

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

IN THE MATTER OF
TOWN OF NARRAGANSETT

AND

CASE NO. EE-1610

LOCAL 1589, INTERNATIONAL
ASSOCIATION OF FIRE FIGHTERS,
AFL-CIO (UNIT CLARIFICATION:
SECRETARY)

DECISION
AND
ORDER

I. BACKGROUND

Local 1589, International Association of Fire Fighters, AFL-CIO (hereinafter Union) was certified by the Rhode Island State Labor Relations Board (hereinafter Board) on February 1, 1966, as the bargaining representative for a unit defined as: "All paid full time uniformed members of the Fire Department of the Town of Narragansett". At the time of this Certification; (1 Rhode Island General Laws (R.I.G.L. Title 28, Chapter 9.1 (commonly known as the Fire Fighters Arbitration Act) in Section 5 provided that:

"The labor organization selected by the majority of fire fighters in any city or town shall be recognized by such city or town as the sole and exclusive bargaining agent for all of the members of the city or town fire department unless and until recognition of such labor organization is withdrawn by vote of a majority of the fire fighters"; (Underlining added).

(2 R.I.G.L. 28-9.1-3, at the time of its first enactment in 1961 defined the term "fire fighter" as:

"(a) The term 'fire fighter' shall mean the permanent uniformed members of any paid fire department in any city or town within the state".

On December 20, 1993, the Union filed with the Board a letter requesting that the newly created position of Secretary within the Fire Department be included within the bargaining unit certified in Case No. EE-1610. After an investigation by an Agent of the Board,

The Fire Fighters Arbitration Act was first enacted in 1961.

the Board on February 1, 1994, notified the Union and the Town of Narragansett and the Narragansett Fire Department that:

"After careful consideration of all of the information available, the Board has determined that the definition contained in 28-9.1-3 does apply in that:

(1) The term 'fire fighter' shall mean...all employees of any paid fire department in any city or town, within the state.

Therefore, it is the Board's determination that the position of 'secretary' in the Narragansett Fire Department shall be accreted to the bargaining unit defined in Case No. EE-1610".

On February 18, 1994, the Town of Narragansett requested the Board to: "...convene a hearing on this matter. The Town does not believe that this position appropriately belongs in the unit in

the secretary holds a confidential status". In response to such request, the Board held a Formal Hearing on the matter of the accretion of the position of Secretary in the Narragansett Fire Department to the previously certified unit in Case No. EE-1610

Formal Hearing was held on April 13, 1994, and Briefs were submitted by the Union on May 12, 1994, and by the Town of Narragansett on May 13, 1994.

II. DISCUSSION

Before discussing the matter in detail, the Board will set forth the history of the term "Fire Fighter" as set forth in R.I.G.L. 28-9.1-3. Commonly known as the Fire Fighters Arbitration

As noted above, when the Fire Fighters Arbitration Act was first enacted in 1961, it defined Fire Fighter as:

"...the permanent uniformed members of any paid fire department in any city or town within the state"

Chapter 74, Section 1 of the Public Laws of Rhode Island, 1976, amended R.I.G.L. 28-9.1-3 to read as follows:

"(a) The term 'fire fighter' shall mean the permanent uniformed members and all employees of any paid fire department in any city or town within the state". (Underlined words were the 1976 Amendment to 28-9.1-3).

Chapter 69, Section 1 of the Public Laws of Rhode Island, 1986, amended R.I.G.L. 28-9.1-3 to read as follows:

"(a) The term 'fire fighter' shall mean the permanent uniformed members, rescue service personnel of any city or town, emergency medical services personnel of any city or town, and all employees of any paid fire department in any city or town within the state". (Underlined words were the 1986 Amendment to 28-9.1-3).

It is noted by the Board that there are no provisions within Fire Fighters Arbitration Act or in any other statute of the State of Rhode Island which calls for the exclusion of any class of employee of a paid Fire Department in any city or town within the State. To the Board, the language of R.I.G.L. 28-9.1-3 is clear

unambiguous. In addition to permanent uniformed members rescue service personnel, emergency medical services personnel, and

employees of any paid fire department in any city or town within the State are to be included within the bargaining unit. While the mandatory inclusion of all such employees, including the Chief of the Department² within the bargaining unit, may not seem to some people appropriate for a variety of reasons, this Board cannot ignore the clear and unambiguous language of R.I.G.L. 28-9.1-3.

The Town of Narragansett argues that the Secretary is a confidential employee and should be excluded and cites the case of Barrington School Committee v. Rhode Island State Labor Relations Board, RI 608 A2d 1126 (1992). As said by the Town of Narragansett at Page 2 of its Brief:

"In that case, [Barrington Supra] the Supreme Court was reviewing the definition of 'municipal employee' set forth in R.I.G.L. § 28-9.4-2. At the time that the matter first arose, this definition did not contain a specific exclusion for confidential employees. The Court, however determined that, based upon policy concerns and the Board's prior decisions barring confidential employees from belonging to a bargaining unit it would acknowledge and accept this exclusion from the definition of 'municipal employees'".

² In the instant case, the Chief of the Narragansett Fire Department has not been included within the bargaining unit. The Chief, Union, and the Town have excluded the Chief from the unit provided for in the Collective Bargaining Agreement. Such is a permissible exclusion where the Chief, Union and Employer agree to exclude the Chief. Gallucci v. Brindamour, RI ___, 477 A2d 617 (1984); Town of Lincoln v. Lincoln Lodge No. 22, RI ___, 660 A2d 710 (1995).

The Board would first note that the Barrington case, *supra* involved a municipal employee. Under the definition of "municipal employee" contained within the Act relating to municipal employees, Fire Fighters are expressly excluded therefrom. Whatever may be said about Barrington, *supra*, the General Assembly amended the definition of "municipal employee" by Section 1 of Chapter 58 of Public Laws of Rhode Island 1989. R.I.G.L. 28-9.4-2 (b) now defines a municipal employee to mean:

"...any employee of a municipal employer whether or not in the classified service of the municipal employer, except: ...(4) 'confidential' and 'supervisory' employees; ...".³

The General Assembly made it clear that nothing in R.I.G.L. 28-9.4-1, et seq. applies to Fire Fighters. The Board must look to the provisions of the Fire Fighters Arbitration Act to determine may be included in a unit of Fire Fighters. The General Assembly in its wisdom has seen fit to mandate the inclusion of certain named categories of employees as appropriate for inclusion in a bargaining unit under the Fire Fighters Arbitration Act. As noted above, the Act provides for and requires the inclusion within the bargaining unit of "all employees" of any paid Fire Department. There is no question in this case that the Narragansett Fire Department is a paid Fire Department. The Board concludes from the Decision of the Rhode Island Supreme Court in the Lincoln Case, *supra*, that regardless of what others may deem an inappropriate inclusion within a bargaining unit, once the General Assembly has spoken, the Board is bound thereby. For the Board, sua sponte, to determine that employees of a paid Fire Department should be excluded from a bargaining unit of such Fire Department would be tantamount to the exercise of legislative power. This, the Board is not prepared to do. Until such time as the Supreme Court of the State of Rhode Island determines otherwise, the Board will continue to include within a bargaining unit of "Fire Fighters" those

³ Other exclusions are included under R.I.G.L. 28-9.4-2 (b) but are not relevant here.

employees who are classed under the definition of Fire Fighter as set forth in R.I.G.L. 28-9

However, assuming that the Supreme Court might ultimately exclude from a "Fire Fighter" bargaining unit an employee who is determined to be a confidential employee, the Board determines in this case that the Secretary employed in the Narragansett Fire Department is not a confidential employee. The determination of a confidential employee is arrived at by the employment of the so-called "Labor-Nexus" test as set forth in the Barrington Case, supra. Under the "Labor-Nexus" test there are two (2) categories of confidential employees. As said by the Rhode Island Supreme Court in the Barrington Case, supra, at Page 1136 of 608 A2d:

"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'. (Citations omitted). The second category consists of those employees who in the course of their duties 'regularly have access to confidential information concerning anticipated changes which may result from collective bargaining negotiations'..."

To be classified as a confidential employee, the employee's job responsibilities must fall within one of those categories

The evidence before the Board did not establish that the Fire Chief for whom the Secretary worked in part had any real or substantial input into the formulation, determination, and effectuation of management policies in the field of labor relations. The best that can be said from the Chief's own testimony is that if called upon, he might have some input into contractual proposals for the Town (Tr. Page 11). However, the testimony was unrefuted that in his short period as Chief, he has not been involved in contract negotiations (Tr. Page 11). He might if called upon put comments in writing (Tr. Page 11) but there was no evidence that he has ever done so. The record is devoid of any credible evidence that the Chief was involved in the formulation of management policies in the field of labor relations. The record is also clearly devoid of any credible evidence that the Chief was ever involved in the determination of management policies in the field of labor relations. Finally, the record is further devoid of

credible evidence that the Chief was involved in the effectuating of management policies in the field of labor relations. The best that can be said from the testimony of the Chief (the only witness in this case) is that he does handle some grievances pursuant to the provisions of the Collective Bargaining Agreement. However, he has no authority to hire employees (Tr. Pages 27-28). Employees are hired by the Town by either the Town Council or the Town Manager (Tr. Page 28) after testing (Tr. Page

The record is devoid of any evidence to establish the Chief's right to fire any employee. From the evidence, the Board can only conclude and does conclude that the Chief does not formulate, determine or effectuate management policies in the field of labor relations. Therefore, the Secretary does not assist or act in a confidential capacity to a person who formulates, determines or effectuates management policies in the field of labor relations and consequently, does not meet the first prong of the "Labor-Nexus"

As to the second prong of the "Labor-Nexus" test, the record is devoid of any credible evidence that the Secretary regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations. The Chief, for whom the Secretary works, was no part of collective bargaining negotiations. It is clear from the record that the Chief does not formulate management policies in the field of labor relations. Clearly, the Secretary neither had nor has access to such policies. Additionally, the Chief does not determine management policies in the field of labor relations. The Secretary therefore neither has nor had regular access to such non-existent policies. Finally, the Chief does not effectuate management policies in the field of labor relations. The Secretary could and not have access thereto.

Introduced as Town Exhibit #1 was a job description of the Secretary's duties. An examination thereof makes it clear that the duties are clearly ministerial in nature. As stated in the

Position Description (Town Exhibit 1 for the position of Secretary
(Fire Department):

"POSITION PURPOSE AND OBJECTIVES

An employee in this class performs a variety of clerical, secretarial and administrative tasks in keeping official records, providing administrative support to the Fire Chief, and assisting in the administration of the standard operating policies and procedures of the Fire Department. The individual performs routine clerical and administrative work in answering phones, receiving the public, data processing, and bookkeeping under the general supervision of the Fire Chief". (Underlining added).

Further the essential functions of the Secretary in Position Description are described as follows:

"ESSENTIAL FUNCTIONS

Prepares and checks weekly payroll for accuracy and compliance with union contracts.

Assists in the procurement of department materials and supplies by preparing purchase orders and other documentation in accordance with Town regulations.

Receives and distributes incoming mail, processes outgoing mail.

Transcribes, composes, edits, and types routine correspondence, reports and documents requiring judgment as to content, accuracy, and completeness.

Operates standard office machines, as required

Answers and operates central telephone system and routes callers or provides information as required.

Maintains a filing system, and acts as receptionist for Fire Department.

Receives the public and answers questions, responds to inquiries from employees, citizens and others and refers, when necessary, to appropriate persons".

Without belaboring this Decision, the Board would note that the "Essential Functions" are hardly of such nature as to raise the position of Secretary to an employee who in the course of his or her duties "regularly have access to confidential information concerning anticipated changes which may result from collective bargaining negotiations". Whatever little information may come to the Secretary relating to grievances is clearly not sufficient to meet the second prong of the "Labor-Nexus" test.

The Board has reviewed the testimony of the only witness in this case (the Chief) and can only come to the conclusion that the

Secretary, even if the Board must consider the question of confidentiality, (which it rejects) is not such an employee as meets either prong of the "Labor-Nexus" test and the Board will accrete the position of Secretary in the Town of Narragansett Fire Department to the bargaining unit previously certified in Case No. EE-1610.

FINDINGS OF FACT

1. The Union is a labor organization within the meaning of the Rhode Island State Labor Relations Act, which exists and is constituted for the purposes, in whole or in part, of collective bargaining relative to wages, rates of pay, hours, working conditions and other terms and conditions of employment.

2. The Town of Narragansett is an employer within the meaning of the Rhode Island State Labor Relations Act.

3. The Fire Fighters Arbitration Act (R.I.G.L. 28-9.1-5) provides

"The labor organization selected by the majority of fire fighters in any city or town shall be recognized by such city or town as the sole and exclusive bargaining agent for all of the members of the city or town fire department unless and until recognition of such labor organization is withdrawn by vote of a majority of the fire fighters". (Underlining added)

4. The term "fire fighter" is defined by R.I.G.L. 28-9.1-3 to mean:

"...the permanent uniformed members, rescue service personnel of any city or town, emergency medical services personnel of any city or town, and all employees of any paid fire department in any city or town within the state". (Underlining added)

5. The Town of Narragansett's Fire Department is a paid fire department.

6. The position of Secretary is a position within the Town of Narragansett's Fire Department.

7 The Fire Fighters Arbitration Act makes no provision for exclusion of any particular class of position from inclusion within the bargaining unit.

8. Under R.I.G.L. 28-9.1-3, the Secretary is included within the bargaining unit.

9. The Chief of the Narragansett Fire Department does formulate, determine, or effectuate management policies in field of labor relations.

10. The Secretary does not act in a confidential capacity to anyone who formulates, determines or effectuates management policies in the field of labor relations.

11. The duties of the Secretary, by Job Description, clerical and ministerial in nature

12. The Secretary does not regularly have access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

13. The Secretary is not a confidential employee.

CONCLUSIONS OF LAW

1. The position of Secretary within the Narragansett Department must be included within the bargaining unit of fire fighters by virtue of the provisions of R.I.G.L. 28-9.1-3.

2. The Town of Narragansett did not, by credible evidence, establish that the position of Secretary within the Narragansett Fire Department is a confidential one.

ORDER

It is hereby Ordered that:

The position of Secretary in the Narragansett Fire Department is accreted to the bargaining unit defined in Case No. EE-1610.

RHODE ISLAND STATE LABOR RELATIONS BOARD

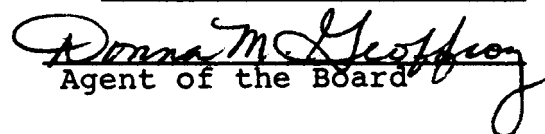

Joseph V. Mulvey, Chairman


Raymond Petrarca, Member


Glenn H. Edgecomb, Member

Entered as Order of the
Rhode Island State Labor Relations Board

Dated: October 17, 1995

By: 
Agent of the Board