

STATE OF VERMONT
VERMONT LABOR RELATIONS BOARD

_____)	
In The Matter Of:)	
)	
AMERICAN FEDERATION OF TEACHERS LOCAL)	Docket No. 78-75R
3333, AFL-CIO)	
and)	
)	
WASHINGTON CENTRAL SUPERVISORY UNION,)	Docket No. 78-86R
UNION 32 HIGH SCHOOL BOARD OF DIRECTORS)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case.

This is a unit determination matter brought by the above named Petitioners by Petition dated May 31, 1978 seeking clarification of the composition of the bargaining unit at Union 32 High School. The American Federation of Teachers, (the "Union") is the representative of the bargaining unit in issue. Local 3333, AFL-CIO, in case number 78-75R, the Petitioners seek exclusion from the bargaining unit of teachers who are department heads (known as "team leaders" in the jargon now in fashion) as either supervisory or confidential employees. In case number 78-86R, the Petitioners seek an order excluding from the administrators' bargaining unit Ms. Beverly Tucker, secretary of the principal and associate principal of the Union 32 High School, as a confidential employee. A hearing was held on July 27, 1978, at which the Petitioners were represented by Philip Moss, Esquire and the Union was represented by Samual Martz, its field representative.

For the reasons stated below, this Board holds that it lacks jurisdiction

to rule on the question of inclusion of the so-called "team leaders" in the bargaining unit. For the reasons stated below the Board holds that it does have jurisdiction to determine the appropriateness of Ms. Tucker's inclusion in the bargaining unit and rules that she should be excluded as a "confidential employee" within the meaning of 21 V.S.A. § 1722(12)(D).

Findings of Fact.

1. Petitioners, Washington Central Supervisory Union and Union 32 High School Board of Directors (the "Petitioners") are municipal employers as that term is defined in 21 V.S.A. § 1722(13).

2. The Petitioners recognize the Union as the exclusive representative of the teachers employed by the District. This recognition of the Union by the Petitioners was voluntary on the part of the Petitioners.

3. The so-called "team leaders" whom the Petitioners seek to exclude from the bargaining unit are eleven teachers who are supervised directly by the principal and in turn have certain supervisory responsibilities over other teachers within their department. The following departments have "team leader" positions:

- Social Studies
- Mathematics
- Science
- Living Arts
- English
- Physical Education
- Fine Arts

At the time of hearing the position of team leader in the departments of physical education and fine arts were vacant.

4. The "team leaders" are certified teachers.

5. Ms. Beverly Tucker is secretary to Mr. Weiss, principal of U-32 High School, and to Ms. Jacquelyn Gahagen, associate principal at U-32.

6. Ms. Tucker's duties and responsibilities are as described in the job description in evidence as employer's exhibit number 7.

7. The Petitioners maintain a personal file on every employee including all members of the Union. These files contain records of each employee's personnel action including references, employment history and discipline, and also include information personal to the employee such as medical history. These files also indicate what teachers are or are not being recommended for contract renewal and at what salary.

8. The personal files of employees are available for review by the concerned employee. The only other people who have access to these files are the principal, associate principal and their secretary, Ms. Tucker. Neither the Union, nor its agents are permitted access to an employee's file except with the permission of that employee.

9. The principal and associate principal have supervisory responsibility over members of the Union and have the authority to initiate and effectively to recommend disciplinary action as to members of the Union and as to hiring and firing by the Petitioners of members of the Union.

10. In the course of carrying out their personnel responsibilities, the principal routinely uses the services of Ms. Tucker in her capacity as his secretary. Employers exhibits numbers 9 and 10 are warning letters to employees represented by the Union which were dictated to Ms. Tucker by the principal. A copy of exhibit number 10 was sent to the superintendent of Schools but no one else is privy to the contents of the letter. Employer's exhibit number 8 is a letter dictated by the principal to Ms. Tucker regarding termination of the employee who received the warning letter in evidence of employer's exhibit number 9.

Conclusions of Law and Opinion.

11. The threshold question for any determination by the Board is its jurisdiction to act. As a creation of statute this Board has only such power as is given to it by statute. Nothing may be presumed in favor of its jurisdiction. See New Hampshire-Vermont Physicians Service v. Commissioner, Department of Banking & Insurance, 132 Vt. 592,596 (1974); In Re Lake Sadawga Dam, 121 Vt. 367,370 (1960); and Trybulski v. Bellows Falls Hydro-Electric Corp., 112 Vt. 1,7 (1941). While the Board is given general jurisdiction over labor relations between municipal employers and municipal employees by Chapter 22, Title 21, V.S.A., Section 1722(12)(E) of Title 21 excludes certified employees of school districts from most provisions of that Chapter. Except as to unfair labor practices, labor relations between a school district and its certified employees are governed by provisions of Chapter 57, Title 16, V.S.A.. But even the statute giving the Board jurisdiction to consider unfair labor practice charges as to certified teachers also expressly preserves and reinforces the efficacy of Chapter 57, Title 16. See 21 V.S.A. § 1735.

12. This Board construes the provisions of 16 V.S.A. §§ 1991 and 1992 to provide the exclusive procedure by which questions of collective bargaining representation involving certified public school teachers are to be determined. This Board has no power to intrude upon the procedures mandated by the General Assembly for such representation questions. The issues posed by case number 78-75R are therefore not within the Board's jurisdiction and the petition in that matter must be dismissed.

13. The Board arrives at the conclusion that it lacks jurisdiction to determine representation questions of the "team leaders" at issue in this dispute with full recognition that there is pending before this Board an unfair labor practice charge of the Union claiming that the Petitioners have failed to bargain.

One defense asserted by the Petitioners in that unfair labor practice matter is that the unit is improperly constituted and need not be bargained with. It may be that in connection with this pending unfair labor practice charge the Board will be called upon by the parties to consider questions of unit determination. But, while the Board will reserve judgment on any such questions until it has had an opportunity for a hearing on the unfair labor practice complaint, it follows from this holding that the Board will accept as a given the composition of a unit of certified teachers determined lawfully under Chapter 57, Title 16, V.S.A..

14. The Petitioners urge the Board to find that it has jurisdiction to make a unit determination with respect to certified teachers under the rationale of Cramp Shipbuilding Company, 52 NLRB 309 (1943). In Cramp Shipbuilding, the National Labor Relations Board was confronted with a situation where it had no express jurisdiction over the particular matter in issue but inferred that it had the jurisdiction necessary to carry out its mandate, to effectuate the principles of the National Labor Relations Act. Neither in Cramp Shipbuilding nor the related cases cited by Petitioners were the labor boards in issue confronted with an express exclusion from the Board's jurisdiction of the determination at issue. That is the distinguishing feature between the case at the bar and the cases cited by Petitioner. In the case at bar the Board believes that it is clearly limited by statutory provision from having jurisdiction to deal with representation questions of certified teachers.

15. The foregoing discussion does not apply to Ms. Tucker. She is not a certified employee to whom the provisions of Chapter 57, Title 16, V.S.A. apply. The Board's jurisdiction to determine matters pertaining to Ms. Tucker's representation are determined by her own circumstances and not be the general composition of the Union's membership or the general composition of the membership of her bargaining unit. She is a "municipal employee" under 21 V.S.A. § 1722(12)

unless barred from that status under 21 V.S.A. § 1722(12)(D) because she is a confidential employee.

16. The term "confidential employee" is defined in 21 V.S.A. § 1722(6) which provides:

"Confidential Employee" means 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 his official duties.

Vermont's municipal labor relations statute, therefore, adheres to the rationale generally accepted in labor law that an employer should be entitled to rely upon employees who are not subject to divided loyalties and that employees should not be put in a position where they must choose between their obligations to a union and to their employer. The Board concludes from the evidence that Ms. Tucker is a confidential employee as that term is defined above. As a member of the Union, she is represented by the Union for purposes of collective bargaining with respect to her wages, hours, and conditions of the employment generally. However, as the secretary to U-32's principal and associate principal, she has unlimited access to employees' personal files which contain information relating to all employees' current and future employment status. This information is not made available to the Union indiscriminately without permission of the affected employee. Ms. Tucker's unlimited access to those files in the course of her employment is inconsistent with her involvement in the Union.

17. Similarly, as indicated above, Ms. Tucker types disciplinary letters to persons in the bargaining unit represented by the Union. She thereby comes into possession of confidential information which is consistent with her membership in the Union.

18. Because of her access to confidential information relating to personnel administration, Ms. Tucker is a "confidential employee" as above defined.

Order.

For the reasons stated above, the Petition in case number 78-75R is dismissed for lack of jurisdiction. For the reasons stated above, the Petition in case number 78-86R is granted and the position of secretary to Union 32 High School's principal and to the associate principal, now held by Ms. Beverly Tucker, is excluded from the bargaining unit of the Petitioner's administrative staff which is now represented by the Union.

DATED this 7th day of September, 1978.

VERMONT LABOR RELATIONS BOARD


By:


KIMBERLY B. CHENEY

By:


ROBERT BROWN

By:


WILLIAM KEMSLEY