

Associated Day Care Services of Metropolitan Boston, Employer-Petitioner and District 65, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO. Case 1-UC-365

15 March 1984

DECISION ON REVIEW AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 19 April 1982 the Regional Director for Region 1 issued a Decision and Clarification of Bargaining Unit in the above-captioned proceeding in which he found that employees occupying the newly created position of administrative assistant were not confidential employees and should be included in the existing bargaining unit. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed a timely request for review contending, *inter alia*, that the Regional Director made erroneous factual findings and departed from Board precedent in concluding that the administrative assistants were not confidential employees.

By telegraphic order dated 20 May 1982 the Board granted the request for review. Thereafter, the Union filed a brief on review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this proceeding with respect to the issue under review, including the brief of the Union, and makes the following findings.

The Employer, which has a central office located in Boston, Massachusetts, provides day care services for children at seven day care centers in the Boston metropolitan area.¹ On 26 December 1979, in Case 1-RC-16614, the Union was certified as the exclusive bargaining representative of the employees in the following unit:

All regular full-time and regular part-time teachers, social workers, teaching assistants, neighborhood workers, cooks, assistant cooks, housekeepers, office clerical employees and custodial and maintenance employees employed at the Employer's eight (8) metropolitan Boston locations, specifically the Central Office, 7 Marshall Street, Boston, Children's Community Corner, 185 Shurtleff Street, Chelsea, Children's Day Care Center of Cambridge, 245 Columbia Street, Cambridge, Patri-

cia M. Hassett Day Care Center, 274 Mt. Vernon Street, Dorchester, Jamaica Plain Day Care Center, 962 Parker Street, Jamaica Plain, Ruggles Street Mission Hill Day Care Center, 38 St. Alphonsus Street, Roxbury, Sunnyside Day Nursery, 320 Dudley Street, Roxbury, and Gilday Day Care Center, 21 James Street, Roxbury, but excluding educational associates, social work associates, nutrition associates, temporary, substitute and casual employees, limited part-time employees (less than sixteen (16) hours per week), student teachers, executive and managerial employees, confidential employees, all other employees, guards and supervisors as defined in the Act.

Thereafter, the Employer and the Union entered into a collective-bargaining agreement effective from October 1980 through 30 June 1982, covering the certified bargaining unit. There are about 90 employees in the bargaining unit.

The Employer seeks to clarify the bargaining unit to exclude the newly created position of administrative assistant on the ground that it is confidential. The Union contends that the Regional Director was correct in clarifying the unit to include the administrative assistants because they are not confidential employees.

On or about 6 October 1981 the Employer notified the Union that it intended to create the new position of administrative assistant, to abolish the existing unit position of center secretary, and to reduce the number of social workers and neighborhood workers employed at the centers. The Employer informed the Union that it planned to have the new administrative assistants take over all the job duties of the center secretaries, who had functioned mainly as receptionists and had also performed some typing, as well as many of the clerical functions previously performed by the social workers and neighborhood workers, such as filling out intake and reassessment forms for the centers' clients. The Employer, however, took the position that the administrative assistants should be excluded from the unit as confidential employees because, in addition to performing duties previously assigned to unit employees, they would also type and file confidential material for the center directors and would be responsible for maintaining the centers' personnel files, duties which the center directors had previously been performing.² Between

¹ Member Hunter finds that the assertion of jurisdiction appears warranted on the limited facts here. He also notes that no party has raised this issue.

² The record reveals that, since about March 1981, the Employer had been considering the creation of a new position to perform some of the center directors' increasing administrative responsibilities. In late May 1981, the Employer hired a new director of administrative services who

Continued

6 October and 8 December 1981, the Employer and the Union met several times to discuss the duties of the new position and whether it would be included in the unit, but they were unable to reach agreement on unit inclusion. By a letter dated 11 December 1981 the Employer notified the Union that, in light of the impasse reached in their discussions, it intended to proceed with its plans to fill the new position of administrative assistant as discussed during their meetings and that it still considered this position a confidential one which should be excluded from the unit. Between 18 January and 26 January 1982 the Employer hired seven administrative assistants.³

Six of the new administrative assistants work at day care centers. The job description for their positions states:

Under the Center Director's supervision, is responsible for the accurate and timely maintenance of all administrative, programmatic and confidential personnel records and systems of the center. Performs receptionist functions, typing, filing and clerical duties. Completes required intake and reassessment forms for all consumers.

The seventh administrative assistant works at the central office. The job description for her position states:

Under the Director of Administrative Services' supervision, is responsible for the accurate and timely maintenance of all administrative, programmatic and confidential personnel records and systems of the Central Office. Performs receptionist and bookkeeping functions, typing, filing and clerical duties. May be substitute for center Administrative Assistant.

The parties stipulated that the center directors are managerial employees. The record reveals that each of the day care centers has a center director who oversees the operations of that center, supervises from 9 to 15 unit employees, hires and fires employees, disciplines employees, and handles first-step grievances arising under the contract. The center directors report directly to the executive di-

rector; attend weekly management meetings at the central office; participate in the formulation of management proposals for collective bargaining; and attend all collective-bargaining sessions with the Union. It is also undisputed that the director of administrative services is a managerial employee. The record reveals that she works at the central office and is responsible for designing, implementing, and overseeing the budget, finance, fund management, personnel, payroll, contract and grant development, and all management information systems, including data collection regarding food, equipment, and personnel. She coordinated the testing and hiring of the new administrative assistants and ran their training sessions. She has an assistant director of administrative services reporting to her, and she reports directly to the executive director. She attends the weekly management meetings at the central office and participates in the formulation of management proposals for collective bargaining.

It is well settled that the Board will exclude confidential secretaries from bargaining units only if those employees "assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations."⁴ This "labor nexus" test for excluding confidential employees was upheld by the Supreme Court in *NLRB v. Hendricks County Rural Electric Membership Corp.*, 454 U.S. 170 (1981). In this case, it is clear that all of the administrative assistants, whose status as confidential employees is in dispute, work directly for admitted managerial employees with labor relations responsibilities. Thus, the question is whether they assist and act in a confidential capacity to these managerial employees.

The administrative assistants employed at day care centers spend most of their time acting as receptionists; opening and sorting the mail for delivery; collecting data from clients, employees, and outside sources; filing material which they have either collected themselves or received from the center directors; and typing any material the center directors decide should be typed. The record reveals that the administrative assistant employed at the central office performs these same functions for the director of administrative services, but also does a substantial amount of bookkeeping. The Employer contends that, in performing these functions, the administrative assistants act in a confidential capacity because they have access to or may type documents relating to unit employees' personnel files, minutes of the weekly management meet-

was requested by the executive director to concentrate on updating and reorganizing the system for maintaining personnel records. Finally, in August 1981, the Massachusetts Department of Social Services ordered the Employer to submit a new proposal covering all its programs which would, inter alia, reduce costs by eliminating any social services for work-related day care.

³ Notices announcing the availability of these new positions were posted at all of the centers. One center secretary and two other unit employees were among the applicants for the position. The former center secretary and one of the other unit employee applicants were selected as administrative assistants; however, as of the date of the hearing in this case, the former center secretary had resigned from her new position as administrative assistant and had been replaced.

⁴ *B. F. Goodrich Co.*, 115 NLRB 722, 724 (1956); *Kleinberg, Kaplan, Wolff, Cohen & Burrows, P.C.*, 253 NLRB 450 (1980).

ings, management proposals for collective bargaining, and management grievance responses; participate in grievance investigations; and substitute for the center directors.

Regarding unit employees' personnel files, the record shows that the administrative assistants employed at the day care centers have just finished a complete updating of all personnel records, which involved collecting personal data from all unit employees and also data from outside sources, such as references from previous employers, credentials from schools, certifications from licensing agencies, test results, or health records. In addition, they will be responsible for collecting similar data in the future as to new employees. They have typed and filed personnel evaluations, recommendations, and disciplinary letters regarding unit employees; and they routinely collect payroll, attendance, and scheduling data from unit employees. Because the record shows that duplicate personnel records are maintained at the central office for all unit employees employed at the day care centers, it appears that the administrative assistant in the central office would at least have filed all of the documents collected and typed by the other administrative assistants. The record also indicates administrative assistants have assisted in the hiring process for new employees by typing and posting job vacancy notices, helping applicants fill out the application forms, and collecting data such as references.⁵

With respect to the minutes of the weekly management meetings, the executive director testified that he had informed the center directors they were free to share these minutes with their administrative assistants and to allow the administrative assistants to maintain files of these minutes. Two center directors testified that they had shown their administrative assistants the minutes of all the management meetings which had occurred in the 2 months since the administrative assistants were hired; however, during this period of time there was no discussion of management proposals for collective bargaining or of any other confidential labor relations matters at these meetings. The minutes of these management meetings are taken and typed by the executive secretary to the executive director, who is the only employee presently excluded from the unit as a confidential employee.

No management proposals concerning collective bargaining have been formulated or presented since the administrative assistants were hired. In the past,

⁵ One center director testified that the administrative assistant at her center had sat in on two interviews which the center director held with applicants for teaching positions, who were in fact hired; however, the record does not indicate what function the administrative assistant performed at these interviews, i.e., whether she was present simply to collect data on the applicants or to participate in the hiring decision.

any written material regarding management's proposals for collective bargaining has been typed by the executive director's executive secretary and either handed out to the center directors at management meetings or mailed to their homes. The executive director testified, however, that now, because of the hiring of the administrative assistants, any written material as to management proposals would be sent to the centers, where the administrative assistants would open and file it.

As to the grievance handling, the record establishes that no grievances have been filed since the administrative assistants were hired. Nevertheless, the evidence reveals that if a center director should choose to answer a first-step grievance in writing, which is not required under the contract, the administrative assistant would type the answer.⁶ The administrative assistants would also file all written material regarding grievances. Further, the director of administrative services testified that if a center director wished to do so she could ask her administrative assistant to investigate the facts underlying an employee's grievance, e.g., by checking the employee's personnel file to determine whether the employee was actually entitled to more time off as claimed. In connection with such an investigation, the center director could also request the administrative assistant to be present at the meeting when a grievance is presented.

Finally, the administrative assistants at the day care centers regularly fill in for the center directors during the weekly management meetings and during any other absences of the center directors, such as for illness. The record reveals that the center directors consider the administrative assistants to be "in charge" during their absences, but that they leave detailed written staffing instructions for the administrative assistants and are often in contact with the administrative assistants on these occasions. In one instance when employees' time-sheets needed to be signed during a center director's absence, the administrative assistant involved called the director of administrative services for instructions and permission to do so.

It is well established that mere access to confidential labor relations material such as personnel

⁶ The contract provides that first-step grievances will be answered by the employee's immediate supervisor, which would be the center director for employees at a day care center. The record indicates that in the past grievances have been answered both orally and in writing at the first step and that, since the administrative assistants were hired, there has been no change in the Employer's policy of leaving this within the discretion of the center director involved. The record is unclear as to whether the director of administrative services is the immediate supervisor of any unit employee and thus might be required to answer any first-step grievances, although the record does reveal that she has been asked by the executive director to provide information in connection with his handling of second-step grievances.

files, minutes of management meetings, and grievance responses is not sufficient to confer confidential status; even the typing of such material does not, without more, warrant a finding of confidential status.⁷ Thus, unless it can be shown that the employee has played some role in creating the document or in making the substantive decision being recorded,⁸ or that the employee regularly has access to labor relations policy information before it becomes known to the union or employees concerned,⁹ the Board will not find the employee to have confidential status.¹⁰

Based on the record evidence, we find that the Employer's administrative assistants are expected to play a role in the investigation of grievances which will affect the decision made by management on the merits of a grievance and that this is sufficient to render them confidential employees. Furthermore, we find that they are expected to

⁷ See, e.g., *Los Angeles New Hospital*, 244 NLRB 960, 961 (1979); *John Sexton & Co.*, 224 NLRB 1341 (1976); *ITT Grinnell Corp.*, 212 NLRB 734 (1974); *Chrysler Corp.*, 173 NLRB 1046, 1048 (1968).

⁸ See *Postal Service*, 232 NLRB 556, 558 (1978).

⁹ See *Pullman, Inc.*, 214 NLRB 762, 763 (1974), and *Weyerhaeuser Co.*, 173 NLRB 1170, 1172-73 (1968).

¹⁰ Member Hunter finds it unnecessary to place any reliance on this analysis and the cases cited in fns. 7 through 9.

have regular access to, and on occasion to type, memoranda concerning management proposals for collective bargaining before these proposals are presented to the Union; we also note that they will regularly see the minutes of the weekly management meetings at which management proposals for collective bargaining will be discussed. While the administrative assistants may spend relatively little of their working time performing these duties, the amount of time devoted to labor relations matters is not the controlling factor in determining confidential status.¹¹ Accordingly, we shall exclude the classification of administrative assistant from the existing unit.

ORDER

It is ordered that the certification in Case 1-RC-16614 previously issued to District 65, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America be clarified by specifically excluding the classification of administrative assistant.

¹¹ *Reynold Baking Co.*, 249 NLRB 1100 (1980); *Siemens Corp.*, 224 NLRB 1579 (1976); *West Chemical Products*, 221 NLRB 250 (1975); *Bechtel Inc.*, 215 NLRB 906 (1974).