

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

IN THE MATTER OF

RHODE ISLAND BOARD OF GOVERNORS
FOR HIGHER EDUCATION (RIC)

-AND-

PROFESSIONAL STAFF ASSOCIATION @ RIC
LOCAL 3302, AFT, AFL-CIO

CASE NO: EE- 2087
Unit Clarification:
Director, User
Support Services

DECISION AND ORDER OF DISMISSAL

TRAVEL OF CASE

The above-entitled matter came on to be heard before the Rhode Island State Labor Relations Board (hereinafter "Board") on a Request for Accretion (hereinafter "Petition" for the position of Director of User Support Services, currently held by Patricia Hayes. The Petition was filed with the Board by RI College Staff Association, affiliated with the RI Federation of Teachers, AFT, AFL-CIO on January 16, 2002. On February 11, 2002 an informal hearing was held with representatives of the Union and the Employer, pursuant to R. G.L. 28-7-9 (b) (5).

The Board's Agent conducted a subsequent investigation on the request. Upon completion of his investigation, the Board's agent filed an investigative report with the Board on February 25, 2002 and provided a copy of the same to the parties. Formal hearings were held on September 30, 2003 and November 25, 2003. Representatives from the Employer and Union participated and were provided a full and fair opportunity to examine and cross-examine witnesses and to submit appropriate documentary evidence.

DISCUSSION

The Employer in the case has challenged the inclusion of the position of Director of User Support Services as being supervisory and thus ineligible for inclusion within the collective bargaining process. Since the issue of supervisory status could be dispositive of the matter, the Board will examine this issue first.

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 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".

Finally, since the definition of "supervisor" is highly specific and requires a legal conclusion, the statement of employees who either claim or agree they are "supervisors" is not given extensive weight by the Board. In the experience of this Board, there are many occasions when an employee would like to believe that he or she is a supervisor or that a job description claims that an employee is responsible for supervising others. However, when a detailed examination is made of the employee's actual authority to undertake the actions as described in the definition of supervisor, many times the employee fails the "test". In instance, there have been occasions when an employee erroneously thinks he or she is a supervisor because he or she has simply initialed time cards of employees who have reported their hours or who have made assignment to employees within the scope of their regular duties. Therefore, the Board analyzes the actual authority of employees against their statements or job descriptions and makes a legal conclusion as to whether positions are supervisory or not.

Since an employee may classify as a supervisor if he or she has the authority to undertake only just one of the functions set forth in aforementioned definition (i.e., hire, fire, etc) the Board's inquiry will end as to the other functions.

In this case, Patricia Hayes has been employed as the Director, User Support Services for Rhode Island College since October 2001. Ms. Hayes testified before the Board on November 25, 2001 and the Board found her to be a credible, reliable witness. Unfortunately for the Union's petition, the evidence before the Board established that Ms. Hayes has the authority to reprimand subordinate employees and has exercised in fact that authority. (TR. 11/25/03, p. 70) She testified that she believes she has the authority because she was so informed when she was hired and from conversation with the Director of Human Resources. (TR. 11/25/03, p. 79-80) She testified that she has exercised her authority to discipline in an informal manner, but has not issued any formal

written discipline, which, would be placed in a file. (TR. 11/25/03, p. 79-80)
Moreover, she testified that she has issued these informal reprimands to members of the proposed bargaining unit, as well as members of other bargaining units. (TR. 11/25/03, p. 78)

The fact that Ms. Hayes has issued discipline in the form of verbal reprimands, to members of the proposed bargaining unit, is fatal to the Union's petition even though it appears that this is likely the only indicia of supervisory status. The definition and federal law interpreting the definition are quite clear; only one indicia of supervisory status must be present to disqualify an employee as supervisory. Therefore, the petition to accrete the position of Director, User Support Services is hereby denied and dismissed

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) Patricia Hayes has been employed as the Director, User Support Services, for Rhode Island College since October 2001
- 4) Ms. Hayes has the authority to reprimand subordinate employees and has exercised, in fact, that authority.
- 5) Ms. Hayes believes she has the authority because she was so informed when she was hired and from conversation with the Director of Human Resources.
- 6) Ms. Hayes has exercised her authority to discipline in an informal manner, but has not issued any formal written discipline, which, would be placed in a file. She has issued these informal reprimands to members of the proposed bargaining unit, as well as members of other bargaining units.

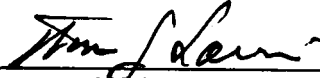
CONCLUSION OF LAW

1) The position of Director User Support Services, held by Patricia Hayes, is supervisory and is ineligible for inclusion within an appropriate bargaining unit.

ORDER

1) The petition to accrete the position of Director User Support Services to the bargaining unit certified by Case No EE-2087 is hereby denied and dismissed.

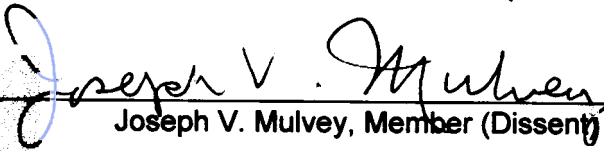
RHODE ISLAND STATE LABOR RELATIONS BOARD



Walter J. Lanni, Chairman



Frank J. Montanaro, Member (Dissent)



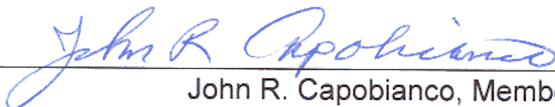
Joseph V. Mulvey, Member (Dissent)



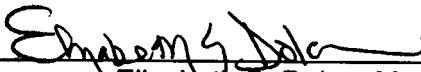
Gerald S. Goldstein, Member



Ellen L. Jordan, Member



John R. Capobianco, Member (Dissent)



Elizabeth S. Dolan, Member

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

Dated:  2005

By: 
Robyn H. Golden, Acting Administrator

-2087 U.S.

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PROFESSIONAL STAFF ASSOCIATION, :
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UNIT CLARIFICATION:
DIRECTOR, USER
SUPPORT SERVICES

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-2087 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