



undersigned hearing officer on June 25, 1997, after which the record was closed.

#### FINDINGS OF FACT

1. The Oyster River Cooperative School District is a "public employer" within the meaning of RSA 273-A:1 X.
2. The Oyster River Management Association seeks to become certified as the exclusive bargaining representative for certain managerial, supervisory and executive positions including: assistant superintendent, business administrator, special education coordinator, principal (4), assistant principal (4), accounts supervisor, school lunch director and transportation director. The District has not challenged the inclusion of any of these positions in the bargaining unit. The petition also seeks to include the position of executive secretary to the superintendent which is being challenged by the District. The position of Superintendent has been excluded by agreement of the parties.
3. Superintendent John H. Powers testified that the incumbent executive secretary transcribes notes of minutes he takes at non-public sessions of the Board of Education. This position opens, sorts and answers all his mail at his direction, prepares materials for School Board meetings, prepares proposals and confidential supporting data for labor negotiations, all via Dictaphone. The executive secretary communicates with legal counsel for the superintendent and maintains confidential files including those involving grievances. The superintendent confides in this position and is comfortable doing so. According to Mr. Powers, the position was designed as such and no other position in the secretarial staff is appropriate for such confidential duties. There is no working job description available for the position referred to by Mr. Powers as executive assistant and by the Association as executive secretary.
4. There are two other secretarial positions in the office advanced by the Association as capable of

performing the confidential tasks related to labor negotiations for this bargaining unit which are now performed by the executive secretary. The two positions are the secretary to the special education director/receptionist and payroll and the accounts payable clerk. The former performs the work of the executive secretary in her absence which includes secretarial work for the three other bargaining units of District employees.

5. The incumbent executive secretary, Collette Clickman, wishes to be a member of this bargaining unit, feels a community of interest with those organizing this bargaining unit and adheres to their stated goals. This position performs complex projects and is responsible for these from inception to completion. The position has strong managerial aspects. The incumbent has experienced and dealt with professional loyalty and ethical challenges inherent in her position and believes she can perform work for her employer relating to the bargaining unit without compromise. Being both a bargaining unit member and confidante to the public employer would not present a conflict for the present executive secretary.

#### DECISION AND ORDER

RSA 273-A:8 empowers the Public Employee Labor Relations Board to determine whether a bargaining unit is to be established and, if so, the composition of the proposed bargaining unit. The statute sets the standard under which each proposed unit is to be reviewed and specifies reasons for excluding positions from a bargaining unit.

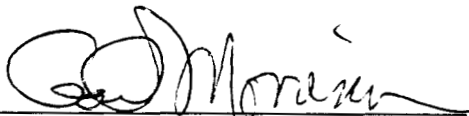
The position of executive assistant or executive secretary is a managerial position. There is a community of interest between this position and the managerial positions of the proposed bargaining unit which satisfies the requirement of RSA 273-A:8 I. However, the position must be excluded because it is outside the statutory definition of "public employee" who may organize which is contained in RSA 273-A:1 IX. A paragraph of that section, RSA 273-A:1 IX (c) requires the exclusion of a position, when the duties of the position imply a confidential relationship to the public employer. This is such a position.

Appeal of Laconia, 135 NH 421 (1992). It is important to note, in light of the testimony regarding this position, (Findings 3, 4 and 5), that it is the nature of the position, not the professionalism of the individual holder of the position, that must be scrutinized under the statute.

The appropriate bargaining unit for Oyster River Management Association shall include the following positions: assistant superintendent, business administrator, special education coordinator, principal (4), assistant principal (4), accounts supervisor, school lunch director and transportation director.

So ordered

Signed this day 11th day of July, 1997.



GAIL C. MORRISON  
Hearing Officer