

UNIVERSITY OF LOWELL AND NATIONAL ASSOC. OF GOVERNMENT EMPLOYEES AND MASS. STATE EMPLOYEES ASSOC. AND COUNCIL 41, AFSCME, AND LOCAL 254, SEIU, AND LOCAL 380, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, SCRE-2004 (274/77).

(10 Definitions)

✓ 17.1 confidential employee

(30 Bargaining Unit Determination)

✓ 35.2 confidential

35.41 clericals

Commissioners Participating: James S. Cooper, Chairman; Garry J. Wooters, Commissioner.

Appearances:

Joseph A. Furnari, Esq.	- Counsel for the University of Lowell
Augustus Camelio, Esq.	- Counsel for Council 41, American Federation of State, County and Municipal Employees, AFL-CIO
Mark J. Dalton, Esq.	- Counsel for Massachusetts State Employees Association
David W. Downs, Esq.	- Counsel for National Association of Government Employees
Donna Kaplan	- Representing Local 254, Service Employees International Union AFL-CIO
Luke Kramer	- Representing Local 380, International Brotherhood of Teamsters, Chaufferus, Warehousemen and Helpers of America

Statement of the Case

On August 6, 1975, the University of Lowell (Employer) filed a petition with the State Labor Relations Commission (Commission), pursuant to G.L. c. 150E §4 (herein the Law), seeking to resolve claims of representation by one or more Employee Organizations for a unit consisting of all clerical-technical non-professional employees of the University of Lowell. The National Association of Government Employees (NAGE) was the certified bargaining representative of the predecessor unit at Lowell Technological Institute. The Massachusetts State Employees Association (MSEA) was the certified bargaining representative of the predecessor unit at Lowell State College.

The Commission conducted an investigation pursuant to G.L. c. 150E §4 and M.L.R.C. Rules Article 11 and ordered that an expedited hearing be conducted. Council 41, American Federation of State, County and Municipal Employees (AFSCME); Local 254, Service Employees International Union (Local 254, SEIU), and Local 380, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America were found to have sufficient interest to intervene in the proceedings. On May 28, June 2, June 21 and July 26, 1976 expedited hearings were held before David Abel, Hearing Officer. The Commission designated the proceedings as a formal hearing on July 26, 1976. All the parties were afforded the opportunity to examine and cross-examine the witnesses and to introduce testimony bearing upon the issues presented. Briefs submitted by the parties have been carefully considered. On the basis of all the evidence, the Commission makes the following Findings of Fact and Conclusions of Law.

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Findings of Fact

1. The University of Lowell is a public institution created by the Massachusetts General Court pursuant to G.L. c. 75A.
2. The University is governed by a Board of Trustees (the Trustees) established pursuant to G.L. c. 75A §1.
3. The Board of Trustees is a public employer within the meaning of the Law.
4. AFSCME is an employee organization within the meaning of section 1 of the Law.
5. MSEA is an employee organization within the meaning of section 1 of the Law.
6. NAGE is an employee organization within the meaning of section 1 of the Law.
7. Local 254, SEIU, is an employee organization within the meaning of section 1 of the Law.
8. Local 380, Teamsters, is an employee organization within the meaning of section 1 of the Law.

The University of Lowell was created in 1973 by the merger of Lowell State College and Lowell Technological Institute -- two separate but complementary institutions. Lowell State (now the South Campus), part of the State college system, emphasized teacher education at the elementary and secondary levels. Lowell Tech (now the North Campus) emphasized engineering, business administration and science. During its initial stages, the structure of the university has been dictated by the circumstances of the merger: the enabling legislation, existing collective bargaining contracts, separate budgets that had been appropriated by the General Court, and different pay scales and forms of organization at the two institutions. Creating one university from two separate schools is difficult and at this stage there is an overlapping of old and new structures and policies.

The University Structure:

The statutory authority for governing the University rests with the Board of Trustees created by G.L. c. 75A §1. The Trustees have overall executive authority for the operation of the university. The first Board was appointed in April 1975. The President is responsible for the day-to-day operations. John Duff, the first President, took office in April 1976. By statute, the President of Lowell Tech became the Executive Vice-President and the President of Lowell State became the Chancellor of the University. The Chancellor will retire at the age of 70 and that post will be abolished. St. 1973, c. 1175, §12. The Provost, Leon Beghian, is responsible for academic affairs on the North Campus. The Dean for Academic Affairs, Robert Foy, is responsible for academic affairs on the South Campus and has some responsibility for university-wide academic affairs as well.



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President Duff meets each week with his cabinet which advises him on university policy.¹ He also meets twice a month with the academic deans who also advise him on policy matters.

The Academic Deans:

The role of the deans varies considerably at the two campuses.² Prior to the merger, the North Campus colleges of Engineering, Management Science, and Pure and Applied Science were at Lowell Tech. The deans of these colleges had overall responsibility for managing their schools. They were the second step in the grievance procedure under the collective bargaining contract with the faculty. The first step of a grievance was with the Academic Dean, Robert Foy, and the second step was with the President. Deans Robert Foy and William T. Hogan (College of Engineering) have been named as management representatives to the Employer's negotiating committee for all collective bargaining contracts.

The contested secretarial positions:

Joyce Sullivan is President Duff's secretary and performs all her/his secretarial work on the North Campus.

Suzanne Ransom is secretary to the Chancellor, the Director of Fiscal Affairs, and performs the secretarial work for President Duff when he is on the South Campus. She does typing, filing, screens phone calls and handles correspondence.

Mary Perkins performs all the secretarial duties for Provost Beghian; she is his only clerical worker.

Marie Sherman is secretary to Dean Foy and shares an office with him. She does all his secretarial work, including typing, filing, opening correspondence, and answering the phone. She performs the secretarial work relating to his involvement in union grievances.

Patricia Duff is secretary to the Dean of the College of Liberal Arts and is the only secretarial worker in the college. She spends 50% of her time handling student requests, and the rest of her time she does the Dean's clerical work, including typing, setting up meetings and appointments, and re-evaluating transfer lists. She does not type collective bargaining agreements or employee grievances. She does type budget requests.

¹Members of the cabinet are: Dr. Everett Olsen, Executive Vice-President; Dr. Daniel O'Leary, Chancellor; Dr. Robert Foy, Dean of Academic Affairs; Dr. Leon E. Beghian, Provost; Dr. Mary McGauvran, Dean of Administration and Director of Admissions; Dr. Leo F. King, Jr., Dean of Student Affairs; Raymond I. Rigney, controller; William F. Dunn, Director of Fiscal Affairs; Dr. June Gonsalves, Equal Opportunity Officer; Linda Frawley, Public Relations.

²The deans are: Robert Foy, Academic Affairs; Mary McGauvran, Admissions; Leo F. King, Jr., Student Affairs; William T. Hogan, Engineering; Joseph G. Killela, Director of Nuclear Program; Daniel E. Diamond, Management Science;
(cont'd.)

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Norma LaJoie is secretary to the Dean of the College of Music, Thomas Elliot. She is the only secretary in the college. She spends 5 to 10% of her time assisting the Dean and the remainder of her time typing for the faculty and keeping student records. She does not open the mail. She has never handled any matters relating to collective bargaining.

Barbara Lyman is secretary to Dean Shannon of the College of Education and is the sole clerical employee in the college. She reads Dr. Shannon's mail, sorts the faculty mail, types course descriptions, handles graduate school materials, correspondence with students, and processes admissions. She has had no involvement in collective bargaining matters.

Jane Fagan works only for John I. Bruce, Dean of the College of Pure and Applied Science. There are other support staff who do the general clerical work for the college. Fagan opens the mail, types evaluations, takes dictation at grievance sessions, and has access to personnel files of both faculty and clerical workers in the college.

Lucille Charbonneau is secretary to Daniel E. Diamond, Dean of the College of Management Science. She works directly with the Dean; a staff assistant works with students and alumni. She does all of the Dean's typing. She receives and types faculty grievances and evaluations. She does all the filing on personnel matters for faculty and clerical employees in the college. This file is kept locked, and only Diamond and Charbonneau have the key to it.

Eleanor McKenna is secretary to William T. Hogan, Dean of the College of Engineering. There are other support staff who do the general clerical work of the college. McKenna maintains the faculty personnel files in her office. She types union materials, including grievances, promotions, new hires, and sabbaticals. She also opens and sorts the Dean's correspondence and screens his phone calls.

Bernadette Galvin handles all the secretarial services for Mary McQuavran, Director of Admissions and Dean of Administration. Galvin assigns work to other clericals in the office. She schedules appointments and supervises the flow of applications in the office. Fifty percent of her time is spent meeting the public that come to the admissions office. She had no involvement with collective bargaining material.

Barbara MacCaron is secretary to the Dean of Student Affairs, Leo King, Jr. She does all the general secretarial work pertaining to student affairs and student services. She screens telephone calls, answers mail and routine questions, takes dictation. She types minutes of complaints against students, some parent-teacher conferences, and congratulations to students. A work-study student handles the student filing. MacCaron has no access to personnel matters, collective bargaining information or grievances.

² John I. Bruce, Pure and Applied Science; Thomas Elliot, Music; Patricia Goler, Liberal Arts; Margaret Shannon, Education; Gertrude Burkner, Health Professions.

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Claire Lessard is secretary to the Director of the Nuclear Center, Joseph G. Killela. She handles the correspondence, purchasing and travel arrangements for the Center. She types the Director's recommendations to the President of the University. She does not have access to personnel records or collective bargaining materials.

At the time of hearings, the position of secretary to the Equal Employment Officer, Dr. June Gonsalves, was vacant. Dr. Gonsalves testified that her secretary handled her files, all her typing, correspondence, telephone communications, and ran the office in her absence.

Opinion

The issue is whether the above described secretaries to central office administrators, deans, and directors should be excluded as confidential employees. Section 1 of the Law requires that:

Employees shall be designated as confidential employees only if they directly assist and act in a confidential capacity to a person or persons otherwise excluded from coverage under this act. G.L. c. 150E, §1.

The Employer argues that these secretaries should be excluded from the unit because they "directly assist or act in a confidential capacity" to management staff.³ In a consent election between the Employer and Local 254, SEIU, the parties excluded from a unit of "all administrative professionals" these same administrators, deans, and directors as "managerial and confidential employees." University of Lowell, SCR-2094 (1976). The Commission accepts this agreement that the administrators, deans and directors are managerial employees.

We must then determine whether the secretaries directly assist or act in a confidential capacity to the administrators, directors, and deans.⁴ The Commission looks to the nature of the relationship between the employee and the excluded employee, in making that determination. Board of Trustees, 3 MLC 1179 (1976). "(T)he statutory exclusion is designed to protect certain personal relationships which must exist if a collective bargaining system is to function at the cost of

³No testimony was submitted concerning the vacant positions of secretary to the Controller and secretary to the Dean of the College of Health Professions; therefore, the Commission will not rule on whether such positions are confidential.

⁴Hearing Officer David Abel ruled that Suzanne Ransom, Joyce A. Sullivan (secretaries to President Duff) and Mary E. Perkins (secretary to Provost Beghian) were confidential employees within the meaning of §1 of the Law. The Commission has reviewed that ruling and affirms it.

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denying bargaining rights to individuals who are themselves in no sense managerial." Wellesley School Committee, 1 MLC 1389, 1410 (1975). However, "access to sensitive financial data, personnel records or similar 'non-labor relations' material" will not, by itself, make an employee confidential. Silver Lake Regional School District, 1 MLC 1240, 1243 (1975); Board of Trustees, supra.

Only four deans have a role in collective bargaining: Deans Foy (Academic Affairs) and Hogan (Engineering) have been names to the Employer's negotiating committee for all collective bargaining contracts; and Deans Hogan, Diamond, and Bruce are the second step in the grievance procedure with their respective faculty. Dean Foy's secretary shares an office with him, has access to all his files, and does all his secretarial work. The secretaries to Deans Hogan, Diamond, and Bruce type grievances and other union related materials. They are responsible for all secretarial work requested by the deans. There are other support staff who handle the general clerical work for their respective colleges. The Commission finds that Marie Sherman (secretary to Dean Foy), Eleanor McKenna (secretary to Dean Hogan), Jane B. Fagan (secretary to Dean Bruce) and Lucille Charbonneau (secretary to Dean Diamond) directly assist and act in a confidential capacity to a person otherwise excluded from coverage under the Law and are therefore excluded from the bargaining unit.

The other deans, directors and central office administrators do not have a similar role in collective bargaining. While the Equal Opportunity Officer, Dr. Gonsalves, did provide assistance in collective bargaining, she aided both the Employer and the Union. The secretaries to these other administrators and deans have a different relationship with their employer as well; they do not spend all their time working exclusively for one person. Patricia Duff, secretary to the Dean of Liberal Arts, spends 50% of her time handling student requests. Norma LaJoie, secretary to the Dean of the College of Music, spends only 5 to 10% of her time assisting the Dean and the rest of her time doing clerical work for the college. Claire Lessard, secretary to the Director of the Nuclear Center, and Barbara Lyman, secretary to the Dean of the College of Education, are the only clerical employees in their departments, so they handle the general clerical work.

Bernadette Galvin, secretary to the Director of Admissions spends 50% of her time meeting the public and the rest of it supervising admissions materials in the office. Barbara S. MacCaron, secretary to the Dean of Student Affairs, is responsible for all general secretarial services for student affairs, including typing complaints against students. The secretary to June Gonsalves, Equal Employment Officer, has access to all her files and materials in this area. While admissions folders, student records and equal opportunity information may be classified as "sensitive material", access to this material is not sufficient to exclude them from the bargaining unit. "It is helpful to recognize that employees may directly assist excluded employees without assisting them in a 'confidential' capacity". Board of Trustees, supra, at 1204.

The Commission finds that the following secretaries do not directly assist or act in a confidential capacity to their respective deans or directors and are therefore included in the bargaining unit: Patricia Duff (secretary to the Dean of Liberal Arts); Norma LaJoie (secretary to the Dean of the College of Music); Barbara Lyman (secretary to the Dean of the College of Education); Claire Lessard



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(secretary to the Director of the Nuclear Center); Bernadette Galvin (secretary to the Director of Admissions); Barbara S. MacCaron (secretary to the Dean of Student Affairs); and the secretary to the Equal Employment Officer.

Conclusions

Upon all of the facts the Commission finds:

1. That a question exists concerning the representation of certain employees of the University of Lowell.
2. That the unit appropriate for collective bargaining consists of:

All clerical-technical non-professional employees of the University of Lowell excluding Suzanne Ransom and Joyce A. Sullivan (secretaries to President Duff); Mary E. Perkins (secretary to Provost Beghian); Marie Sherman (secretary to Dean Foy); Eleanor McKenna (secretary to Dean Hogan); Jane B. Fagan (secretary to Dean Bruce); and Lucille Charbonneau (secretary to Dean Diamond).

3. That an election shall be held for the purpose of determining whether or not the majority of the employees in said unit have designated or selected Council 41, American Federation of State, County and Municipal Employees, AFL-CIO; Massachusetts State Employees Association; Local 254, Service Employees International Union, AFL-CIO; Local 380, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as their representative for the purposes of collective bargaining.
4. That the list of eligible voters shall consist of all those persons included within the above-described unit whose names appear upon the payroll of the Public Employer for the week ending January 29, 1977 and who have not since quit or been discharged for cause.

Direction of Election

By virtue of and pursuant to the power vested in the Commission by Chapter 150E of the General Laws, IT IS HEREBY DIRECTED, as part of the investigation authorized by the Commission, that an election by secret ballot shall be conducted under the direction and supervision of representatives of the Commission among the employees in the aforesaid bargaining unit at such time and place and under such conditions that shall be contained in the notice of election issued by the Commission and served on all parties and posted on the premises of the employer together with copies of the specimen ballot.

In order to assure that all eligible voters shall have the opportunity to be informed of the issues and the exercise of their statutory right to vote, all parties to this election shall have access to a list of voters and their addresses which may be used to communicate with them.

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Accordingly, IT IS HEREBY FURTHER DIRECTED that three (3) copies of an election eligibility list, containing the names and addresses of all the eligible voters must be filed by the employer with the Executive Secretary of the Commission, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, Massachusetts 02202, no later than fourteen (14) days from the date of this Decision.

The Executive Secretary shall make the list available to all the parties to the election. Since failure to make timely submission of this list may result in substantial prejudice to the rights of the employees and the parties, no extension of time for the filing thereof will be granted except under extraordinary circumstances. Failure to comply with this direction may be grounds for setting aside the election should proper and timely objections be filed.

James S. Cooper, Chairman

Garry J. Wooters, Commissioner

