

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

IN THE MATTER OF

STATE OF RHODE ISLAND
DEPARTMENT OF HEALTH

-AND-

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES

CASE NO: EE-1655A
Unit Clarification
request dated: January 7, 1997

ORDER OF DISMISSAL

On January 7, 1997, the National Association of Government Employees (hereinafter "Union") filed a Request for Unit Clarification, seeking to accrete the position of the Director of Nursing Education (now known as the Director of Nurse Registration and Nurse Education) to the bargaining unit certified by Case No. EE-1655A. An informal hearing on the request was held on January 31, 1997. The matter then proceeded to investigation. On September 23, 1997, the Board made a preliminary determination that the position should rightfully be included within the bargaining unit. On October 20, 1997, the Employer filed an objection to the Board's preliminary determination. Thereafter, the matter was scheduled for formal hearing for March 10, 1998. By letter dated March 6, 1998, the parties informed the Board that they had agreed to hold the matter in abeyance because the position had become vacant. On January 20, 2000, the Board was notified that the position had been refilled and the case was reactivated. Thereafter, the formal hearing schedule was established but postponed on several occasions. Just prior to the first formal hearing, on May 19, 2000 the Employer filed (by fax) a Motion to Dismiss. Union filed its Objection to the Motion at the formal hearing, which commenced on May 23, 2000. The second formal hearing, which was scheduled for September 14, 2000, was postponed and rescheduled several additional times, until it was finally conducted on March 28, 2002. Upon conclusion of the hearing, the Board ordered briefs to be filed by May 10, 2002. filing date was extended by agreement to September 20, 2002. The Employer filed its brief on September 23, 2002. The union decided not to file a brief and indicated that it was relying instead on the Board's decision and order in Case No. EE-3538.

DISCUSSION

When this petition was originally filed, in January of 1997, it sought the inclusion of a position known as the "State Director of Nursing Education", a position which had been in existence since the 1950's, and which had never been part of any bargaining unit. Sometime after the petition was filed, the position became vacant, and the case was held in abeyance. In the interim, the position of "State Director of Nursing Education" was eliminated, and the position of "State Director of Nurse Registration and Nurse Education" was created. This new position, filled by Mr. Charles Alexandre, was part of a reorganization of the Department of Health, which moved oversight for nurse licensure from the Administrator of Professional Regulation to a new division within the Department of Health, under the Chief of Health Professions Regulation. The main function of this new position is to direct, coordinate, and oversee the enforcement of state laws and regulations pertaining to the licensing of nurses and the practice of nursing within the State of Rhode Island. The original position, the Director of Nursing Education, had, as its main function, the oversight for nursing education. The abolished position did not have any responsibility for enforcing state laws regarding the licensure of nurses or the practice or the profession of nursing.

It is well settled, in Rhode Island, that "supervisory" employees are not permitted, as a matter of law, to engage in collective bargaining. In Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board, 694 A.2d 1185, 1189 (R.I. 1997), the Rhode Island Supreme Court adopted the following federal definition of "supervisor"

"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))

In this case, the record established that one of the main functions of the position of Director of Nurse Registration and Nurse Education is to determine the scope of an investigation when complaints are filed against licensed nurses. (TR 5/23/00 p. 68) Complaints may be filed by nursing homes, hospitals, family members, and others, and may allege such serious matters as patient abuse or neglect, medication errors, alcohol and/or drug abuse. In his capacity as Director of Nurse Registration and Nurse Education, Mr. Alexandre coordinates the

investigation. He first notifies a nurse of the allegation. Once the nurse has responded, Mr. Alexandre then forwards the matter, with additional information, to the Nurse's Board Complaint Committee (hereinafter referred to as "Nurses' Board"). Mr. Alexandre also provides his opinion to the Nurses' Board as to the appropriate level and type of sanction and/or discipline that should be imposed upon a nurse who has been found to have violated the licensing regulations. (TR. 5/23/00 p. 71) Mr. Alexandre has the authority to recommend reprimand, probation, surrender of a license, suspension of a license, or revocation of a license. (TR. 5/23/00 p. 71) He testified that the Nurses' Board accepts his recommendations almost all of the time, with the exception of one or two times. (TR. 5/23/00 p. 81) Finally, Mr. Alexandre then monitors the progress of nurses who may be placed on probation as a result of the disciplinary process. (TR. 5/23/00 p. 75) Mr. Alexandre himself has the authority to issue discipline up to the level of a written warning. After that, he would have to consult with a supervisor to issue a suspension. (TR. 5/23/00 p. 77)

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) One of the main functions of the position of Director of Nurse Registration and Nurse Education is to determine the scope of an investigation when complaints are filed against licensed nurses.
- 3) Complaints may be filed by nursing homes, hospitals, family members, and others and may allege such serious matters as patient abuse or neglect, medication errors, alcohol and/or drug abuse.
- 4) Mr. Alexandre provides his opinion to the Nurses' Board as to the appropriate level and type of sanction and/or discipline that should be imposed upon a nurse who has been found to have violated the licensing regulations.
- 5) Mr. Alexandre has the authority to recommend reprimand, probation, surrender of a license, suspension of a license, or revocation of a license. The Nurses' Board accepts his recommendations almost all of the time.
- 6) Mr. Alexandre himself has the authority to issue discipline up to the level of a written warning for employees who work under him.

- 7) Mr. Alexandre has the authority to effectively recommend reprimand, probation, surrender of a license, suspension of a license, or revocation of a license. In determining the appropriate disciplinary recommendation, Mr. Alexandre utilizes his independent judgement.

CONCLUSIONS OF LAW

The Director of Nurse Registration and Nurse Education effectively recommends discipline for nurses to the Nurses' Board. As such, the Director of Nurse Registration and Nurse Education is a supervisory employee, as that term is defined by Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board, 694 A.2d 1185, 189 (R.I. 1997), and is not eligible for inclusion within the bargaining unit.

ORDER

- 1) Pursuant to R.I. G.L. 28-7-9 (d), the petition for the accretion of the position of "Director of Nurse Registration and Nurse Education" is hereby denied and dismissed.

Walter J. Lanni

Walter J. Lanni, Chairman

Frank J. Montanaro

Frank J. Montanaro, Member

Joseph V. Mulvey

Joseph V. Mulvey, Member

Gerald S. Goldstein

Gerald S. Goldstein, Member

Ellen L. Jordan

Ellen L. Jordan, Member

John P. Pobjanico

John Pobjanico, Member

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

Dated: FEBRUARY 13, 2003

By:

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