

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

IN THE MATTER OF

PAWTUCKET HOUSING AUTHORITY

CASE NO: EE 3302

Unit Clarification

request received: May 18, 1998

AND

TEAMSTERS LOCAL UNION NO. 64

ORDER OF DISMISSAL

Investigative Agent: Joan N. Brousseau

Petitioner: Teamsters Local Union No. 64

Relief Sought:

1) Accretion of the Director of Resident Services

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

June 17, 1998 (rescheduled at the request of the Union from June 4, 1998)

Labor Board: Joan N. Brousseau.

Employer: Richard Jocelyn, Esquire; Roland Mousally

Union: Richard Bergeron; Andrew Hladyk

Documents Submitted:

"Agreement between the Housing Authority of the City of Pawtucket and Rebecca L. Florence"

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

July 17, 1998: Rebecca Florence, Director of Resident Services

July 28, 1998: Mr. Roland Mousally, Executive Director, Pawtucket Housing Authority

RELEVANT HISTORY OF THE BARGAINING UNIT

EE-3302: On August 4, 1983, Teamsters' Local #64 was certified to represent: "Managers, Management Aides, Clerk Cashiers" of the Pawtucket Housing Authority.

DISCUSSION

It is axiomatic that a person must be an employee of an employer before that person is even minimally eligible for inclusion within any bargaining unit. There is no one way to make a determination as to whether or not someone is an "employee," as opposed to an independent contractor. The Internal Revenue Services utilizes a twenty-question test to assist it in determining employment status. This test tends to focus on the areas of "control" and indicia of independence. The more control and independence that the worker retains, the more the scale weighs in favor of "independent contractor" status.

In this case, Ms. Florence operates very independently of the Housing Authority. Although she does maintain an office within the Housing Authority's facilities, the same is for her own convenience. However, some of her work is also completed from her home. Ms. Florence is not required to work on the Housing Authority's premises.

Further, Ms. Florence has entered into a contractual agreement with the Housing Authority which recognizes that her status fails to meet the most basic requirement of the status of an "employee." That is, she is paid on an independent contractor's basis and receives a Form 1099 to document her remuneration, instead of a Form W-2. No taxes are taken from her payments, and she assumes all responsibility for the same. Furthermore, she receives no employment "benefit," such as health care. She does not punch a time clock, nor is she required to document her hours of work. She merely submits a monthly status report to the Executive Director. Finally, Ms. Florence's services cannot be terminated without written notice to her, which must specify an effective date at least five days before the date of termination.

Clearly, then, Ms. Florence's status does not even meet the basic definition of an 'employee,' and she is clearly an independent contractor. Therefore, since she is not an employee, this position is not eligible for inclusion within the bargaining unit.

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) Ms. Rebecca Florence serves as the Director of Resident Services for the Pawtucket Housing Authority under a written contract.
- 3) Ms. Florence is paid \$16,500.00 for a six-month period, which is paid in biweekly increments. No taxes are withheld from her check, and she does not receive any employment benefits, such as paid health care.
- 4) Ms. Florence's services cannot be terminated without written notice to her, which must specify an effective date at least five days before the date of termination.
- 5) Ms. Florence provides a written monthly report to the Executive Director, but is not required to keep track of her hours of work.
- 6) Ms. Florence is not required to work on the Housing Authority's premises, but does maintain an office there as a matter of convenience.

CONCLUSIONS OF LAW

- 1) The position of Director of Resident Services is not an "employee" of the Pawtucket Housing Authority and is not eligible for inclusion in any bargaining unit of employees of the Pawtucket Housing Authority

ORDER

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

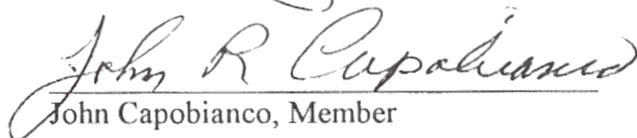
RHODE ISLAND STATE LABOR RELATIONS BOARD


Frank J. Montanaro, Member


Joseph V. Mulvey, Member


Gerald S. Goldstein, Member


Ellen L. Jordan, Member


John Capobianco, Member

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

Dated: May 17, 2000

By: 
Joan N. Brousseau, Administrator