

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

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IN THE MATTER OF

STATE OF RHODE ISLAND  
DEPARTMENT OF HEALTH

CASE NO: EE 3575  
Unit Clarification  
request dated: January 4, 1999

AND

RI Department of Health Professional  
Staff Association/ NEARI/ NEA

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**ORDER OF DISMISSAL**

**Investigative Agent:** Joan N. Brousseau

**Petitioner:** RI Department of Health Professional Staff Association/ NEARI/ NEA

**Relief Sought:**

1) Accretion of the position of Medicolegal Administrator

**Date(s) of Informal Hearing(s), Parties Present and Documents Exchanged:**

March 10, 1999 (originally scheduled for January 25, 1999.)

Labor Board: Joan N. Brousseau.

Employer: Edward D'Arezzo, Mary Ellen McCabe, Esquire.

Union: Jane Argentieri, Chris Brackett, J. Raymond McCaughey

**Documents Submitted:**

Employer's response to investigative report (Submitted after the informal hearing)

**Date(s) of Field Investigation and Names and Titles of Interviewees:**

April 15, 1999: Mr. George Ducharme, Medicolegal Administrator

June 3, 1999: Dr. Elizabeth Laposata, Chief Medical Examiner

**RELEVANT HISTORY OF THE BARGAINING UNIT**

**EE-3575:** On May 6, 1998, the RI Department of Health Professional Staff Association / NEARI / NEA was certified to represent: "All professional employees in the Department of Health".

**Administrative Procedure:**

On June 9, 1999, after the field investigation, the Board's Agent prepared a five (5) page written memorandum, outlining her discussions and findings in extensive detail. Both the Union and the Employer were provided with a copy of the written report and both had the opportunity to submit additional written responses. On July 1, 1999 the Employer submitted a written response. In reaching the decision herein, the Board considered the contents of the investigator's report, the employer's response and the bargaining history of this unit. <sup>1</sup>

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<sup>1</sup> The Investigator's report is hereby adopted and incorporated herein by reference.

## POSITION OF THE PARTIES

### The Union:

The Union contends that the position of Medicolegal Administrator has a “community of interest” with the Department of Health’s Professional Staff Association, based on the salary level and job duties, which include assisting the Chief and Deputy Chief Medical Examiners in the coordination of duties, including mass casualty situations and the development of mass casualty protocols and plans. The Union contends that although the position does have some supervisory responsibilities, they do not rise to the level of warranting exclusion from the bargaining unit.

### The Employer:

The Employer contends that this position is a top administrative position in the Chief Medical Examiner’s Office which confers significant supervisory duties in administering and managing the investigative, mortuary and case management components of the office. The position is also an “Appointing Authority” which has the authority to discipline employees within the office. Further, the Employer indicates that there is a likelihood that a reorganization of the Department will result in the supervision of other NEA employees in the Toxicology Laboratory, by the Medicolegal Administrator.

## DISCUSSION

“In determining whether an accretion of employees to an existing bargaining unit is proper, the National Labor Relations Board (NLRB) considers many of the same factors that determine the community-of-interest question, namely, such factors as integration of operations; centralization of managerial and administrative control; geographic proximity; similarity of working conditions, skills, and functions; common control over labor relations; collective bargaining history; and interchangeability of employees.” Rhode Island Public Telecommunications Authority v Rhode Island State Labor Relations Board, 650 A2d 479, N.L.R.B. v Security-Columbian Banknote, Co., 541 F.2d 135, 140 (3d Cir. 1976). Therefore, this Board reviews the investigator’s report to determine if there has even been a showing of a “community of interest” between the position proposed for accretion and the other positions already within the bargaining unit.

Professional employees, unless disqualified for other grounds (managerial, supervisory or confidentiality), are eligible to participate in collective bargaining. A supervisory employee is any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent

judgment. (29 U.S.C. § 152(11) Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board, 694 A.2d 1185, 1189. (R.I. 1997).

Confidential employees are those who “assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or those who, in the course of their duties have access to confidential information concerning anticipated changes which may result from collective bargaining negotiations. Barrington School Committee v. Rhode Island State Labor Relations Board, 608 A.2d 1126 (1992).

In this case, the Employer has established to the Board’s satisfaction that the position of Medicolegal Administrator should be excluded from the bargaining unit because it is a high level supervisory position and is also a confidential position, as set forth in the following findings of fact and conclusion of law.

#### **FINDINGS OF FACT**

- 1) The Board’s Agent conducted an appropriate field investigation and held an informal hearing which was attended by both parties.
- 2) The Medicolegal Administrator is an “Appointing Authority” with the authority to discipline employees within the State Medical Examiner’s Office. The Medicolegal Administrator has participated in meting out discipline by sending an employee home, documenting the reasons for discharge of a second employee and signing letters of discipline. Further, the Medicolegal Administrator attends grievance hearings at the first level and participates as one of the Employer’s representatives. In the event that the grievances proceed to the Office of Labor Relations for the State, the Medicolegal Administrator would participate as an employer’s representative there as well.
- 3) Although the Medicolegal Administrator has not yet participated in any contract negotiations, it is expected that he will participate in such activities at the appropriate time.
- 4) The Medicolegal Administrator has participated as a team member with the Chief Medical Examiner and the Deputy Chief Medical Examiner in the interview and selection process for four new employees in the Medical Examiner’s office. Additionally, the Medicolegal Administrator conducted the background checks on the candidates.

**CONCLUSIONS OF LAW**

- 1) The Petitioner has not established by a fair preponderance of the evidence set forth at the informal hearing or the field investigation that the position of “Medicolegal Administrator” is eligible for inclusion within the existing bargaining unit.

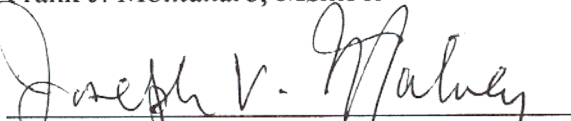
**ORDER**

- 1) Pursuant to R.I.G.L. 28-7-9 (d), the petition for the position of “Medicolegal Administrator” is hereby denied and dismissed.

**RHODE ISLAND STATE LABOR RELATIONS BOARD**

  
Ellen L. Jordan, Interim Chairperson

  
Frank J. Montanaro, Member

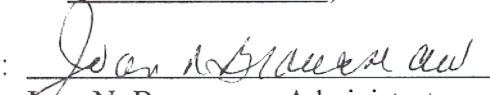
  
Joseph V. Mulvey, Member

  
Gerald S. Goldstein, Member

  
John R. Capobianco, Member

**Entered as an Order of the  
Rhode Island State Labor Relations Board**

Dated: March 30, 2000

By:   
Joan N. Brousseau, Administrator