

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

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IN THE MATTER OF

STATE OF RHODE ISLAND,  
DEPARTMENT OF CORRECTIONS

Case No. EE-3260

Unit Clarification: Assistant Chief  
Distribution Officer

-AND-

RI COUNCIL 94, ASFCME, AFL-CIO  
LOCAL 2884

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**ORDER OF DISMISSAL**

**Investigative Agent:** Martin E. Joyce, Jr.

**Petitioner:** RI Council 94, AFSCME, AFL-CIO, Local 2884

**Relief Sought:**

- 1) Accretion of the position of Assistant Chief Distribution Officer into the bargaining unit established by Case No. EE-3260.

**Date(s) of Informal Hearing:** July 20, 1999

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

June 13, 2001: Ms. Nancy Regniere, Assistant Chief Distribution Officer

May 8, 2001: Mr. Terrence McNamara, Chief Distribution Officer

**RELEVANT HISTORY OF THE BARGAINING UNIT**

**EE-3260:** On March 6, 1980, RI Council 94, AFSCME, AFL-CIO was certified to represent: "All clerical and maintenance employees, excluding Coordinator of Maintenance."

**Administrative Procedure:**

On July 19, 2001, after the field investigation, the Board's Agent prepared a three (3) page written memorandum, outlining his discussions and findings regarding the petition. Both the Union and the Employer were provided with a copy of the written report, and both had a thirty (30) day period in which to submit additional written responses. On August 20, 2001, the Employer submitted a written response agreeing with the facts set forth in the Investigator's Report, and reasserting the Department's position that the position of Assistant Chief Distribution Officer should not be accreted to any bargaining unit. The Union did not submit any response or information to rebut the Investigator's Report. In reaching the decision herein, the Board considered the contents of the Investigator's Report, the bargaining history of this unit, and the Employer's written response.

**DISCUSSION**

In an accretion petition, the burden is on the Petitioner to establish that the position sought for accretion into a bargaining unit shares a community of interest with the existing bargaining unit. In this case, the Investigator reported that the Petitioner was not familiar with the duties of the position, but that nevertheless, the Union believed there is a community of interest with the other positions contained within the bargaining unit. How the Union could

come to the conclusion that the position rightfully should be included in its bargaining unit when it doesn't even know the duties of the position is curious, at best.

In determining whether accretion of employees to existing bargaining units is proper, the Rhode Island State Labor Relations Board (RISLRB) considers many of the same factors that determine community of interest questions for purpose of bargaining unit determination; namely, such factors as integration of operations, centralization of managerial and administrative control, geographic proximity, similarity of working conditions and skills, 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. (R.I. 1994) Therefore, this Board normally reviews the Investigator's Report to determine if there has even been a showing of a "community of interest" between the position proposed for accretion and the other positions already within the bargaining unit. Only then does the Board move on to whether or not a position is excludable due to other factors; i.e., status as managerial, supervisory, or confidential.

In this case, although the Union was unaware of the duties of the position, the Investigator learned that her duties include: "assisting in the administration and supervision of the service function of the state's warehouse facilities; schedule deliveries, price store items, insure inventories are adequate, deal with vendors and accurately price items for sale to the prisoners, insure proper payment and distribution to the prisoners....Responsible for computerized sales data, and insure orders are put up and priced properly by storekeepers."

In addition, her responsibilities include directing clerical staff, effectively recommending discipline of subordinates, preparing recommendations for the efficient operation of the warehouse, maintaining records/data base, scheduling overtime for employees. This position can also recommend suspension and/or termination. Whether or not this employee shares a community of interest with other employees is not established by the record thus far. Therefore, the Board must conclude that the Petitioner has not met its burden, and cannot find a community of interest with other members of the bargaining unit. However, even if the Union had established that the position shared a community of interest with the bargaining unit, position also qualifies as supervisory, and must therefore be excluded.

**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) The position of Assistant Chief Distribution Officer can effectively recommend discipline, suspension, and/or termination of subordinates.

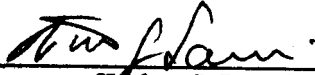
**CONCLUSIONS OF LAW**

- 1) The position of Assistant Chief Distribution Officer is supervisory.
- 2) The Petitioner has not established, by a fair preponderance of the evidence set forth at the informal hearing, or through the field investigation, that the position of Assistant Chief Distribution Officer is eligible for inclusion within the existing bargaining unit.

**ORDER**

- ) Pursuant to R.I.G.L. 28-7-9 (d), the petition for the accretion of the position of "Assistant Chief Distribution Officer" is hereby denied and dismissed.

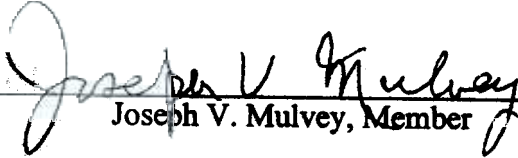
RHODE ISLAND STATE LABOR RELATIONS BOARD



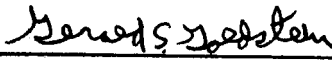
Walter J. Lanni, Chairman



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: January 9, 2002

By:

  
Joan N. Brousseau, Administrator