

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 ENVIRONMENTAL
MANAGEMENT

CASE NO. EE-1896
Unit Clarification: Programming
Services Officer

-AND-

RI COUNCIL 94, ASFCME, AFL-CIO :

ORDER OF DISMISSAL

Investigative Agent: Martin E. Joyce, Jr.

Petitioner: RI COUNCIL 94, ASFCME, AFL-CIO

Relief Sought: Accretion of the position of "Programming Services Officer" into the bargaining unit defined by Case No. EE-1896.

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

December 13, 2001: Ms. Elizabeth Stone, Programming Services Officer

January 14, 2002: Mr. Robert Ballou, Chief of Staff for Director of the Department of Environmental Management.

Administrative Procedure:

After concluding an informal hearing on September 6, 2000, and subsequent field investigations, the Board's Agent prepared a three (3) page written memorandum, outlining his discussions and findings regarding the position. 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 February 12, 2002, the Employer submitted a written response. In reaching the decision herein, the Board considered the contents of the investigator's report and exhibits, the written responses thereto, and the bargaining history of this unit. ¹

RELEVANT HISTORY OF THE BARGAINING UNIT

Case No. EE-1896: On April 7, 1970, the Rhode Island State Employees Association, now known as Council 94, AFSCME, AFL-CIO was certified to represent:

"All employees in the Department of Natural Resources, excluding all top level supervisory personnel." ²

The position of Programming Services Officer was created in the year 2000, and has been filled by Ms. Elizabeth Stone since May 30, 2000.

DISCUSSION

The Employer argues that this position should be excluded from collective bargaining as it is a confidential position; and furthermore, does not share a community of interest with other members of the bargaining unit.

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

² The Department of Natural Resources is now known as the Department of Environmental Management.

The Union believes that the position does have a community of interest, and that none of the duties of the position are supervisory or confidential. It is well settled in the field of labor relations that confidential employees are not eligible to engage in collective bargaining. In Barrington School Committee v. Rhode Island State Labor Relations Board, 694 A.2d 1185 (R.I. 1992) the Rhode Island Supreme Court considered the question of what employees qualify as “confidential” and held:

“Two categories of employees are recognized as confidential under the test and are therefore excluded from collective bargaining. The first category comprises those confidential employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. ... The second category consists of employees who, in the course of their duties, regularly have access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.” (Barrington at p. 1136, quoting NLRB v. Hendricks County Rural Electric Membership Corp., 454 U.S. 170 at 189)

FINDINGS OF FACT

- 1) The position of Programming Services Officer was created in the year 2000, and has been filled by Ms. Elizabeth Stone since May 30, 2000.
- 2) Ms. Stone reports to the Chief of Staff for the Director of the Department of Environmental Management, and in the absence of the Chief of Staff, serves as a de facto Chief of Staff and reports directly to the Director of the Department.
- 3) She works a non-standard workweek, with longer hours than members of the bargaining unit, especially when the legislature is in session.
- 4) Ms. Stone participates in high-level management meetings where labor relations strategy, grievances, and negotiations are discussed, and assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations.

CONCLUSIONS OF LAW

- 1) The position sought is not eligible for inclusion within Case No. EE-1896 because it is a confidential position.


ORDER

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

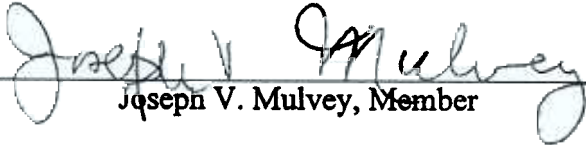
RHODE ISLAND STATE LABOR RELATIONS BOARD



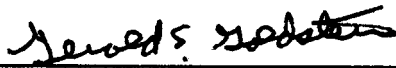
Walter J. Lanni, Chairman



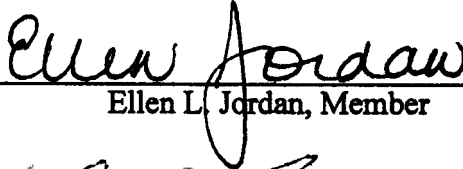
Frank J. Montanaro, Member



Joseph V. Mulvey, Member



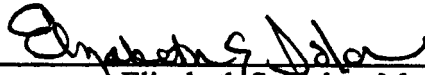
Gerald S. Goldstein, Member



Ellen L. Jordan, Member



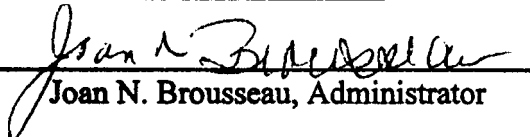
John R. Capobianco, Member



Elizabeth S. Dolan, Member

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

Dated: October 10, 2002

By: 
Joan N. Brousseau, Administrator