



**State of New Hampshire**  
Public Employee Labor Relations Board

**Keene State College Administrative Staff Association, NEA-NH**

**and**

**Keene State College**

**Case No. E-0189-1**

**Decision No. 2016-097**

**Appearances:**

Damien M. DiGiovanni, Esq., Morgan, Brown & Joy, LLP, Boston, MA,  
for the Keene State College

Esther Kane Dickinson, Esq., NEA-NH, Concord, NH, for the Keene State  
College Administrative Staff Association, NEA-NH

**Background:**

On December 10, 2015, the Keene State College Administrative Staff Association, NEA-NH (Association) filed a petition for certification seeking to represent certain Keene State College (College) administrative/operating staff employees. After the College filed an objection, the parties reached agreement on bargaining unit composition with the exception of the position of Senior Program Support Assistant to the Vice President for Student Affairs and the Dean of Students. The College argues that the current employee in this position, Melanie Lizotte, qualifies as a confidential employee within the meaning of RSA 273-A:1, IX (c) and should be excluded from the unit on that basis. The parties agreed to proceed to election without prejudice to the College's pending request for the exclusion of Ms. Lizotte from the unit. See PELRB Decision No. 2016-043. Pursuant to the results of election, conducted on April 6, 2016, the

Association has been selected by a majority of the eligible voters as their representative. See PELRB Report of Election and Tally of Ballots (April 6, 2016).

An adjudicatory hearing on the College's objection to the inclusion of the Senior Program Support Assistant position in the bargaining unit was conducted on March 2, 2016 at the Public Employee Labor Relations Board (PELRB) offices in Concord. The parties had a full opportunity to be heard, to offer documentary evidence, and to examine and cross-examine witnesses. The parties filed post-hearing briefs on March 22, 2016; and the decision is as follows.

#### **Findings of Fact**

1. The College is a member institution of the University System of New Hampshire and a public employer within the meaning of RSA 273-A:I, X.

2. The Association is an employee organization seeking to represent certain College administrative/operating staff employees.

3. Prior to the filing of the present petition for certification, the College had three bargaining units: (1) a full time faculty unit represented by the Keene State College Education Association, NEA-NH; (2) an adjunct faculty unit represented by the Keene State College Adjunct Association, NEA-NH; and (3) a campus safety personnel unit represented by the Teamsters Local 633. See Agreed Statement of Uncontested Facts at 5.

4. The PELRB is also processing three certification petitions involving proposed new bargaining units: (1) The current petition (Case No. E-0189-1) (administrative/operating staff employees); (2) Case No. E-0190-1 (professional and technical employees); and (3) Case No. E-0191-1 (Directors and Supervisors).

5. Gail Zimmerman is the Associate Vice President (VP) for Student Affairs and Dean of Students (Dean). The parties agreed that this position should not be included in any

bargaining unit. Her duties and responsibilities as Associate VP for Student Affairs include supervision of five units within the Division of Student Affairs (Division): (1) Counseling Center, (2) Center for Health and Wellness, (3) Office of Disability Services, (4) Veteran Services, and (5) Student Conduct and off Campus Community Relations. She directly supervises the directors of each of those units. Overall, the Division has around 30 employees, including professional and technical employees and administrative/operating staff employees. She conducts performance evaluations for five directors that report to her. She also reviews, and has the authority to change, evaluations prepared by five directors for the Division employees before sending the evaluations to Vice President of Student Affairs and Enrollment Management Kemal Atkins, to whom she reports.

6. As Dean of Student Affairs, Ms. Zimmerman deals with all types of student complaints, including complaints against professional and technical employees and administrative/operating staff employees. After a student files a complaint against a staff member, an investigation is conducted. Dean Zimmerman is informed of the investigation at every point and she determines how the investigation will proceed but does not usually conduct investigations herself. For example, a student came of the Dean Zimmerman's office to complain that a member of the operating staff had been aggressive toward him/her. After talking to the student, the Dean submitted a formal complaint to the College Campus Safety. To address the student's safety concerns, the employee was put on administrative leave while the situation was being investigated. Dean Zimmerman did not personally conduct the investigation or make the decision to put the staff member on the administrative leave, but she was aware of the decision and communicated to the student that his/her safety concerns has been addressed.

7. Dean Zimmerman keeps files on all students of the College and is responsible for student records, which include student discipline, conduct, complaints, personal issues and

students' issues with College personnel. She also has her own "office files" related to personnel. They are not official "personnel" files, which are kept in the Human Resources (HR) Department. Dean Zimmerman keeps the office files for the employees who report directly to her and may also have office files for the staff who are employed in the units within the Division. If there are performance issues with a staff member in one of the units she supervises, she also maintains an office file for that employee. Dean Zimmerman also maintains office files for those individuals who are involved in, or are subjects of, student complaints. Sensitive information about a staff member can be placed in office files. These files are kept in a locked cabinet in the Dean's office suite.

8. Dean Zimmerman is also an ADA compliance officer for the College. All disability discrimination complaints come to her office. Most of these complaints are filed by students claiming that they have not been properly accommodated by the College. Dean Zimmerman investigates the complaints to determine whether or not a complainant has been discriminated against. These formal complaints may concern administrative/operating staff employees or faculty and, depending on resolution, these complaints may be placed into employees' personnel files.

9. Dean Zimmerman is involved in institutional procedures and policy making. For example: she developed the Diminished Care Leave of Absence policy that allows a student to take a medical leave of absence with a tuition remission when appropriate. The Dean is also involved in revising the College sexual misconduct policy. In the past, this policy applied only to students. Now, the policy is being revised so that it covers both students and employees.

10. Dean Zimmerman does not attend the meetings of the President's Cabinet, of which Mr. Atkins is a member, unless Mr. Atkins asks her to attend in his place. She does provide information for Mr. Atkins before Cabinet meetings.

11. Dean Zimmerman is a part of Mr. Atkins' leadership team, which also includes the Associate VP for Enrollment Management and the Assistant VP for Student Affairs. They usually meet every two weeks and discuss personnel matters like organizational structure/reorganization, employees' leadership abilities, and whether or not somebody is well-suited to a particular position on a committee. There are no specific discussions of promotions, demotions or terminations, but leadership team members are kept apprised of the issues that arise in each unit within the Division.

12. In addition to the leadership team meetings, Dean Zimmerman meets with Mr. Atkins individually every two weeks to discuss policy and personnel, including individual cases. They may discuss whether someone is suited for a position, and Mr. Atkins keeps her updated on matters that affect the Division.

13. Currently, Dean Zimmerman is not a member of the College negotiating team, is not involved in collective bargaining, and does not process any union grievances. Prior to the filing of the current certification petitions (see Findings of Fact at 4), none of the Division directors or Division employees were organized into a bargaining unit. None of Dean Zimmerman's employees have utilized the existing HR grievance procedure (for employees who are not covered by collective bargaining agreements, including Division employees). However, her office would be involved in the processing of any grievances actually filed.

14. Melanie Lizotte is a Senior Program Support Assistant in the Dean of Students Office. She reports directly to and administratively assists Dean Zimmerman. Ms. Lizotte is classified as an operating staff employee by the College.

15. The Dean of Student's office is a two-person office, and Ms. Lizotte's work station is within five feet from the Dean's office door in the outer office/reception area in the suite.

16. As part of her duties, Ms. Lizotte opens all mail that comes to the Dean's office and responds to all phone calls and walk-in requests and classifies and prioritizes them for the Dean. Ms. Lizotte provides administrative support for the Dean's policy-making efforts and for any correspondence or documentation Dean Zimmerman needs. Ms. Lizotte has unlimited access to student record files and any office, disciplinary, or investigatory files that are kept at the Dean Zimmerman's office, including files concerning other employees. Ms. Lizotte maintains all paper and electronic files and inputs documentation into them as needed. She alone has a key to the cabinet where the investigatory, student, and office files are kept.

17. Students make complaints about administrative/operating staff and faculty, among others, to the Dean's office in person, by phone, and by email. Ms. Lizotte screens and processes these complaints in the first instance, and she also screen and manages student visits to the Dean's office and maintains and adjusts the Dean's calendar as necessary. Through these contacts, her proximity to the Dean, and her general duties, Ms. Lizotte usually learns about the substance of most, if not all, student complaints to the Dean's office, how the Dean responds, and the outcome of any investigation, including any disciplinary action that may result. She also keeps the complaining student informed, as appropriate, about the status of the student's case. Although Ms. Lizotte is not present during investigatory interviews, she is privy to communications and discussions related to investigations.

18. Ms. Lizotte also receives and processes all other emails to the Dean's office, which can include communications from faculty and staff raising concerns about students. She also processes correspondence that has been marked "confidential," although she generally does not open such correspondence if it comes from the President's office.

19. Ms. Lizotte provides administrative support for the processing of discrimination-related complaints the Dean receives as an ADA compliance officer. Ms. Lizotte scans the

formal complaints to either harassment/discrimination complaint electronic files or ADA complaint electronic files. She also has unlimited access to ADA complaint outcome letters, prepared by Dean Zimmerman, even if the outcome is employee discipline.

20. Ms. Lizotte is involved in preparation of disciplinary letters: she reads the disciplinary letters prepared by Dean Zimmerman for proofreading and editing purposes.

21. Ms. Lizotte is often included on confidential communications, and, in sexual assault cases, the Title IX officer routinely copies Ms. Lizotte on emails he sends to Dean Zimmerman. Some of these cases involve administrative/operating staff and professional and technical employees.

22. Ms. Lizotte also acts as Dean Zimmerman's operating budget manager and has access to all Division budgets. The College keeps budget information on a program called Banner, which is accessible to more people than just Ms. Lizotte. Ms. Lizotte monitors and helps administer the existing Division budget, produces reports for Dean Zimmerman, which sometimes include employee compensation information, enters charges against the budget, including the cost of supplies and fees for professional services, and consults with the Dean as to how budget items can be re-allocated.

23. Dean Zimmerman has a very close working relationship with Ms. Lizotte and depends heavily upon her to provide administrative support in virtually all aspects of the Dean's job. According to Dean Zimmerman, there is nothing she does not trust Ms. Lizotte with, and it is impossible to filter out complaints about employees prior to them reaching Ms. Lizotte. Dean Zimmerman believes that any restriction on Ms. Lizotte's access to confidential or sensitive employee information would undermine the effectiveness and efficiency of the Dean's office operations.

## Decision and Order

### Decision Summary

The Senior Program Support Assistant in the Dean of Students Office is a confidential employee within the meaning of RSA 273-A:1, IX (c). Accordingly, this position is excluded from the administrative staff bargaining unit.

### Jurisdiction

The PELRB has jurisdiction to determine the appropriate bargaining units pursuant to RSA 273-A:8 and Pub 302.

### Discussion

The College argues that the position of Senior Program Support Assistant in the Dean of Students Office should be excluded from the bargaining unit because this position is confidential within the meaning of RSA 273-A:1, IX (c). RSA 273-A:1, IX (c) defines "public employee" as "any person employed by a public employer except ... [p]ersons whose duties imply a confidential relationship to the public employer." Confidential employees are "those employees who have access to confidential information *with respect to labor relations, negotiations, significant personnel decisions and the like.*" *Appeal of Town of Moultonborough*, 164 N.H. 257, 262 (2012) (emphasis added). Furthermore,

[T]he number of such employees in any department or other unit of government must be large enough to enable the labor relations activities of the Department and the personnel activities of the Department to be carried on, but must not be so numerous as to deny employees who are entitled to the rights and benefits of R.S.A. 273-A those rights merely on the assertion that they might somehow be connected with activities related to labor relations.

*State of New Hampshire, Department of Revenue Administration v. State Employees' Association*, PELRB Decision No. 78001. "There is no set minimum or maximum number of

employees who may be deemed confidential.” *Appeal of City of Laconia*, 135 N.H. 421, 424 (1992).

In *Hooksett Police Supervisors*, the executive secretary was excluded from the proposed bargaining unit because she maintained all personnel files and performance evaluations, took and typed the minutes of the Police Commission’s meetings, both public and non-public, typed the Chief’s letters, including budgetary and labor related letters, and was privy to the Chief’s ideas regarding collective bargaining negotiations with the exclusive representative of an existing bargaining unit. See *Hooksett Police Supervisors, NEPBA Local 38 and Town of Hooksett*, PELRB Decision No. 2010-182. Similarly, in *Teamsters Local 633 of NH/Newmarket Public Works Employees and Town of Newmarket*, the position of secretary was excluded from the bargaining unit based on the finding that the duties and responsibilities of the position, including the responsibilities of keeping the confidential personnel files and discipline records, opening all department mail including communications with counsel, and being involved in budget preparations, implied a confidential relationship to the public employer. PELRB Decision No. 2008-127. See also *Rochester Municipal Employees Association and City of Rochester*, PELRB Decision No. 2009-150 (finding that executive secretary in city manager’s office and secretary II in city finance office were confidential employees); *Northfield Police Union, New England Police Benevolent Association and Town of Northfield*, PELRB Decision No. 2009-030 (finding that administrative assistant was confidential employee). Similarly, in *Appeal of City of Laconia*, the Supreme Court concluded that “it was unreasonable to require the personnel director, as the city’s chief labor negotiator, to work under circumstances in which he must keep secrets from his secretary regarding a significant part of his work” and excluded the position as confidential. See *Appeal of Town of Moultonborough*, 164 N.H. 257, 263 (2012) (citing *Appeal of City of Laconia*, supra, 135 N.H. at 423). In *Laconia*, the administrative secretary was privy to the personnel

director's personal thoughts, strategies, and notes about the collective bargaining process and opened all inter-departmental communications, including mail involving labor negotiation strategies between the city manager and the personnel director. See *Appeal of Town of Moultonborough*, supra, 164 N.H. at 263 (citing *Appeal of City of Laconia*, supra, 135 N.H. at 423). The Supreme Court reached a similar conclusion in *Appeal of Town of Newport*, 140 N.H. 343, 354 (1995):

In *Newport*, the department secretary worked under the general supervision of the director of public works, an administrative superior who outlined departmental policy, made work assignments, and evaluated work in terms of effectiveness of results. Moreover, she maintained personnel records, was privy to disciplinary actions taken, and attended staff meetings at which confidential matters were discussed. In addition, the director of public works testified that if a proposed bargaining unit was created, the department secretary might be put in a situation in which her loyalties would be divided between the union and the town. Based upon this evidence, we concluded that the department secretary position was not sufficiently distinguishable from the administrative secretary position that we found confidential in *Laconia* and, therefore, should be excluded from the proposed unit.

*Appeal of Town of Moultonborough*, supra, 164 N.H. at 263-64 (citing *Appeal of Town of Newport*, 140 N.H. at 346-47) (citations omitted).

In contrast, in *I.U.O.E. Local 08 v. Town of Pembroke*, the public works secretary was included in the bargaining unit over the Town's objection that she was a confidential employee. See PELRB Decision No. 2006-205. The evidence in *Pembroke* was insufficient to prove that the secretary was involved with personnel or other confidential labor relations matter in any meaningful way. *Id.* See also *Hampstead Police Union, NEPBA Local 37 and Town of Hampstead*, PELRB Decision No. 2008-071 (finding that dispatcher-clerk was not confidential employee); *Bethlehem Educational Support Personnel, NEA-New Hampshire and Bethlehem School District*, PELRB Decision No. 2010-054 (finding that evidence was insufficient to prove that administrative assistant and secretary were confidential employees). Likewise, in *Appeal of Town of Moultonborough*, supra, 164 N.H. at 263-64, the Supreme Court agreed with the

PELRB that the executive assistant to the police chief was not a confidential employee within the meaning of RSA 273-A:1, IX. *Id.*, stating that

... the executive assistant does not maintain personnel files and only the chief has a key to the locked cabinet containing personnel files. Additionally, she does not attend staff meetings or non-public meetings between the chief and board of selectmen. Moreover, although she receives all of the department mail, she does not open mail marked 'confidential.'

*Appeal of Town of Moultonborough*, supra, 164 N.H. at 263-64.

In this case, the evidence shows that Ms. Lizotte is a confidential employee within the meaning of RSA 273-A:1, IX (c). Based on the record, she has unlimited access to all documentation/paperwork utilized or prepared by the Dean of Students, including performance evaluations for employees in the Division, disciplinary letters, outcome-of-investigation letters, and any other material that goes into employee investigatory/office files which the Dean keeps in her office. Among other things, she receives and screens all phone calls, emails, and mail, including letters marked "confidential"; and she alone has the key to the locked cabinet in which the personnel-related office files are kept. Akin to secretaries/administrative assistants in *Appeal of Town of Newport, Hooksett, Newmarket, Rochester, and Northfield*, she is privy to all aspects of the operation of the Dean's office and has significant and virtually unrestricted access to a variety of confidential and sensitive personnel information. Like the employer in the *Appeal of City of Laconia*, the Dean relies extensively upon Ms. Lizotte to manage office operations on a daily basis without any limitation on the scope and nature of her work; and it is apparent that the efficient and effective operation of the Dean's office would be disrupted if her duties were modified in any respect to curtail her involvement in these areas. Like in *Laconia*, it would be unreasonable to require the Dean "to work under circumstances in which [she] must keep secrets" from her administrative assistant regarding a significant part of her work. See *Appeal of City of Laconia*, supra, 135 N.H. at 423.

Based on the foregoing, I find that Ms. Lizotte has access to confidential information with respect to significant personnel decision and will likely have access to confidential information with respect to labor relations once the bargaining units consisting of the Division employees are certified. Therefore, she is a person whose duties imply a confidential relationship to the public employer within the meaning of RSA 273-A:1, IX (c) and *Appeal of City of Laconia, id.* Accordingly, the College's objection to the inclusion of the position of Senior Program Support Assistant in the Dean of Students Office is sustained and this position is excluded from the administrative/operating staff bargaining unit. The description of the administrative staff bargaining unit is set forth in Tables One and Two appended to this decision.

So ordered.

Date: 5/19/16

  
Karina A. Lange, Esq.  
Staff Counsel/Hearing Officer

Distribution: Esther Kane Dickinson, Esq.  
Damien M. DiGiovanni, Esq.  
Ronald F. Rodgers, Esq.

**Table One – Bargaining Unit Positions:  
All full-time and regular part-time operating staff employees,  
including but not limited to the following positions:**

Academic/Student Serv Asst.	Administrative Assistant I
Administrative Assistant II	Administrative Assistant III
Bus Off Sr BSA	Business Serv Asst. I
Business Services Asst. II	Digital Copy Operator
Divisional Admin Support Coord	Editorial Associate
Information Support Tech	Laboratory Tech III
Library Admin Asst. III	Library Serv Supervisor
Mail Clerk	Mail Services Assistant II
Program Support Assistant	Purchasing Aide
Receiving Clerk	Sr Business Services Asst.
Sr Information Support Asst.	Sr Prog Support Assistant
Store Operations Assistant	

**Table Two- Bargaining Unit Exclusions:**

Administrative Asst. II Human Resources KB0677	Div. Administrative Support Coordinator Arts & Humanities Div-Admin- KB0097
Sr. Administrative Asst. VP Student Affairs KB0388	Sr. Administrative Asst. Associate VP Academic Affairs KB0628
Sr. Administrative Asst. President's Office KB0102	Sr. Administrative Asst. VP Finance & Planning KB0434
Sr. Business Services Asst. Advancement Services KB0765	Sr. Human Resources Asst. Human Resources KB0644
Sr. Human Resources Asst. Human Resources KB0403	Sr. Program Support Asst. Advancement VP Office KB0788
Sr. Program Support Asst. to VP for Student Affairs and Dean of Students KB0076	