

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF:

NARRAGANSETT BAY WATER QUALITY
MANAGEMENT DISTRICT COMMISSION

AND -

:
:
:
:
:

CASE NO. EE-1704

RHODE ISLAND COUNCIL 94,
AFSCME, AFL-CIO
(Unit Clarification: WWTF
Laboratory Technician II)

DECISION AND ORDER

STATEMENT OF FACTS

As stated in Post-Hearing Memorandum of The Narragansett Bay
Water Quality Management District Commission at pp. 1-5:

"The Narragansett Bay Water Quality Management District Commission (hereinafter 'NBC') is a public corporation of the State of Rhode Island, created by R.I.G.L. §46-25-4 for the purposes of acquiring, planning, constructing, improving, operating and maintaining sewage treatment facilities. The NBC owns and operates two waste water treatment plants: Field's Point and Bucklin Point. These plants act to minimize pollution in Narragansett Bay. In early 1992, pursuant to R.I.G.L. §46-25.1-1, the Blackstone Valley Sewer District Commission (hereinafter 'BVSDC') merged into the NBC. All employees of BVSDC became and are deemed NBC employees. Bucklin Point is the site of the waste water treatment plant previously owned and operated by the BVSDC. Since the merger, it has been owned and operated by the NBC.

Prior to the merger, Local 1033, Affiliate of Laborers' International Union of North America (hereinafter 'Local 1033'), was certified by the Rhode Island State Labor Relations Board (hereinafter 'RILRB' or 'Board') as the exclusive bargaining representative of certain NBC employees. [Employer Exhibit 2]. That certification included only classified employees of the NBC. Also before the merger, Council 94, A.F.S.C.M.E. (hereinafter 'Council 94') was certified by the RILRB as the exclusive bargaining representative of certain BVSDC employees. [Union Exhibit 1]. That certification expressly excludes supervisors from the unit.

Today there are approximately 162 employees at NBC facilities at Field's Point and Bucklin Point who are evenly split in collective bargaining representation between Local 1033 and Council 94.

The NBC also operates and staffs two laboratories in which it conducts testing for its two waste water treatment plants and for its industrial pretreatment program. One laboratory is located at Field's Point and the other at Bucklin Point. [Tr. 6-8-95, p. 17]. Organizationally, the laboratories fall within the jurisdiction of the NBC's

Operations Division which is headed by Paul Nordstrom ('Nordstrom'), a licensed professional engineer. [See Employer Exhibit 1; Tr. 6-8-95, p. 17].

Upon the BVSDC's merger with the NBC, Cynthia Walters ('Walters'), the NBC's Laboratory Manager, was assigned to make an assessment of the Bucklin Point laboratory. [Tr. 2-9-95, p. 53]. Walters had begun her assessment prior to the merger and eventually concluded that the chemists at the Bucklin Point laboratory were '...wasting their mind power...' by doing routine process work. [Tr. 2-9-95, pp. 53-55]. Process work essentially involves the testing and evaluation of waste water as well as hands-on tedious work such as pouring sludge in a dish to determine the amount of solids it contains. [Tr. 2-9-95, p. 52; p. 54]. In her evaluation Walters focused on issues related to quality control and compliance with Environmental Protection Agency (hereinafter 'EPA') regulations. [Tr. 2-9-95, p. 56]. The NBC was also concerned about the Bucklin Point laboratory's practice of sending samples to outside laboratories for testing (at great cost). This work should have been done in-house. [Tr. 2-9-95, p. 53; Tr. 6-8-95, p. 22]. Coincident to its apprehension about the level of quality assurance at the Bucklin Point laboratory, the NBC saw a need to implement a system of checks and balances to trace analytical sampling procedures. [Tr. 6-8-95, pp. 22-23].

Thus in November of 1993, the NBC contemplated a reorganization of the Bucklin Point laboratory which was restructured in January of 1994. [Employer Exhibit 1]. The organizational rationale, according to Walters, was to have all process work and laboratory technicians together at Bucklin Point to do the routine work there. More specialized chemistry would be done at the Field's Point laboratory. That plan required someone to be responsible to insure that all of the Bucklin Point samples and analyses were done correctly. [Tr. 2-9-95, pp. 59-60]. According to Nordstrom, historically the Field's Point laboratory had a position known as Waste Water Treatment Facilities Lab Technician II (hereinafter 'WWTFLT II') to supervise and review the work of laboratory technicians and aides to insure proper quality control. [Tr. 6-8-95, p. 23]. The WWTFLT II position had existed within the NBC as a non-classified, non-bargaining unit position since 1989, long before the merger and reorganization of the Bucklin Point laboratory. [Tr. 6-8-95, p. 28; p. 34; Tr. 6-20-96, pp. 6-8].

Consequently, the NBC posted the position of WWTFLT II at Bucklin Point with the expectation that the person filling that position would exercise a similar level of duties and responsibilities as that position had discharged at the Field's Point laboratory. [Tr. 6-8-95, p. 35]. Paul Conte (hereinafter 'Conte'), who had worked as a laboratory technician at the Bucklin Point laboratory, applied for the Bucklin Point WWTFLT II position in November of 1993. He was awarded it in December of that year. [Tr. 10-3-95, p. 41]. In January of 1994, Conte signed an individual employment agreement with the NBC. [Employer Exhibit 4; Tr. 10-3-95, p. 35].

Since then (and without interruption during the pendency of these proceedings) Conte has discharged the duties and responsibilities generally outlined in the WWTFLT II job description. [Union Exhibit 4]. More particularly, Conte's

responsibilities include implementing new testing procedures and supervisory functions such as training, assigning work, overseeing and reviewing work, applying and enforcing personnel rules, monitoring compliance with safety rules, insuring performance standards with respect to testing procedures and implementing corrective measures. [Tr. 10-3-95, pp. 15; 17; 18; 20-28; 30-32]."

As stated in Brief of the Union at pp. 1-5:

"The original certification in this case, dated February 8, 1968, (Petitioner's Exhibit #1) did not differentiate between classified and non-classified positions. At the time this issue arose in August of 1993, the position of Laboratory Technician (Petitioner's Exhibit #2) was a position at the Bucklin Point Plant and was a position included within the above-referenced certification.

In November of 1993, the Narragansett Bay Commission set out to freeze Council 94 positions and create non-classified, non-union positions because it had been contractually difficult to bring Fields Point Laboratory Tech positions to Bucklin Point to help during shortages (Petitioner's Exhibit #5), (T. vol. 2, pp. 6,7).

NBC went ahead and froze the classified position of Mr. Conte and created a non-classified Lab Technician position. Paul Conte was interviewed for the new position and notified that he had received the position sometime in December 1993. (T. Vol. 3, p. 41) When Mr. Conte started his new duties on or about January 3, 1994, he requested a leave to protect status from his classified position for six months.

Mr. Conte testified that when he started the new position he worked in the same area as before. He testified that he worked the same hours. He testified that he worked the same days. He testified that the employees that he was working with did not change. (T. vol. 3, pp. 43-45)

Mr. Conte testified that part of his daily routine duties as Laboratory Technician were performing BODs. He testified that the performance of these duties were still part of his daily routine duties. (T. vol. 3, p. 51) Mr. Conte testified further that as part of his regular duties as Lab Technician he performed fat, oil and grease tests and that he continued to perform these tests in his new classification. He testified that as a Lab Technician he performed grease tests, TSS tests, BOD tests, Ph Determination, settleable solids and that he continued to perform these tests in his new classification. (T. vol. 3, p. 53)

Mr. Conte testified that both in his prior position and in his present position he worked with a Lab Aide and in both positions if the Lab Aides were making mistakes in their work he would correct them. (T. vol. 3, pp. 56, 57) Mr. Conte testified that in his prior position, a Laboratory Technician was higher than a Laboratory Aide and he would instruct them in how to perform certain duties and tests. If they were doing something wrong he would tell them, the same way he tells them in his new position. (T. vol. 3, pp. 39, 40)

Mr. Conte testified further that in his new position he had an employee with severe absentee problems. He testified that this problem had been going on for months and that Mr.

Conte had spoken to the individual three or four times but the individual did not listen to him. Mr. Conte spoke to Mr. Houde and that Mr. Houde spoke to the individual and that the individual listened to Mr. Houde (T. vol. 3, pp. 64, 65) Mr. Conte also testified that when he was in the laboratory as a Laboratory Technician the employees in the lab worked as a team. He admitted that he was in the same lab with the same employees after he assumed his new classification and that the employees still assisted each other and still worked as a team. (T. vol. 3, p. 65)

Mr. Conte testified that if there is no supervisor working on the week-ends the lab continues to function and that if an employee does not show up, Mr. Fitzgibbons would have to be called and he would authorize someone to come in to cover. Mr. Conte also admitted that he signed his Leave to Protect Status papers to retain his right to stay in the classified service. (T. vol. 3, pp. 66, 67)

Mr. Conte testified further that there are instances in his new position where he perceives a violation of personnel rules and he will go to that person. He testified that there are instances where employees in the laboratory do not comply with his warnings and that he then goes to his supervisors. (T. vol. 3, p. 28)

Finally, Mr. Conte testified that when he is the sole supervisor on weekends there is also one other technician and one operator on duty. As part of his regular work duties on weekends he performs work that is normally performed by the Lab Technician, Lab Aide and Operator. (T. vol. 3, p. 36)

Frances Underwood is in the classification Chemist and works at Bucklin Point for the Narragansett Bay Commission. In 1991 he was working in the upstairs lab at Bucklin Point. At that point and time there were two chemists, himself and Lorraine Lessuck. There was a Laboratory Technician, Paul Conte, and there was also a Laboratory Aide in the upstairs lab.

In 1991 there was also a downstairs lab and the staffing in that lab consisted of a Senior Chemist and Waste Water Facilities Operator. In 1991 the employees in both labs were classified employees and were all members of Local 1010, the existing certified bargaining unit. In October of 1993, staffing in the upstairs lab was the same as it was in 1991. (T. vol. 1, pp. 18, 19)

Mr. Underwood testified further that there were daily interactions with members of the staff and if one individual were out the other classifications would perform some of that individuals job functions. (T. vol. 1, p. 24)

Mr. Underwood testified that he was familiar with the employees in the labs in October of 1993 and in January of 1994. He testified that all of these employees, including Mr. Conte, received paid health benefits. He testified that they all worked a thirty-five hour week and that in January of 1994 they received the same benefits they had been receiving in October of 1993. He testified that Mr. Conte continued to receive paid health benefits, he continued to work thirty-five hours per week, he continued to receive the same sick benefits, and he continued to receive the same vacation benefits.

Mr. Underwood testified that Mr. Conte continued to interact with him and the other classified employees in the lab in the same manner as he had in October of 1993. Mr. Underwood testified that he did not observe any differences in the job duties performed by Mr. Conte in October of 1993 when he was a Laboratory Technician and the job duties he performed in January of 1994 when he was a Waste Water Facilities Laboratory Technician II. (T. vol. 1, pp. 27-30)"

ISSUE

The sole issue before this Board is whether the non-classified position of WWTF Laboratory Technician II held by Mr. Conte can be accreted into a classified unit inasmuch as it is a non-classified position.

This Board ruled that the Issue as to whether or not accretion was appropriate was to be determined as of the time that the request for the inclusion was made (see TR Vol III, p. 16)

Messrs. Conte and Underwood established by their testimony without contradiction that Conte was performing substantially the same duties in his new classification as he was as a Laboratory Technician. The evidence also establishes that even though Conte was technically a non-classified employee, there continued to exist a substantial community of interest between Mr. Conte and the other employees in the classified positions at the Bucklin Point labs.

In the case of Rhode Island Public Telecommunications Authority, et al vs. Rhode Island State Labor Relations Board, A2d 479 (R.I. 1994), our Supreme Court identified the factors that the National Labor Relations Board considers in accretion cases. The factors for determining whether the accretion of employees to an existing unit is proper are:

1. Integration of operations;
2. Centralization of managerial administrative control;
3. Geographic proximity;
4. Similarity of working conditions, skills and functions;
5. Common control over labor relations;
6. Collective Bargaining history; and
7. Interchangeability of employees.

It is the position of the Union in this case that when you compare the facts in the case to the factors considered by

National Labor Relations Board and the State Supreme Court in the Telecommunications case, every one of them supports the accretion of Mr. Conte's position of WWTF Laboratory Technician II into the existing Bargaining Unit.

A critical issue of the community of interest standard and factors pertaining to accretion were dealt with by our Supreme Court in the Telecommunications case, in which they concluded that the individuals in that case did not share a mutual interest in wages, hours, and other conditions of employment with members of the Union. In the present case, however, at Bucklin Point in 1994,

Conte shared with Mr. Underwood and the other classified employees more than substantial similarities warranting accretion of his position into the Bargaining Unit.

At the time the Union sought the accretion of this position, the following similarities existed:

1. The employees worked closely together in the same laboratory;
2. They had similar skills;
3. They worked under the same working conditions;
4. They interchanged among each other and performed the others jobs when the person was absent;
5. They all reported to the same bosses;
6. They could not effectively recommend discipline against one another;
7. They continued to receive similar wages and benefits;
8. They continued to work similar hours; and
9. The units Collective Bargaining history demonstrates that this position should be accreted to the existing Collective Bargaining Unit.

It is interesting to note that prior to his position at the Bucklin Point lab being frozen and the new position being posted filled, Mr. Conte held a position in the existing Collective Bargaining Unit. All of the positions in the lab have always been in the existing Bargaining Unit. It would appear that the only reason the new position was not included within the existing Bargaining Unit was to circumvent the law requiring that the existing Bargaining Unit should not be altered

Another factor supporting accretion cited by the National Labor Relations Board in the Supreme Court is the interchange-

ability of employees. The undisputed evidence established that prior to the creation of Mr. Conte's new position in January 1994, the classified employees in the lab assisted each other, filled in for each other, and worked as a team. After Conte became a non-classified employee, the undisputed evidence establishes that Mr. Conte and the classified employees continued to assist each other, fill in for each other, and work as a team (see TR Vol III, p. 65)

The similarity of the work being performed was attested to by Laboratory Manager Cynthia Walters, who testified that "We had tech work being done at Bucklin Point, tech work being done at Fields Point, so we were having the techs doing the same work in two locations." (TR Vol I, p. 59) At TR Vol I, p. 62, Ms. Walters testified that at the time Conte was upgraded to Lab Tech II, oil and grease procedures were added to his job. She then admitted that he may have done some of this previously as a Lab Technician. She further admitted that this was the only difference at the time between the two classifications. She further admitted in testimony on February 9, 1995, during direct examination that the Waste Water Treatment Facility Lab Technician II position which Mr. Conte now holds and the old position of Lab Tech that he held prior to January 1994 is on the same learning curve as all the Lab Technician positions in the Bargaining Unit and that all of the Techs are learning these right now.

The testimony of Labor Relations Coordinator Denise Mello which appears in TR Vol IV further buttresses the evidence concerning the similarity of interests. She testified that the educational and experience requirements of the Lab Technician position and the Lab Technician II position are similar admitted further that the two positions both contain duties consisting of laboratory responsibilities, and she admitted that they all worked in the same laboratory. She also admitted that Mr.

Conte's service with the Narragansett Bay Commission actually started with a predecessor organization, the Blackstone Valley District Commission. She admitted that Mr. Conte was a member of the Bargaining Unit at Blackstone Valley. She further admitted that when the Blackstone Valley District Commission merged with the Narragansett Bay Commission, the Blackstone Valley Bargaining Unit remained in tact, and Mr. Conte continued to remain a member of that Bargaining Unit

In the opinion of the Board, all of the evidence supports a conclusion that the position which Mr. Conte assumed and began performing in January of 1994 has a strong community of interest with the other positions in the lab at Bucklin Point which are in the existing Bargaining Unit and in the classified service.

The only remaining question is whether there is any prohibition against classified and non-classified employees being in the same Bargaining Unit

Under Rhode Island General Laws 36-11-1, State employees are given the right to organize:

"R.I.G.L. 36-11-1(a) State employees, except for casual employees or seasonal employees, shall have the right to organize and designate representatives of their own choosing for the purpose of collective bargaining with respect to wages, hours and other conditions of employment."

As stated in the Brief of the Union at pp. 11-12:

"In the definitional section of this chapter, only casual and seasonal employees are defined. The Legislature did not distinguish between classified and non-classified State employees when it gave to State employees the right to organize.

The State Department of Administration has itself recognized that it is appropriate for classified and unclassified employees to be in the same bargaining unit. (Union Exhibit #12) Arbitrators have upheld that classified and unclassified positions are properly within the bargaining unit and subject to the same terms of the Master Contract. (Petitioner's Exhibit #10, #13)

The Petitioner submits that the status of an employee as classified, unclassified or non-classified is of no consequence. The General Assembly of the State of Rhode Island has not excluded non-classified employees from being organized in the same bargaining unit as classified or unclassified State employees. If employees share a community

of interest, it should makes (sic) no difference whether a State employee is in the classified, unclassified, or non-classified service."

During the course of the formal hearings, the Narragansett Bay Commission attempted to establish that Mr. Conte's position should be excluded from the Bargaining Unit because his job is supervisory in nature. The National Labor Relations Act defines supervisors as:

"any individual as having authority, in the interests of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility 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."

The record is devoid of any evidence that would show that Mr. Conte has any authority or interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign reward, or discipline other employees. In the unanimous opinion of this Board, Mr. Conte's position is not that of a supervisor.

FINDINGS OF FACT

The Board based upon the testimony before it finds as a 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 purpose, 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 Narragansett Bay Water Quality Management District Commission is an employer within the meaning of the Rhode Island State Labor Relations Act.
3. There exists such a community of interest between Mr. Conte's position (non-classified) as WWTF LT II and other positions in the Bargaining Unit (classified) that it is clear that if Conte's position was a classified one, he would be accreted into the Bargaining Unit.
4. There exists no statutory or case law creating a prohibition against classified and non-classified positions being in the same Bargaining Unit.


CONCLUSIONS OF LAW

The Union has proven by a fair preponderance of the credible evidence that the position of WWTFLT II (even though non-classified) has sufficient community of interest with all other members of the Bargaining Unit at the Bucklin Point plant of the NBC (classified) to justify the accretion of this position into the existing Bargaining Unit in Case No. EE-1704.

ORDER

The position of WWTFLT II is hereby accreted to the Bargaining Unit defined in Case No. EE-1704, and the NBC is hereby ordered to recognize the Union, Rhode Island Council 94, AFSCME, AFL-CIO, as the Bargaining Agent for said position of WWTFLT II.

RHODE ISLAND STATE LABOR
RELATIONS BOARD


Joseph V. Mulvey, Chairman


Raymond Petrarca, Member


Frank J. Montanaro, Member


Glenn Edgecomb, Member

Entered as Order of the
Rhode Island State Labor Relations Board

Dated: July 14, 1997

By: 
DONNA M. GEOFFROY, ADMINISTRATOR