

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 TRANSPORTATION

- AND -

RHODE ISLAND LABORERS' DISTRICT :
COUNCIL on behalf of :
LOCAL UNION 1033 :

CASE NO. EE-3326
Unit Clarification: Office Manager/
Operations

DECISION AND ORDER

TRAVEL OF CASE

The above matter came on to be heard on a Unit Clarification Request for Accretion (hereinafter Petition) for the position of "Office Manager/Operations". The petition was filed with the Rhode Island State Labor Relations Board (hereinafter "Board") on February 21, 2001 by RI Laborer's District Council on behalf of Local 1033 (hereinafter "Union")

Pursuant to R.I.G.L. 28-7-9 (b) (5), an informal hearing was held on March 21, 2001. Representatives of both the Union and the Employer were present and provided extensive information to the Board's investigative Agent. On October 23, 2001, the Board's Agent forwarded a copy of his four (4) page written report to the parties, with instructions that written responses would be accepted by the Board for a period of thirty (30) days. On October 30, 2001 the Union submitted a written response indicating that it agreed with the findings contained within the investigator's report. On November 21, 2001, the Employer filed a written objection to the investigator's report. On December 11, 2001, the Board met to review the investigator's report and the responses of the parties and preliminarily determined that the position of Office Manager/Operations should be included within the bargaining unit defined in Case No. EE-3326.

In accordance with R.I.G.L. 28-7-9 (b) (5), the Board then conducted formal hearings on April 23, 2002 and June 6, 2002. Representatives from the Employer and the Union

¹ The original petition also sought inclusion of a position with the title "pre-Implementation Aide". The original petition also sought inclusion in either EE-3323 or EE-3326. The request for the "Pre-Implementation Aide" was withdrawn at the informal hearing of March 21, 2001. The request for inclusion within EE-3323 was withdrawn at the April 23, 2002 formal hearing. Therefore, this Decision and Order will address only the position of Office Manager/Operations and the bargaining unit defined in Case No. EE-3326.

participated and were provided with a full and fair opportunity to examine and cross examine witnesses and to submit appropriate documentary evidence. The parties were then directed to file any post hearing briefs by August 15, 2002. The Union filed its brief on August 14, 2002. The Employer's brief, dated August 15, 2002, was received by the Board's Administrator on August 19, 2002.

FACTUAL BACKGROUND and SUMMARY OF EVIDENCE

On or about April 14, 1993, the Union was certified by the Board to represent: "all supervisory personnel above the various ranks of Foreman for which a unit or units have already been established within the Highway Maintenance Division in the Department of Transportation." (EE 3326)

The current incumbent of the position of Office Manager/Operations, Debra D'Ambra began her service for the State of Rhode Island, Department of Transportation, Division of Highway Maintenance in 1980 as a Senior Clerk Steno. In 1985 and again in 1987, her position was reclassified, first as a Clerk Secretary and then as a Billing Specialist. In 1996, her position was reclassified to Assistant Business Management Officer. During her tenure in these positions, Ms. D'Ambra was a bargaining unit member of various labor organizations. In November of 1999, the incumbent of the position of Office Manager/Operations within the Division of Highway Maintenance retired. Thereafter, Ms. D'Ambra assumed the duties of this position on an "acting" basis until April of 2000, when she was permanently appointed to the position.² Ms. D'Ambra works under the supervision and direction of Mr. John Nickelson, the Deputy Chief Engineer for Operations.

On direct examination, Ms. D'Ambra testified that her duties include receiving requests from citizens and other parties concerning tree permits and banners, as well as producing various types of reports for Mr. Nickelson (TR 4/23/02 p. 17) She also has daily contact with the field personnel who work for Mr. Nickelson, including the ACI litter crews. (TR 4/23/02 p. 18) She also types letters and memos dictated by Mr. Nickelson. (TR 4/23/02 p. 18-19)

With respect to disciplinary and personnel matters, Ms. D'Ambra testified that Ms. Pamela Moscarelli, a Human Resources Specialist II, has been performing these duties since she was assigned to the division in July of 1999. (TR 4/23/02 p. 19-20) More specifically, Ms.

² The position had been posted as a non-union, confidential position. (Employer's Exhibit #10)

D'Ambra testified that Ms. Moscarelli sets up disciplinary and grievance meetings with the appropriate parties, including Mr. Nickelson and union representatives. (TR 4/23/02 p. 20) Previous to Ms. Moscaelli's hiring, Ms. D'Ambra arranged for the various meetings, but did not participate in the meetings. (TR 4/23/02 p. 20) Ms. D'Ambra testified that her role in these matters is limited to opening an "interdepartmental envelope" to retrieve disciplinary letters written by Ms. Moscarelli, which have been sent for Mr. Nickelson's signature. Ms. D'Ambra acknowledged that she sometimes reads these disciplinary letters. After Mr. Nickelson has signed the letter, Ms. D'Ambra returns it to Ms. Moscarelli, who maintains a copy in her office files. (TR 4/23/02 p. 22)

Ms. D'Ambra testified that she is not involved with grievances at all. She indicated that Mr. Nickelson, Ms. Moscarelli and Marie Marcaccio handle all the grievance matters. (TR 4/23/02 p. 22-23) Ms. D'Ambra testified that she has no role whatsoever in the administration or adjustment of grievances. (TR 4/23/02 p. 23)

As far as other labor relations issues are concerned, Ms. D'Ambra testified that she certainly had no role and that she did not believe that her supervisor, Mr. Nickelson, was involved in these matters. She believed that these matters were handled in either Mr. Paul Pysz's office or elsewhere in the administration. (TR 4/23/02 p. 24) Ms. D'Ambra testified that once Ms. Moscarelli was hired in July of 1999, all personnel issues and labor relations files just "went out of the office". (TR 4/23/02 p. 25, 29)

On cross examination, Ms. D'Ambra testified that all the labor files are locked in Ms. Moscarelli's office. When Ms. Moscarelli is not around, Ms. Marcaccio will get the key and go into Ms. Moscarelli's office to retrieve files. Ms. D'Ambra has never been asked to enter Ms. Moscarelli's office to retrieve a file. (TR 4/23/02 p. 29) With respect to typing, Ms. D'Ambra has typed a few letters, during her tenure of Office Manager, that touched on labor relations issues (Employer Exhibits #4 through #7). None of these letters pertained to a grievance or to labor relations strategy, negotiations or policies. On re-direct examination, Ms. D'Ambra testified that she did not sit in on any of the meetings referred to in Employer Exhibits #4-7, nor was she asked for her opinion regarding the contents of these communications. (TR 4/23/02 p. 39)

The Employer presented the testimony of Mr. John Nickelson, the Deputy Chief Engineer for Operations, Ms. D'Ambra's supervisor. He testified that his responsibilities include the administration of the division, including budget work, personnel matters, and job assignments. (TR 4/23/02 p. 42-43) He testified that his office handles grievances, disciplinary matters, including suspensions, arbitrations, and deals with business agents from unions. (TR 4/23/02 p. 44-45) Mr. Nickelson confirmed that the division's "personnel files" were moved to Ms. Moscarelli's office after she came on board in 1999. (TR 4/23/02 p. 49) He also confirmed that Ms. D'Ambra would not typically have access to these files, although if the occasion arose, he would not have any reservation about asking Ms. D'Ambra to retrieve a file for him. (TR 4/23/02 p. 49) He also testified that when the division moves its offices late in 2002, the office will have an administration section which will include space for him, Ms. Marcaccio, Ms. Moscarelli, Ms. D'Ambra and the environmental scientists. (TR 4/23/02 p. 50)

On cross examination, Mr. Nickelson confirmed that at one time Ms. D'Ambra did have access to personnel files, but that was when she was occupying another job classification and prior to the files being moved to Ms. Moscarelli's office. (TR 4/23/02 p. 51) Mr. Nickelson also acknowledged that thus far, he has never asked Ms. D'Ambra to retrieve any personnel file for him. (TR 4/23/02 p. 51) Mr. Nickelson testified that either he or Ms. Moscarelli handle issues pertaining to employee grievances or discipline (TR 4/23/02 p. 52-53) He confirmed that Ms. D'Ambra does not participate in hearings or meetings relating to grievances or discipline. (TR 4/23/02 p. 54) Mr. Nickelson testified that he might make commentary to Ms. D'Ambra concerning specific disciplinary matters. (TR 4/23/02 p. 55) Mr. Nickelson also testified that there are other job titles in his office that are included within the bargaining unit. They are highway maintenance supervisors, business management officer, chief of highway maintenance supervisors, fiscal officers; a mix of white collar and blue collar jobs are included within the bargaining unit. (TR 4/23/02 p. 57) Mr. Nickelson also acknowledged that, while he played a role in labor negotiations years ago, he has not done so in recent years and certainly not since Ms. D'Ambra became the Office Manager. (TR 4/23/02 p. 58)

The Employer also presented the testimony of Mr. Paul Pysz, the Human Resources Administrator for the Department of Transportation since 1983. (TR 4/23/02 p. 60) Mr. Pysz's

testimony centered largely on the duties of other "Office Managers" within the Department of Transportation, two of which are included within other labor organizations

DISCUSSION

The issue, in this case, is whether or not the position of "Office Manager/Operations", held by Debra D'Ambra is a "confidential" position, as that term is defined by Rhode Island labor law, and therefore excludable from collective bargaining. The current state of the law defining 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 1185 (R.I. 1992). In Barrington, the Court adopted the two pronged "labor-nexus" test of determining whether an employee is "confidential"

"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)

The definition of "confidential" for collective bargaining purposes, as set forth in Barrington, is purposefully and narrowly constricted to two types of employees, because "a more expansive application of the exclusionary rule would deprive a great number of employees, in an unwarranted fashion, of the statutory right to collectively bargain". Barrington at 136, referencing, Note, *"The Labor-Nexus" Limitation on the Exclusion of Confidential Employees—NLRB v. Hendricks County Rural Electric Membership Corp.*, 16 Ga. L. Rev. 745, 754 (1982).

Thus, the word "confidential," within the scope of labor relations, has a very specific legal meaning which departs significantly from the routine dictionary definition of confidential (treated with confidence, private, secret). In all employment situations, there are countless types of information that are considered "private" or "secret", depending upon the relationship of the party seeking the information to the person who has control of the information. For instance, most employee personnel information is private or secret (i.e. "confidential") to the individual employee and designated members of a department of human resources. This does not mean that clerks or secretaries in human relations or personnel departments are ineligible for collective

bargaining. Further, employees with access to investigative pre-employment reports and reports of disciplinary actions, including written reprimands, do not meet the definition of “confidential” for collective bargaining purposes.³

In this case, the Board then has to examine Ms. D’Ambra’s position as it relates to the labor nexus test set forth in Barrington. Under the first prong of the test, the Board has to examine the scope and nature of the position held by the supervisor of the employee whose status is under consideration to see whether the supervisor is a person who formulates, determines, and effectuates management policies in the field of labor relations. In this case, there was no testimony to support a finding that Mr. Nickelson is a “person who formulates, determines, and effectuates management policies in the field of labor relations”. In fact, the testimony in the case supports a finding that Mr. Nickelson does not involve himself much in labor relations matters. As for collective bargaining negotiations, the record is clear that Mr. Nickelson has not been involved for the last seven rounds of negotiations; these matters are generally conducted through the Department of Administration’s Office of Labor Relations. As for individual personnel issues such as grievances, the responsibilities for such matters lie with another subordinate, Ms. Moscarelli. Furthermore, assuming *arguendo* that Mr. Nickelson could possibly be considered to be a management employee who “formulates, determines and effectuates management policies in the field of labor relations”, Ms. D’Ambra still does not fall into the category of a confidential employee because there is no evidence in the record to support a finding that she acts in a confidential capacity to Mr. Nickelson in regards to those duties. There is simply no evidence in the record to support a finding that Ms. D’Ambra, either in her capacity as an assistant to Mr. Nickelson or any other capacity, performs any duties associated with collective bargaining, labor policy, grievance resolution or any other labor relations matter.

As to the second category of confidential employees defined in Barrington, there is no evidence in the record to support a finding that Ms. D’Ambra’s position could be described as “regularly having access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.” In fact, her supervisor, Mr. Nickelson, did not even participate in the last seven rounds of collective bargaining negotiations. Therefore, for all

³ Also see Board’s decision and order in EE-3636 Bristol County Water Authority and Teamsters Union Local 251, decided December 11, 2001.

of the foregoing reasons, the Board finds that the evidence and testimony in the record, as a whole, does not support a finding that the position of Office Manager/Operations is confidential, and the position is eligible for collective bargaining.

The next issue, however, is whether or not the position of "Office Manager/Operations" shares a community of interest with the existing composition of the bargaining unit.

"In determining whether accretion of employees to existing bargaining units is proper, the National Labor Relations Board (NLRB) 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, N.L.R.B. v Security-Columbian Banknote, Co. 541 F.2d 135, 140 (3d Cir. 1976).

No one of these factors is controlling, nor is there any hard and fast requirement of how many factors may or must be met.

In this case, the testimony established that there are other job titles in the Division of Highway Maintenance that are included within the bargaining unit, including: highway maintenance supervisors, business management officer, chief of highway maintenance supervisors, and fiscal officers. There is a common control over labor relations for this division, which is centralized in the Department of Administration. The white collar office positions have similar working hours. The collective bargaining history is such that this is a relatively new bargaining unit, and the position being sought was not in existence at the time the unit was formed. There is also evidence that the position of "Office Manager" is permitted to be in other Unions. Therefore, the Board finds that there exists a sufficient community of interest for the position of "Office Manager/Operations" to be accreted into the existing bargaining unit.

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 Transportation is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.

- 3) Pursuant to R.I.G.L. 28-7-9 (b) (5), the Board held both informal and formal hearings on this matter.
- 4) On or about April 14, 1993, the Union was certified by the Board to represent: "all supervisory personnel above the various ranks of Foreman for which a unit or units have already been established within the Highway Maintenance Division in the Department of Transportation." (EE-3326)
- 5) In April of 2000, Ms. Debra D'Ambra was permanently appointed to the position of Office Manager within the Division of Highway Maintenance within the Department of Transportation.
- 6) Ms. D'Ambra's duties include receiving requests from citizens and other parties concerning tree permits and banners, producing various types of reports for Mr. Nickelson; maintaining daily contact with the field personnel who work for Mr. Nickelson, including the ACI litter crews; typing letters and memos.
- 7) Ms. Pamela Moscarelli, a Human Resources Specialist II, handles disciplinary and personnel matters in the Division of Highway Maintenance, in conjunction with Mr. John Nickelson, the Deputy Chief Engineer for Operations. The Division's personnel files were moved to Ms. Moscarelli's office in July of 1999.
- 8) Ms. D'Ambra is not involved with collective bargaining negotiations or strategy. Ms. D'Ambra is not involved with personnel matters, including discipline or the adjusting of grievances.
- 9) Mr. Nickelson did not participate in the last seven rounds of collective bargaining negotiations for the Division of Highway Maintenance.
- 10) On a few occasions, Ms. D'Ambra has typed memos or letters on issues that relate, in some fashion, to labor relations.
- 11) Within the Division of Highway Maintenance, there are both white collar and blue collar positions that are represented by the bargaining unit, including: highway maintenance supervisors, business management officer, chief of highway maintenance supervisors, and fiscal officers.

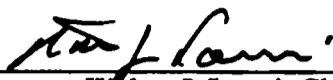
CONCLUSIONS OF LAW

- 1) The Union did establish, by a preponderance of the evidence, that the position of Office Manager/Operations shares a community of interest with the bargaining unit defined in Case No. EE-3326.
- 2) The Employer did not establish, by a preponderance of the evidence, that the position of Office Manager/Operations is confidential, as that term is defined by current Rhode Island labor law.

ORDER

- 1) The Petition to accrete the position of "Office Manager/Operations" to the bargaining unit defined by Case No. EE-3326 is hereby granted.

RHODE ISLAND STATE LABOR RELATIONS BOARD



Walter J. Lanni, Chairman



Frank J. Montanaro, Member



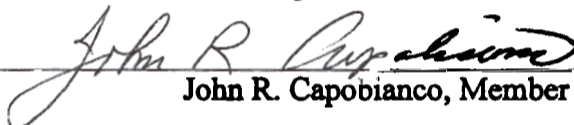
Joseph V. Mulvey, Member



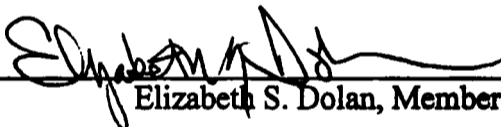
Gerald S. Goldstein, Member



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: November 14, 2002

By: 
Joan N. Brousseau, Administrator