

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 CORRECTIONS  
Employer

-AND-

RHODE ISLAND BROTHERHOOD OF  
CORRECTIONAL OFFICERS  
Union

CASE NO: EE-2003  
Unit clarification: Security  
Specialists

---

**DECISION AND ORDER**

**TRAVEL OF CASE**

The above matter came on to be heard on a Request for Unit Clarification (hereinafter Petition) to accrete the positions of "Security Specialist" filed by the Rhode Island Brotherhood of Correctional Officers (hereinafter "RIBCO" or "Union"). The petition was originally filed with the Rhode Island State Labor Relations Board (hereinafter "Board") on September 13, 1991. After investigation and a conference with the parties (Union and Employer), the Board determined that the classification was neither supervisory nor confidential in nature and was, therefore, appropriate for accretion into the bargaining unit defined by Case No. EE-2003. The Board notified the parties of this decision by letter dated January 15, 1992. Neither party requested a formal hearing before the Board on the accretion issue, nor did the Employer seek any judicial review of the Board's decision. Thereafter, during the course of collective bargaining negotiations, the Employer refused to bargain over the issue of wages, hours and working conditions of the Security Specialists, and the Union filed a charge alleging an unfair labor practice. On January 4, 1993, the Board issued a complaint, alleging that the Employer's refusal to bargain constituted an unfair labor practice ("ULP") in violation of R.I.G.L. 28-7-13 (6) and (10).

Upon its receipt of the ULP complaint, the Employer requested, by letter dated January 13, 1993, that the Board conduct a formal hearing on the accretion of the Security Specialists. On February 10, 1993, the Board denied the Employer's request for formal hearing on the grounds of untimeliness. Thereafter, on November 26, 1993, the Board found that the Employer had indeed violated R. G.L. 28-7-13 (6) and (10) when it refused to bargain collectively with the

---

Union concerning the positions of Security Specialist. On March 13, 1996, the Rhode Island Superior Court upheld the decision of the Board. Thereafter, the Employer sought and obtained a writ of certiorari from the Rhode Island Supreme Court on May 30, 1996. The Employer complained that it had not received either an informal or formal hearing, despite its having requested a formal hearing in January 1993. Ultimately, the Supreme Court vacated the unfair labor practice and ordered the Board to hold both an informal and a formal hearing on the issue of the accretion of the Security Specialists into the bargaining unit. State of Rhode Island, Department of Corrections, vs Rhode Island State Labor Relations Board, 703 A. 2d 1095 (R. 1997)

Thereafter, pursuant the Supreme Court's order and to R. G.L. 28-7-9 (b) (5), an informal hearing was held on February , 1998, between representatives of the Employer and the Union. At that time, the parties agreed, by written stipulation, that they would waive an investigation into this matter and requested to proceed to formal hearing.

Formal hearings were held on June 2, 1998, November 17, 1998<sup>1</sup> and March 30, 2000<sup>2</sup>. Both parties had full and ample opportunity to present evidence and examine and cross examine witnesses.<sup>3</sup> Upon conclusion of the hearings, both the Employer and the Union submitted written briefs. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony and evidence presented and arguments contained within the post hearing briefs.

### POSITIONS OF THE PARTIES

The Employer argues, in its brief, that the position of "Security Specialist" confidential position which must be excluded from collective bargaining as a matter of law. Employer's brief, p. 1) The Employer argues that the position of Security Specialist is "confidential" as established by the "labor nexus" test set down in Barrington School Committee v Rhode Island State Labor Relations Board, 608 A.2d 126 (R.I. 1992). In the alternative, the

<sup>1</sup> At the request of the Union's attorney, the hearing was re-scheduled from October 27, 1998, due to scheduling conflicts.

<sup>2</sup> At the request of Employer's attorney, the hearing originally scheduled for March 16, 1999 was rescheduled to April 1, 1999. The hearing scheduled for April 1, 1999 was rescheduled, at the request of the Union's attorney to August 12, 1999, then to September 28, 1999, then to January 13, 2000. On November 29, 1999, counsel for the Employer indicated that the parties were attempting to resolve the dispute and requested another continuance. On December 17, 1999, counsel for the Union, by agreement of the parties, requested an additional continuance.

<sup>3</sup> The Employer submitted twenty (20) exhibits and presented the testimony of eight (8) witnesses. The Union submitted one (1) exhibit and the testimony of three (3) witnesses.

Employer argues that this position also meets criteria for expanding the “labor nexus” test because they [the Security Specialists] are employees who play a critical role in the security of the Adult Correctional Institution and other facilities of the Department of Corrections. Apart from its argument in its brief that the Security Specialists are confidential employees, the Employer’s representatives asked questions, during the proceedings, which raised the issue of whether these positions were supervisory or managerial. Although these issues appear to have been abandoned by the Employer, the Board will review the evidence and discuss these exclusions as well.

The Union argues that the Security Specialists share a “community of interest” with the bargaining unit represented in Case No. EE-2003, and that the Security Specialists are neither supervisory nor confidential as those terms are defined by Rhode Island labor law. Therefore, the positions should be accreted into the existing bargaining unit of Correctional Officers.

#### SUMMARY OF EVIDENCE

The position of Security Specialist was created in the Department of Corrections in the early 1990s. At that time, there was a Chief of Security and two Security Specialists. The Department now has four Security Specialists, each assigned to a specific building or buildings. According to the Employer’s Exhibit #1 (job description), Security Specialist’s duties include the responsibility to “maintain security equipment to include but not limited to weapons, restraints, metal detectors, riot equipment, etc; to conduct security audits of all areas to include perimeters; to make reports, keep records and conduct inventories of equipment; as required

Examples of the work they perform includes: to make reports, keep records and conduct inventories of equipment; to assist in the additions or alterations of equipment or structures such as closed circuit TV, radio equipment, padlocks and wire screening, security doors, new or modified cell blocks and guard towers; to assist in making recommendations for improved security in the transportation of prisoners to and from the courts; to assist in the instruction of Correctional Officers in the principles and techniques of security systems. (Employer’s Exhibit #1)

The Union presented the testimony of Mr. James C. Bailey, a Security Specialist for five and one-half years prior to his testimony at the March 30, 2000 hearing. TR 3/30/00 p. 4) He testified that a large portion of his daily work includes the perimeter detection system, which is a

system designed to detect an escape or intrusion on the perimeter of the facility. (TR 3/30/00 p. 5) There are several different types of perimeter systems, including fencing, microwave systems and electronic devices. The Security Specialist's role is to insure that each system is working properly and that the policies and procedures regarding that system are being followed by the correctional personnel. (TR 3/30/00 p. 6) The Security Specialist tests the system, records the responses and results, and then writes a report to forward to the maintenance department. (TR 3/30/00 p. 6) The Security Specialist also evaluates the perimeter, as far as vulnerability to defeat. (TR 3/30/00 p. 7) The Security Specialist also monitors excess alarms, including false alarms and excessive alarms. (TR 3/30/00 p. 7) The Security Specialist also monitors whether officers are following the correct procedures when deactivating alarms, when documenting the deactivations and investigating the same. (TR 3/30/00 p. 8)

Security Specialists respond to requests from the Correctional Officers regarding broken or malfunctioning keys or locks, portable radios, and inventory forms. (TR 3/30/00 p. 9) The Security Specialists have responsibility for the functioning of portable belt alarms, handcuffs, leg irons, and belly chains. The Security Specialists make sure that weapons, including 38 revolvers, AR-15 rifles, shotguns, night sticks, chemical agents, and bull horns are inventoried and operational. (TR 3/30/00 p. 10) The Security Specialists also monitor, maintain and inventory protective equipment such as body armor, helmets, gas masks, leather gloves, groin protectors, shin protectors, and elbow pads. (TR 3/30/00 p. 11, 16) Security Specialists deal with video surveillance cameras, time-lapsed records and automated key dispensing systems. (TR 3/30/00 p.

Mr. Bailey is personally responsible for approximately 1,000 keys, which are used in his two assigned buildings. (TR 3/30/00 p. 11) He is also responsible for an additional emergency key system. (TR 3/30/00 p. 3) Each of the four Security Specialists also has his own specialized area of security or project that he handles on a department-wide basis, such as the weapons inventory which is done by Mr. Picard, and the gas cage program which was created by Mr. Bailey. (TR 3/30/00 p. 15, 16) Mr. Madison is responsible for the inmate drug testing program. (TR 3/30/00 p. 23, 46) (Also see testimony of Mr. Michael Frost. TR. 6/2/98 p. 26-27) Security Specialists also make sure that appropriate equipment for prisoner transport is available and in working order. These items include handcuffs, leg chains and other restraints. (TR

3/30/00 p. 16) Mr. Bailey also performs security audits of cell blocks, housing units, dining rooms, recreational areas, the prison yard, and the industries area of the facility. (TR 3/30/00 p.

He inspects the condition of the cell doors, locks, gates, and lighting. (TR 3/30/00 p. 7) Security Specialists also search for inmate contraband inside the facility such as weapons, drugs and escape tools. (TR 3/30/00 p. 18)

One of Mr. Bailey's special projects includes preparing a proposal on the types of technology he recommends for the facilities' perimeter detection system. (TR. 3/30/00 p. 18) He has also been involved in considering a "TG" guard system, which is a chemical agent delivery system that can be deployed by an officer in the control center with the push of a button.

3/30/00 p. 19) Mr. Bailey also handles a significant amount of paperwork, including drafting memos to the Deputy Warden on procedures and new routines. (TR 3/30/00 p. 20)

Mr. Bailey's immediate supervisor, on paper, is Michael Frost, the Chief of Security for the Department, although in reality, he actually reports to the Deputy Warden. (TR 3/30/00 p. 20)

The Deputy Warden is the one responsible for giving Mr. Bailey his daily assignments and who prioritizes work assignments. (TR 3/30/00 p. 20) According to Mr. Bailey, the Deputy Warden reports to the Warden, who reports to the Assistant Director of Operations who, in turn, reports to the Director of the Department. (TR 3/30/00 p. 21)

The Security Specialists interact, on a regular and routine basis, with the Correctional Officers in the cell blocks, in the housing units, and the industry areas. (TR 3/30/00 p. 22) The Security Specialists have all been trained as Correctional Officers. They receive the same sick leave, vacation and personal time as the Correctional Officers. They have the same health and life insurance benefits. (TR 3/30/00 p. 21) On a weekly basis, Mr. Bailey deals with the Correctional Officers for broken keys and broken radios. (TR 3/30/00 p. 21) He routinely fields questions from the officers regarding various procedures. (TR 3/30/00 p. 22)

Mr. Bailey also testified that he has been involved in drafting policies at the facility level, involving informal counting procedures of inmates and inspection of security bars. When Mr. Bailey completes his draft of a policy, he submits it to the Deputy Warden for review and comments. It may then be sent to the shift commander or lieutenant, for input. After revisions, the Warden actually issues the policy. (TR 3/30/00 p. 44) Mr. Bailey, personally, has also been involved in revising department-level policies, including the key control policy. (TR 3/30/00 p.

25) The department-level policy process is usually longer than the facility-level policy process. When he completes his draft of a policy, he submits it to the Deputy Warden for review and comments. It may then be sent to the shift commander or lieutenant for input. All the Wardens will have the opportunity to comment. After revisions, the proposed policy gets sent to all the buildings for review and comment. The Warden actually issues the policy (TR 3/30/00 p. 45) Mr. Bailey believes that all department-wide policies have to be approved by the Policy Review Committee. (TR 3/30/00 p. 45)

Mr. Bailey participates, occasionally, in staff meetings at the Maximum Security facility. (TR 3/30/00 p. 28) These meetings are held every other week, and the typical attendees include the Deputy Warden of operations, the Deputy Warden for programs, a captain, several lieutenants, a correctional officer nurse, a correctional officer steward, counselors, and someone from maintenance. (TR 3/30/00 p. 29)

Mr. Bailey also meets about every two to three weeks with the Chief of Security and the other Security Specialists, for informational type meetings. The minutes of these meetings are sent to the Director's office. Mr. Bailey testified that, for a while, the Director began to take a larger interest in the security programs at the facility, and that as a result, things were getting done. (TR 3/30/00 p. 32) However, that level of response tapered off, so Mr. Bailey now regards the meetings as not very helpful (TR 3/30/00 p. 32)

Mr. Bailey testified that he participates in employee discipline to the extent that he counsels employees and "writes them up" on "administrative action slips" for infractions regarding security procedures. (TR 3/30/00 p. 33, 46) (Also see testimony of Mr. Michael Frost. TR 6/2/98 p. 29) Mr. Bailey does not have the authority to issue or recommend discipline to officers for infractions, such as being out of uniform or late for work (TR 3/30/00 p. 49) The administrative action slip gets filled out and submitted to the Deputy Warden. He can make recommendations to the Deputy as to the discipline, but the Deputy Warden actually meets with the employee to discuss the infraction. (TR 3/30/00 p. 46, 47) Mr. Bailey also testified frankly that he doesn't always make disciplinary referrals, simply because he doesn't have the time to deal with the issue. He's too busy working on the technology itself, to stop and look up whether procedure has been violated. (TR 3/30/00 p. 34) He stated that he hopes that he'll have additional time, in the future, to ensure that all the policies and procedures are being followed.

(TR 3/30/00 p. 35) He candidly admitted that his failure to refer some of the employees to the disciplinary process is in conflict with his mission as a Security Specialist; but that the staff is under-resourced, and he has to prioritize his work. (TR 3/30/00 p. 35) He also stated that it's an issue because the Department constantly writes policies and standards, which they don't have the resources to attain, and that the policies and procedures are unrealistic. (TR 3/30/00 p. 36) (Also see testimony of Mr. Michael Frost. TR 6/2/98 p. 25-26)

In his position as a Security Specialist, Mr. Bailey does not review or evaluate relief and leave schedules for Correctional Officers. He does review safety procedures and disciplinary control measures. He also reviews and evaluates plans for emergencies, such as riots or escapes. He also evaluates plans for the detention of inmates and the security of the correctional institution. (TR 3/30/00 p. 40) He participates in the control of contraband and reviews and evaluates the effectiveness of training programs for the custodial staff. (TR 3/30/00 p. 41) He also makes recommendations to the Assistant Director regarding rules and regulations regarding the security of the institution. (TR 3/30/00 p. 41) He is involved with the security and safe handling of firearms and ammunition. (TR 3/30/00 p. 41) He is also responsible for taking action to quell or suppress riotous or rebellious action taken by an inmate. (TR 3/30/00 p. 43)

The Employer submitted the testimony of several witnesses. Its first witness was Mr. Michael Frost, the Chief of Security since October 1990. (TR. 6/2/98 p. 11) Prior to becoming Chief of Security, Mr. Frost also served as a Security Specialist. (TR. 6/2/98 p. 12) He testified that the responsibilities of the Security Specialists have been evolving and increasing over the last decade. He stated that when he was a Security Specialist, he was involved with significant policy writing, including the security policies, the disciplinary policies, the hospital policy and the transport policy. (TR. 6/2/98 p. 14) He supervises the four Security Specialists and reports to the Chief Inspector. (TR. 6/2/98 p. 14) According to Mr. Frost, all the Security Specialists participate in a quarterly security audit which is a formal system of evaluating the physical security of a building. After the audit is completed a written report is generated and forwarded to the Director. (TR. 6/2/98 p. 16)

Mr. Frost testified that a major function of the Security Specialists is to be in charge of key control. (TR. 6/2/98 p. 7) Another major role of the Security Specialists is to be in charge of all the alarm systems used in all the buildings, such as x-ray machines and metal detectors.

(TR 6/2/98 p. 18) Security Specialists also conduct hospital audits, to make sure that correctional personnel assigned to guard inmate patients are following the proper security procedures. (TR 6/2/98 p. 18)

On cross examination, Mr. Frost testified that the Security Specialists have essentially no role in hiring, other than occasionally sitting on a hiring panel, like any other member of the Department. (TR 6/2/98 p. 21) The Security Specialists have no authority to fire, transfer, promote, or assign work responsibilities. (TR 6/2/98 p. 22) They do not participate in labor relations negotiations on behalf of the Department. (TR 6/2/98 p. 22) The Security Specialists do not participate in the formulation of labor relations strategy on behalf of the Department. (TR 6/2/98 p. 23) They may occasionally testify as a witness at a grievance hearing, but Mr. Frost could not recall them ever testifying at an arbitration. (TR 6/2/98 p. 22-23) On occasion, Mr. Frost might ask one of the Security Specialists to sit in on a meeting for him. (TR 6/2/98 p. 24)

As to discipline, Mr. Frost believes that since 1991, Security Specialists have had the occasion to initiate the disciplinary process approximately twenty (20) times. (See Employer's exhibits 2,3,5,6,7, 9, 10, 12, 13, 14, 15, 16)<sup>4</sup> Mr. Frost indicated that the report gets referred to the Warden, who can conduct his own investigation, and is free to reject the disciplinary recommendation.

The Employer next presented the testimony of Mr. Thomas Partridge, the Deputy Warden of Medium Two since May 1997. He testified that Security Specialists can recommend four levels of discipline. (TR 6/2/98 p. 38) Captains and Lieutenants can also issue the administrative action forms and make disciplinary recommendations. (TR 6/2/98 p. 41)

Mr. Walter T. Whitman, the Warden of Maximum Security, High Security, and Prison Industries, and a long time employee of the Department of Corrections, also testified. He stated that he has had occasions when he's had difficulty with lieutenants and captains disciplining Correctional Officers. (TR 6/2/98 p. 48) He stated that although he always issued discipline when appropriate, he occasionally received pressure from lieutenants, captains or executive board members not to issue discipline. (TR 6/2/98 p. 49)

Mr. Whitman testified that when he first took over as Deputy Warden at Maximum

---

<sup>4</sup> The Union noted that four of these exhibits were all dated within two weeks of the June 2, 1998 hearing. In addition, one of them was issued by Captain Brodeur, a member of RIBCO, not a Security Specialist.



Security in 1991, the locks and keys were in poor condition; locks were left open and no one knew where keys were. He stated that the facility was in a state of complete anarchy, with no backup keys, no fire door keys, and no security procedures. (TR 6/2/98 p. 56-57) Fortunately, all that has changed during his tenure, and he described the facility as now being state-of-the-art (TR 6/2/98 p. 57) Mr. Whitman testified that the key control utility officer is more functional, more of an operational nuts and bolts type of position; and that the Security Specialists are more administrative. (TR 6/2/98 p. 58) Mr. Whitman stated that Mr. Bailey is involved with the construction upgrade of the maximum security facility and has been involved in all the planning. Mr. Whitman stated that Mr. Bailey had done most of the research to advise as to the types of security systems to be employed in the building. (TR 6/2/98 p. 58)

The Employer also presented the testimony of Mr. Albert Gardner, the Warden of the Service Intake Center, an employee of the Department since 1969, and a former union member. Mr. Gardner testified that he has routinely, or occasionally, received reports from Security Specialists regarding checks at outside hospitals. (TR 6/2/98 p. 66) (See State Exhibit # 9) He also testified on the problem of "key winds" being tampered with, and stated that oversight of checking the wind clocks now belongs to Security Specialists, instead of shift commanders. (TR 6/2/98 p. 72) He stated that, although he has had problems with lieutenants or captains being reluctant to issue discipline, he could not recall even one definitive occasion when he had disciplined them for this alleged failure. (TR 6/2/98 p. 73)

At the conclusion of the June 2, 1998 hearing, the Employer presented the testimony of Mr. William Cudworth, a Deputy Warden at the Intake Service Center, and an employee of the Department since 1976. (TR 6/2/98 p. 78) The bulk of Mr. Cudworth's testimony was repetitious of earlier testimony. He did state, however, that when he was a lieutenant and captain and had the responsibility of discipline, he was subjected to "peer advocacy" encouraging him to "stick together" and discouraging discipline. (TR 6/2/98 p. 84) He stated that this "causes a problem when you're in a supervisor capacity in that you're more unwilling to document a disciplinary problem so you try to handle it unofficially." He also stated that being forced to testify against a fellow officer puts them in a dichotomy. (TR 6/2/98 p. 85) He stated that he found it very hard to testify and so did other superiors. (TR 6/2/98 p. 86) On cross examination, Mr. Cudworth acknowledged that, although he has had the occasion to discipline captains and

lieutenants for *their* failure to issue discipline, their union affiliation had nothing to do with the issue. (TR 6/2/98 p. 88)

On November 7, 1998, the Employer presented the testimony of George Vose, then Director of the Department of Corrections. He testified extensively as to his career path and his duties at the Department. Although most of his testimony was not directly relevant to the duties of the Security Specialists, he did testify that Security Specialists do receive overtime pay.

1/17/98 p. 21) The 50 non-union Managers, Deputy Wardens, and Wardens do not receive overtime pay. (TR 1/17/98 p. 21-22) He also testified that there are four Inspectors within the Department, whose function is to investigate employee misconduct. (TR 1/17/98 p. 23) Security Specialists do not interact, on a regular basis, with the Inspectors; their involvement with the Inspectors would be on a case by case basis, only if the Security Specialist had relevant knowledge. The testimony of the Employer's final two witnesses, Mr. Jake Gadsden and Mr. Barry Levin, added nothing new to the testimony, which has already been summarized herein.

#### DISCUSSION

The first issue in this case is whether or not the position of Security Specialist is a "confidential" position, which must be excluded from collective bargaining as a matter of law, as alleged by the Employer, in its brief. The current state of the law that defines a confidential employee is found in the Rhode Island Supreme Court's decision in Barrington School Committee v. Rhode Island State Labor Relations Board, 694 A.2d 185 (R.I. 1992). (Hereinafter "Barrington") In Barrington, the Court adopted the "labor-nexus" test of determining whether a secretary was a "confidential" employee.

"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)

In Barrington, the Court declined, however, to adopt the labor nexus test as necessarily controlling in all future instances. In so holding the Court said, "it may be that a broader definition of those employees considered to be 'confidential' would be desirable in other circumstances." Id at 137.

In this case, the Employer first urges this Board to find that the Security Specialists should be considered confidential, and excluded from bargaining. In the alternative, the Employer argues that management has to be able to trust the Security Specialists, because they are employees who play a critical role in ensuring the security of the institution. Therefore, the Employer also argues that unionizing the Security Specialists conflicts with the Director's statutory ability to run a safe and secure prison system. Finally, the Employer argues that Security Specialists should be considered "guards" to enforce the Employer's rules against employees; and therefore, it is inappropriate for them to be included within the proposed unit.

First, there was simply no evidence set forth that the Security Specialist employees assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. Likewise, there was also not a shred of evidence that any of the employees in question, in the course of their duties, regularly have access to confidential information concerning anticipated changes which may result from collective bargaining negotiations. In fact, Mr. Frost, a witness for the Employer testified that the Security Specialists do not participate in labor relations negotiations on behalf of the Department, nor do they participate in the formulation of labor relations strategy on behalf of the Department. (TR. 6/2/98 p. 22-23). Therefore, under the labor nexus test, the Security Specialists are not confidential employees.

The next argument we take under consideration is the Employer's argument that the facts presented in this case warrant an expansion of the labor nexus definition of confidential employee. This Board is mindful of the Barrington Court's reservation to apply the labor nexus test in all cases, and we have carefully reviewed the facts of this case against arguments set forth by the Employer to determine whether or not this case does represent the type of circumstance in which the definition of "confidential" employee should be expanded beyond the narrowly defined "labor nexus" test.<sup>5</sup> The Employer argues that the Security Specialists are privy to confidential [information], since they work more or less exclusively for the Deputy Wardens. (Employer's brief p. 15) The problem with this argument is that there was absolutely no testimony whatsoever that the Deputy Wardens actually shared any confidential information with

---

<sup>5</sup>In this regard, this case is similar to our earlier consideration of an accretion of the Department's MIS (computer) employees.

the Security Specialist. Deputy Warden Gadsden testified that he held administrative meetings, which he considered confidential, with the captain, the shift commander (who is either a lieutenant or captain), the Security Specialist, and the head of his engineering department.

On cross examination however, his explanation for why he considered the meetings to be “confidential” was “because in order to move a facility forward, sometimes you have to talk rather candidly about some issues and people assigned to particular posts. Whenever you’re talking about a particular issue, you end up talking about that person.” (TR 1/17/98 p. 47) Deputy Warden Gadsden did acknowledge that two of the four attendees to these meeting are members of RIBCO, but did not feel that the confidentiality of the meeting was compromised; because he is careful enough to realize that if something is sensitive, he’ll just hold the issue and have another meeting. (R 1/17/98 p. 48) He stated that he has occasionally asked the Security Specialist to leave meetings, as well, so that he could discuss things without their presence. Clearly, since the Security Specialists are asked to leave “confidential meetings” when they are not union members, they cannot possibly be so “aligned with management” so as to require their exclusion from a collective bargaining unit. Furthermore, there was no testimony that the Security Specialists are privy to the “most sensitive details of management decision making”. The Board is even less persuaded in this case, than in the case of the MIS employees, that an expansion of the “labor nexus” test is warranted; and the Board hereby declines to do so. Therefore, the Board finds, as a matter of law, that the Security Specialists need not be excluded on the basis of confidentiality, as that term is defined by Rhode Island labor law.

The next question is whether or not the Security Specialists are managerial employees. “Managerial” employees are employees who “formulate and effectuate management policies by expressing and making operative the decisions of their employers.” Fraternal Order of Police, Westerly Lodge 10 v. Town of Westerly, 659 A.2d 1104, 1107 (1995); State v. Local 2883 AFSCME, 463 A.2d 186, 190 (1983) citing and quoting in part NLRB v. Bell Aerospace Co., 416 U.S. 267, 278 (1974). Managerial employees must exercise discretion within or even independently of established employer policy and must be aligned with management. N. R.B. v. Yeshiva University, 444 U.S. 672 (1980). An employee may be excluded as managerial only if he represents management interests by taking or recommending discretionary actions that control or implement employer policy. Id. “Employees whose decision-making is limited to the routine

discharge of professional duties in projects to which they have been assigned cannot be excluded from coverage even if union membership arguably may involve some divided loyalty. Only if an employee's activities fall outside the scope of the duties routinely performed by similarly situated professionals will he be found aligned with management." Id at 690.

In this case, the testimony of both the Union and Employer's witnesses established that the Security Specialists' role in drafting policies and procedures is limited to their technical expertise. Once they have a draft proposal, it is then forwarded up and through the chain of command, or review process. There is actually a "policy unit" that has the final say on these matters, and it is the Director's office that actually issues a policy. The Security Specialists, while entrusted to provide their technical expertise, do not independently formulate effectuate management policies by expressing and making operative the decisions of their employer. Their decision-making is limited to the routine discharge of professional duties in projects to which they have been assigned. They are not managerial employees, and shall not be excluded from collective bargaining on that basis.

Finally, we turn to the question, seemingly abandoned by the Employer in its brief, but explored at the hearings, of whether the Security Specialists are supervisors.

In the Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board, 694 A.2d 185, 189 (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))

For the bulk of these indicia of supervisory status, the evidence clearly established that the Security Specialists have absolutely no role, in either undertaking the action or even in effectively recommending the same. The Director of the Department unequivocally testified that he retains the sole authority to hire and fire, under the Merit System Law. (TR 11/17/98 p. Security Specialists have essentially no role in hiring, other than occasionally sitting on a hiring panel, like any other member of the Department. (TR 6/2/98 p. 21) They have no authority to fire, transfer, promote, or assign work responsibilities. (TR 6/2/98 p. 22) They may occasionally

testify as a witness at a grievance hearing, but they don't have the power to adjust grievances.  
(TR 6/2/98 p. 22-23)

To the Board, the real issue in this case is whether or not the Security Specialists can issue discipline, or can effectively recommend discipline, through the exercise of authority that requires the use of independent judgment. On this one aspect of this question, the evidence is less clear-cut, and more difficult to evaluate.

In this case, Mr. Bailey testified that he participates in employee discipline, to the extent that he counsels employees and "writes them up" on "administrative action slips" for infractions regarding security procedures. (TR 3/30/00 p. 33, 46) (Also see testimony of Mr. Michael Frost. TR 6/2/98 p. 26) The administrative action slip gets filled out and submitted to the Deputy Warden. The Security Specialist can make recommendations to the Deputy as to the discipline, by checking a box, but the Deputy Warden actually meets with the employee to discuss the infraction. (TR 3/30/00 p. 46, 47)

The documentary evidence in this case consists almost entirely of Employer's exhibits, which are primarily several examples of the Notices of Administrative Action and accompanying memos. In most cases, the Notices of Administrative Action, which are primarily fill-in-the-blank forms, with a few lines of narration, are accompanied by a memorandum to a Warden from a Security Specialist. Mr. Bailey was involved with nine (9) of these reports (Employer's Exhibits 3, 4, 5, 6, 7, 9, 10, 13, and 15) The Administrative Action form has a series of boxes to check off for recommended discipline ranging from counseling, to written or oral reprimands, or referral for hearing. In the bulk of these cases, Mr. Bailey has also submitted a factual description of his observations in his memorandum. Within the memorandum, he does not make any recommendation for disciplinary action and concludes each memo by inviting further inquiry, should the reader have any questions. When the infraction stemmed from an outside security hospital post, there was also an "Outside Hospital Check" form attached to the report and Notice of Administrative Action Form. The Hospital Check form is a check-list type form, wherein the Security Specialist checks for fifteen specific items.

For the bulk of these exhibits, there is no record as to the ultimate disposition of the matter whether the recommended counseling was undertaken or whether further action was taken or reversed. Therefore, the Board finds the evidence lacking as to whether Mr. Bailey has

effectively recommended anything. As to Exhibit #9, Deputy Warden Gardner testified that the individual “may have been disciplined for this or at minimal called in and informally reprimanded.” (TR 6/2/98 p. 67) Deputy Warden Gardner also acknowledged that the discipline that gets imposed ultimately is up to the Director of the Department. (TR 6/2/98 p. 68)

Employer’s Exhibits 11, 12 and 14 all originated with Security Specialist Picard. Exhibit #11 contained a memo from Mr. Picard to the Deputy Warden, which did recommend a hearing at the Warden’s level “to provide proper disciplinary action”. The Exhibit also contains a letter from Director George A. Vose, Jr. outlining the results of a “pre-discipline hearing” which states “this letter is now a part of your permanent personnel file and will be considered in rendering decisions on future personnel actions”. The letter does not indicate that there were any attachments to the disciplinary letter. However, attached to the letter, as part of the Exhibit, were the underlying investigative reports and memos submitted by Mr. Picard and the Department’s locksmith. It is the Board’s view of this evidence that it is the *Director’s letter* which serves as the disciplinary action. Without the letter, there would be no disciplinary action, even if there had been a disciplinary investigation. Indeed, a system such as this provides the necessary checks and balances, and seems to afford the accused with the appropriate due process.

Employer’s Exhibit #12 is a Notice of Administrative Action form signed by Mr. Picard recommending a referral to hearing. Attached to that form is an interoffice memorandum from Mr. Albert Gardner, Warden, to Mr. Barry Levin, Personnel Officer, in which Warden Gardner concludes that he believes the accused is guilty of the conduct alleged by Mr. Picard; and *Warden Gardner recommends* a two-day suspension for dereliction of duty. So, although Mr. Picard effectively recommended that a hearing be held, he made no other recommendation, and we do not know the ultimate outcome of his supervisor’s recommendation to Mr. Levin. As set forth above, the Board does not believe that a recommendation for a hearing, or even a hearing itself, can be considered discipline. In cases of hearings, it is only when the hearing officer concludes that the evidence supports the charge, and punishment is imposed, that discipline occurs.

Employer's Exhibit #14 is an unsigned notice of administrative action form, and is, therefore, incompetent evidence which the Board shall disregard.<sup>6</sup>

Employer's Exhibit #16 is a report and hearing referral issued by Security Specialist J. Avila, on August 6, 1998. It contains no disciplinary recommendation. The testimony established that the accused did not have a hearing in this case, and opted to accept a recommendation made by Deputy Warden Gadsden, to Human Resources, of a ten (10) day suspension. Deputy Warden Gadsden testified that the accused made this decision based on his prior disciplinary record and the fact that the hearing would be at the Departmental level. This evidence clearly establishes that the Security Specialists act essentially as cops, and write up violations. They do not hold hearings, or make decisions, as to the ultimate discipline. They can only make referrals to the next level in the chain of command. The evidence also clearly establishes that even the Deputy Wardens do not have the ultimate authority to issue the discipline; even they sometimes have to get approval from the next level in the chain of command.

Finally, as to Exhibits 7, 18 and 19, all three are decisions issued by Mr. Barry Levin on grievances. The Board does not believe that Exhibit #17 is of much help to the Employer's position, because it clearly acknowledges that the authority of Security Specialists to formally discipline individuals must be reviewed by the Deputy Warden of the facility. This type of oversight does not, in the opinion of the Board, invest Security Specialists with the requisite level of supervisory authority to issue discipline.

Exhibit #18 states that the grievant was given a counseling based upon a report by a Security Specialist. The hearing officer concluded that the action taken, based upon the investigation of Security Specialist Bailey, was warranted. The document does not indicate who actually gave the counseling; the document only establishes that action was taken based upon the investigation. There was no testimony, in the record, to establish who gave the counseling. Therefore, the evidence does not establish that Security Specialist Bailey, himself, gave the counseling. Furthermore, even if he had given the actual counseling, the action was subject to

---

<sup>6</sup>In this case, the form is unsigned by a Security Specialist, and no one presented any testimony of a Security Specialist, to verify that he filled out this report. As to other unsigned exhibits, it is usually noted that the Employee refused to sign, and the Board has considered that statement at its face value, and accepted the veracity therein.



further review by the hearing officer, who has the power to hear the matter on his own, and come to his own conclusions. Employer's Exhibit #19 actually deals with a grievance alleging that the Department has non-bargaining unit personnel doing bargaining unit work. As such, the Board finds this evidence to be irrelevant to the issue in this case, and finds no probative value therein.

In conclusion, although at first blush it may be tempting to just concur with the Employer, and agree that Security Specialists issue discipline or can effectively recommend it, upon further review, the evidence in this case does not support such a finding. Had the evidence established that a Security Specialist commonly made disciplinary recommendations; and those recommendations were regularly, or even often, followed by their superiors, this Board could likely have been persuaded that the Security Specialists can effectively recommend discipline. However, the most that the evidence established is that they can write up reports, which could result in discipline being imposed by someone higher on the chain of command than a Security Specialist, and often higher than a Deputy Warden. Therefore, for all of the foregoing reasons, this Board rejects the argument that the Security Specialists are supervisory employees and they shall not be excluded from collective bargaining on that basis.

The Employer also argued that Security Specialists are "guards" as defined by 29 U.S.C. 159 and should, therefore, not be included in the proposed unit. This was also argued in the MIS employees accretion case. In that case, the Rhode Island Superior Court affirmed the decision of the Board, and found that the Rhode Island State Labor Relations Board is not governed by section 9 (b) (3) of the National Labor Relations Act. The Court also held that public employees of the State or any political subdivision are not governed by federal labor laws, and that the law of Rhode Island governs and defines the permissible contours of the relationship between guards and non-guards in the collective bargaining process. R.I. Sup. Ct. C.A. No. 99-0230 (J. Gibney) Furthermore, R. G.L. 28-7-15 entitled "Determination of Bargaining Unit" provides that the Rhode Island State Labor Relations Board shall decide in each case... the unit appropriate for collective bargaining. Therefore, the Board finds that whether or not the Security Specialists would be considered "guards" under federal labor law is irrelevant to the issue at hand.

The final issue is whether there exists a sufficient community of interest with the existing bargaining unit. In determining whether there exists a community of interest, the Board relies

on the factors adopted by the Rhode Island Supreme Court in R.I. Public Telecommunications Authority v R.I. State Labor Relations Board, 650, A.2d 479, 485 (R.I. 1994) These factors are:

- 1) Similarity in scale and manner of determining earnings,
- 2) Similarity of employment benefits, hours of work, and other terms and conditions of employment,
- 3) Similarity in the kind of work performed,
- 4) Similarity in the qualifications, skill and training of the employees,
- 5) Frequency of contact or interchange among the employees,
- 6) Geographic proximity,
- 7) Continuity or integration of production processes,
- 8) Common supervision and determinations of labor relations policy,
- 9) Relationship to the administrative organization of the employer,
- 10) History of collective bargaining,
- 11) Desires of the affected employees,
- 12) Extent of union organization.

In this case, the Security Specialists all work in the same complex of buildings and are subject to the same Code of Conduct, as well as Code of Ethics, as are other members of RIBCO.

The Security Specialists interact, on a regular and routine basis, with the Correctional Officers in the cell blocks, in the housing units, and the industry areas. (TR 3/30/00 p. 21) The pay scale, as set forth in Union Exhibit #1, falls within the range of the existing bargaining unit. The Security Specialists have all been trained as Correctional Officers. They receive the same sick leave, vacation and personal time as the Correctional Officers. They have the same health and life insurance benefits. (TR 3/30/00 p. 22) The Security Specialists have been trying to be organized since the position was created in 1991, and it is through no fault of their own that they have not yet been accreted to an existing bargaining unit.

Therefore, for all of the foregoing reasons, the Board finds that there exists a community of interest sufficient to accrete the Security Specialists to the bargaining unit in Case No. EE-2003.

#### **FINDINGS OF FACT**

- 1) The Petitioner is a labor organization, which exists and is constituted for the purpose, in whole or in part, of collective bargaining relative to wages, rates of pay, hours, working conditions and all other terms and conditions of employment and of dealing with employers concerning grievances or other mutual aid and protection.
- 2) The State of Rhode Island, Department of Corrections is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
- 3) Security Specialists duties include the responsibility to "maintain security equipment to

include but not limited to weapons, restraints, metal detectors, riot equipment, etc; to conduct security audits of all areas including perimeters; to make reports, keep records and conduct inventories of equipment; as required.” Examples of the work they perform includes: to make reports, keep records and conduct inventories of equipment; to assist in the additions or alterations of equipment or structures such as closed circuit TV, radio equipment, padlocks and wire screening, security doors, new or modified cell blocks and guard towers; to assist in making recommendations for improved security in the transportation of prisoners to and from the courts; to assist in the instruction of Correctional Officers in the principles and techniques of security systems.

- 4) Each of the four Security Specialists also has his own specialized area of security or project that he handles on a department-wide basis. Security Specialists also search for inmate contraband inside the facility, such as weapons, drugs and escape tools.
- 5) The Security Specialists interact, on a regular and routine basis, with the Correctional Officers in the cell blocks, in the housing units, and the industry areas. The Security Specialists have all been trained as Correctional Officers. They receive the same sick leave, vacation and personal time as the Correctional Officers. They have the same health and life insurance benefits.
- 6) Some of the Security Specialists have a role in the initial drafting of policies, both at the facility level and the Department level. Once a draft policy has been prepared, it goes through a series of reviews or revisions up the chain of command, and is reviewed by a “Policy Unit”. The Security Specialists do not actually issue the policy.
- 7) Some of the Security Specialists participate in staff meetings. In Maximum Security, these meetings are held every other week, and the typical attendees include the Deputy Warden of operations, the Deputy Warden for programs, a captain, several lieutenants, a correctional officer nurse, a correctional officer steward, counselors, and someone from maintenance.
- 8) Security Specialists are authorized to fill out “administrative action slips” and conduct investigations into infractions regarding security procedures. Security Specialists can make recommendations to the Deputy as to discipline, but the Deputy Warden actually meets with the employee to discuss the infraction, and can either accept or reject the Security Specialists’ recommendations.

- 9) Security Specialists do not review or evaluate relief and leave schedules for Correctional Officers. They do review safety procedures and disciplinary control measures. They also review and evaluate plans for emergencies, such as riots or escapes. They also evaluate plans for the detention of inmates, and the security of the correctional institution. They participate in the control of contraband and review and evaluate the effectiveness of training programs for the custodial staff. They also make recommendations to the Assistant Director regarding rules and regulations regarding the security of the institution. They are involved with the security and safe handling of firearms and ammunition. They are also responsible for taking action to quell or suppress riotous or rebellious action taken by an inmate. Security Specialists participate in a quarterly security audit, which is a formal system of evaluating the physical security of a building.
- 10) Security Specialists have essentially no role in hiring, other than occasionally sitting on a hiring panel, like any other member of the Department. The Security Specialists have no authority to fire, transfer, promote, or assign work responsibilities. They do not participate in labor relations negotiations on behalf of the Department. The Security Specialists do not participate in the formulation of labor relations strategy on behalf of the Department. They may occasionally testify as a witness at a grievance hearing.
- 11) Security Specialists all work in the same complex of buildings and are subject to the same Code of Conduct, as well as Code of Ethics, as are other members of RIBCO. The pay scale, as set forth in Union Exhibit #1, falls within the range of the existing bargaining unit. Security Specialists have all been trained as Correctional Officers. The Security Specialists have been trying to be organized since the position was created in 1991, and it is through no fault of their own that they have not yet been accreted to an existing bargaining unit.

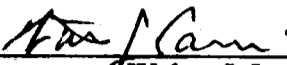
#### **CONCLUSIONS OF LAW**

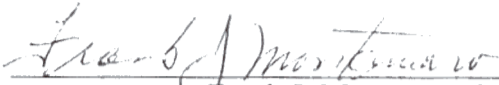
- 1) The position of Security Specialist is neither confidential, managerial, nor supervisory and is eligible for collective bargaining.
- 2) The position of Security Specialist shares a community of interest with RIBCO.

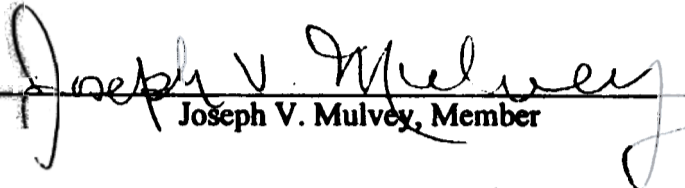
#### **ORDER**

- 1) The position of Security Specialist shall be and is hereby accreted to the certification in Case No. EE-2003

RHODE ISLAND STATE LABOR RELATIONS BOARD


  
Walter J. Lanni, Chairman

  
Frank J. Montanaro, Member

  
Joseph V. Mulvey, Member

  
Gerald S. Goldstein, Member

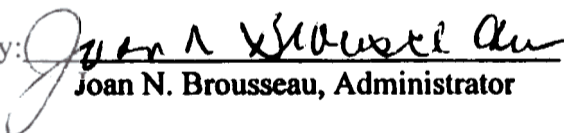
  
Ellen L. Jordan, Member

  
John R. Capobianco, Member

  
Elizabeth S. Dolan, Member

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

Dated: February 22, 2001

By:   
Joan N. Brousseau, Administrator