - Produce year-end reports for all revolving (enterprise) accounts including Adult Ed.
 - Provide info, reports and support for annual audit and pre-audit
 - Maintains student accounts and provides reports
 - Prepares bill for review by Board authorized agents
 - Communicates with Treasurer regarding authorization for invoice payments, payroll and benefit expenses
 - File quarterly sales tax reports for enterprise accounts
 - Reconcile monthly bank statements
 - Maintain files, both digital and hard copy, for grant and BERF expenditures
 - Coordinate with the Facilities Director on project expenses and invoice payments
 - Communicate to Business Manager and Facilities Director when final payments are made and project fiscal obligations are complete
 - Contributes to the development of procedures for processing revenues, expenses and internal controls
 - Help communicate procedures to staff to facilitate the smooth operation and processing of orders, payments and reimbursements
 - Responds to questions regarding procedures for categorizing and tracking expenses
 - Assist Business Manager with payroll processing
 - Other tasks as assigned
- (Association Exhibit B, Employer Exhibit 4)

9. The Financial Assistant has intimate knowledge of how the Employer's financial system works, and how the modules within the Tyler software used by the Employer interact. Bailey has the ability to "drill down" to obtain detailed information that is not generally accessible to the general public. She is able to use the Tyler software to create customized reports (Employer Exhibit 11).

10. Bailey enters data on computer spreadsheets to generate reports during the budget development process upon the request of the Superintendent or Business Manager. An example would be reports concerning revenues and expenses for departments wherein she has early and total access to any budget variances. She provides these reports to the Superintendent and Business Manager to inform their discussion and development of budget proposals. Bailey has not participated in budget development meetings with the Superintendent and Business Manager.

The Superintendent and Business Manager use the information provided by Bailey in their presentations to the School Board (Employer Exhibit 11).

11. Bailey has access to information on every employee's compensation and how that compensation is distributed between salary and benefits. She provides this compensation information to the Superintendent and Business Manager as part of the budget development process which they use in their presentations to the School Board.

12. Once the Employer has approved the budget for the next fiscal year, Bailey enters salary and benefit data into the financial software for the upcoming year to be used by the Business Manager to process payroll. In performing this task, she has access to information that is not generally available to the public or the Association, including disaggregated information on salaries and benefits, sick leave, vacation leave, and leave time accrual. Bailey sets up the financial software to track information on leave use for compliance with collective bargaining agreements (Employer Exhibit 13).

13. Bailey has provided information requested by the Superintendent and Business Manager on matters relating to the financial status of the Employer such as salary balances for a teacher for the rest of the school year, detailed expenditure reports, State base payments that are due, and balances in checking accounts. Detailed expenditure reports contain details on encumbrances and year to date expenses that are not available to the Association or the public (Employer Exhibit 12, 14).

14. Bailey has specific and detailed knowledge on matters such as fund balances, accounts payable, payroll expenses, grant reports and requests, closing the books at the end of the fiscal year, setting up the budget at the beginning of a fiscal year, and audits. She works closely with the Business Manager on these matters (Employer Exhibit 15).

15. If the School Board, Superintendent or Business Manager were to ask for a financial report to inform a budget recommendation on such matters as staffing, the Financial Assistant may generate the report.

16. The intimate knowledge that Bailey has concerning how the Employer's financial system works, and her access to the system, would allow her to provide Association representatives with a greater level of detail and understanding about the proposed budget, budget projections, and detailed cost information, than would otherwise be available to them.

17. The Executive Administrative Assistant does not have the training or experience to assume the financial duties performed by the Financial Assistant.

18. Pursuant to Vermont law, all school districts are in the process of transitioning to a new eFinance system. The Employer is scheduled to bring the eFinance system online during the 2021-2022 school year. The Financial Assistant may set up modules and training for this new system, and it is expected that the Financial Assistant and Business Manager will be responsible for the implementation of the system. There will be a specific module for budget development; the Financial Assistant will have access to this module to ensure consistency of data entry and internal verification of financial commitments. The information contained in the module will not generally be available to the public.

OPINION

The issue before us is whether the Administrative Assistant to the Business Manager is a confidential employee. Under the applicable 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). The use of the word "incompatible" in the statutory definition requires the Board to accommodate and balance both the employer's interest in protecting its bargaining position and the employee's interest in bargaining collectively. Harwood Union High School District and Harwood Education Association, 172 Vt. 167, 176 (2001).

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 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, 172 Vt. at 176. 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 that 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 have an adverse 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 Employer contends that the Financial Assistant's involvement in budgetary matters as part of her regular duties makes her a confidential employee. The Employer asserts that these duties cannot be delegated to another confidential employee. The Employer maintains it would be prejudiced by the Financial Assistant's inclusion in the bargaining unit if the information she has access to, and financial reports she runs, are shared with the Association.

The Association contends to the contrary that the Employer has not shown that any functions performed by the Financial Assistant justify her exclusion from the support staff bargaining unit. The Association asserts that her access to financial information, without more, is insufficient to make her confidential since she exercised no discretion or authority with respect to this information, and was not privy to administrators' discussions about the use of the information during the budget development process. The Association maintains that the position is unquestionably clerical in nature, and membership in or representation by the Association is not incompatible with these duties.

The Board has frequently examined for confidential status employees serving in a fiscal role, such as bookkeepers, accountants, financial analysts, payroll clerks or accounts payable clerks. In many cases, the Board concluded that the employees were privy to confidential information as part of their regular duties, which information was not available to the public and the union, that would make membership in, or representation by, a union incompatible with their

duties. City of Rutland and AFSCME Council 93, Local 1201, 33 VLRB 101 (2014). United Steelworkers of America, AFL-CIO and Town of Barre, 27 VLRB 229 (2004). Colchester, supra. Washington South District Teachers' Association, Vermont-NEA and Washington South Supervisory Union Board of School Directors, 12 VLRB 22 (1989). Orange Southwest Supervisory Union, et al, and Orange Southwest Teachers' Association, 11 VLRB 285 (1988). AFSCME Local 490 and Town of Bennington, 11 VLRB 89 (1988). Personnel Designation Dispute of Calderara, 10 VLRB 261 (1987). Vermont Federation of Teachers, AFT, AFL-CIO and Vermont State Colleges, 7 VLRB 6, 21-22 (1984). United Steelworkers of America, Local 8774 and City of Barre, 5 VLRB 3 (1982). Rutland City School Department, supra. However, employees with fiscal duties who need only occasional access to confidential materials, which duties can be feasibly reassigned, have been held not to be confidential employees. Village of Essex Junction and Local 1343. AFSCME, 12 VLRB 211 (1989). Colchester, supra. Orange Southwest, supra

We are persuaded that the Financial Assistant is privy to confidential information as part of regular duties, which information is not available to the public and the Association, that would make membership in, or representation by, the Association incompatible with duties. The Financial Assistant's involvement in budgetary matters as part of her regular duties makes her a confidential employee.

The Financial Assistant has unlimited access to the Employer's financial information and has intimate knowledge of how the Employer's financial system works and how modules within the system interact. She is able to obtain detailed information that is not accessible by the general public and the Association. She is able to generate reports, including customized reports, during the budget development process upon the request of the Superintendent or Business Manager.

These include reports with respect to revenues and expenses for departments wherein she has early and total access to any budget variances, and information on employee compensation and how that compensation is distributed between salary and benefits. She provides these reports to the Superintendent and Business Manager as part of their development of budget proposals and they use the information provided by her in their presentations to the School Board.

If the Financial Assistant is excluded from the bargaining unit, the Employer will be able to obtain complete and accurate information in these key areas to assist it in the budget development process without a concern of premature Association knowledge of confidential information. In performing such duties, which are beyond clerical duties, the Financial Assistant assists or acts in a confidential capacity in relation to persons who formulate, determine and effectuate management policies in the field of labor relations. City of Rutland and AFSCME Council 93, Local 1201, 33 VLRB at 113. The Financial Assistant acts in this capacity in relation to the Superintendent and Business Manager. The confidential nature of the Financial Assistant position is reinforced by her working in the close quarters of the central office wherein conversations of others can be overheard

It is apparent that the Financial Assistant has such a close relation to the Employer's management of the budgetary aspects of labor relations that the Employer would be prejudiced by her inclusion in a bargaining unit with other employees. Id. The intimate knowledge that the Financial Assistant has concerning how the Employer's financial system works, and her access to the system, would allow her to provide Association representatives with a greater level of detail and understanding about the proposed budget, budget projections, and detailed cost information than would otherwise be available to them. The Employer is entitled to rely upon the Financial Assistant not being subject to divided loyalties with respect to her knowledge, access

and responsibilities, and she should not be in a position where she must choose between her obligations to the Association and to the Employer.

Further, this is not a situation where the Financial Assistant's confidential duties can be feasibly reassigned to another confidential employee. The Executive Administrative Assistant does not have the training or experience to assume the financial duties performed by the Financial Assistant. The evidence also does not indicate that it would be feasible for the Business Manager to assume these duties.

In sum, we conclude that the Financial Assistant should be excluded from the bargaining unit as a confidential employee because of duties relating to budgetary matters which would make membership in, or representation by, an employee organization incompatible with official duties.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the unit clarification petition filed by the Addison Central Education Association (Hannaford Regional Technical School District Support Staff Unit) (“Association”) is denied, and the Financial Assistant to the Business Manager of the Hannaford Career Center is excluded from the bargaining unit of employees represented by the Association as a confidential employee.

Dated this 5th day of November, 2020, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Chairperson

/s/ David R. Boulanger

David R. Boulanger

/s/ Karen D. Saudek

Karen D. Saudek