

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

IN THE MATTER OF

TOWN OF JOHNSTON

CASE NO: EE 3188
Unit Clarification
request dated: August 17, 1998

AND

RI COUNCIL 94, ASFCME, AFL-CIO

ORDER OF DISMISSAL

Investigative Agent: Joan N. Brousseau

Petitioner: Town of Johnston

Relief Sought:

- 1) Accretion of the position of Utilities Foreman into the bargaining unit defined in Case No. 3188.

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

September 25, 1998

Labor Board: Joan N. Brousseau.

Employer: Leo Tomasetti

Union: Gerard O'Neill, Esquire; Vincent DeTora; Louis Prata; Ricky Lanni; and Pompeo DelVecchio, Jr.

Documents Submitted:

- 1) Section 10.12 of the effective collective bargaining agreement.
- 2) Correspondence from Union President Louis Prata.

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

October 17, 1998: Mr. Leo Tomasetti, Personnel Director, Town of Johnston

October 23, 1998: Mr. Arnold Vecchione, Utilities Director, Town of Johnston

October 27, 1998: Mr. Louis A. Perrotta, Mayor, Town of Johnston

RELEVANT HISTORY OF THE BARGAINING UNIT

EE-1865: On October 29, 1969, Rhode Island Public Employees, Council 70, AFSCME, AFL-CIO (now known as Council 94) was certified to represent: "All full time employees in the Highway and Park Department excluding Director."

EE-1880: On November 28 1969, the Rhode Island Public Employees, Council 70, AFSCME, AFL-CIO (now known as Council 94) was certified to represent: "All classified employees of the Town."

EE-3188: On September 29, 1977, RI COUNCIL 94, ASFCME, AFL-CIO was certified to represent: “all Town employees presently covered under Case No. EE-1880 and EE-1865, excluding all employees customarily excluded by the State Labor Relations Act.”

Note: The election and certification in this case was a result of a petition filed by the Ocean State Municipal Employees Association and a subsequent election. The petitioner lost to the incumbent Union, Council 70 (now 94).

Section 10.12 of the contract between the parties provides:

“The position of Executive Secretary in Division A of 10.1 and the positions of Recreation Director, Highway Director in Division B of 10.1 shall be appointed at the discretion of the Mayor. Further, the provisions of Section 10.3 of this article shall not apply. Further, when the above positions become vacant, they shall become non-union positions.”

Administrative Procedure:

On October 29, 1998, after the field investigation, the Board’s Agent prepared a five (5) page written memorandum, outlining her discussions and findings in extensive detail. Both the Union and the Employer were provided with a copy of the written report and both had the opportunity to submit additional written responses. On December 1 1998, Union submitted a written response. In reaching the decision herein, the Board considered the contents of the investigator’s report and exhibits and the bargaining history of this unit. ¹

POSITION OF THE PARTIES

The Town of Johnston: As the Petitioner, the Town wants this position accreted to the existing bargaining unit. The position was created in 1990, but the Town isn’t sure why there was not an earlier accretion petition. The Town does not believe the position should be appointed by the Mayor, as is the present practice.

The Union: The Union does not want this position within the bargaining unit. The Union feels that the position is actually the “Utilities Director” and that the annual salary of \$36,050 calculates to \$17.33 per hour, which is higher than the collective bargaining contract rate of \$16.13 per hour for the position of Foreman. The Union argues that the parties have agreed that Director positions will come out of the bargaining unit, as they are vacated.

DISCUSSION

“In determining whether an accretion of employees to an existing bargaining unit is proper, the National Labor Relations Board (NLRB) considers many of the same factors that determine the community-of-interest question, namely, such factors as integration of operations; centralization of managerial and administrative control; geographic proximity; similarity of working conditions, skills, and functions; common control over labor relations; collective bargaining history; and interchangeability of employees. Rhode Island Public Telecommunications Authority v Rhode Island State Labor Relations Board, 650 A2d 479, N.L.R.B. v Security-Columbian Banknote, Co. 541 F.2d 135, 140 (3d Cir. 1976). Therefore, this Board reviews the investigator’s report to determine if there has

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

even been a showing of a “community of interest” between the position proposed for accretion and the other positions already within the bargaining unit.

Notwithstanding the title of “Utilities Foreman”, the parties appear to be in agreement, that the position in issue is in fact a “Director” of a department. Vecchione, the incumbent, considers himself the “Utilities Director”. His verbal description of his duties and responsibilities clearly identifies this position as being of upper management and supervisory in that: (1) He reports directly to the Mayor. (2) His peers with whom he works very closely, have been identified as upper management, are being removed from the bargaining unit as the positions are vacated. (3) He oversees drivers, laborers and clerks and participates in any disciplinary proceedings pertaining to these positions. (4) He is considered by the Mayor to be the “Department Head” and would be the first level employer’s representative contacted within the course of a grievance within the department. (5) He has testified as a witness for the employer at an arbitration hearing. (6) He prepares the budget for the Utilities Department and is responsible for managing and responding to all calls that come to the Department, 24 hours a day. (7) His salary of \$36,050.00 is set by the Town Council and is 7% higher than all the present pay grades within the bargaining unit. (8) The Town Council, when approving the position has referred to the position as the “Utilities Director”.

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) There is a dissimilarity in the scale of earnings between the requested position and the highest paid positions within the bargaining unit.
- 3) The “Utilities Director” or “Foreman” is paid an annual salary and is “on call”, while the members of the bargaining unit are paid an hourly rate and are not “on call”.
- 4) The “Utilities Director” or “Foreman” does not perform the same work as the other members of the bargaining unit.
- 5) The “Utilities Director” or “Foreman” has not traditionally been a member of any bargaining unit
- 6) The “Utilities Director” or “Foreman” is a Department Head, and other Department Heads are being removed from the bargaining unit as the positions become vacant.

CONCLUSIONS OF LAW

- 1) The Petitioner has not established by a fair preponderance of the evidence set forth at the informal hearing or the field investigation that the position of "Utilities Foreman" is eligible for inclusion within the existing bargaining unit.


ORDER

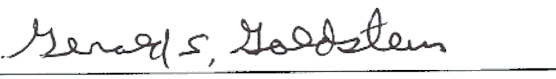
- 1) Pursuant to R.I.G.L. 28-7-9 (d), the petition for the position of "Utilities Foreman" is hereby denied and dismissed


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