

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

IN THE MATTER OF	:	
	:	
CITY OF NEWPORT	:	
Employer & Petitioner	:	
	:	
AND	:	
	:	
RI COUNCIL 94, AFSCME, AFL-CIO	:	CASE NOS: EE-3141
Respondent	:	and EE-3581
	:	(Unit Clarification)
AND	:	
	:	
NEWPORT MUNICIPAL EMPLOYEES	:	
ASSOCIATION, NEARI	:	
Respondent	:	

DECISION AND ORDER

TRAVEL OF CASE

The above matter came on to be heard on a Request for Clarification (hereinafter Petition) for the position of "Water Meter Supervisor"¹ held by Mr. Dermott McDermott. The petition was filed with the Rhode Island State Labor Relations Board (hereinafter "Board") on May 13, 1998, by the City of Newport (hereinafter Petitioner). The Petition noted that the City sought clarification because two unions; the Newport Municipal Employees Association, NEARI and Council 94, Local 911, both claimed the position as a member of their respective bargaining units. In addition, the Newport Municipal Employees Association, NEARI had also filed a charge of unfair labor practice against the City for its refusal to recognize the position of Water Meter Supervisor as NEARI's position. (ULP 5290)

Pursuant to R.I.G.L. 28-7-9 (b) (5), an informal hearing was scheduled for June 9, 1998. However, at the request of the parties, the matter was postponed several times and was finally heard on July 14, 1998. Representatives of both Unions and the City were in attendance and provided information to the Board's investigative Agent. On July 24, 1998, the Agent interviewed Mr. McDermott, Water Meter Foreman; and on September 25, 1998, the Agent met with Mr. Roy Anderson, the Director of Utilities for the City of Newport. Finally, on September 28, 1998, the Agent spoke with Mr. Michael Coury, from the City's personnel office.

¹ Although the Petition sought clarification of the position of "Water Meter Supervisor", Mr. McDermott's title is actually "Water Meter Foreman".

On October 6, 1998, the Agent forwarded a copy of her eight (8) page written report to all the parties in this case. On November 4, 1998, NEARI filed a written response to the Agent's report. On January 27, 2000, the Board reviewed the matter and made a preliminary determination that the position of Water Meter Supervisor (Foreman) should remain within the bargaining unit represented by Council 94 in Case No. EE-3141. In accordance with R.I.G.L. 28-7-9 (b) (5), the Board then scheduled the matter for formal hearing for April 20, 2000. Thereafter, due to a scheduling conflict with Council 94's attorney, the Board re-scheduled the case to hearing on March 28, 2000, where the Petitioner and both of the Respondents were represented by legal counsel.

FACTUAL BACKGROUND

On or about October 4, 1976, Council 70, AFSCME, AFL-CIO (now known as Council 94) was certified by the Board to represent: "All City Employees, excluding supervisory and professional personnel, as described in Certification 1764. This Petition specifically excludes Policemen, Firemen, Teachers, and employees as defined in certification 1727." On or about April 22, 1997, NEARI was certified to represent a bargaining unit that contained the position of "Water Meter Supervisor". At the time of NEARI's certification, the position of "Water Meter Supervisor" had recently been vacated by the February 1997 retirement of Mr. Fred Kelly, a long time employee.

In addition to Mr. Kelly's retirement, another employee (Water Meter Repairman) from the Water Meter Department was terminated in February 1997. Neither position was immediately re-filled. Thereafter, the City and Council 94, with no input from NEARI, agreed to a reorganization of the Department and to create the position of Water Meter Foreman, which was a combination of duties from both the Water Meter Repairman's position and the Water Meter Supervisor's position. Mr. McDermott began filling the position of Water Meter Foreman in approximately March 1997 and in August 1997, he received a formal pay grade differential under Council 94's "U" pay schedule, bringing his annual salary from \$27,379.00 to \$34,426.00. In August 1997, NEARI filed a charge of unfair labor practice against the City for its refusal to recognize the position of Water Meter Supervisor as a NEARI position. (ULP 5290)

POSITIONS OF THE PARTIES

The Respondent NEARI asserts that the position of "Water Meter Foreman" is actually the same position as "Water Meter Supervisor"; the position has just been re-named. Therefore, NEARI contends that no matter what the position is called, it rightfully belongs within NEARI's supervisory bargaining unit, as originally certified. Respondent Council 94 contends that the position of Water Meter Foreman is distinct from the vacant Water Meter Supervisor position, and that the position Water Meter Foreman shares a community of interest with Council 94's bargaining unit. Upon the conclusion of the formal hearing, the Petitioner City argued that the position should remain in Council 94.

DISCUSSION

There are two inquiries to be made to reach a conclusion in this case. First, whether Mr. McDermott's duties fit within the scope of the supervisory unit represented by NEARI. Second, in the event that the Water Meter Foreman is not a supervisory position, does it share a community of interest with the Council 94 unit.

In the Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board, 694 A.2d 1185, 1189 (R.I. 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))

In this case, Mr. McDermott testified that five employees report to him; three (3) water meter repairmen, a maintenance mechanic and a senior billing account clerk. (TR. p. 18) In his capacity as Water Meter Foreman, Mr. McDermott issues work assignments for reading the meters and also assigns maintenance, repair and testing responsibilities. (TR. p. 19-20) The schedules for the three repairmen are set on a monthly basis. (TR. p. 20) Mr. McDermott establishes a preliminary budget request for the Department and then reviews the same with his supervisor, the Utilities Director. (TR. p. 23)

Mr. McDermott testified that he would probably be the first person that one of the employees in his department would see if there was an employment problem. (TR. p. 25) In the

event the problem could not be resolved, Mr. McDermott testified that he believes the next step for the employee would be to take it to the Utilities Director. (TR. p. 26) Mr. McDermott acknowledged that he has dealt with some problems in a "personal way" and has undertaken disciplinary measures by speaking to employees. (TR. p. 26) As far as hiring is concerned, Mr. McDermott participated as a member of a committee to review a secretarial candidate. (TR. p. 30) There have been no firings since Mr. McDermott began serving as Water Meter Foreman. (TR. p. 31)

Mr. McDermott does schedule overtime for employees within the Water Meter Unit, when necessary. (TR. p. 45) The other employees within the Unit are required to inform Mr. McDermott if they are going to be out sick. Mr. McDermott does have the ability to deny scheduling vacation time. (TR. p. 45)

The record is simply devoid of any evidence, credible or not, that Mr. McDermott has the authority to transfer, suspend, lay off, recall, promote, discharge or reward other employees or to effectively recommend any such action. The record, in this case, also indicates that Mr. McDermott has no ability to hire or fire employees. The most that can be said is that he has been consulted, along with others, on the hiring of one secretary. There was no question that he did not have the final say in whether the person was hired and the record is insufficient to support a finding that he "effectively recommended" a hiring. Therefore, there are only three remaining issues to consider:

- (1) Whether Mr. McDermott uses his own independent judgment when directing or assigning work to the members of the Water Unit, or whether his exercise of authority is of a routine or clerical nature.
- (2) Whether Mr. McDermott can discipline employees, or effectively recommend discipline.
- (3) Whether Mr. McDermott can adjust grievances or effectively recommend such action.

The Board shall consider each of these issues in order. First, does Mr. McDermott use his own independent judgment when directing or assigning work to the members of the Water Unit, or is his exercise of authority of a routine or clerical nature? The testimony in this case established that there is a certain limited roster of duties performed by the Water Unit, and these water meter reading duties are repeated on a four month cycle. In the event that Mr. McDermott

is not in to make the monthly or daily assignments, the mechanic will make up the work orders. Other than reading the meters, the work assignments are made in response to customer demands or needs, on an as-needed basis. There is no evidence in the record to suggest that Mr. McDermott uses his independent judgement to assign a particular type of problem to any particular worker. It is clear from the record that the work assignments are all routine in nature and do not require the use of independent judgement.

As for issuing discipline, there is scant evidence in the record concerning this issue. Although Mr. McDermott indicated that he has spoken to workers about problems, this Board does not believe that just speaking to an employee constitutes discipline. (TR. p. 26)

Finally, as far as resolving grievances is concerned, the record established that there haven't been any instances of grievances filed within Mr. McDermott's tenure as Water Meter Foreman, so it is unclear what role, if any, Mr. McDermott would have in adjusting these grievances. In addition, Mr. McDermott testified that he thought that these types of issues would be taken up with his supervisor, the Director of Utilities. The Board finds that there is insufficient evidence in the record to persuade the Board that Mr. McDermott has any real authority when it comes to adjusting employee grievances.

For all of the foregoing, the Board finds that the position of Water Meter Foreman does not fall within the definition of supervisory, and is not appropriate for inclusion in the NEARI unit.

Having answered the question of whether the Water Meter Foreman is a supervisory position in the negative, the Board will now determine whether this position shares a community of interest with the other Council 94 positions within the Water Meter Unit. This position has been described as a working Foreman. (TR. p. 51) Mr. McDermott's hours of work are from 7:00 a.m. - 3:30 p.m., which is the same schedule as the other members of the Water Meter Unit. (TR. p. 36) All employees get a one-half hour lunch break. All the positions report to and work from the same location. (TR. p. 36) All of the positions, other than Foreman, have been in the Council 94 unit for many years, and there has been a long history of bargaining with this particular unit. Much of the unit's work is interchangeable; that is if one employee is absent, any of the others can, and do, fill in. The Water Meter Foreman is a working Foreman and works in the field, on calls, on a regular basis. (TR. p. 37, 39) For all of the foregoing, the Board finds

that the position of Water Meter Foreman has a sufficient community of interest to be included within the Council 94 bargaining unit.

FINDINGS OF FACT

- 1) The Petitioner, City of Newport is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
- 2) The Respondents, Council 94 and NEARI are both labor organizations, which exist and are 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.
- 3) On or about October 4, 1976, Council 70, AFSCME, AFL-CIO (now known as Council 94) was certified by the Board to represent: "All City Employees, excluding supervisory and professional personnel, as described in Certification 1764. This Petition specifically excludes Policemen, Firemen, Teachers, and employees as defined in certification 1727."
- 4) On or about April 22, 1997, NEARI was certified to represent a bargaining unit that contained the position of "Water Meter Supervisor". At the time of NEARI's certification, the position of "Water Meter Supervisor" had recently been vacated by the February 1997 retirement of Mr. Fred Kelly, a long time employee.
- 5) The position of Water Meter Foreman is a combination of duties from both the Water Meter Repairman's position and the Water Meter Supervisor's position
- 6) In the scope of his employment as Water Meter Foreman, Mr. McDermott does not have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action.
- 7) Mr. McDermott's actions in assigning or directing the employees in the Water Meter Unit are merely routine or clerical, and do not require the use of independent judgment.

CONCLUSIONS OF LAW

- 1) The position of Water Meter Foreman held by Dermott McDermott is not supervisory and is eligible for collective bargaining in a rank and file unit.
- 2) The position of Water Meter Foreman shares a community of interest with the Council 94 bargaining unit.

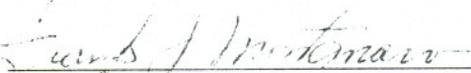
ORDER

- 1) The position of Water Meter Foreman held by Dermott McDermott shall be and is hereby accreted to the certification in Case No. EE-3141.

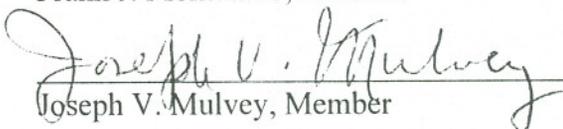
RHODE ISLAND STATE LABOR RELATIONS BOARD



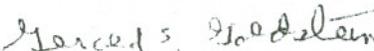
Walter J. Lantti, Chairman



Frank J. Montanaro, Member



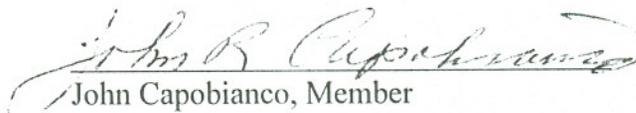
Joseph V. Mulvey, Member



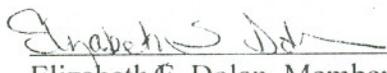
Gerald S. Goldstein, Member



Ellen L. Jordan, Member



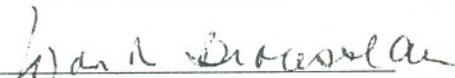
John Capobianco, Member



Elizabeth F. Dolan, Member

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

Dated: December 7, 2000

By: 
Joan N. Brousseau, Administrator