

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

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IN THE MATTER OF

NEWPORT SCHOOL COMMITTEE

-AND-

THE TEACHERS' ASSOCIATION OF  
NEWPORT / NEARI

CASE NO: EE 1643

Unit Clarification

Petition: dated February 5, 1996<sup>1</sup>

and

Petition for Re-Consideration  
dated December 19, 1997

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ORDER OF DISMISSAL

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Investigative Agent: Joan N. Brousseau

Petitioner: Newport School Committee

Relief Sought: 1) Removal of the positions of Director of Counseling Services and the Director of Media Services from the bargaining unit defined in EE-1643. 2) A Formal hearing to be held by Rhode Island State Labor Relations Board.

Date(s) of Informal Hearing(s), Parties Present and Documents Exchanged:

1) **November 13, 1996**

Labor Board: Joan N. Brousseau.

Employer: Stephen A. Robinson, Esquire.

Union: Ms. Jane Argientieri .

Written Job descriptions for both positions were reviewed by the parties.

2) **January 13, 1997**

Labor Board: Joan N. Brousseau.

Employer: Stephen A. Robinson, Esquire.

Union: Vincent Santaniello, Esquire, Ms. Diane McCaffrey , Ms. Tia Scigulinsky, Ms. Susan Nardi.

Documents: The Board's agent provided both parties with copies of the 1981 amendment to the Teacher's Arbitration Act and the current amendment.

Date(s) of Field Investigation and Names and Titles of Interviewees:

November 21, 1996: 1) Mr. Alan Kritz, Director of Media Services

2) Mr. Stanley Brown, Director of Administrative Services

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<sup>1</sup> On April 29, 1996, the Union also filed a unit clarification seeking to accrete the position of Computer Education and Technology Coordinator. That petition will be subject to a formal hearing and a separate decision and order at a later date.

## **RELEVANT STATUTES & HISTORY OF THE BARGAINING UNIT**

EE-1643: Certification date: October 10, 1966

- 1) The Teachers' Association of Newport was certified to represent "All certified teaching personnel engaged in teaching duties excluding Superintendents, Assistant Superintendents, Principals and Assistant Principals"
- 2) In 1966, the Teachers Arbitration Act (R.I.G.L. 28-9.3-2) defined "certified teachers" as follows: "Certified teachers shall mean certified teaching personnel engaged in teaching duties Superintendents, assistant superintendents, principals and assistant principals are excluded from the provisions of this chapter"
- 3) The 1981 Amendment to Teachers Arbitration Act (28-9.3-2): defined "certified teachers" as follows: "certified teachers shall mean certified teaching personnel... engaged in teaching duties including certified support personnel whose positions require a professional certificate issued by the state department of education Superintendents, assistant superintendents, principals and assistant principals and other supervisors above the rank of assistant principal are excluded from the provisions of this chapter". (underlining added)
- 4) Department Heads are members of this bargaining unit
- 5) A dispute arose between the parties during contract negotiations relative to the appropriateness of the subject positions for exclusion from the bargaining unit As part of the disposition and settlement of the contract, the parties agreed to submit the dispute to the Board via a petition for unit clarification.

### **FACTUAL SUMMARY**

#### **Director of Media Services**

The current occupant of this position is Alan Kritz a 10 year occupant of the position in question and a 25 year employee<sup>2</sup> of the Newport School Department. When Mr. Kritz first assumed this position in 1987, the title had just been changed from Audio-Visual Coordinator to the Director of Media Services and the work schedule was changed from a 10 month position to an 11 month position. Computer responsibilities were also added at this time.

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<sup>2</sup> Mr. Kritz has been a member of this bargaining unit for the entire 25 years of his employment

When the position was posted in 1987, the posting indicated supervision of Computer Aides, however 6 positions of Computer Aides were eliminated when the School Department created the position of Computer Education and Technology Coordinator in 1991. Other Computer Aides are directly responsible to the principal of their work-site buildings. At one point Mr. Kritz did have an Audio/Visual Aide worked for him half time. That person now works wherever the School Department needs his services.

Mr. Kritz's duties are to generate media for the teachers to use in the classroom. He copies TV programs or generates original video tapes made by students. He provides audio/visual support and limited computer support.<sup>3</sup> Mr. Kritz takes care of the camcorders and public address systems used throughout the district. He has some limited interaction with middle school students who become involved with the camerawork. This type of interaction increases in the spring with videotaping concerts and graduation.

Mr. Kritz does not have input relative to media policies. The School Committee adopted a video policy that was distributed to him. He reports to the Superintendent's designee, Mr. Stanley Brown, the Director of Administrative Services.

Mr. Brown feels that Mr. Kritz is still responsible for some media people. For instance, at the high school and the middle school, there is a support staff person that handles ordering and inventory of films and media projects for the teachers and ensures that they are delivered when needed. Mr. Brown feels that Mr. Kritz can make recommendations as to the status of these people, but that the actual process of disciplining or termination is lengthy and that Mr. Kritz would be minimally involved. Mr. Brown feels that Mr. Kritz does not really work with students, but that he may call the high school to see which student is available to videotape the school committee meeting. Mr. Brown states that Mr. Kritz has no teaching duties. Mr. Brown states that Mr. Kritz is physically located in the school because there is a shortage of space in the school administration offices. Mr. Brown states that the policy which was sent to Mr. Kritz from the School Committee dealt with the use of videos in the classroom.

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<sup>3</sup> The Audio/Visual Aide in each school building takes care of keeping track of the equipment in each school building.

### Director of Counseling:

The current occupant of this position is Miguel Lopes a 9 year occupant of the position in question<sup>4</sup> and a 25 year employee<sup>5</sup> of the Newport School Department. His position is a 12 month position. Mr. Lopes is in charge of counseling services and is responsible for the day-to-day operation of the Department. He has four guidance counselors under his direct supervision and one who works at the Newport County Career Technical School under his indirect supervision. He is also indirectly responsible for the supervision of two clerks. He is responsible for the budget within the Department of Counseling relative to line items, supplies and equipment, but is not involved in personnel issues. //

Mr. Lopes is responsible for attending meetings at the call of the Principal in charge of evaluating his staff of counselors, which he states is similar to Department Heads. He counsels students (the harder cases) on a referral basis. He meets with outside community groups regarding curriculum and maintains and develops curriculum. He serves on committees: internal committees are assigned by the Principal community committees are voluntary. He maintains the testing programs at the school and is the test center coordinator. He assists with the orientation of students during the summer, with the assistant principal and the principal.

Mr. Lopes has sat on interview panels for hiring of employees within the high school, including counselors. The committees are chaired by someone from the administration. The panel reaches a consensus for recommendation for hiring and the committee sends the recommendation to the superintendent. The recommendations of these committees are usually followed.

Employee evaluations are done every three years. The evaluation is done by him, with the employee and is then forwarded to the principal. Mr. Lopes has never had the occasion to deal with an official reprimand of an employee. Most problems have been worked out informally. Mr. Lopes stated that if he had a counselor with whom he was having a problem, he would notify the principal. He believes that then, he and the

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<sup>4</sup> According to Mr. Lopes, the position was previously called Director of Guidance.

<sup>5</sup> Mr. Lopes has been a member of this bargaining unit for the entire 25 years of his employment.

principal would come up with a plan of action and that he would then be given the consent to carry out the agreed upon plan. He has never been involved with either a grievance or a grievance hearing. If one of the employees calls out sick, he or she is not required to notify Mr. Lopes, but rather the administration and the building principal. Mr. Lopes is notified of the absence by the principal. If an employee requests vacation leave, Mr. Lopes is required to review the request and make sure that it does not conflict with other schedules. Mr. Lopes then "signs off" on the request and forwards it to the principal's office.

Mr. Lopes does attend administrative meetings, but is not involved with formulating or implementing personnel policies or procedures. Mr. Lopes states that the change in his job title was merely a change to reflect current terminology in the field of guidance and is not reflective of any increase in job responsibilities. Mr. Lopes states that his predecessor was paid approximately the same as an assistant principal. However, there have been times when the bargaining unit won pay raises when the administrative staff did not and therefore, his salary increased to more than an assistant principal's.

Mr. Brown concurred with Mr. Lopes' description of his duties and responsibilities. However, he wanted the Board to note that Department Heads perform teaching duties, as well as their supervisory functions. Mr. Brown notes that Mr. Lopes does not counsel students on a daily basis, but only on a referral basis.

#### **POSITION OF THE PARTIES**

The Employer's position is that the Director of Media Services and the Director of Counseling Services are not appropriate bargaining unit positions. The Employer believes that the positions are management level positions and that they do not have a community of interest with the positions in the bargaining unit. The Employer also argues that both positions have supervisory responsibilities and provide no direct services to students. In support of its position, the Employer refers the Board to the decisions in Barrington School Committee v. State Labor Relations Board, 608 A.2d 1126 (1992) (and more specifically to footnote #8) and Rhode Island Public Telecommunications Authority v. Rhode Island State Labor Relations Board, 650 A.2d 479 (1994).

Furthermore, the Employer argues that the position of Director of Media Services should not automatically fall under the teacher's bargaining unit, just because the School

Committee put the requirement of a teacher's certification on the job posting. The Employer argues that there is no State Department of Education certification required for this particular job title, that it is only a Newport School Department requirement.

The Union's position is that there has been no substantive change in these positions that would warrant exclusion from the bargaining unit, where they have been included since the original certification. The titles to the positions have changed; nothing more. The Union also notes that the job posting for the Director of Guidance requires experience in guidance and a certification in teaching. Furthermore, the salary is based on a teacher's salary, with an additional stipend for working 12 months instead of 10 months. The Union also argues that there are other Director titles within this bargaining unit and that the duties of this position do not include policy making, nor the ability to hire, fire, discipline and is not involved in adjusting grievances. The Union also notes that it knows of no other Rhode Island city or town that excludes the Director of Guidance from the bargaining unit.

As to the Director of Media Services, the Union argues that he does not set policy, nor does he hire, fire or evaluate. He is not a part of the grievance procedure and has no supervisory responsibilities. The Union argues that he teaches students and teachers how to use the audio visual equipment. The Union also argues that there are many other duties listed on the job description which were not mentioned by Mr. Lopes.

### DISCUSSION

In determining the true duties of any given position, this Board considers the incumbent employees' descriptions of their actual duties much more instructive than written job descriptions. Furthermore, an employee's report on his or her actual ability to supervise, hire, fire, effectively discipline or adjust grievances is given great weight.

The burden on the petitioner in this case is to demonstrate to this Board that the duties and responsibilities of the two positions in question have changed to such a degree as to warrant exclusion from the bargaining unit. Or, the petitioner must establish that the positions are actually different positions altogether than the ones which were originally certified as part of the bargaining unit and have become positions excludable under the Teachers Arbitration Act, R.I.G.L. 28-9.3-2. Otherwise, the doctrine of res judicata applies and this Board will not disturb its original certification of 1966. In arriving at the

arriving at the within decision, the Board has relied upon the investigative report of its agent, the various pieces of correspondence submitted by the parties, the written job descriptions and our discussions with the Agent at the September 18, 1997 meeting of the Board.

### **FINDINGS OF FACT**

- 1) The current occupant of the Director of Media Services cannot hire, fire or effectively discipline employees, nor does he directly or regularly supervise any other employees.
- 2) The Director of Media Services engages in limited teaching duties, more so during the spring semesters.
- 3) The current occupant of the Director of Counseling has never had the occasion to discipline or fire an employee, and does not participate in the resolution of any grievance. His participation in hiring is limited to being a member on a panel which ultimately makes a recommendation.
- 4) The Director of Counseling is required by the Employer to hold a teaching certification and he counsels students on a referral basis and assists with the orientation of students during the summer.
- 5) The Director of Counseling attends administrative meetings, but is not involved with formulating or implementing personnel policies or procedures.
- 6) The salary for the Director of Counseling is higher than that of an assistant principal due to the pay raise history of the bargaining unit.
- 7) The Board's Agent conducted an appropriate field investigation and held two informal hearings which were attended by both parties.

### **CONCLUSIONS OF LAW**

- 1) The Petitioner has not established by a fair preponderance of the evidence set forth that the position of Director of Media Services does not engage in any teaching duties or that the position is either a superintendent, assistant superintendent, principal, assistant principal or other supervisor above the rank of assistant principal. Therefore, the position is not excludable under R.I.G.L. 28-9.3-2.
- 2) The Petitioner has not established by a fair preponderance of the evidence set forth that the position of Director of Media Services within the School Department of the City of Newport, does not require a professional certificate issued by the state

department of education. Therefore, the position is not excludable under R.I.G.L. 28-9.3-2

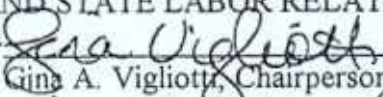
- 3) The Petitioner has not established by a fair preponderance of the evidence set forth that the position of Director of Counseling does not engage in any teaching duties or that the position is either a superintendent, assistant superintendent, principal, assistant principal or other supervisor above the rank of assistant principal. Therefore, the position is not excludable under R.I.G.L. 28-9.3-2
- 4) The Petitioner has not established by a fair preponderance of the evidence set forth that the position of Director of Counseling within the School Department of the City of Newport, does not require a professional certificate issued by the state department of education. Therefore, the position is not excludable under R.I.G.L. 28-9.3-2 .
- 5) The Petitioner has not established by a fair preponderance of the evidence set forth at the informal hearings or the field investigation that the position of Director of Media Services or the position of Director of Counseling have changed sufficiently to warrant their exclusion from the bargaining unit under R.I.G.L. 28-9.3-2 or that the positions in question no longer share a community of interest with the other positions within the existing bargaining unit

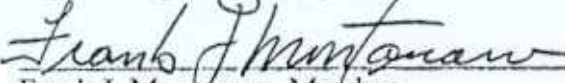
#### **ORDER**

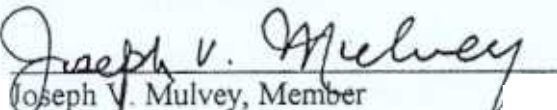
- 1) Pursuant to R.I.G.L. 28-7-9 (d), the petition for unit clarification and the petition for reconsideration is hereby denied and dismissed; the positions of Director of Counseling Services and the Director of Media Services shall remain in the bargaining unit defined in case no. EE-1643



RHODE ISLAND STATE LABOR RELATIONS BOARD

  
Gina A. Vigliotti, Chairperson

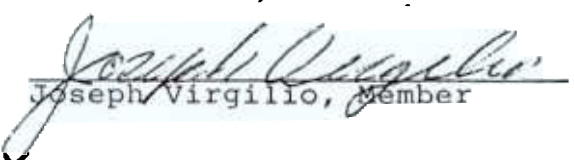
  
Frank J. Montanaro, Member

  
Joseph V. Mulvey, Member

Gerald S. Goldstein, Member (Dissent)

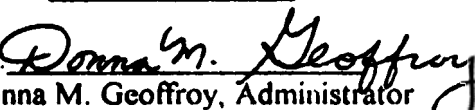
  
Ellen L. Jordan, Member

  
Paul E. Martineau, Member

  
Joseph Virgilio, Member

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

Dated: February 26, 1998

By:   
Donna M. Geoffroy, Administrator