

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

IN THE MATTER OF	:	
EAST GREENWICH SCHOOL COMMITTEE	:	
-AND-	:	CASE NO: EE- 1630
EAST GREENWICH EDUCATION	:	<b>Unit Clarification:</b>
ASSOCIATION NEARI/NEA	:	Athletic Director

**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 Athletic Director, currently held by Vincent Varrecchione. The Petition was filed with the East Greenwich Education Association NEARI/NEA, on February 2, 2006. An informal hearing was schedule relative to this matter for February 27, 2006. However, in place of the informal hearing, the parties mutually agreed to submit a written statement of facts to the Board's office on or before March 10, 2006. The Union's Statement was dated February 24, 2006 and received on February 27, 2006. The Employer's Written Statement of Facts was dated March 2, 2006 and received on March 3, 2006. On March 13, 2006 the Union submitted a Response to the School Committee's Statement of Fact.

The Board's Agent conducted a subsequent investigation on the request. Upon completion of the investigation, the Board's agent filed an investigative report with the Board, and on August 11, 2006 provided a copy of the same to the parties. Both the Union and the Employer submitted a written response to the investigative report. Formal hearings were held on February 15, 2007, March 15, 2007 and March 27, 2007. 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. Upon conclusion of the hearings, both parties submitted their briefs on May 11, 2007, and the matter was considered by the Board at its June 12, 2007 meeting.

## DISCUSSION

Prior to the creation of the full-time Athletic Director's position, the Employer utilized the services of an "Athletic Coordinator", a limited, part-time position held by a teacher, Ms. Debra McMullen, who also had teaching responsibilities. On June 16 2005, Ms. McMullen submitted an official letter of resignation to the School Committee, due to the conflicting demands of her young family. (Respondent's Exhibit #1) In her resignation letter, Ms. McMullen suggests that the School Committee consider making the position full-time or in the alternative, provide some part-time clerical or administrative assistance to the Athletic Director. Ms. McMullen also suggest that if the School Committee does decide to make the position full-time, then the duties of Athletic Director for the middle school could be incorporated into the new position. On June 9, 2005, the School Committee submitted a help wanted ad to the Providence Journal, seeking a new Athletic Director for the East Greenwich High School. The position was advertised as a part-time (.6) position. A vacancy notice was also posted "in-house" within the school system. No bargaining unit members applied for the position.

On July 29, 2005, after discussing Ms. McMullen's recommendations, the School Committee posted a new notice of vacancy for Athletic Director. This posting was for a full-time, non-union, management position, with a salary range of \$55,000.00 to \$65,000.00. (Respondent's Exhibit #3) Forty-six (46) individuals applied for the position and eight (8) individuals were granted an interview. On August 25, 2005, Michael Levine, the Acting Principal of East Greenwich High School, wrote to the Superintendent of Schools recommending that Vincent Varrecchione be hired as the new Athletic Director. On August 26, 2005, the Acting Superintendent of Schools recommended that the School Committee increase the salary of the position to \$72,000.00. (Respondent's Exhibit #4, p. 2) On August 30, 2005, the School Committee voted to hire Mr. Varrecchione. Mr. Varrecchione accepted the position and in October 2005, entered into an employment contract with the School Committee.

The Union argues that the new position of Athletic Director is a non-administrative, professional position which is eligible for collective bargaining under

Chapter 9.3 of Title 28 of the Rhode Island General Laws. The Union then argues that the position of Athletic Director is not supervisory and shares a community of interest with the members of the proposed bargaining unit. The Employer has challenged the inclusion of the position of Athletic Director into the bargaining unit 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.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))

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.

### **THE ATHLETIC DIRECTOR’S POSITION**

The Employer presented the testimony of Mr. Vincent Varrecchione, the Athletic Director. He described his position as being “in charge of virtually every aspect of the athletic program with regard to coaches, students, supervision, maintenance, et cetera.” (TR. p. 71) He stated that there are approximately 50 teams between the high school and middle school, with at least one coach for each team, plus some volunteer coaches and advisers. (TR. p. 71) Of the

approximately sixty (60) to seventy (70) coaching individuals, approximately one-third (1/3) of them are teachers in the East Greenwich School system. (TR. p. 72) There are approximately 500 student athletes. (TR. p. 72) Mr. Varrecchione testified that he was advised, prior to be offered the position, that the job would not be typical in terms of its hours or days of work. He was advised by Mr. Levine, the high school principal, that the job would require working nights, weekends, holidays and extra time in the summer. (TR. p. 82) Mr. Varrecchione testified that he entered into an Employment Agreement with the School Department and that the Employer entered that contact as an Exhibit in these proceedings. Mr. Varrecchione testified as to a great many things, however, this particular decision is going to focus on a limited amount of testimony, because it is not necessary to discuss every detail of evidence, in order to reach a decision.

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

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

The parties in this case agree that only a School Committee has the authority to “hire” coaches. Therefore, there can be no question that Mr. Varrecchione does not actually hire the coaches. The question then becomes whether he effectively recommends hiring of the coaches and whether he has any authority to hire other employees. Mr. Varrecchione testified that when there is a vacancy in the coaching staff, he goes through Human Resources to place an ad. Applications are sent directly to Mr. Varrecchione who reviews them and decides on whom to interview. (TR. p. 125) When he interviews for head coaches, he will often have another Administrator present. (TR. p. 126) When the interview process is completed and a candidate selected, Mr. Varrecchione will forward a written recommendation to the Principal, who in turn submits it to the School Committee. (TR p. 127) The School Committee has never rejected any candidate recommended by Mr. Varrecchione. (TR. pgs. 35, 94, 94, 171)

In addition, Mr. Varrecchione testified that for home games, he hires people to assist with the sale of tickets and concessions at various games, as well as police for security details. He indicated that he has complete discretion on determining staffing levels for these needs. (TR. pgs. 100-101) For home games, Mr.

Varrecchione is responsible to tend to some needs of the visiting team. In the event that Mr. Varrecchione cannot be personally present, he hires a "game supervisor." Game supervisors are in charge of greeting the visiting team, directing them to the locker rooms, and assisting any handicapped individuals. (TR. pgs. 101-102) Mr. Varrecchione does not need approval from the school committee to hire security officials or game officials. (TR. p. 102) When Mr. Varrecchione first began this position, he did inherit a list of names of people who had previously served in these roles which he initially utilized. He did state however, that he has had the need to make some changes where some people were let go and new people were added to the staff. (TR. p. 103) He testified that the decision to change personnel was his alone. (TR. p. 103)

The Union has argued that because Mr. Varrecchione is only one individual on the Committee that recommends coaches and because the recommendations have to go to the principal and superintendent, prior to reaching the school Committee, then it cannot be said that the Athletic Director effectively recommends hiring. However, the School Superintendent, Mr. Charles Meyer, estimated that Mr. Varrecchione has recommended *approximately twenty-five (25) coaches* for hiring in the slightly less than two (2) years he has been in this position. The School Committee has not refused any of these recommendations. This Board finds that this is not a minor amount of hiring or the occasional recommendation within a committee. This level of hiring and the amount of time involved in the hiring process makes its clear that the recommendation of coaches is an important element of the Athletic Director's position. Since none of Mr. Varrecchione's approximately twenty-five (25) recommendations for hiring have been rejected, this Board is persuaded that Mr. Varrecchione's recommendations have been effective and therefore, the Board finds the position of Athletic Director falls within the definition of supervisory employee.

***To discipline or suspend***

Mr. Levine testified that in his opinion, Mr. Varrecchione has the authority to issue discipline directly to employees, without having to seek prior approval from Mr. Levine. In fact, Mr. Levine stated that he trusts Mr. Varrecchione and allows him that

authority. (TR. p. 180) Mr. Levine also stated that he would absolutely endorse any disciplinary recommendations that Mr. Varrecchione might make. (TR. p. 180) Mr. Meyer, the Superintendent, confirmed that Mr. Varrecchione has the authority to make recommendations for discipline (as well as hiring). (TR. p. 195)

As to actual discipline, Mr. Varrecchione testified that he had to speak to a coach who was alleged to be mixing religion with coaching. (TR. p. 183) In addition, during Mr. Varrecchione's first year in the position, there was incident where a coach would not accommodate a disabled child. As a result, Mr. Varrecchione asked the coach to resign. (TR. p. 184) On another occasion, Mr. Varrecchione asked Mr. Levine to sit in on a meeting with a coach who had been suspended from a game. Mr. Levine testified that Mr. Varrecchione led the meeting and made the final determination on what to do with the coach. (TR. pgs. 183-184) The coach ultimately resigned from the position as requested by Mr. Varrecchione so that formal discipline against the coach was avoided.

The fact that the coach resigned when asked to by Mr. Varrecchione indicates that Mr. Varrecchione certainly has the authority, in the interest of his Employer to discipline and to effectively recommend discipline. It also demonstrates Mr. Varrecchione's managerial savvy in achieving the desired goal of eliminating the coach, without having to actually issue the discipline. The Board finds that this type of discretion is that which is vested only in a supervisory employee and we so hold in this case.

#### **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) During his two (2) year tenure as Athletic Director, Mr. Varrecchione has effectively recommended the hiring of approximately twenty-five (25) coaches.
- 4) The Athletic Director has the authority to effectively recommend discipline to the Principal.
- 5) The Athletic Director has issued a mild form of discipline by speaking to a coach about inappropriately mixing religion with coaching. In addition, the Athletic Director has requested and received the resignation of at least one coach.

#### **CONCLUSION OF LAW**

- 1) The position of Athletic Director held by Vincent Varrecchione is supervisory and is ineligible for inclusion within an appropriate bargaining unit.

#### **ORDER**

- 1) The petition to accrete the position of Athletic Director to the bargaining unit certified by Case No. EE-1630 is hereby denied and dismissed.

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

IN THE MATTER OF

RHODE ISLAND STATE LABOR  
RELATIONS BOARD

-AND-

EAST GREENWICH  
SCHOOL COMMITTEE

CASE NO: EE-1630

**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-1630 dated May 2, 2008, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **May 2, 2008**.

Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-29.

Dated: MAY 2, 2008

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

EE-1630:



RHODE ISLAND STATE LABOR RELATIONS BOARD



Walter J. Lanni, Chairman



Frank Montanaro, Member (Dissent)



Gerald S. Goldstein, Member



Ellen L. Jordan, Member



John R. Capobianco, Member (Dissent)



Elizabeth S. Dolan, Member

**BOARD MEMBER, JOSEPH MULVEY, DID NOT PARTICIPATE IN THIS MATTER.**

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

Dated: MAY 2, 2008

By:   
Robyn H. Golden, Administrator

EE-1630