

STATE OF RHODE ISLAND
BEFORE THE STATE LABOR RELATIONS BOARD

In the MATTER of

RHODE ISLAND STATE LABOR RELATIONS BOARD

-and-

CASE NO. EE-1854

RHODE ISLAND DEPARTMENT OF EDUCATION
PROFESSIONAL EMPLOYEES UNION LOCAL 2012, A.F.T.
UNIT CLARIFICATION: ASSOCIATE PRODUCER

D E C I S I O N

AND

O R D E R

The above matter came before the Rhode Island State Labor Relations Board, hereinafter referred to as the Board, on the Unit Clarification Petition of the Rhode Island Department of Education, Professional Employees Union, Local 2012, A.F.T., AFL-CIO, hereinafter referred to as the Petitioner. The Petitioner seeks to clarify the positions known and/or referred to as Associate Producer at the Rhode Island Public Telecommunications Authority, "Channel 36", hereinafter referred to as the Respondent, and to include those positions within the Local's bargaining unit.

Subsequently, agents of the Board investigated the matter. Thereafter, the Board determined that a formal hearing would have to be held concluding that the position of Associate Producer was not in existence at the time of the original clarification between Rhode Island Department of Education and the American Federation of Teachers, Professional Employees Union in the bargaining unit defined in EE-1854. The Board then scheduled and held formal hearings on 10/12/88; 11/13/88; 5/25/89; 7/6/89; and 2/26/90 at which time all parties were afforded an opportunity to present evidence.

The Petitioner argued that said employees, are permanent state employees protected by the provisions of Chapter 36-11 of the Rhode Island General Laws governing the organization of State employees. It was argued that said employee Phae Plushner was continuously employed by the Respondent from January, 1984 to June, 1988, and employee Leslie Parks was continuously employed from October, 1986 to April, 1988. The Board heard testimony from both Phae Plushner and Leslie Parks concerning their respective positions with Channel 36.

Ms. Plushner testified that she was hired as an intern in January, 1984 and at that time did not receive a salary or benefits. However, sometime in April, 1984 she testified that she began receiving a salary at minimum wage with no

benefits and worked 35 hours per week which lasted until the end of her employment in July, 1988. She also testified that after April, 1984, her duties and responsibilities expanded to include putting together the Channel 36 television program "Tuesday Nights". She testified that she booked and screened guests, researched program topics and ideas, and performed other production duties.

In addition, the transcript clearly shows that the credits on the "Tuesday Nights" television program listed her as Associate Producer.

Ms. Plushner testimony indicates that she was referred to both orally and in writing as "Associate Producer" on numerous occasions, from April, 1984 to the time of the filing of the Unit Clarification Petition, by the Respondent's Director of Production, Leroy Czaskos and Producer/Director of said "Tuesday Nights" TV program, James Garrett

The transcript clearly shows that Ms. Plushner was referred to as Associate Producer by all those associated with her employment. In fact, several written documents including Union Exhibits 3, 4, & 5 which were written by the TV Station Director of Production and the Producer and Host of said "Tuesday Nights" program respectively, refer to Ms. Plushner as same.

Ms. Leslie Parks testified that she was hired under the title of Associate Producer by Mr. Czaskos in October, 1986. She testified that she was never referred to as an intern/trainee by anyone affiliated with the station. She also testified that she was authorized by Mr. Czaskos to direct and supervise the duties of the interns. This testimony was never disputed or contradicted

The thrust of the Respondent's argument regarding this issue of positions of employment, is that the Petitioner's petition must be dismissed because such a position of Associate Producer does not exist. The Respondent argues that there are no personnel or budgetary documents in regard to this position of Associate Producer. The Respondent also argues that and cites binding arbitration case law which established that people who work as trainees for the state are not employees for collective bargaining purposes

This Board recognizes and acknowledges the Respondent's arguments. However, the testimony presented before this Board indicates a definite difference and distinction between the duties of employment of Ms. Plushner and Ms. Parks, and that of the intern/trainee of the station. The station's organizational

chart as depicted in Union Exhibit No. 6 clearly indicates that Intern and Associate Producers are listed in different places

Respondent further argues that an intern/trainee is not held to the same standards of productivity and performance. This may be true, but cannot apply to the employment of Ms. Plushner and Ms. Parks. It was Mr. Czaskos' own testimony that Phae Plushner's duties and responsibilities included furnishing ideas for programs, researching, choosing topics and coordinating the appearance of guests. Said witness further acknowledged that "part-time Associate Producer" is an accurate reflection of her status at the station during the time of her employment. The Board believes that these duties are essential to the production of the TV program and are clearly duties which require a great deal of productivity and performance.

In light of the above, it becomes apparent that both Ms. Plushner and Ms. Parks were not interns; and any argument by Respondent that the title of Associate Producer given to them was purely cosmetic is unbelievable.

Also, there is nothing contained in the record which would indicate that either employee was a "casual employee" or "seasonal employee" as defined by R.I.G.L. Sec. 36-11-1.1. The job and duties of each employee are clearly related to the work performed by the regular employees in the collective bargaining unit, and their lengthy duration of employment refutes any argument by Respondent that their employment was seasonal in nature.

The testimony presented indicates that Ms. Plushner and Ms. Parks are permanent employees who worked for Channel 36 for four (4) years and two (2) years respectively. Each employee performed and did the same work as other employees in the bargaining unit. The mere fact that said employees received a salary less than the average salary of the bargaining unit and received no benefits does not reveal the existence of a lack of any community of interest or similarity

It is the Board's position, as previously indicated, that said employees are not interns. At the time of the filing of the unit clarification by the Petitioner herein, said two (2) employees held a position separate and apart from that of an intern/trainee

Said position was not created in the minds of the employees as implied by the Respondent, but by and through the acts of the Respondent itself. The actual title or name of the position is unimportant. What is important, however, is that the Respondent, not the two (2) employees created the position of "Associate Producer".

WHEREFORE, on the basis of the foregoing, the Board makes the following Findings of Facts and Conclusion of Law.

FINDING OF FACTS

1. That the employer, State of Rhode Island, Department of Education Rhode Island Public Telecommunications Authority, Channel 36 is a duly constituted department within the government of the State of Rhode Island. Said department qualifies as an employer and has its offices and principal place of business located at 111 Dupont Drive, Providence, RI 02907.

2. That the Rhode Island Department of Education, Professional Employees Union, Local 2012, A.F.T., AFL-CIO 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

3. That the Petitioner filed with the Board, a Petition for Unit Clarification wherein it sought to represent certain employees referred to as "Associate Producer" employed by the Rhode Island Telecommunications Authority, Channel 36.

4. The Respondent refused to recognize the position of Associate Producer as a position that exists with its department.

5. That on 10/12/88; 11/13/88; 5/25/89; 7/6/89; and 2/26/90, the Rhode Island State Labor Relations Board held a formal hearing regarding the question of the existence of such a position and whether the position of the two (2) employees should be included in the bargaining unit.

6. That Phae Plushner was hired as an intern on January, 1984 and at said time did not receive a salary.

7. That from April, 1984 to July, 1988, Ms. Plushner received a salary at minimum wage with no benefits and worked 35 hours per week

8. That Ms. Plushner's duties of employment included performing various production duties related to the production of the "Tuesday Nights" television program.

9. That the credits of said TV show listed Ms. Plushner as Associate Producer.

10. That Ms. Phae Plushner was an Associate Producer of Channel 36 from April, 1984 to July, 1988.

11. That said Associate Producer position was given to her and created by the Respondent.

12. That Ms. Parks was hired by the Respondent in October, 1986 also as an Associate Producer, a position she maintained until her employment ended in April, 1988.

13. That both Ms. Plusner and Ms. Parks are "state employees" as defined in Chapter 36-11 in the Rhode Island General Laws.

14. That the position of employment of Ms. Plushner and Ms. Parks are similar to and share a community of interest with that of the other employees of the bargaining unit.

CONCLUSIONS OF LAW


1. That the Board finds that the position known as Associate Producer held by Ms. Plushner and Ms. Parks do exist and are proper positions for the inclusion in the bargaining unit.

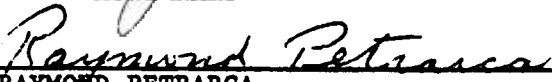
2. That the Petitioner has proven by a fair preponderance of the credible evidence that its bargaining unit is an appropriate bargaining unit for the inclusion of this position for the purpose of collective bargaining.

O R D E R

1. The Unit Clarification Petition of the Petitioner is granted and the position in question, namely two (2) Associate Producers, are hereby accreted to the existing bargaining unit defined in Case No. EE-1854.

RHODE ISLAND STATE LABOR RELATIONS BOARD


FRANK MONTANARO


RAYMOND PETRARCA


GLENN EDGECOMB

Board Member Beardsley dissents


DANIEL BEARDSLEY, JR.

Entered as an Order of
the RHODE ISLAND STATE LABOR RELATIONS BOARD

DATED: DECEMBER 21, 1990

BY 
THOMAS E. SOARES, Acting Administrator