

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

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**IN THE MATTER OF**

**TOWN OF SCITUATE, DEPARTMENT  
OF PUBLIC WORKS**

**CASE NO: EE- 3669  
Unit Clarification:  
Chief Mechanic**

**AND**

**TEAMSTERS LOCAL 251;**

**DECISION & ORDER**

**TRAVEL OF CASE**

The above-entitled matter came on to be heard before the Rhode Island State Labor Relations Board (hereinafter "Board") as a challenged ballot after the certification of election results for an otherwise agreed upon bargaining unit. The election petition was filed on August 6, 2003 by Teamsters Local Union No. 251. An informal hearing was held by the Board's Agent on September 17, 2003 with representatives of both the Union and the Employer. The parties could agree on all other positions except for the Chief Mechanic. Thus, an election was held on October 15, 2003, with the ballot of the Chief Mechanic being held due to the challenge

A formal hearing was held by the Board on the challenged ballot on August 31 2004. Both the Employer and the Union had full opportunity to present evidence and to examine and cross examine witnesses. Upon conclusion of the hearing, the parties also filed briefs. In arriving at the decision herein, the Board has considered the testimony and evidence submitted at the formal hearing and has reviewed both briefs.

**FACTUAL SUMMARY**

The Town of Scituate, Department of Public Works (hereinafter "DPW") is currently staffed by a total complement of fifteen (15) employees, including: the director, two (2) forepersons, one (1) chief mechanic, eight (8) driver/equipment operators, one (1) mechanic, one (1) clerk and one (1) custodian. (TR. p. 11) Mr. Richard Iverson serves as the DPW Director. At the time this petition was filed, the DPW also had a position of Assistant Director, which had been held by Mr. David Dovedale until his

retirement After Mr. Dovedale's retirement, the position of Assistant Director was not re-filled (TR. p. 5)

The terms and conditions for employment of all the DPW employees are set forth in the Town's Human Resource Policy Manual. (Joint Exhibit #1) As Director of the DPW, Mr. Iverson serves as the Department Head and is vested with ultimate responsibility for all personnel decisions within the Department,<sup>1</sup> and also has complete control over the Department's budget. (TR. p. 7 and Joint Exhibit #1, p. 3) Although there was no written organizational chart submitted into evidence, Mr. Iverson described the Department as being divided into two (2) divisions the highway maintenance division and the mechanical and maintenance division. (TR. p. 24) The entire DPW is housed in one facility located at One Lincoln Circle in Scituate.

The primary purpose of the DPW is to maintain town highways and the mechanized motor vehicles and equipment of the Town The DPW has a total of two (2) mechanics, including the Chief Mechanic. As Chief Mechanic, Mr. Randall spends approximately seventy-five (75%) percent of his work day performing mechanic's work and the balance of his work day is spent on prioritizing the workload and completing work orders. (TR. p. 47) When mechanic work arrives in the garage, Mr. Randall normally keeps the more difficult repair work because of his superior work skills. (TR. p. 46) The other mechanic, Mr. Nate Naylor, also fills out work order sheets and performs maintenance and repair work Mr Naylor and Mr. Randall work together to get the jobs [assigned to the garage] done (TR. p. 79)

### DISCUSSION

The Employer in the case has challenged the inclusion of the position of Chief Mechanic as being supervisory and thus ineligible for inclusion within the collective bargaining process

In Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board, 694 A.2d 1185, 1189 (R 1997), the Rhode Island Supreme Court adopted the following federal definition of "supervisor":

“any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” (29 U.S.C. § 152(11))

Thus, in order for supervisory status to exist, three criteria must be met: (1) the individual must have the authority to engage in one of the twelve functions set forth in the aforementioned definition; (2) the exercise of such authority must require the use of independent judgment and (3) the individual must hold the authority in the interest of the employer. NLRB v Health Care & Retirement Corp., 511 US 571, (1994)

Under federal labor law, this list of twelve supervisory functions has been determined to be disjunctive; that is, a supervisor is an individual with the authority to undertake any one of these functions. Rest Haven Living Center, Inc. 322 NLRB 33, 153 LRRM 1132 (1996) It also includes individuals who possess the authority to recommend any of the foregoing actions However, as a practical matter, an individual who fails to exercise any of the indicia of statutory authority will rarely be found to be a supervisor Capitol Transit Company, 114 NLRB 617, 37 LRRM 1005 (1955) enforced, 38 LRRM 2681 (D.C. 1956)

Determining whether an individual uses independent judgment in the exercise of functions indicative of supervisory status is extraordinarily fact intensive analysis. N.L.R.A. Law & Practice 2.03 (4) In analyzing the indicia of “assignment” and “responsibly directing” employees, it is clear that “not all assignments and directions given by an employee involve the exercise of supervisory authority. As stated by the Fifth Circuit

‘If any authority over someone else, no matter how insignificant or infrequent, made an employee a supervisor, our industrial composite would be predominantly supervisory. Every order giver is not a supervisor. Even the traffic director tells the president of a company where to park his car.’” N.L.R.A. Law & Practice 2.03 (4) citing Providence Hospital, 320 NLRB 717 (1996).

Determining whether an employee has used independent judgment in making an assignment requires careful analysis of the facts. For example, work assignments made to equalize work on a rotational basis or assignment based on skills when the differences in skills are well known to the employee is routine Further, assigning tasks

that clearly fall within an employee's job description does not require the use of "independent judgment". In this case, there is no written job description for the Chief Mechanic. The Board was presented with testimony from Richard Iverson, the Director of the Department of Public Works since 1993, and Dean Randall, the incumbent Chief Mechanic since approximately 1997.

### **THE INDICIA OF SUPERVISORY STATUS**

#### ***To hire***

Mr. Iverson testified that he performs all hiring for the DPW, subject to the ultimate approval by the Town Council. (TR. p. 12, 13) He testified that most of the positions get filled from within the department's existing complement of part-time workers. He did state that when he hired Nate Naylor as mechanic, he had to perform an outside search. Mr. Iverson consulted with Mr. Randall and the Assistant Director, Mr. Dovedale, and had all three (3) men participate in the interviewing process. (TR. p. 18) Mr. Iverson testified that everyone agreed that Mr. Naylor was the top candidate and that's who he hired. (TR. ps. 18, 19) Mr. Iverson acknowledged however that he retained the ultimate authority for hiring. (TR. p. 20)

Mr. Randall testified that while he did participate in the interview process for Mr. Naylor and that he did agree that Mr. Naylor was the most qualified as far as his mechanic's skills, Mr. Randall had some concerns about Mr. Naylor's background. (TR. p. 50) Ultimately, Mr. Naylor was hired by Mr. Iverson despite Mr. Randall's concerns. (TR. p. 50) Thus, it seems clear that the ultimate authority for hiring lies not with Mr. Randall but with Mr. Iverson, or even the Town Council. In addition, the Board does not find that Mr. Randall could effectively recommend hiring decisions, because the one time he did participate, his concerns were insufficient to prevent the hiring of Mr. Naylor.

#### ***To transfer***

Mr. Randall does not have the authority to, nor has he ever transferred an employee. There are occasions when Mr. Randall needs additional workers on a temporary basis, due to snow or other conditions. When this occurs, Mr. Randall will ask one (1) of the two (2) foremen to borrow one (1) or more laborers. (TR. p. 26, 53) Mr. Randall has no authority to simply transfer an employee from highway maintenance to vehicle maintenance without consulting with the highway foremen

***To discharge, lay off or to recall***

It is undisputed that Mr. Randall does not possess the authority to discharge, lay off or recall employees. (TR. p. 53) All hiring and firing decisions are made by Mr. Iverson, with the approval of the Town Council. Even when there was an assistant director of Public Works, Mr. Iverson retained all ultimate authority for hiring and firing. (TR. p. 13)

***To promote or reward***

It is undisputed that Mr. Randall does not possess the authority to promote any employees. (TR. p. 50-51) Similarly, Randall has never performed any performance evaluations for Naylor. (TR. p. 52) Annual performance reviews are conducted by Mr. Iverson. (TR. p. 14) Relatedly, Randall has no authority to set or adjust wages or benefits of other Town employees (TR. p. 50, 52) In the past, Iverson has been solely responsible for granting Naylor a wage increase. (TR. p. 53)

***To discipline or suspend***

Mr. Randall testified that he has never been told that he has any authority to discipline another employee. (TR. p. 48) Not surprisingly then, Mr. Randall also testified that he has never issued any discipline. (TR. p. 48) In fact, not even Mr. Iverson has issued any type of discipline in his tenure there since 1993. (TR. p. 13)

***To adjust grievances***

Mr. Randall testified that he did not have the authority to adjust wage and vacation related grievances among other employees. (TR. p. 57) There was no contradictory evidence in the evidence on this issue

***To assign***

The evidence before the Board on this factor is that work gets assigned to the mechanics in the garage by various Town Departments who utilize mechanical equipment (ie// police department, fire department, DPW foremen). Neither Mr. Randall nor Mr. Naylor has any control over what equipment they must repair. Once the work is assigned to the garage for repair, Randall, due to his superior experience, will then prioritize the work, most often retaining the more difficult repairs Randall specifically testified that he is the more experienced mechanic; thus, his retention of the more difficult projects based upon a well known difference in skills is routine. Therefore, Randall's distribution of the work load

based upon skill levels of the two (2) mechanics does not, in this Board's opinion, render him a supervisory employee.

In addition, Randall's prioritization of work is insufficient to render Randall a supervisor. Highland Superstores Inc. v. NLRB, 927 F.2d 918, 921 (6<sup>th</sup>. Cir. 1991) Clark Mach. Corp. 308 NLRB 555, 56 (1992), Kent Prods., 289 NLRB 824, (1988). **Additionally**, Randall specifically testified that he and Naylor work together, to get the job done. (TR. p. 79) Thus, the Board finds that Mr. Randall's actions in prioritizing repair work in the garage are insufficient to render him a supervisory employee.

### ***To responsibly direct***

Mr. Randall testified that he "oversees" Mr. Naylor's work on a day-to day basis, while working on a side-by-side basis with Mr. Naylor. (TR. p. 67) **Mr. Randall indicated** that he monitors what's going on in the shop, especially when it comes to safety issues. (TR. p. 67, 74-75) He testified that depending upon the type of work being done, he might **check on Mr. Naylor's finished work product.** **Mr. Randall does not provide any formal** training classes to Mr. Naylor or any other employees. (TR. p. 77) **Mr. Randall does not** routinely or regularly direct Mr. Naylor in the performance of his daily mechanic duties. **Mr.** Randall does make sure that the work performed in the shop is performed to Department of Transportation standards. (TR. p. 74) In the Board's opinion, Mr. Randall's description of his role in this area is to essentially act as a "quality control" inspector for the finished work **product.** He does not monitor nor direct Mr. Naylor's work, but merely occasionally reviews **it after completion for safety compliance.** **Therefore, the Board finds that Mr. Randall's** actions do not rise to the level of responsibly directing Mr. Naylor, and that his work in the area of quality control does not render him a supervisory employee.

### **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) Richard Iverson, as Director of the Department of Public Works, is vested with the ultimate authority for hiring, firing, and discipline of all employees in the Department. The one time that Mr. Randall participated in the interview process, Mr. Iverson hired someone that Mr. Randall thought may have some background problems.
- 4) Mr. Randall does not have the authority to, nor has he ever transferred an employee. **Mr. Randall has no authority to simply transfer an employee from highway maintenance to vehicle maintenance without consulting with the highway foremen** Whenever Mr. Randall has asked for additional help, it has always been provided to him.
- 5) Mr. Randall does not possess the authority to promote any employees. **Mr. Randall never performed any performance evaluations for Mr. Naylor. Annual performance reviews are done by Mr. Iverson, not Mr. Randall. Mr. Randall has no authority to set or adjust wages or benefits of other Town employees.**
- 6) Neither Mr. Randall nor Mr. Iverson have ever issued discipline to any other employee within the DPW. **Mr. Randall testified that he has never been told that he has any authority to discipline another employee. This testimony was un rebutted.**
- 7) Mr. Randall testified that he did not have the authority to adjust wage and vacation related grievances among other employees. There was no contradictory evidence in the evidence on this issue.
- 8) Work gets assigned to the mechanics in the garage by various Town Departments who utilize mechanical equipment. (ie., police department, fire department, DPW foremen). Neither Mr. Randall nor Mr. Naylor has any control over what equipment **they must repair.** Once the work is assigned to the garage for repair, Mr. Randall, due to his superior experience, will then prioritize the work, most often retaining the more difficult repairs.
- 9) Mr. Randall testified that he "oversees" Mr. Naylor's work on a day-to day basis, while working on a side-by-side basis with Mr. Naylor. **Mr. Randall indicated that he monitors what is going on in the shop, especially when it comes to safety issues.** Mr. Randall does not provide any formal training classes to Mr. Naylor or any other employees. Mr. Randall does not routinely or regularly direct Mr. Naylor in the

performance of his daily mechanic duties. Mr. Randall does make sure that the work performed in the shop is performed to Department of Transportation standards.

#### **CONCLUSIONS OF LAW**

- 1) The position of Chief Mechanic is not a supervisory position and is eligible for inclusion within the bargaining unit certified by EE-3669.

#### **ORDER**

- 1) The position of Chief Mechanic shall be included within the bargaining unit certified by EE- 3669



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**NOTICE OF RIGHT TO APPEAL AGENCY DECISION  
PURSUANT TO R.I.G.L. 42-35-12**

Please take note that parties aggrieved by the within decision of the RI State Labor Relations Board, in the matter of EE-3669 dated 2-10-05 , may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after 2-10-05

Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-31.

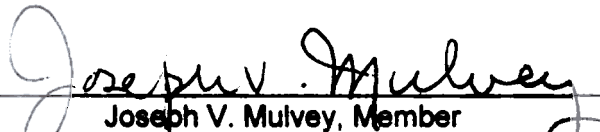
Dated: February 10, 2005

By: Robyn H. Golden  
Robyn H. Golden, Acting Administrator

RHODE ISLAND STATE LABOR RELATIONS BOARD

  
Walter J. Lanni, Chairman

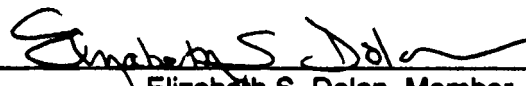
  
Frank J. Montanaro, Member

  
Joseph V. Mulvey, Member

  
Gerald S. Goldstein, Member (Dissent)

  
Ellen L. Jordan, Member (Dissent)

  
John R. Capobianco, Member

  
Elizabeth S. Dolan, Member

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

Dated: FEBRUARY 10, 2005

By:   
Robyn H. Golden, Acting Administrator

EE- 3669