

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

IN THE MATTER OF
CITY OF PAWTUCKET, RHODE ISLAND
EMPLOYER

AND

CASE NO. EE-3541

R. I. COUNCIL 94, AFSCME
PETITIONER

DECISION ON MISCELLANEOUS PETITION
TO INCLUDE POSITIONS OF HUMAN RESOURCE
ASSISTANT AND HUMAN RESOURCE AIDE
WITHIN BARGAINING UNIT

On July 12, 1993, Rhode Island Council 94 of American Federation of State, County and Municipal Employees (hereinafter Council 94) filed a Certification Petition with the Rhode Island State Labor Relations Board (hereinafter Board) seeking Certification of a bargaining unit composed of "Directors, Deputy Directors, Managers, Department Assistants, Coordinators, Supervisors, Executive Secretaries, etc."

When Council 94 and the City of Pawtucket as the Employer (hereinafter Employer) could not agree on the appropriate unit, the Board scheduled a Formal Hearing on the Petition for January 14, 1994. On January 14, 1994, Council 94 and the Employer agreed to a bargaining Unit and signed a Consent Agreement for an election in a unit composed of "all professional and technical employees of the City of Pawtucket, except those excluded under Chapter 9.4-2 of Title 28 of the General Laws of R.I.; and specifically excluding those positions and/or departments as stipulated by the parties as reflected in the record of the formal hearing of January 1994."

The record of the Formal Hearing of January 14, 1994, reflected that positions in the Mayor's office and employees in

office were excluded. Also excluded were the positions of Finance Director, Executive Secretary to the Finance Director, City Clerk, all employees in the City Solicitor's office, City Solicitor, Assistant City Solicitor, Executive Secretary to the Solicitor, Director of Worker's Compensation, Director of Public Works, Executive Secretary to the Public Works Director, Director of Public Safety, Director of Human Services, Human Resource Assistant/Personnel Assistant, Director of Planning, Personnel Director, Personnel Aide, and the Personnel Assistant

The election was held on February 4, 1994, and on February 9, 1994, the Board certified Council 94 as the bargaining representative in the following unit:

" . . .all professional and technical employees of the City of Pawtucket, except those excluded under Chapter 9.4-2 of Title 28 of the General Laws of R.I.; and specifically excluding those positions and/or departments as stipulated by the parties and as reflected in the record of the formal hearing of January 14, 1994."

Thereafter, on April 29, 1994, the Board received a Miscellaneous Petition filed on behalf of Paula Newman in her capacity as Human Resource Assistant and Tracey McGrath in her capacity as Human Resource Aide (hereinafter Petitioners), wherein it was requested that the Board conduct a hearing " .on the issues of why both parties and positions were excluded from the bargaining unit voting herein, namely, R.I. Council 94, AFSCME, to represent all professional and technical employees of the City of Pawtucket," on the basis that said positions fell within the definitions of professional and technical employees of the City of Pawtucket and that neither Council 94 nor the City of Pawtucket as the Employer "had no lawful authority nor reason to exclude them said bargaining unit without their knowledge, consent and permission."

On May 9, 1994, the Board received on behalf of the Employer a Memorandum in Opposition to said Miscellaneous Petition wherein

the Employer asserted that the Miscellaneous Petition was timely filed pursuant to "Article II, Section 11 of the General Rules and Regulations of the Board."¹

Thereafter, on May 16, 1994, the Petitioners filed a reply memorandum wherein they noted that said Article II, Section 11 related to "parties" to the election proceeding and since they had not been parties, the five (5) day period did not apply to them

Article II, Section 11 of the Board's General Rules Regulations in part applies to the time when objections to an election may be filed. The language of this rule relates to parties to the election. In the instant case, the parties to the election conducted by the Board on February 4, 1994, were Council 94 and the Employer. Neither of the Petitioners herein were parties to the Election Proceedings. It is the Board's Decision that the provisions of Article II, Section 11 do not apply to the Petitioners. However, this does not mean that the Petitioners have standing to request a Formal Hearing as to why they were excluded from the bargaining unit pursuant to the Consent Agreement between Council 94 and the Employer, dated January 14, 1994.

Article II, Section 37 of the Board's General Rules Regulations provides a method for Intervention for "any person" intervening. Under Section 37 any person in any proceeding before the Board is required to file with the Board a sworn petition and two copies thereof in writing setting forth the facts upon which such person claims an interest in the proceeding. Said Section 37 further provides for service on all parties and provides that such

¹Article II, Section 11 in pertinent part provides:

"Section 11. Procedure Following Elections; Objections: Upon the conclusion of any election or elections, the Board, or its agent or agents duly designated by the Board to conduct the election shall prepare a report as to the result of the election or elections. The Board shall cause this report to be served upon the parties. Within five (5) days thereafter, any party may serve upon all other parties, and file with the Board (with proof of service) an original and two copies of objections to the election or elections or to the report thereon. The objections shall contain a concise statement of the facts constituting the grounds of objection. . .".

petition be filed at least two days prior to the first hearing, further provides that: "Failure to serve or file such petition as above provided shall be deemed sufficient cause for the denial thereof. "

The Formal Hearing on the Petition for Certification scheduled for January 14, 1994. No petition seeking intervention was filed by the Petitioners pursuant to the provisions of Section 37 between January 14, 1994, and February 4, 1994, the date of the election.

It was on January 14, 1994, that the Consent Election Agreement was entered into and the Petitioners were not included in the proposed bargaining unit. The Petitioners failed to file any petition to intervene between January 14, 1994, and February 4, 1994. Further, following the Election on February 4, 1994, February 9, 1994, the date of Certification, no petition intervention was filed.² It was not until April 29, 1994, that the Petitioners filed their Miscellaneous Petition seeking a hearing on why their positions were not included in the bargaining unit. This time lapse was the better part of three (3) months from the date of Certification. To grant the Miscellaneous Petition would work an injustice to all parties. At some point in time there must be finality to Board Certifications. Had the petitioners herein sought to have intervened at a time prior to the Certification herein, the Board would have had to give serious consideration thereto. However, such is not the case.

Further, there are no provisions in the Board's General Rules and Regulations providing for the filing of a Miscellaneous Petition seeking relief as requested, nor are there any provisions for the Board to hear such a Miscellaneous Petition.

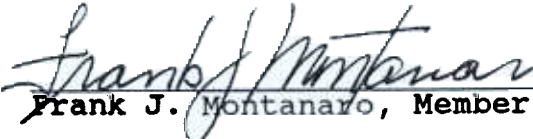
²The Board would note that neither Petitioner filed any objection either prior to the election or on election day in regard to their non-inclusion in the bargaining unit or their non-eligibility to vote in the election.


For all of the foregoing, the "Miscellaneous Petition" of the
Petitioners received by the Board on April 29, 1994, is Denied and
Dismissed.

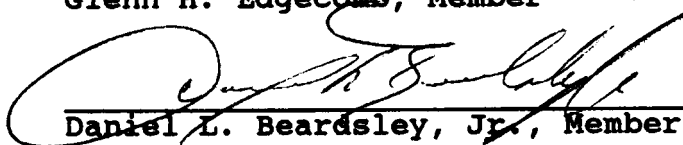
RHODE ISLAND STATE LABOR RELATIONS BOARD


Joseph V. Mulvey, Chairman


Raymond Petrarca, Member



Frank J. Montanaro, Member


Glenn H. Edgecomb, Member


Daniel L. Beardsley, Jr., Member

Entered as Order of the
Rhode Island State Labor Relations Board

Dated: December 16, _____, 1994

By: 
AGENT OF THE BOARD