

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 ADMINISTRATION

CASE NO: EE 1714

Unit Clarification

request dated: December 17, 1997

AND

RI COUNCIL 94, AFSCME, AFL-CIO
Local 2448

ORDER OF DISMISSAL

Investigative Agent: Joan N. Brousseau

Petitioner: RI COUNCIL 94, AFSCME, AFL-CIO, Local 2448

Relief Sought:

Accretion of nine position titles held by thirteen individuals within the bargaining unit defined in Case No. EE-1714.

Note: After the petition was filed, the parties submitted a consent agreement for eight (8) Technical Support Specialist I (UNIX Networks); one (1) Programmer/Analyst II (SQI/UNIX) and three (3) Technical Support Specialist II (UNIX/Networks). The disposition of the request for the positions of Network Technician Specialist and Contract Compliance Officer is being made via a separate document. Therefore, this dismissal order is applicable only as to the positions of Programming Services Officer and Assistant Administrative Officer.

Date(s) of Informal Hearing(s), Parties Present and Documents Exchanged:
January 21, 1998

Employer: Peter Dennehy, Esquire, Laurie Scilabba

Union: Gerard O'Neill, Esquire, Linda Riendeau

Documents Submitted:

Memorandum dated August 16, 1991 written by Ron Clare to Beverly Dwyer.
(Submitted by Mr. Clare during field investigation.)

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

May 18, 1998: Pamela Lynch, Programming Services Officer

Dawn Fernandes, Assistant Administrative Officer

June 9, 1998 Mr. Ronald Clare, Chief, Merit Selection and Classification

June 11, 1998: Ms. Louise Bright, Chief of the Central Business Office

Administrative Procedure:

On June 16, 1998, after the field investigations, the Board's Agent prepared a twelve (12) page written memorandum, outlining her discussions and findings in extensive detail, together with attachments. A copy of the report was sent to the Union and the Employer, with direction to submit any written responses to the Board's Agent within thirty (30)

days. On August 12, 1998 the Employer submitted a written response. In reaching the decision herein, the Board considered the contents of the investigator's report and exhibits, the employer's response and the bargaining history of this unit.¹

RELEVANT HISTORY OF THE BARGAINING UNIT

EE-1714: On July 1, 1971, the AFSCME, CO. 70, AFL-CIO (now known as Council 94) was certified to represent: "All employees within the Department excluding supervisory and professional employees". The 'Department' in this case refers to the Department of Administration, which is listed as the employer on the Certification of Representatives.

DISCUSSION

The Employer objects to the inclusion of both the Programming Services Officer and Assistant Administrative Officer on the basis that they are confidential or supervisory employees, or both. 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).

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)

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) Ms. Dawn Fernandes has held the position of Assistant Administrative Officer since August of 1997, when she was reallocated from the position of Data Control Clerk.

¹ The Investigator's report is hereby adopted and incorporated herein by reference.

- 3) Ms. Fernandes participates in quarterly meetings with the Director of Administration and other high ranking departmental officials regarding personnel issues, as they pertain to the budget.
- 4) Ms. Fernandes has access to information concerning contract proposals and negotiations for contracts.
- 5) When Ms. Fernandes periodically fills in for a secretary in the Director's Office, she actually performs secretarial duties, as opposed to just providing "phone coverage"
- 6) Ms. Fernandes supervises the clerical employees located within the Central Business Office which includes one (1) Word Processing Typist, two (2) Fiscal Clerks, and one (1) Pre-Audit Clerk.
- 7) Ms. Fernandes, with the knowledge and consent of Ms. Bright, can issue and implement oral reprimands and can effectively make recommendations for discipline.
- 8) Ms. Pamela Lynch has held the position of Programming Services Officer since 1996, when she was reallocated from the position of Principal Personnel Analyst.
- 9) Ms. Lynch's primary duties are to conduct desk audits and classification studies on classified employees. If the employee is not satisfied with the results of Ms. Lynch's audit, the employee can appeal her determination to the Administrator of Adjudication. A decision by the Administrator of Adjudication can be further appealed to the Personnel Appeals Board. Ms. Lynch testifies on behalf of her employer at both levels of hearings.
- 10) Ms. Lynch also assists in administering layoffs of Council 94 members and helps to mediate "bumping". In the event that an employee grieves her decisions, she testifies at arbitration hearings for her employer.
- 11) Ms. Lynch also performs compensation analysis for under compensated classes and assists the employer in preparing responses to union proposals.

CONCLUSIONS OF LAW

- 1) The position of Assistant Administrative Office, as presently described herein is a confidential and supervisory position and is ineligible for inclusion within the bargaining unit.

2) The position of Programming Services Officer, as presently described herein is a confidential position and is ineligible for inclusion within the bargaining unit.

ORDER

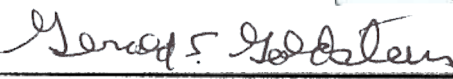
1) Pursuant to R.I.G.L. 28-7-9(d), the petition for the positions of “Assistant Administrative Officer” and “Programming Services Officer” is hereby denied and dismissed.

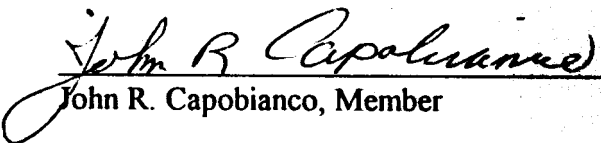
RHODE ISLAND STATE LABOR RELATIONS BOARD


Ellen L. Jordan, Interim Chairperson


Frank J. Montanaro, Member

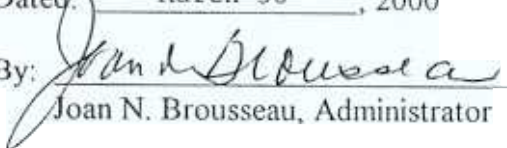

Joseph V. Mulvey, Member


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