

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

IN THE MATTER OF

STATE OF RHODE ISLAND
STATE PROPERTIES COMMITTEE

CASE NO: EE-3133
Executive Secretary –
State Properties Committee

-AND-

R.I. COUNCIL 94, AFSCME, AFL-CIO

DECISION AND ORDER of DISMISSAL

TRAVEL OF CASE

The above entitled matter came on to be heard before the Rhode Island State Labor Relations Board (hereinafter "Board") on a Request for Accretion (hereinafter "Petition") for the position of Executive Secretary, State Properties Committee (Central Services). The Petition was filed with the Board by R.I. Council 94, AFSCME, AFL-CIO on July 2, 2003. On August 4, 2003, an informal hearing was held with representatives of the Union and the Employer, pursuant to R.I.G.L. 28-7-9 (b) (5).

The Board's Agent conducted a subsequent investigation on the request. Upon completion of her investigation, the Board's agent filed an investigative report with the Board and on September 3, 2003 provided a copy of the same to the parties. On September 30, 2003, the Employer filed a written response taking issue with the conclusions and recommendations contained in the investigative report.

On October 14, 2003, the Board met and made a preliminary determination that the position should be accreted to the bargaining unit. The parties were notified of the Board's decision by letter dated October 17, 2003 and the Board set the matter down for formal hearing on January 8, 2004. The formal hearing was continued by the request of the parties to January 22, 2004. Representatives from the Employer and Union

to examine and cross examine

FACTUAL SUMMARY

The Union presented the testimony of Anne Lanni, the incumbent Executive Secretary to the State Properties Committee and Salvatore Lombardi, President of Local Union 2884. The Employer presented the testimony of Mr. Jerome F. Williams, the Executive Director for Operations for the Department of Administration, State of Rhode Island. The parties submitted nine (9) joint exhibits for the Board's consideration.

Ms. Lanni testified that she first became employed as the Executive Secretary to the State Properties Committee in October of 1997 and that she believed her position was part of the Division of Central Services. (TR. p. 7) Her office is located on the second floor of One Capitol Hill in Providence. (TR. p. 17) Until March 2003, Ms. Lanni's immediate supervisor was Dennis Lynch, the Associate Director of the Division of Central Services and the Chairman of the State Properties Committee. Since March 2003, she has reported to both William Ferguson, the Interim Associate Director of the Division of Central Services and Mr. Williams, in his capacity as the new Chairman of the State Properties Committee. (TR. p.18) Ms. Lanni testified that she has never participated in the hiring, firing, supervision, discipline or promotion of any other state employees. (TR. p.18-19) Ms. Lanni also testified that she has never been involved with any confidential labor relations matters, nor has she ever adjusted a fellow employee's grievance. (TR. p. 19) She stated she has no regular access to confidential labor relations matters. (TR. p. 19) Her duties include: keeping all the records of the state properties committee as it pertains to real property; keeping a recorded tape and minutes of the committee's meetings, assembling and posting requests of various departments in accordance with the open meetings law; maintaining files; serving as secretary to the principle property officer; and serving as backup staffing on rare occasions. (TR. p. 20)

Ms. Lanni testified that the State Properties Committee, which is comprised of various representatives from the State of Rhode Island, oversees any and all leasing,

physical vicinity of other secretarial, clerical employees. Her office is not located near either Mr. Ferguson's office or Mr. Williams' office. (TR. p. 23-24)

On cross examination, Ms. Lanni testified that when she is absent from work, her "back up" is Ms. Dottie Church. (TR. p. 35) She also testified that after she prepares the agendas and minutes of the Committee, she submits them to Mr. Williams for approval. (TR. p. 36) When Ms. Lanni needs to request time off, she submits her requests to Mr. Ferguson. (TR. p. 37)

The Union also presented the testimony of Mr. Salvatore Lombardi, the President of Local Union 2884 which represents the bargaining units under certification EE-3133, Commissions and Agencies. He testified that there are a number of unclassified clerical positions in the Department of Administration who receive similar health and vacation benefits as Ms. Lanni receives. (TR. p. 43) On cross examination, Mr. Lombardi testified as to how various positions have been added to the certification in EE-3133 over the years. He acknowledged that many of the positions that have been accreted over the years report to a specific board or commission, as opposed to a department of state government. (TR. p. 59)

The Employer presented the testimony of Jerome F. Williams, the Executive Director for Operations for the Department of Administration since April, 2003. He testified that the position of Executive Secretary for the State Properties Committee is located within the Division of Central Services, Department of Administration. (TR. p. 66; Also see Joint Exhibit #7, page 3) He testified that the State Properties Committee, which is created by statute, is responsible for the approval of any interest in land and real property for the State of Rhode Island. (TR. p. 66) Mr. Williams confirms that Ms. Lanni assists him in preparing agendas for the Committee meetings and then submits them to him for review. (TR. p. 68) Mr. Williams testified that there have been occasions when request have come to the state properties committee that could have an impact on the

properties committee prior to full negotiations being completed or communicated to employees. (TR. p. 74)

On cross examination, Mr. Williams acknowledged that the State Properties Committee is subject to the Open Meetings Law and that anyone who attends these meetings would have access to the same information as Ms. Lanni, who serves as the recorder of those meetings. (TR. p. 76) Mr. Williams also agreed that any Fiscal Fitness initiatives impacting real property will have to come before the Committee at a public hearing. (TR. p. 77) Mr. Williams also acknowledged that there would be no impact to any state employees from the Committee's work until a matter has been placed on an agenda, voted on at a public hearing and then implemented. (TR. p. 78) Mr. Williams also acknowledged that John Ryan, a principle property officer who works on leases, is a member of a union. (TR. p. 79)

DISCUSSION

The first issue to be addressed in this case is the eligibility of the position for inclusion within collective bargaining. The Employer has objected to the inclusion of the position in the bargaining unit by alleging that the position is a "confidential" position. 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

As support for its contention that the position of Executive Secretary to the State Properties Committee is confidential, the Employer essentially concedes that claim of confidentiality in this case doesn't meet the two-prong labor nexus test. The Employer simply argues that the position could be privy to information that would affect state employees before that information had been publicly announced and that this would be a sufficient reason to expand the definition of confidential employee

The Board has previously considered other requests to expand the definition of "confidential" for labor relations purposes. These cases typically involve computerized access to extensive amounts of documents, data or records. The Board has indicated that if a case were presented where it could be established that an employee could have unfettered access to every "byte" of information, with no way for an employer to protect itself from this access, the Board would carefully consider an expansion of the definition of confidential.

The evidence in this case established that when requests come to the State Properties Committee from various state departments, boards or agencies, the request is placed on an agenda and posted publicly pursuant to the Open Meetings laws. The hearing on the request is also done in public, in accordance with the Open Meetings laws. Finally, the minutes of the Committee meetings are open public records. In this case, the most that can be said is that Ms. Lanni would know in advance of other persons that a matter was being placed on the Committee's agenda for discussion. The same is true for all secretarial positions who prepare meeting agendas- someone has to type the information. However, Ms. Lanni can't possibly know the outcome of the Committee's public hearing in advance of the hearing! The most that Ms. Lanni could do in response to the receipt of an item for the agenda, is to personally tell others that a matter was going to be heard by a public body. This would be the same information that would be posted publicly in advance of the meeting and the results would be reported in the minutes of the public body. Therefore, this case does not even come close to the type of case that would warrant an expansion of the definition of confidential and the

forth in the Board's rules and regulations, specifically Rule 1.01.8. The Employer argues in its brief that the union failed to provide any information at all on several of the twelve factors set forth in Rule 1.01.8, including the similarity in scale and manner of determining earnings; similarity in the qualifications, skills and training of employees and other factors. The Board agrees that the information set forth by the union was insufficient to satisfy its burden of establishing a community of interest.

However, the Board finds that there is a larger problem with the Union's petition than establishing the community of interest. The Union has petitioned for accretion under the certification of EE-3133 which designated the Union as the collective bargaining agent for employees of "State of Rhode Island, Commissions and Agencies". The Board's certification specifically sets forth the names of the nine (9) Commissions or Agencies which are covered by the certification. The State Properties Committee is not set forth on the certification. Additionally, the testimony and documentary evidence in this case have clearly established that the position of Executive Secretary of the State Properties Committee is a position located within the Division of Central Services, Department of Administration.

The State Properties Committee, was created by R.I.G.L. 37-6-1 to "act in cooperation with the departments, boards, bureaus, commissions and agencies of the state' for the purpose of "acquiring, administering and disposing of interests in land and other real property for the improvement of the administration of state government, the advancement of commerce, and the protection and improvement of the health, welfare and safety of the inhabitants" of the State of Rhode Island. The Committee is comprised of: the State's Chief Purchasing Officer, the Attorney General, a representative of the Department of Administration, one member representing the public and one member each from the House of Representatives and the Senate. Thus, even if the Executive Secretary was employed by the State Properties Committee, it would appear to the Board that the certification in EE-3133 cannot be amended to include the State Properties Committee because it is not an

FINDINGS OF FACT

- 1) The Respondent is an “Employer” within the meaning of the Rhode Island State Labor Relations Act.
- 2) The Union is a labor organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers in grievances or other mutual aid or protection and as such is a “Labor Organization” within the meaning of the Rhode Island State Labor Relations Act.
- 3) The position of Executive Secretary of the State Properties Committee is a position located within the Division of Central Services, Department of Administration.
- 4) The duties and responsibilities of the position of Executive Secretary include keeping all the records of the state properties committee as it pertains to real property; keeping a recorded tape and minutes of the committee’s meetings, assembling and posting requests of various departments in accordance with the open meetings law; maintaining files; serving as secretary to the principle property officer; and serving as backup staffing on rare occasions.
- 5) The position of Executive Secretary reports to the Chairman of the State Properties Committee and the Interim Associate Director of the Division of Central Services.
- 6) The position of Executive Secretary has never participated in the hiring, firing, supervision, discipline or promotion of any other state employees.
- 7) The position of Executive Secretary has never been involved with any confidential labor relations matters, nor has she ever adjusted a fellow employee’s grievance.
- 8) The position of Executive Secretary has no regular access to confidential labor relations matters.
- 9) The State Properties Committee meets twice a month in open session to discuss items in an agenda which have been posted in accordance with the Open Meetings Laws.
- 10) The Executive Secretary prepares the State Property Committee’s agendas and


CONCLUSIONS OF LAW

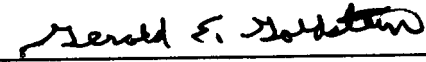
- 1) The position of Executive Secretary held by Anne Lanni is not confidential and is eligible for inclusion within an appropriate bargaining unit.
- 2) The State Properties Committee, as established by R.I.G.L. 37-6-1 is not a Board or Commission.
- 3) The Union did not establish by a preponderance of the reliable credible evidence in the record that the position of Executive Secretary, State Properties Committee shares a community of interest with other members of the bargaining units covered by the certification in Case No. EE-3133.
- 4) The matter of the appropriateness of inclusion of this position of Executive Secretary within the certification of EE-1714 is not before the Board within the present proceeding.
- 5) The State Properties Committee, as established by R.I.G.L. 37-6-1, is not covered by the Certification in Case No. EE-3133.

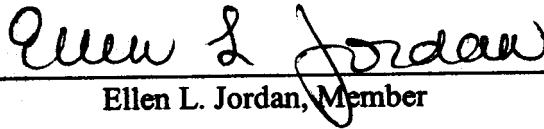
ORDER

- 1) The petition to accrete the position of Executive Secretary (State Properties Committee) to the bargaining unit certified by Case No EE 3133 is hereby denied and dismissed.

RHODE ISLAND STATE LABOR RELATIONS BOARD


Joseph V. Mulvey, I


Gerald S. Goldstein, Member

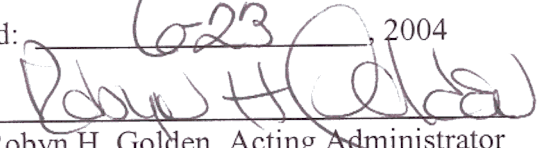

Ellen L. Jordan, Member


John R. Capobianco, Member


Elizabeth Dolan, Member

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

Dated: 6-23, 2004

By: 
Robyn H. Golden, Acting Administrator

**NOTE: Walter J. Lanni, Chairman, recused himself from participation in this matter.
Frank J. Montanaro, Member, abstained from voting in this matter.**