

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

_____)
IN THE MATTER OF
WOONSOCKET HOUSING AUTHORITY,)
Employer)
AND)
INTERNATIONAL BROTHERHOOD OF)
TEAMSTERS, LOCAL UNION #64,)
Petitioner)

CASE NO. EE-3486

DECISION
- AND -
DIRECTION OF ELECTION

The above matter came on to be heard on a "Petition by Employees for Investigation and Certification of Representatives" (hereinafter Petition) filed by International Brotherhood of Teamsters, Local Union #64 (hereinafter Petitioner) on January 1991, wherein the Petitioner seeks to represent a bargaining composed of "Director of Modernization/Development, Comptroller, Senior Housing Manager, Housing Manager, System Administrator and Executive Secretary to Director" of the Woonsocket Housing Authority (hereinafter Respondent). The Petition was accompanied by signature cards which, if verified, were sufficient in number to warrant the conducting of an election. All signature cards which had been submitted were verified on March 15, 1991, and, as indicated, were of sufficient number to warrant the conducting of an election.

Formal hearings on the Petition were held on November 21, 1991, May 13 and May 18, 1992, by the Rhode Island State Labor Relations Board (hereinafter Board). At such hearings, the

Respondent objected to the inclusion of each and every position within the proposed bargaining unit on the basis that:

1. The position of Director of Modernization/ Development, Comptroller, Senior Housing Manager, Housing Managers (two (2) in number) and the Systems Administrator were supervisory positions and should be excluded from the proposed bargaining unit by virtue of R.I.G.L. 28-9.4-2 (b) 4;
2. The positions of Director of Modernization/ Development, Comptroller, Senior Housing Manager and Housing Managers (two (2) in number) were either administrative employees or managerial employees and should be excluded from the proposed bargaining unit by virtue of R.I.G.L. 28-9.4-2 (b) 1;
3. The positions of Director of Modernization/ Development, Comptroller and Executive Secretary to the Director were confidential employees and should be excluded from the proposed bargaining unit by virtue of R.I.G.L. 28-9.4-2 (b) 4.

The Respondent's position with respect to each of the positions to be excluded will be discussed hereinafter.

Title 28, Chapter 9.4, Section 2 of the General Laws of Rhode Island 1956, Reenactment of 1986, grants to employees of Housing Authorities the rights under R.I.G.L. 28-9.4-1, "...to organize, to be represented, to negotiate and bargain on a collective basis...covering hours, salary, working conditions and other terms of employment; provided, however, that nothing contained in this chapter shall be construed to accord to municipal employees the right to strike."

Section 9.4-2 (b) of said Title 28 defines Municipal Employees as follows:

"(b) 'Municipal Employees' means any employee of a municipal employer, whether or not in the classified service of the municipal employer, except:

1. Elected officials and administrative officials;

2. Board and commission members;
3. Certified teachers, police officers, fire-fighters;
4. 'Confidential' and 'supervisory' employees;
5. 'Casual' employees, meaning those persons hired for an occasional period to perform special jobs or functions;
6. 'Seasonal' employees meaning those persons employed to perform work on a seasonal basis of not more than sixteen (16) weeks, or who are part of an annual job employment program;
7. Employees of authorities except housing authorities not under direct management by a municipality who work less than twenty (20) hours per week. The state labor relations board shall, whenever requested to do so, in each instance, determine who are supervisory, administrative, confidential, casual, and seasonal employees."

In the first instance, it must be noted that Title 28 Chapter 9.4 contains no definition of "Administrative Officials" "Confidential Employees" or "Supervisory Employees". It is apparent that the Legislature left the determination of such employees to the Board for the last paragraph of R.I.G.L. 28-9.4-2 (b) provides that the Board "...shall, whenever requested to do so, in each instance, determine who are supervisory, administrative, confidential, casual, and seasonal employees".

In the Board's Decision of November 7, 1973, relative to the request of the State of Rhode Island for the exclusion of management and supervisory personnel from any proposed bargaining unit, (which Decision was quoted with approval by the Supreme Court of the State of Rhode Island in State v. Local No. 2883, AFSCME, 463 A2d 186 (1983) we said at Page 4 thereof:

"...we are constrained to conclude that with the exception of those supervisory personnel, that we categorize as being 'top level supervisory personnel' supervisors do have the right to organize and bargain

collectively. We do not define who would be included in such a unit because this would be the function of the Board only when specific factual cases have been presented to the Board for such a decision. However, we do feel that a top level supervisor would be one whose duties and tasks and functions are purely supervisory in nature and who of necessity partakes more of the nature of management and policymakers than of rank and file". (underlining added) This has been the consistent policy of the Board since that date.

With respect to who are "Administrative Officials" this Board contemplates that they, in the absence of any contrary definition, are the equivalent of "Managerial Personnel", who this Board has included within the term "Top Level Supervisory Personnel". This is consistent with our language in the Decision of November 7, 1973, where at Page 5 thereof we concluded that:

.state employees do have the right to organize and to bargain collectively with the exception of managerial personnel and what we classify as being 'top level supervisory personnel'"

In November of 1979, the Board adopted a policy relative to assisting the Board in the determination of whether to exclude, an alleged, supervisory position from a rank and file unit. This policy provides as follows:

"8. In determining whether a supervisory position should be excluded from a rank and file unit, the Board shall consider among other criteria whether the principal functions of the position are characterized by not fewer than two of the following:

(a) Performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees;

(b) performing such duties as are distinct and dissimilar from those performed by the employees supervised;

(c) exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing the provisions of a collective bargaining agreement;

(d) establishing or participating in the establishment of performance standards for subordinate

employees and taking corrective measures to implement those standards". (underlining added)

We believe that the application of the foregoing principles to Municipal Employees is appropriate and consistent with the intent and purposes of both R.I.G.L. 28-9.4-1 et seq. and R.I.G.L. 28-7-1 et seq. (Rhode Island State Labor Relations Act) and the Board will review the evidence presented in determining the inclusion or exclusion of the objected to positions within the bargaining unit, in the light of such principles. However, the Board will consider, in addition to the above four 4) criteria, the supervisory level of each employee.

In the instant case, the bargaining unit petitioned for is not what we commonly refer to as a "rank and file unit". In the instant case, Council 94, American Federation of State County and Municipal Employees (hereinafter Council 94) represents the so-called "rank and file" employees in a unit that would be separate and distinct from the proposed bargaining unit. As we said in our Policy Statement of November 7, 1973:

"...with the exception of those supervisory personnel that we categorize as being 'top level supervisory personnel' supervisors do have the right to organize and bargain collectively".

Again as said in said Policy Statement of November 7, 1973:

"We do not define who would be included in such a unit because this would be the function of the board only when specific factual cases have been presented to the board for such a decision".

In indicating who the Board felt would be "top level supervisory personnel", we said in said Policy Statement of November 7, 1973:

"...a top level supervisor would be one whose duties and tasks and functions are purely supervisory in nature and who of necessity partakes more of the nature of management and policymakers then of rank and file". (underlining added)

As the Board recently said in State of Rhode Island and the Rhode Island Laborers' District Council, etc. Case No. EE-3439 in determining a unit separate and distinct from a rank and file unit:

"...the Board will look to the hierarchy of managerial and supervisory authority in relation to the position or positions sought to be included in such a separate and distinct unit. Not every...employee who may exercise some degree of managerial or supervisory authority need necessarily be denied the right to organize and bargain collectively..."

In determining whether employees who exercise some degree of managerial or supervisory responsibility should be allowed to organize and bargain in a separate and distinct unit from "rank and file" employees, the Board will analyze each case to determine if the managerial or supervisory authority is of such a nature so as to classify the position as "top level supervisory personnel"

Before considering each of the six (6) positions in questions here, a review of testimony as to the structure and operational policies of the Respondent is in order.

The undisputed testimony is that the Respondent is operated by a Board of Commissioners composed of five (5) members who promulgate all policies and regulations governing the operation of the Respondent subject to rules, regulations, and guidelines

established by the United States Government's, Department of Housing and Urban Development (HUD).¹

Clearly the operational policies are set by the Board of Commissioners and the employees proposed to be included in the bargaining unit, each in his or her own capacity, carry out the established policies. Other than making comments and suggestions no one (1) of the employees involved in this proceeding have any role in setting policy. While some do regularly attend meetings of the Board of Commissioners, they are not involved in the establishment of the policies of the Respondent

The testimony established that the Executive Director of the Respondent, the Comptroller, Director of Modernization/Developement and the Executive Secretary, constitute the negotiating committee for the Respondent. However, in its negotiations with Council 94 for the so-called "rank and file" employees, the actual written Collective Bargaining Agreement must be and is approved solely by the Board of Commissioners. Thus, all working conditions for the employees covered by the Collective Bargaining Agreement between the Respondent and Council 94 are established by the Board of Commissioners when it approves the Collective Bargaining Agreement. As to employees of the Respondent not covered by said Collective Bargaining Agreement with Council 94, their working conditions are likewise set by the Board of Commissioners including the policy on overtime.²

1. The Respondent's budget, bidding procedures, members and classifications of employees, positions and numerous matters relating to the actual operation of the facilities operated by the Respondent, are all subject to HUD approval.

2. The actual implementation of the overtime policy and the assignment thereof is done by some of the employees proposed to be included in the proposed unit.

A. DIRECTOR OF MODERNIZATION/DEVELOPMENT

The Respondent argues that the Director of Modernization/Development acts in the capacities of supervisor, managerial employee and confidential employee.

The evidence established that the Director of Modernization/Development was on the third (3rd) level of supervisory responsibility. The five (5) Commissioners constitute the first (1st) level of supervisory responsibility. The Executive Director constitutes the second (2nd) level of supervisory responsibility. (Respondent's Exhibit 1 - Organization Chart of the Respondent). As part of its case in establishing the position of Director of Modernization/Development as a supervisory one, the Respondent introduced into evidence the "Class Specification" (Respondent's Exhibit 10) for this position. This "Class Specification" under "Supervision Given" says:

"The incumbent may give supervision to the Housing Managers and Foremen in order to coordinate the highest and best use of the maintenance staff, materials and equipment for the upkeep and betterment of our properties". (underlining added)

It should be noted here that this "Class Specification" was drawn up by the Respondent and uses the word may. The evidence established only in a general way that the Senior Housing Manager and the two (2) Housing Managers³ report to the Director of Modernization/Development

Further, an examination of the "Class Specification" for the Director of Modernization/Development in relation to Principal

3. All three (3) positions are on the fourth (4th) level of supervisory responsibilities as shown under the Organizational Chart and are on the same level.

Duties sets forth thirteen (13) duties, only two 2) of which relate in any way to supervisory responsibility, i.e.

"(c) Oversee training of maintenance staff;

i Direct work efforts to deal with priorities."

The evidence did not establish in any positive way that the Director of Modernization/Development did engage in the training of maintenance staff nor did it deal with the direction of work efforts to deal with priorities. Moreover, even if these purported supervisory duties were and are carried out, they are not of such a magnitude as to classify such position as one "purely supervisory in nature"

Additionally, the evidence established that the Director of Modernization/Development did not have the ultimate authority to hire or fire employees. While the occupant of such position may have interviewed prospective employees, the evidence is clear that the actual, final hiring and the ultimate firing of all employees was done by the Board of Commissioners. In addition, while the occupant of such position may and has issued warnings to employees, he cannot suspend an employee without the approval of the Executive Director (Transcript Page 94) nor does he formulate the rules under which a warning may be issued (Transcript Page 95); nor does he formulate personnel policy (Transcript Page 96); nor any other policies issued by HUD that govern the operations of the Respondent (Transcript Page 86). Further, he does not exercise judgment in adjusting grievances or in enforcing the provision of the Collective Bargaining Agreement

While he was a part of the Respondent's negotiating team for negotiations with Council 94, the actual adoption and approval of

Collective Bargaining Agreement was and is done by the Board of Commissioners.

Basic overall policies of the Respondent are set by HUD and Director of Modernization/Development does not either establish or assist in the establishment of such policies nor does he establish or participate in the establishment of performance standards for subordinate employees nor does he take corrective measures to implement such standards, if any such standards exist.

The evidence established that by far, the greater part of duties of the position of Director of Modernization/Development, as set forth in the "Class Specification", are not of a supervisory nature. Moreover, the policies and guidelines under which he operates are either set by HUD or the Board of Commissioners.

From a review of all of the evidence, the Board concludes that the Director of Modernization/Development does not perform such supervisory duties of such nature so as to be classified as an employee whose duties, tasks and functions are purely supervisory in nature. Additionally, his duties are not such as to classify him as a managerial employee under the policies of Board previously referred to herein.

The remaining issue in relation to the Director of Modernization/Development is whether he is a confidential employee. If he is a confidential employee, he must be excluded from the bargaining unit. Barrington School Committee v. Rhode Island State Labor Relations Board, RI 608 A2d 1126 (1992). In the Barrington School Committee case, supra, the Supreme Court of the State of Rhode Island adopted for that case

the so-called "labor-nexus" test.⁴ Under the labor-nexus test, two (2) categories of employees are recognized as "confidential" first - 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; - second 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.

The evidence established that it is the Board of Commissioners who have the final determination with respect to collective bargaining conducted with Council 94. It is the Board of Commissioners who decide upon the contractual proposals the Respondent will make to Council 94 (Transcript Page 111). It is also the Board of Commissioners who determine what proposals of Council 94 will be accepted by the Respondent (Transcript Pages 111-112). From the testimony in this case, it is the Board's finding and conclusion that it is the Board of Commissioners who formulate, determine and effectuate management policies in the field of labor relations. From the testimony and evidence, it is clear that the Director of Modernization/Development does not act in a confidential capacity to the Board of Commissioners. If anyone acts in such capacity, it is the Executive Director of the Respondent who is not included among those employees sought to be included in the requested bargaining unit.

4. The Board notes that the Supreme Court, in its Opinion, noted that: "...we decline at this time to embrace the labor-nexus test as necessarily controlling in all future instances. It may be that a broader definition of those employees considered to be "confidential" would be desirable in other circumstances".

The evidence established that the Director of Modernization/Development did act as a member of the Respondent's negotiating team. It is obvious that he, in such capacity, would have access to some labor information. However, the testimony in this case is that it was the Board of Commissioners who made the proposals to the Respondent and which ultimately accepted or rejected the proposals of Council 94. The time spent by the Director of Modernization/Development, in such negotiations, was minimal since the Collective Bargaining Agreement was for a three (3) year period. Further, there is no evidence that the Director of Modernization/Development had or required access to any labor information as a routine part of his duties or responsibilities.

Furthermore, there is no showing that the Director of Modernization/Development was "in a confidential work relationship with a specifically identifiable managerial employee responsible for labor policy" The evidence established that it was the Board of Commissioners which not only set labor policy but all policies of the Respondent not established by HUD. Whatever access the Director of Modernization/Development had or has to labor-related information was of a casual nature and not as a routine part of his duties

For all of the foregoing, the Board finds that the Director of Modernization/Development does not exercise such supervisory and/or managerial functions so as to be excluded from the proposed bargaining unit nor does he act in such a capacity so as to be classed as a confidential employee.

FINDINGS OF FACT

A review of all of the evidence, oral and documentary, leads to the following Findings of Fact:

The fundamental duties of the Director of Modernization/Development are not of a supervisory nature for only two (2) of the thirteen (13) specified duties can, in any sense, be classified as supervisory in nature.

2. The evidence failed to establish that the Director of Modernization/Development did, in fact, oversee the training of maintenance staff

3. The evidence failed to establish that the Director of Modernization/Development directed work efforts to deal with priorities.

4. The Director of Modernization/Development does not have or possess the authority to hire or fire any employee.

5. The Director of Modernization/Development does issue warnings but has no authority to suspend any employee except with the approval and consent of the Executive Director.

6. The Director of Modernization/Development does not set or establish policies by which the Respondent is operated. Such policies are set either by HUD or the Respondent's Board of Commissioners.

7. The Director of Modernization/Development does not establish or set labor policies.

8. The Director of Modernization/Development does serve on the Respondent's Negotiating Committee. However, the terms and conditions of any Collective Bargaining Agreement are set and approved by the Respondent's Board of Commissioners

9. The Director of Modernization/Development does not have any authority to resolve grievances of any employee

The Director of Modernization/Development does not establish performance standards for other employees

The Director of Modernization/Development does not act in a confidential capacity to the Board of Commissioners which establishes and sets labor policy

The Director of Modernization/Development does not regularly have access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

The Director of Modernization/Development does not have nor need regular and considerable access to confidential labor matters as a result of his job duties.

CONCLUSIONS OF LAW

1. The Respondent has failed to prove by a fair preponderance of the credible evidence that the Director of Modernization/Development is either a supervisory or managerial employee within the meaning of R.I.G.L. 28-9.4-2 (b) 1 and 4 so as to be excluded from the proposed bargaining unit.

2. The Respondent has failed to prove by a fair preponderance of the credible evidence that the Director of Modernization/Development is a confidential employee within the meaning of R.I.G.L. 28-9.4-2 (b) 4 or within the meaning of confidential employee as set forth in the Barrington School Committee case, supra, so as to be excluded from the proposed bargaining unit.

B. COMPTROLLER

The Respondent argues that the Comptroller acts in the capacity of a supervisor and also acts as a managerial and confidential employee.

evidence established that the Comptroller was on the third (3rd) level of supervisory responsibility.⁵ As part of its case in establishing the position of Comptroller as a supervisory one, the Respondent introduced into evidence the "Class Specification" (Respondent's Exhibit 2) for the position of Comptroller. This "Class Specification" under "Supervision Given" says:

"The encumbent may give general supervision to others, mainly clerical support staff employees. Encumbent assigns work, instructs employees on new or modified work procedures and methods". (underlining added)

Table of Organization (Respondent's Exhibit 1) shows that directly under the Comptroller is the "System Administrator" and under the "System Administrator" are bookkeepers and general clerical staff

An examination of the "Class Specification" for the Comptroller in relation to duties set forth fourteen (14) duties. Only one (1) of which bears any resemblance to a supervisory duty, i.e. (1) which provides that the Comptroller "may maintain property control records or oversee this work" (underlining added).

evidence did not establish, in any positive way, that the Comptroller oversaw maintenance of property control records by other employees. Even assuming such a duty was in fact carried out by the Comptroller, it is not of such magnitude as to classify the Comptroller's position as one "purely supervisory in

5. The levels of supervisory responsibility have been addressed in the discussion of the position of Director of Modernization/Development and will not be discussed herein in relation to the position of Comptroller. Both positions are on the same level of supervisory responsibility. See Respondent's Exhibit 1.

nature" There was testimony that the Comptroller assigned work to clerical employees but such work was of a routine nature and required little, if any, supervision. It is also clear from the evidence and the Organizational Table that whatever supervision was given to clerical staff, it probably came from the "System Administrator"

While the Comptroller did interview candidates for positions, the ultimate decision to hire or fire any employee was made by the Board of Commissioners. While the Comptroller could give verbal warnings, such were discussed with the Executive Director before being given. As to more severe discipline, such as suspension, the same could not be done by the Comptroller. Additionally, there was no evidence that the Comptroller formulated the rules under which a warning may be issued nor does he have authority to formulate personnel policy nor any other policies established by the Board of Commissioners. Further, he has no input into policies issued by HUD. Further, while the Comptroller may, on occasion, sit in at a grievance proceeding he has no authority to make final or binding decisions on any such grievance. Similar to the Director of Modernization/Development, the Comptroller has served as part of the Respondent's negotiating team for negotiations with Council 94. However, the actual adoption and approval of the Collective Bargaining Agreement was and is by the Board of Commissioners.

Basic overall policies of the Respondent are set by HUD and the Comptroller does not either establish nor assist in the establishment of such policies nor does he establish or participate in the establishment of performance standards for subordinate employees nor does he take corrective measures to implement such standards, if any.

The evidence established that the greater part of the duties of the Comptroller, as set forth in the "Class Specification", are not of a supervisory nature. Moreover, the policies and guidelines for budgeting, bidding and many other activities are either set by HUD or by the Board of Commissioners. In short, the Comptroller has little latitude in carrying out his duties by virtue of the guidelines and policies of HUD.

From a review of all of the evidence, oral and documentary, the Board concludes that the Comptroller does not perform such supervisory duties in such degree so as to be classed as an employee whose duties, tasks and functions are purely supervisory in nature. Additionally, his duties are not such as to classify him as a managerial employee under the policies of the Board previously referred to herein.

As to the Respondent's claim that the Comptroller is a confidential employee, we will not repeat all of what we have said in relation to the alleged confidential status of the Director of Modernization/Development.

It must be pointed out that it is the Board of Commissioners who have the final determination with respect to collective bargaining conducted with Council 94. All of what was said in relation to the Board of Commissioners' control of collective bargaining negotiations is equally applicable to the Comptroller.

The evidence established that the Comptroller was one of the Respondent's Negotiating Committee and as such would have access to some labor matters. However, the testimony in this case is that it was the Board of Commissioners who made the proposals to the Respondent and which ultimately accepted or rejected the proposals of Council 94. As noted, time spent in collective bargaining was only a minimal part of the Comptroller's duties

since the Collective Bargaining Agreement covered a three (3) year period. Further, there was no evidence that the Comptroller had or required access to any labor information as a routine part of the duties of his position.

Additionally, there was no showing that the Comptroller was "in a confidential work relationship with a specifically identifiable managerial employee responsible for labor policy". As previously noted, it is the Board of Commissioners which not only sets labor policy but all policies of the Respondent not established by HUD. Whatever access the Comptroller had or has to labor-related information was of a casual nature and not as a routine part of his duties.

For all of the foregoing, the Board finds that the Comptroller does not exercise such supervisory and/or managerial functions so as to be excluded from the proposed bargaining unit nor does he act in such a capacity so as to be classed as a confidential employee.

FINDINGS OF FACT

A review of all of the evidence, oral and documentary, leads to the following Findings of Fact:

1. The fundamental duties of the Comptroller are not of a supervisory nature for only one (1) of the fourteen (14) specified duties can, in any sense, be classified as supervisory in nature.

2. The evidence fail to establish that the Comptroller did in fact, oversee the maintenance of property control records

3. The Comptroller does not have or possess the authority to hire or fire any employee.

4. The Comptroller can issue warnings but consults with Executive Director of the Respondent before issuing any such warning.

5. The Comptroller cannot suspend any employee.

6. The Comptroller does not set or establish policies by which the Respondent is operated. Policies of operation are established by either HUD or the Respondent's Board of Commissioners.

7. The Comptroller does not establish or set labor policies.

8. The Comptroller does serve on the Respondent's Negotiating Committee. However, the terms and conditions of Collective Bargaining Agreement are set and approved by Respondent's Board of Commissioners.

9. The Comptroller does not have any final authority to resolve grievances of employees.

10. The Comptroller does not establish performance standards for other employees

11. The Comptroller does not act in a confidential capacity to the Board of Commissioners which establishes and sets labor policy

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

13. The Comptroller does not have nor need regular and considerable access to confidential labor matters as a result of his job duties.

CONCLUSIONS OF LAW

1. The Respondent has failed to prove by a fair preponderance of the credible evidence that the Comptroller is

either a supervisory or managerial employee within the meaning of R.I.G.L. 28-9.4-2 (b) 1 and 4 so as to be excluded from the proposed bargaining unit.

2. The Respondent has failed to prove by a fair preponderance of the credible evidence that the Comptroller is a confidential employee within the meaning of R.I.G.L. 28-9.4-2 (b) 4 or within the meaning of confidential employee as set forth in the Barrington School Committee case, supra, so as to be excluded from the proposed bargaining unit.

C. SENIOR HOUSING MANAGER

The Respondent argues that the Senior Housing Manager acts in both a supervisory and managerial capacity and should therefore be excluded from the proposed bargaining unit.

The evidence established that the Senior Housing Manager was on the fourth (4th) level of supervisory responsibility. (See Table of Organization of Respondent Respondent's Exhibit 1 As part of its case in establishing the position of Senior Housing Manager as a supervisory one, the Respondent introduced into evidence the "Class Specification" for such position (Respondent's Exhibit 26). This "Class Specification" under "Supervision Given" says:

"The incumbent may give direct supervision to maintenance and/or clerical staff, assigning work and evaluating work completed for appearance and completeness. Periodically evaluates staff on quality or quantity of work. The incumbent will also aid the Family Housing Manager when needed and will coordinate programs which deal with all housing units".

An examination of the "Class Specification" for Senior Housing Manager in relation to the duties of the position sets forth thirteen (13) duties. Of those thirteen (13) duties only

two (2) bear any resemblance to supervisory responsibility. These are (b) which provides that the Senior Housing Manager "monitors and delegates work to subordinate personnel such as clerks, aides and maintenance people" and (k) which provides a duty for "monitoring of highrise buildings, grounds and areas for neatness and general maintenance providing a healthy atmosphere for tenants and the community"

evidence did establish that the Senior Housing Manager does, in a general way, assign workloads and duties to some subordinate employees, i.e. maintenance employees. However, such assignments are of a routine nature for the employees have set and established duties and responsibilities and any supervision is of a routine nature.

evidence did establish that the Senior Housing Manager has issued written warnings (Respondent's Exhibits 29-33) However, any discipline beyond that of the written warning must be authorized by the Executive Director and even he is limited as to termination. Only the Board of Commissioners has the authority to terminate employees. Again, while the Senior Housing Manager has interviewed prospective employees, he has no authority to hire. The hiring, once again, is the sole responsibility of the Board of Commissioners.

With respect to the formulation of personnel policies, the record is devoid of any evidence that the Senior Housing Manager either formulates personnel policies or assists in the formulation thereof.

With respect to the handling of grievances, the Senior Housing Manager may and has on occasion acted in the grievance procedure under Council 94's Collective Bargaining Agreement. However, he has no authority to make final and binding decisions

on such grievances. With respect to collective bargaining, the Senior Housing Manager takes no direct part therein. With respect to labor-related matters, there is no evidence to establish that the occupant of the position of Senior Housing Manager had any position in relation thereto.

As noted previously herein, basic overall policies of the Respondent are set either by HUD or the Respondent's Board of Commissioners. The Senior Housing Manager does not either establish or assist in the establishment of such policies nor does he establish or participate in the establishment of performance standards for subordinate employees nor does he take corrective measures to implement such standards, if any. Even accepting that the Senior Housing Manager is responsible for the monitoring of the grounds and areas for neatness and general maintenance of those facilities under him, such would seem to the Board to be more of a administrative routine as opposed to supervisory duties.

The evidence established that the greater part of the duties of Senior Housing Manager as set forth in "Class Specification" are not of a supervisory nature. Much of the Senior Housing Manager's duties are in relation to tenant occupancy and tenant problems. In this regard, see the duties set forth in the "Class Specification" for the position of Senior Housing Manager

substantial portion of the work of the Senior Housing manager is the carrying out of the policies formulated by HUD and the Respondent's Board of Commissioners.

From a review of all of the evidence, oral and documentary, the Board concludes that the Senior Housing Manager does not perform supervisory duties to such degree so as to be classed as an employee whose duties, tasks and functions are purely

supervisory in nature. Additionally, the duties of the Senior Housing Manager are not such as to classify him as a managerial employee under the policies of the Board previously referred to herein.

For all of the foregoing, the Board finds that the Senior Housing Manager does not exercise such supervisory and/or managerial functions so as to be excluded from the proposed bargaining unit.

FINDINGS OF FACT

1. The fundamental duties of the Senior Housing Manager are not of a supervisory nature, for only two (2) of thirteen (13) specified duties can, in any sense, be classified as supervisory in nature.

2. The Senior Housing Manager does not have or possess the authority to hire or fire any employee

3. The Senior Housing Manager can and does issue written warnings to employees but any disciplinary action beyond such is subject to the approval of the Executive Director.

4. The Senior Housing Manager cannot suspend any employee.

5. The Senior Housing Manager does not set or establish policies by which the Respondent is operated.

6. The Senior Housing Manager does not establish, set or enforce any labor policies or personnel policies of the Respondent

7. The Senior Housing Manager does not have any final authority in the resolution of grievances of employees.

8. The Senior Housing Manager does not establish performance standards for other employees nor is he engaged in the enforcement of any such standards, if any such exist.

9. The Senior Housing Manager does not and is not required to apply personnel policies nor does he engage in the enforcement of the provision of any Collective Bargaining Agreement

CONCLUSIONS OF LAW

1. The Respondent has failed to prove by a fair preponderance of the credible evidence that the Senior Housing Manager is a supervisory employee within the meaning of R.I.G.L. 28-9.4-2 (b) 4 so as to be excluded from the proposed bargaining unit.

2. The Respondent has failed to prove by a fair preponderance of the credible evidence that the Senior Housing Manager is a managerial employee within the meaning of the Board's established policy in relation thereto

D. HOUSING MANAGER (TWO (2) POSITIONS)

The Respondent argues that the Housing Manager⁶ acts in both a supervisory and managerial capacity and should be excluded from the proposed bargaining unit.

The evidence established that the Housing Manager position was on the forth 4th) level of supervisory responsibilities see Table of Organization of the Respondent Respondent's Exhibit 1 As part of its case in establishing that the position of Housing Manager as a supervisory one, the Respondent introduced into evidence the "Class Specification" for such position (Respondent's Exhibit 36). This "Class Specification" under "Supervision Given" says:

6. The Housing Manager is referred to in Respondent's Exhibit 1 as "Family Housing Manager". There are two (2) such positions. One Manager is assigned to Veterans and the other to Morris Heights, both highrise units. Hereinafter we will refer to the two (2) positions simply as Housing Manager.

"The encumbent may give direct supervision to maintenance and/or clerical staff, assigning work and evaluating work completed for appearance and completeness. Periodically evaluates staff on quality or quantity of work".

This statement of "Supervision Given" is identical to that of Senior Housing Manager except the last sentence under "Supervision Given" in the "Class Specification" for Senior Housing Manager

An examination of the "Class Specification" for Housing Manager in relation to the duties of the position sets forth twelve (12) duties. Of these twelve (12) duties only two (2) duties bear any resemblance of supervisory responsibility.⁷

The evidence established that in substantial measure, the Housing Manager carried out similar duties and responsibility to those of the Senior Housing Manager

Both Housing Managers like the Senior Housing Manager do in a general way assign workloads and duties to some subordinate employees, i.e. maintenance employees. However, such assignments are of a routine nature, for the employees do have set and established duties and responsibilities and any supervision is of a routine nature.

Again, like the Senior Housing Manager, the Housing Managers have issued warnings to employees. However, they cannot discipline beyond such warning. As in the case of other employees referred to herein, they have no authority to suspend or fire any employee nor do they have authority to hire any employee.

7. A review of the "Class Specification" for Senior Housing Manager and Housing Manager will show that they are identical except for the duty of the Senior Housing Manager to prepare evictions and to follow up on the procedure therefor.

With respect to the formulation of personnel policies, the record is devoid of evidence that the Housing Managers either formulate personnel policies or assist in the formulation thereof.

Again, like the Senior Housing Manager, the Housing Managers: 1. Have acted in the initial steps in the grievance procedure but have no authority to make final and binding decisions; 2. Have no responsibility for labor-related matters; 3. Have no authority to establish or assist in the establishment of personnel or any policies by which the Respondent is operated; 4. Do not establish or participate in the establishment of performance standards for subordinate employees nor take corrective measures to implement such standards, if any.

The evidence established that the greater part of the duties of Housing Manager as set forth in the "Class Specification" are not of a supervisory nature. As in the case of the Senior Housing Manager a great portion of the duties are in relation to tenant occupancy and tenant problems and in the carrying out of the policies formulated by HUD and the Respondent's Board of Commissioners.

From a review of all of the evidence, oral and documentary, the Board concludes that the Housing Manager position is not one wherein the occupant thereof performs supervisory duties to such degree so as to be classed as an employee whose duties, tasks and functions are purely supervisory in nature. Additionally, the duties are not such as to classify a Housing Manager as a managerial employee under the policies of the Board previously referred to herein.

For all of the foregoing, the Board finds Housing Managers do not exercise such supervisory and/or managerial functions so as to be excluded from the proposed bargaining unit

FINDINGS OF FACT

1. The fundamental duties of the Housing Manager position are not of a supervisory nature, for only two (2) of the twelve (12) specified duties can, in any sense, be classified as supervisory in nature.

2. The Housing Managers do not have or possess the authority to hire or fire any employee

3. Housing Managers can and do issue written warnings to employees but any discipline beyond such is subject to the approval of the Executive Director

4. Housing Managers cannot suspend any employee.

5. Housing Managers do not set or establish policies by which the Respondent is operated.

6. Housing Managers do not establish, set or enforce any labor policies or personnel policies of the Respondent

7. Housing Managers do not have any final authority to resolve grievances of employees

8. Housing Managers do not establish performance standards for other employees.

9. Housing Managers do not and are not required to apply personnel policies nor do they engage in the enforcement of any Collective Bargaining Agreement.

CONCLUSIONS OF LAW

1. The Respondent has failed to prove by a fair preponderance of the credible evidence that Housing Managers are

supervisory employees within the meaning of R.I.G.L. 28-9.4-2 (b) 4 so as to be excluded from the proposed bargaining unit.

2. The Respondent has failed to prove by a fair preponderance of the credible evidence that Housing Managers managerial employees within the meaning of the Board's established policy in relation thereto

E. SYSTEM ADMINISTRATOR

The Respondent argues that the System Administrator acts in a supervisory capacity and should be excluded from the proposed bargaining unit.

The evidence established that the System Administrator on the fourth (4th) level of supervisory responsibility. (See Table of Organization of the Respondent Respondent's Exhibit 1). As part of its case in establishing the position of System Administrator as a supervisory one, the Respondent introduced into evidence the "Class Specification" for such position (Respondent's Exhibit 19). This "Class Specification" under "Supervision Given" says:

"The System Administrator provides supervision to all employees who use the system through use of computer hardware except for the Comptroller".

An examination of the "Class Specification" for System Administrator in relation to the duties of the position sets forth seven 7 duties. Of the seven 7) duties only one (1 bears any resemblance to supervisory responsibility. This is duty (a) which provides that

"Supervises hardware users within system"

evidence established that the System Administrator handles the Respondent's computer system. While the System Administrator may train other employees in the operation of the computer system, there was no evidence that she, in fact, acts in a supervisory capacity in relation to other employees. The System Administrator does not hire or fire any employees. There was no evidence that the System Administrator disciplines other employees nor that she assisted in the formulation of disciplinary rules. Further, the record is devoid of evidence that the System Administrator either formulates personnel policies or assists in the formulation thereof. The record fails to show that the System Administrator deals in any manner with employee grievances. With respect to labor-related matters there was no evidence to establish that the occupant of the position of System Administrator had any responsibility in relation thereto. The only evidence in regard to labor-related matters is that at staff meetings, attended by the System Administrator, labor matters might be discussed. However, there was no showing that the System Administrator had any authority in relation to the Respondent's labor matters. The System Administrator was no part of the Respondent's Negotiating Committee nor was there any evidence that the System Administrator had any meaningful input in labor-related matters.

As noted, on several occasions herein, the basic overall policies of the Respondent are set by HUD or its Board of Commissioners. The System Administrator does not either establish or assist in the establishment of such policies nor does she establish or participate in the establishment of performance standards for other employees nor does she take corrective measures to implement such standards, if any. Even

accepting that the System Administrator is responsible for the operation of the computer system, such would seem to the Board to be more of a responsibility than a supervisory duty.

The evidence established that the greater part of the duties System Administrator and as set forth in the "Class Specification" for such position are not of a supervisory nature. Simply saying that a person has supervisory responsibilities does make such person a supervisor.

From a review of all of the evidence, oral and documentary, Board concludes that System Administrator does not perform supervisory duties to such degree so as to be classed as an employee whose duties, tasks and functions are purely supervisory in nature. Additionally, the duties performed by the System Administrator are not such as to classify the occupant of such position as a managerial employee under the policies of the Board previously referred to herein

For all of the foregoing, the Board finds that the System Administrator does not exercise such supervisory and/or managerial functions so as to be excluded from the proposed bargaining unit.

FINDINGS OF FACT

1. The fundamental duties of the System Administrator are of a supervisory nature. Only one (1 of the seven 7 specified duties can, in any sense, be classified as supervisory in nature.

2. The System Administrator does not have or possess the authority to hire or fire any employee.

3. The System Administrator has no authority to discipline any employee

4. The System Administrator cannot suspend any employee.

5. The System Administrator does not set or establish policies by which the Respondent is operated

6. The System Administrator does not have any effective input into the establishment of the Respondent's operational policies.

7. The System Administrator does not establish or enforce any labor policies or personnel policies of the Respondent.

8. The System Administrator does not establish performance standards for other employees

9. The System Administrator does not and is not required to apply personnel policies nor does she engage in the enforcement of the provisions of any Collective Bargaining Agreement.

CONCLUSIONS OF LAW

1. The Respondent has failed to prove by a fair preponderance of the credible evidence that the System Administrator is a supervisory employee within the meaning of R.I.G.L. 28-9.4-2 (b) 4 so as to be excluded from the proposed bargaining unit

2. The Respondent has failed to prove by a fair preponderance of the credible evidence that the System Administrator is a managerial employee within the meaning of the Board's established policy in relation thereto

F. SECRETARY TO THE EXECUTIVE DIRECTOR

The Respondent argues that the Secretary to the Executive Director (hereinafter Secretary) is a confidential employee and should be excluded from the proposed bargaining unit. This claim is based upon the allegation that the Secretary has regular,

ongoing access to confidential information as part of her job. In support of this position, the Respondent cites the facts that:

1. The Secretary attends the regular meetings of the Board of Commissioners where confidential labor relations and personnel matters are discussed.
2. The Secretary also attends Executive Sessions of the Board of Commissioners where such matters as termination of employees is discussed.
3. The Secretary prepares the Respondent's contract proposals for negotiations with Council 94 and thus, is aware of the proposal well before they are presented to Council 94.
4. The Secretary takes minutes of the negotiations and sits in during caucuses where the Respondent's Negotiating Committee discusses the Respondent's position regarding its own proposals and those of Council 94.
5. The Secretary types the analysis of Council 94's contract proposals and therefor is aware of what the Respondent's Negotiating Committee thinks the impact of Council 94's proposals will be on the Respondent.
6. The Secretary attends and takes notes of grievance hearings and types the Executive Director's answers to grievances and correspondence with Council 94's business agent.

The evidence established that the Secretary works for not only the Executive Director but also for the Director of Modernization/Development and the Comptroller (Transcript Page 68) and attends the monthly meetings of the Board of Commissioners, staff meetings, negotiating meetings and, on occasion, grievance meetings (Transcript Page 68). The evidence also established that the Secretary typed up the Respondent's contract proposal and took minutes of negotiating sessions, when present, and typed them up (Transcript Pages 68 and 69). The Secretary also takes minutes of executive session meetings of the Board of Commissioners (Transcript Page 69)

On cross-examination of the Executive Director, he testified that the Secretary is the only Secretary the Respondent employs (Transcript Page 98 see also Table of Organization Respondent's Exhibit 1); that when she is absent and cannot attend meetings a Mrs. Tarmey, who is one of the Respondent's bookkeepers and is a member of Council 94, fills in (Transcript Pages 99 and 100); that the only confidential matters in which the Secretary is involved are union negotiations and discussion of salaries (Transcript Pages 107 and 108); that all other correspondence is a matter of public record; the Executive Director further testified that he did not know how much of the Secretary's time was spent in negotiating matters (Transcript Pages 109 and 110). It should be noted that there was no definitive testimony that the Secretary did type up grievance responses for the Executive Director.

In determining whether an employee is a confidential one, the Board has, in the past, applied the so-called "Labor-Nexus" test. This test, as previously noted herein, was adopted in the Barrington School Committee case, supra, and the Board believes this is the test to be applied herein. Under the "Labor-Nexus" test, two (2) categories of employees are recognized. First are those "confidential employees who assist and act in a confidential capacity to persons who formulate, determine and effectuate managerial policies in the field of labor relation" In this case, the testimony was uncontradicted that it is the Board of Commissioners who formulate, determine and effectuate management policies in the field of labor relations. The Board of Commissioners hires and fires all employees; sets the salary for all employees; has the ultimate say on disciplinary matters and makes the contract proposals for negotiation and accepts or

rejects Council 94's proposals. The Respondent's Negotiating Committee really acts as a conduit for information to the Board of Commissioners. The record is devoid of evidence that the Secretary assists or acts in a confidential capacity to the Board of Commissioners. If anyone acts in such capacity, it is the Executive Director and not the Secretary who really takes notes and keeps the minutes of the Board of Commissioners' regular and executive session minutes. From all of the evidence before it, the Board concludes that the Secretary does not meet the first of the "Labor-Nexus" categories.

To qualify as a confidential employee under the second category, as said by the Rhode Island Supreme Court in Barrington School Committee case, supra, at Page 1137 of 608 A2d:

"In regard to the second category, the employee in question must be in a confidential work relationship with a specifically identifiable managerial employee responsible for labor policy".

While it may be true that the Secretary acts on some occasions in a confidential capacity to the Executive Director, it is not the Executive Director that is responsible for labor policies of the Respondent. That responsibility rests with the Board of Commissioners and it, in fact, exercise such authority and power. Moreover, if it be assumed that the Executive Director could be considered as an "identifiable managerial employee responsible for labor policy", there was no showing other than that the Secretary, on occasion, is privy to labor matters. As said by the Rhode Island Supreme Court at Page 1137 of the Barrington School Committee case, supra:

"...the mere typing of or handling of confidential labor relations material does not, without more, imply confidential status".

Again, at Page 1137 the Court said:

"The employee at issue must have regular and considerable access to such confidential information as a result of his or her job duties".

In this case, the Secretary, while attending negotiating sessions and keeping notes and typing proposals, has no authority to accept or reject contract proposals. Moreover, the limited time spent by the Secretary in relation to negotiations and labor matters in general cannot be considered as a substantial or major portion of her work duties. While no exact time was testified to, it is apparent to the Board that such time was and is minimal at best.

For all of the foregoing, the Board finds that the Secretary is not a confidential employee so as to be excluded from the proposed bargaining unit.

FINDINGS OF FACT

1. The Secretary does attend and keeps minutes of the regular and executive session meetings of the Board of Commissioners at which meetings, on occasions, labor matters are discussed.

2. The Secretary does, when available, attend collective bargaining meetings and keeps notes

3. The Secretary does type up, on occasion, an analysis of contract proposals.

4. There was no definitive evidence to establish that the Secretary takes notes at grievance hearings and types up the Executive Director's response to such grievances.

5. The Board of Commissioners formulates, determines and effectuates policies of the Respondent in the field of labor relations

6. The Secretary does not sit in a confidential capacity to the Board of Commissioners in the formulation, determination or effectuating of the Respondent's policies in the field of labor relations.

7. The Executive Director is not the managerial employee responsible for the Respondent's labor policy.

8. The Board of Commissioners is the policy maker in the field of labor relations for the Respondent.

9. The Secretary is not in a confidential work relationship with the Board of Commissioners which is the maker of labor policy for the Respondent.

10. The Secretary, even if acting on occasion in a confidential capacity to the Executive Director, is not a confidential employee within the meaning of confidential employee as established in the Barrington School Committee case, supra.

CONCLUSIONS OF LAW

1. The Respondent has failed to prove by a fair preponderance of the credible evidence that the Secretary to the Executive Director is a confidential employee within the meaning of R.I.G.L. 28-9.4-2 (b) 4 so as to be excluded from the proposed bargaining unit.

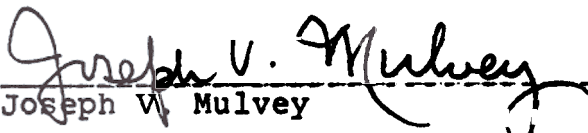
DIRECTION OF ELECTION

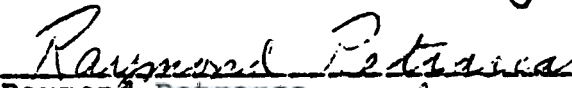
By order of and pursuant to the power vested in the Rhode Island State Labor Relations Board by Rhode Island State Labor Relations Act, it is hereby:

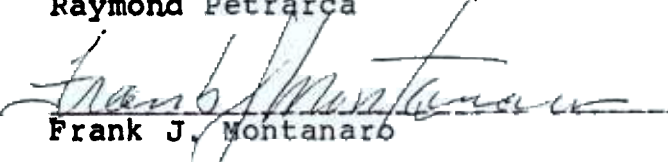
DIRECTED: That an election by secret ballot shall be conducted within ninety (90) days hereof under the supervision of Board or its Agents at a time, place and during hours to be fixed by the Board, among those employees who were employed by Respondent on January 16, 1991, in the unit hereinafter set forth, to determine whether they desire to be represented for the purposes of collective bargaining by International Brotherhood of Teamsters, Local Union 64 or by no labor organization.

The unit is: "Those employees in the class positions of Director of Modernization/Development, Comptroller, Senior Housing Manager, Housing Managers, System Administrator and Executive Secretary to the Director employed by the Woonsocket Housing Authority, excluding all other employees employed by the Woonsocket Housing Authority"

RHODE ISLAND STATE LABOR RELATIONS BOARD

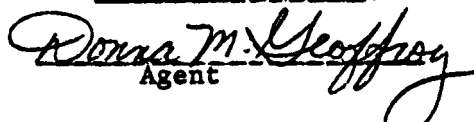

Joseph V. Mulvey


Raymond Petrarca


Frank J. Montanaro

Entered as Order of the
Rhode Island State Labor Relations Board

Dated: October 22, 1992

By: 
Agent