

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

IN THE MATTER OF
BOARD OF TRUSTEES FOR ROBERT H
CHAMPLIN MEMORIAL LIBRARY,
RESPONDENT

CASE NO. EE-3543

TEAMSTERS LOCAL UNION NO. 64,
PETITIONER

DECISION
AND
DIRECTION OF ELECTION

The above-entitled matter came on to be heard on a "Petition By Employees For Investigation And Certification of Representatives" (hereinafter Petition filed by Teamsters Local Union No. 64 (hereinafter Petitioner) on September 15, 1993, wherein the Petitioner sought to represent a bargaining unit composed of: "Robert H. Champlin Memorial Library Employees (all Non-Supervisory Employees)" The Petition was accompanied by thirteen (13) signature cards which, if verified, were sufficient in number to warrant the conduction of an election, assuming that the employees in the proposed unit were otherwise qualified.¹

All thirteen (13) signature cards, which had been submitted with the Petition, were verified on September 21, 1993

An Informal Conference with representatives of the Petitioner and the Respondent, with an Agent of the Rhode Island State Labor Relations Board (hereinafter Board), was held on October 1, 1993. Agreement could not be reached on a Consent Election.² Formal

¹ The matter of qualification of the employees will be discussed hereinafter.

² The position of the Respondent was that four (4) of the positions within the proposed bargaining unit were supervisory positions; one (1) position was confidential and seven (7) positions were part-time employees of an authority and should be excluded; the remaining employee was eligible but no unit of one (1) employee is permissible. Therefore, the Petition should be dismissed. All of these issues will be discussed hereinafter.

Hearings on the Petition were held on December 3 and 17, 1993, and on January 28, 1994. At the conclusion of the Hearing on January 28, 1994, the parties indicated their desire to file written Briefs. The Brief of the Respondent was filed with the Board on March 7, 1994, and that of the Petitioner on March 8, 1994.

Title 28, Chapter 9.4-1 of the General Laws of the State of Rhode Island 1956, Reenactment of 1986, grants to Municipal Employees as defined in the Act, the right

"...to organize, to be represented, to negotiate, and to bargain on a collective basis with municipal employers, as hereinafter defined 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 (a) of said Title 28 defines Municipal Employer as follows:

"(a) 'Municipal employer' means any political subdivision of the state, including any town, city, borough, district, school board, housing authority, or other authority established by law, and any person or persons designated by the municipal employer to act in its interest in dealing with municipal employees".

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

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

4 'confidential' and 'supervisory' employees;

7. employees of authorities except housing authorities not under direct management by a municipality who work less than 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 "confidential employees" or "supervisory employees". It is apparent that the Legislature left

the determination of the status 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 a 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 partake 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!

In November of 1979, the Board adopted a policy relative to assisting it in the determination of whether to exclude a supervisory position from a rank and file unit. This policy, in part 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 principle 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 employee supervised;

(c) exercising judgment in adjusting grievances applying other established personnel policies and

procedures and in enforcing the provisions of the 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 purpose 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 guidance. We shall deal with the objected to positions in the following order: Head of Reference Services; Head of Children's Services; Reader's Advisor and Interlibrary Loan Manager; Circulation Department Manager; Secretary; Custodian; Seven (7) part-time employees.

I. HEAD OF REFERENCE SERVICES

The "Head of Reference Services", Cindy Desrochers, testified that her principle duties, on a daily basis, consisted in answering reference questions, ordering reference materials and cataloging reference materials (Tr. Vol. I, Pg. 7). The main part of her day is spent at the reference desk (Tr. Vol. I, Pg. 8). By her own testimony, there are no employees under her supervision at the present time (Tr. Vol. I, Pg. 8)³ and that while her Job Description (Employer Exhibit 1 provided that "supervisory experience preferred", she never had any supervisory experience prior to her being at the Library (Tr. Vol. 1, Pg. 10). In addition, she testified that she had never hired an employee; never fired an employee and had never done any performance appraisal of any employee (Tr. Vol. 1, Pg. 8). All policy decisions as far as

³ During the summer of 1993, due to budgetary problems, there was a substantial reduction of employees at the Robert H. Champlin Memorial Library (hereinafter Library). Prior to this reduction, there were part-time aides who worked for her and to whatever extent necessary, she directed their work (Tr. Vol. I, Pg. 11). Even at that time, she did not schedule the work time of the aides (Tr. Vol. I, Pg. 12).

hours of work and other conditions of employment in the reference service area were not made by her but by the Director or Assistant Director (Tr. Vol. I, Pg

An examination of the duties of the position of "Head of Reference Services" as set forth in Employer Exhibit 1, while referring to "supervisory experience preferred" and that such person "...will supervise work done on a day to day basis by the Adult Public Services Assistant, and any part-time Library Aides assigned to the Reference Department", it is clear the basic duties set forth therein are more of a clerical or ministerial nature and while such duties may require the exercise of judgment and discretion, they are clearly not of such a nature as to warrant the classification of "Head of Reference Services" as a top level supervisory position. The Board is aware that the "Head of Reference Services" may have some supervisory responsibilities in relation to Aides, when and if they are working, and with respect to volunteer workers, in order to be sure that they perform their assigned duties. However, from the documentary evidence and the oral testimony, the Board concludes that the position of "Head of Reference Services" is not one primarily or substantially of a supervisory nature. Even when there were Aides, prior to the layoffs in the summer of 1993, the record is devoid of evidence to establish that the "Head of Reference Services" had or has the authority to hire or fire such Aides or even to effectively recommend their hiring or firing or even to discipline them.

The evidence, both documentary and oral, failed to establish that the "Head of Reference Services" had authority to determine policy; to have final authority to discipline or terminate any employee; to apply established personnel policy; to establish or participate in the establishment of performance standards for subordinate employees or to take corrective measures to implement such standards. Since there exists no Collective Bargaining Agreement, there could and was no showing that the "Head of Reference Services" enforced the processes of a Collective Bargaining Agreement. Further, there was no showing that the

overall work of the "Head of Reference Services" was dissimilar from that performed by other employees allegedly under her supervision when they were there prior to the Library closing in 1993.

In short, the evidence is clear that the position of "Head of Reference Services" did not and does not meet the Board's criteria for classifying such position as a supervisory one

A. FINDINGS OF FACT

A review of all of the documentary evidence and oral testimony in relation to the position of "Head of Reference Services" leads to the following Findings of Fact:

1. The fundamental and day-to-day duties are of a clerical and/or ministerial nature as opposed to duties usually performed by top level supervisory personnel.

2. The "Head of Reference Services" has no authority to:

(a) hire or fire any employee or even to effectively recommend such action;

(b) impose final disciplinary actions;

(c) participate in collective bargaining negotiations or to enforce the provisions of any Collective Bargaining Agreement should one be executed;

(d) do performance evaluation of other employees;

(e) schedule the work hours of employees;

(f) settle grievances of employees; and

(g) establish or participate in the establishment of performance standards for subordinate employees or to take corrective measures to implement such standards.

3. The "Head of Reference Services" does not routinely or on a day-to-day basis perform such duties as can be classified as supervisory or related to top level supervisory employees.

4. The "Head of Reference Services" is not such a top level supervisor as should be excluded from the proposed bargaining unit.

B. CONCLUSIONS OF LAWS

1. The Respondent has failed to prove by a fair preponderance of the credible evidence that the position of "Head of Reference Services" is of such supervisory nature, within the meaning of R.I.G.L. 28-9.4-2 (b) (4), as interpreted by the Board, 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 position of "Head of Reference Services" is of such a top level supervisory nature, within the meaning of the Board's established policy, so as to be excluded from the proposed bargaining unit.

II. HEAD OF CHILDREN'S SERVICES

The "Head of Children's Services", Anne McLaughlin, testified that her duties consisted in assisting children after school or during the day with questions in relation to the use of the Library; the planning and presenting of programs for children and the selection of materials for the Children's Department (Tr. Vol. I, Pg. 18). This work is performed at the children's information desk in the Children's Department (Tr. Vol. I, Pg. 18). The budget for her Department is set by the Director and Assistant Director (Tr. Vol. I, Pg. 18).

At the time of the Hearings herein, there were two (2) part-timers working with her in the Children's Department (Tr. Vol. I, Pg. 18). All requests for time off in her Department go to the Assistant Director (Tr. Vol. I, Pg. 19). According to the Library Manual (Union Exhibit 1, Pg. 5 and Employer Exhibit 12, Pg. 4 Section 2.1.0 Appointments reads as follows:

"The Board of Trustees hires and terminates all professional employees. The Board considers the Director's recommendations. Other library employees are hired and terminated by the Director after appropriate consultation with the Board of Trustees.

All applicants should apply, by letter, to the Director of the library..."

to supervisory duties and responsibilities, the Job Description for "Head of Children's Services" (Employer Exhibit 2) provides that: "Supervisory experience advantageous" and further provides that the "Head of Children Services": "...will supervise the work done by all staff members while they are performing that work done in the department"

Prior to the lay off in the summer of 1993, one (1) full-time employee and two (2) part-time employees worked for her in the Children's Department. At that time and after the lay off, she prepared the work schedule of those employees and submitted the same to the Assistant Director for his approval (Tr. Vol. I, Pg. 33). While she managed the budget for the Children's Department, all expenditures were subject to the approval of the Director

The testimony further established that she sat in with the Director on interviews of prospective employees (Tr. Vol. 1, Pg. 28).⁴

While the "Head of Children's Services" does prepare a work schedule to cover for the hours of operation of the Children's Department (Employer Exhibit 3), the hours of operation of the Library are determined by the Director in consultation with the Board of Trustees (Tr. Vol. I, Pg. 53). In addition, the hours for part-time employees is determined by the Director (Tr. Vol. I, Pg. 53). Time off for part-timers is determined by the Assistant Director (Tr. Vol. I, Pg. 53). As to employees in her Department requesting time off for sickness, they are supposed to talk to the Assistant Director (Tr. Vol. I, Pg. 53). The dress code is determined by the Director (Tr. Vol. 1, Pg. 54)

record is silent as to whether or not the "Head of Children's Services" has: (1) ever hired or fired an employee; (2) disciplined an employee; (3) exercised judgment in adjusting any grievance; (4) applied established personnel policies; (5)

⁴ It must be noted however, that pursuant to the Manual, such employees were hired by the Director after appropriate consultation with the Board of Trustees.

established performance standards for any subordinate employee or
6 taken corrective measures to implement any such standards

examination of the duties of the "Head of Children's Services" (Employer Exhibit 2) establishes that the vast majority of the duties of the "Head of Children's Services" are not supervisory but are more of a clerical or ministerial nature. Clearly, the performance of many of the duties requires an extensive knowledge of children's reading materials and programs for children. However, such, in the opinion of the Board, are not supervisory responsibilities of such a nature as to classify the position of "Head of Children's Services" as a top level supervisory one. The Board is aware that the "Head of Children's Services" may and does have some supervisory responsibilities in relation to part-time employees when they are working to ensure that such part-time employees are performing their duties properly. However, from the documentary evidence and the oral testimony, the Board concludes that the position of "Head of Children's Services" is not one primarily or substantially of a supervisory nature

evidence, both documentary and oral, failed to establish that the "Head of Children's Services" had authority to determine policy; to have final authority to discipline or terminate any employee; to apply established personnel policy; to establish or participate in the establishment of performance standards for subordinate employees or to take corrective measures to implement such standards. Since there exists no Collective Bargaining Agreement, there could and was no showing that the "Head of Children's Services" enforced the provisions of any Collective Bargaining Agreement

In short, the evidence is clear that the position of "Head of Children's Services" did not and does not meet the Board's criteria for classifying such position as a supervisory one

A. FINDINGS OF FACT

A review of all the documentary evidence and oral testimony in relation to the position of "Head of Children's Services" leads to the following Findings of Fact:

1. The fundamental day-to-day duties are of a clerical and/or ministerial nature as opposed to duties usually performed by top level supervisory personnel

2. The "Head of Children's Services" has no authority to:

(a) hire or fire any employee or even to effectively recommend such action;

(b) impose final disciplinary action;

c participate in collective bargaining negotiations or to enforce the provisions of any Collective Bargaining Agreement should one be executed;

(d) do performance evaluations of subordinate employees;

(e) schedule the work hours of employees except with the approval of the Assistant Director;

f settle grievances of employees; and

(g) establish or participate in the establishment of performance standards for subordinate employees or to take corrective measures to implement such standards

3. The "Head of Children's Services" does not routinely or on a day-to-day basis perform such duties as can be classified as supervisory or related to top level supervisory employees

4. The "Head of Children's Services" is not such a top level supervisor as should be excluded from the proposed bargaining unit.

B. CONCLUSIONS OF LAW

1. The Respondent has failed to prove by a fair preponderance of the credible evidence that the position of "Head of Children's Services" is of such supervisory nature, within the meaning of R.I.G.L. 28-9.4-2 (b) (4), as interpreted by the Board, 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 position of "Head of Children's

Services" is of such a top level supervisory nature, within meaning of the Board's established policy, so as to be excluded from the proposed bargaining unit.

III. READER'S ADVISOR AND INTERLIBRARY LOAN MANAGER

The "Reader's Advisor and Interlibrary Loan Manager", Paulette Gagnon, (hereinafter "Reader's Advisor") testified that her duties consisted in working "...at the reference desk answering reference questions, phone calls, helping the people with the adult fiction as well as the reference books, take reserves and I do the interlibrary loans" (Tr. Vol. I, Pg. 76). She also works in other Departments when there is a need to cover for breaks or lunch time (Tr. Vol. I, Pg. 77). She is the only employee in her Department and supervises no other employees. The budget for her Department is set by the Director and the Board of Trustees (Tr. Vol. I, Pg. 78). She reports to the Assistant Director who does performance appraisals on her work (Tr. Vol. I, Pg. 78).

Prior to the lay off in the summer of 1993, two (2) part-timers worked in her Department (Tr. Vol. I, Pg. 82). After lay off, there have been no employees in her Department (Tr. I, Pg. 77). The schedule of hours of work by the two (2) part-timers in her Department was prepared by the Assistant Director (Tr. Vol. I, Pg. 85). Of the two (2) part-timers, one (1) shelved books, and the other helped at the reference desk and also helped in interlibrary loans (Tr. Vol. I, Pg. 86). In addition to the two (2) part-timers, there were a total of five (5) volunteers worked in her Department but never more than two (2) or three (3) at any time (Tr. Vol. I, Pg. 87) who shelved books (Tr. Vol. I 87). When she had a problem with employees, she reported it to the Assistant Director and did not speak first to the employee or volunteer (Tr. Vol. I, Pgs. 88-89). In cases where an employee was to be out sick, they would contact the Assistant Director (Tr. Vol. I, Pgs. 91 and 92). She did attend Department meetings when they were held (Tr. Vol. I, Pg. 92). She did not prepare the budget for her Department (Tr. Vol. I, Pg. 95).

An examination of the duties of the position of "Reader's Advisor" as set forth in Employer Exhibit 5, while referring to the fact that the "Reader's Advisor": "...will supervise work done by part-time library aides assigned to assist the RA/ILM, and the work done by all staff members in the areas of reserves and interlibrary loans", makes it evident that the bulk of the "Reader's Advisor's" duties are clerical and/or ministerial in nature.⁵

The record is silent as to whether or not the "Reader's Advisor" has: (1) ever hired or fired an employee or effectively recommended a hiring or firing; (2) disciplined any employee; (3) exercised judgment in adjusting of grievances; 4) applied established personnel policies; (5) ever established performance standards for any subordinate employee; or (6) ever taken corrective measures to implement any such standards.

An examination of the duties of "Reader's Advisor" (Employer Exhibit 5) establishes that the vast majority of such duties are not supervisory but more of a clerical or ministerial nature. While the performance of many of the duties of "Reader's Advisor" requires the exercise of judgment and knowledge of a specialized degree, they are not of such a nature as to classify the position as top level supervisory. The Board is aware that the "Reader's Advisor" may and does have some supervisory responsibility in relation to part-time employees and volunteers when they are working to ensure that they are properly performing their duties. However, from the documentary evidence and the oral testimony, the Board concludes that the position of "Reader's Advisor" is not one primarily or substantially of a supervisory nature.

⁵ Employer Exhibit 5 set forth the "Reader's Advisor's" duties as:

"Assist patrons in the use of library catalogs
Assist patrons in the use of adult non-fiction circulating collection
Place reserves on library materials for patrons
Process interlibrary loan requests
Maintain monthly interlibrary loans statistics, and submit them to the Assistant Director".

evidence, both documentary and oral, failed to establish that the "Reader's Advisor" had authority to determine policy; to have final authority to discipline or terminate any employees; or to hire any employee; to apply established personnel policy; to establish or participate in the establishment of performance standards for subordinate employees or to take corrective measures to implement such standards

In short, the evidence is clear that the position of "Reader's Advisor" did not and does not meet the Board's criteria for classifying such position as a supervisory one.

A. FINDINGS OF FACT

A review of all the documentary evidence and oral testimony in relation to the position of "Reader's Advisor" leads to the following Findings of Fact:

1. The fundamental day-to-day duties are of a clerical and/or ministerial nature as opposed to duties usually performed by top level supervisory personnel

2. The "Reader's Advisor" has no authority to:

(a) hire or fire any employee or even to effectively recommend such action;

impose final disciplinary action;

participate in collective bargaining negotiations or to enforce the provisions of any Collective Bargaining Agreement should one be executed;

do performance evaluations of subordinate employees;

schedule the work hours of employees;

settle grievances of employees; and

establish or participate in the establishment of performance standards for subordinate employees or to take corrective measures to implement such standards.

3. The "Reader's Advisor" does not routinely or on a day-to-day basis perform such duties as can be classified as supervisory or related to top level supervisory personnel.

4. The "Reader's Advisor" is not such a top level supervisor as should be excluded from the proposed bargaining

B. CONCLUSIONS OF LAW

1. The Respondent has failed to prove by a fair preponderance of the credible evidence that the position of "Reader's Advisor" is of such supervisory nature, within the meaning of R.I.G.L. 28-9.4-2 (b) 4 , as interpreted by the Board, 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 position of "Reader's Advisor" is of such a top level supervisory nature, within the meaning of the Board's established policy, so as to be excluded from the proposed bargaining unit

IV. CIRCULATION DEPARTMENT MANAGER

The "Circulation Department Manager", Andrea Plaziak testified that she registers patrons for the CLAN card (Tr. Vol II, Pg. 30).⁶ As part of her duties, she issues library material to patrons (Tr. Vol. II, Pg. 30); receives returns of library materials (Tr. Vol. II, Pg. 30); sends out notices and bills for overdue books and library material (Tr. Vol. II, Pg. 30); maintains order of the adult circulation collection in the adult room (Tr Vol. II, Pg. 30); keeps current all signs pertaining to library hours and policies (Tr. Vol. II, Pg. 31); manages all aspects of audiovisual materials (Tr. Vol. II, Pg. 31 and handles disputed bills and claim returns (Tr. Vol. II, Pg. 31). She spends about ninety-eight (98) to one hundred (100) percent of her daily time on the foregoing duties (Tr. Vol. II, Pg. 31). In addition, she works on occasion at the "Reader's Advisor's" desk in the Reference Department and Children's Department (Tr. Vol. II, Pg. 31). She reports to the Assistant Director (Tr. Vol. II, Pg. 31). The

⁶ CLAN is the abbreviation for Cooperating Libraries Automated Network which allows a library patron to borrow material from about thirty (30) libraries throughout the State of Rhode Island (Tr. Vol. II, Pg. 30).

Director sets the total hours that employees work (Tr. Vol. II, Pg 32). At the time of the Hearings herein, there were four 4) part-time employees working in the Circulation Department (Tr. Vol. II, Pg. 33). Prior to the lay offs in the summer of 1993, there had been seven (7) part-timers working in the Circulation Department (Tr. Vol. II, Pg. 34). She also worked with the Director and the Assistant Director in developing a procedural manual for the Circulation Department (Tr. Vol. II, Pg. 34) She has been involved, together with the Director, in interviewing prospective employees (Tr. Vol. II, Pg. 34). In interviewing prospective employees, she was particularly interested in the employee's being able to alphabetize and their need to be presentable (Tr. Vol. II, Pg. 36). The actual selection of an employee is by joint agreement with the Director (Tr. Vol. II, Pg. 36).⁷ She prepared the work schedules for the part-timers (Employee Exhibit 7) and it remained the same from the rehiring of the employees to the date of hearing (Tr. Vol. II, Pg. 40). When asked by counsel for the Respondent as to what the part-timers do, she replied at Pages 43 and 44 of Volume II of the Transcript that:

"A. We answer the telephone that...the telephone line comes through the circulation desk. We answer the telephone, we transfer calls to correct departments and/or people, we check in the books, videos, audio materials, we check out materials to patrons, we register library cards to patrons. When bills or notices come to us from Providence, we search the shelves for these items and send the bills and notices out to patrons; stamp, update due stickers for the automated system.... Shelf materials, general housework".

As to allocating the workload, she responded at Page 45 of Volume II of the Transcript:

"A. There is no reason to do any day-to-day allocation of anything. Once you are trained in the Circulation Department, you just pick up and go, do the work".

If problems arise with respect to the work of part-timers, she speaks to the Assistant Director first (Tr. Vol. II, Pg. 46) and

⁷ As noted previously, all employees are in fact hired by the Director after appropriate consultation with the Board of Trustees.

works it out with the employee. On occasion, she has written letters of reference for employees (Employer Exhibit 8). In one of those letters of referral, she referred to herself as the supervisor of the particular employee.⁸

She testified that she did attend meetings of department heads and that at such meetings, the Director, Assistant Director, Heads of the Reference Services, Children's Services and Reader's Advisor were present (Tr. Vol. II, Pgs. 50 and 51). She was concerned about the dress appearance of employees and was at least partially responsible for the establishment of a dress code (Tr. Vol. II, 51-55). As to filling in for sick employees, this would be worked out with the Assistant Director

While the "Circulation Department Manager's" Job Description (Employer Exhibit 6) refers to the fact that such person shall supervise work done by all staff members while they are performing...work in the department", the Job Description goes on to set forth the duties of such position as:

"Register patrons for the CLAN card
Issue library material to patrons
Receive returned library material
Send overdue notices and bills
Maintain order of the adult circulating
collection in the adult room"⁹

The record is silent as to whether or not the "Circulation Department Manager" has: (1) ever hired or fired any employee; (2) disciplined an employee; (3) exercised judgment in adjusting any grievance; (4) applied established personnel policies; (5) establish performance standards for any subordinate employee; or (6) taken corrective measure to implement any such standards.

An examination of the duties of "Circulation Department Manager" establishes that the vast majority of the duties are not supervisory but of a clerical and/or ministerial nature. The

⁸ Considering the overall supervision required, the Board does not feel bound by her designation of herself as the employee's supervisor.

⁹ It is to be noted that these are the duties previously referred to herein and as testified to by the "Reader's Advisor".

"Circulation Department Manager" testified that ninety-eight to one hundred 100) percent of her time is spent in performance of such clerical and/or ministerial duties. There clearly was little time left for the performance of supervisory responsibilities. The participation in interviews with prospective employees was clearly only a minor part of her responsibilities. She in fact had no power to hire part-time employees for such was the responsibility of the Director after consultation with Board of Trustees. The training of employees clearly did require a substantial part of her time and once trained, there was little more that had to be done. Again, her participation in the dress code, while commendable, was not of such nature as to raise her position to one of top level supervisory nature. The Board is aware that the "Circulation Department Manager" may and does have some supervisory responsibilities in relation to part-timers working in the Department to ensure that they properly perform their duties. However, from the documentary evidence and the oral testimony, the Board concludes that the position of "Circulation Department Manager" is not one primarily or substantially of a supervisory nature. The evidence, both documentary and oral, failed to establish that the "Circulation Department Manager" had authority to determine on her own any policy; to have final authority to discipline or terminate any employee; to apply established personnel policy; to establish or participate in the establishment of performance standards for subordinate employees or to take corrective measures to implement such standards

In short, the evidence is clear that the "Circulation Department Manager" did not and does not meet the Board's criteria for classifying such position as a supervisory one.

A. FINDINGS OF FACT

A review of all the documentary evidence and oral testimony in relation to the position of "Circulation Department Manager" leads to the following Findings of Fact:

1. The fundamental day-to-day duties are of a clerical and/or ministerial nature as opposed to duties usually performed by top level supervisory personnel

2. Ninety-eight (98) to one hundred (100) percent of the duties performed on a daily basis are, by the testimony of the "Circulation Department Manager" herself, clearly of a clerical and/or ministerial nature.

3. The "Circulation Department Manager" has no authority to:

a) hire or fire any employee;

(b) impose final disciplinary action;

(c) participate in collective bargaining negotiations or to enforce the provisions of any Collective Bargaining Agreement should one be executed;

(d) do performance evaluations of subordinate employees;

(e) schedule the work hours of employees, except with approval of the Assistant Director

(f) settle grievances of employees; and

(g) establish or participate in the establishment of performance standards for subordinate employees or to take corrective measures to implement such standards

4. The "Circulation Department Manager" does not routinely or on a day-to-day basis perform such duties as can be classified as supervisory or related to top level supervisory personnel

5. The "Circulation Department Manager" is not such a top level supervisor as should be excluded from the proposed bargaining unit.

B. CONCLUSIONS OF LAW

1. The Respondent has failed to prove by a fair preponderance of the credible evidence that the position of "Circulation Department Manager" is of such supervisory nature, within the meaning of R.I.G.L. 28-9.4-2 (b) 4), as interpreted by the Board, 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 position of "Circulation

Department Manager" is of such a top level supervisory nature within the meaning of the Board's established policy, so as to be excluded from the proposed bargaining unit.

V. SECRETARY

The Respondent argues that the "Secretary", Janet Lanni, is a confidential employee within the meaning of R.I.G.L. 28-9.4-2

4 and should be excluded from the proposed bargaining unit

In determining whether the position of "Secretary" is a confidential one and therefore to be excluded from the proposed bargaining unit, the Board will apply the so-called "Labor-Nexus" test.¹⁰ Under the "Labor-Nexus" test, there are two (2) types of employees that are generally determined to be confidential employees and thus are to be excluded from a bargaining unit.

first category relates to employees who assist and act in a confidential capacity to persons who formulate, determine, effectuate management policies in the field of labor relations. The second category relates to those employees who, in the course of their duties, regularly have access to confidential information concerning anticipated changes which may result in collective bargaining negotiations and have regular and considerable access to such confidential information as a result of his or her job duties. An employee whose duties fall into either category is to be excluded from a bargaining unit as a confidential employee.

In this proceeding, the "Secretary" Janet Lanni, testified that under her work schedule she works from 9:00 a.m. to 1:00 p.m. in Technical Services and from 2:00 p.m. to 5:00 p.m. in the office performing secretarial duties (Tr. Vol. II, Pg. 5)

She testified that her secretarial duties consisted of doing:
..spread sheets, reports, trustee's meetings, regular secretarial

¹⁰ The Board recognizes that the "Labor-Nexus" test, while applied by the Supreme Court of the State of Rhode Island in the case of Barrington School Committee v. Rhode Island State Labor Relations Board, et al, 608 A2d 1126 (1992), may not be necessarily controlling in future cases, the Board does adopt the same as applicable in this case.

work, make copies, type letters" (Tr. Vol. II, Pg. 5).¹¹ She also testified that while working in Technical Services, she processes new books; prepares books to be sent to the bindery; sorts mail (Tr. Vol. II, Pg. 5). She further testified that when an applicant applies for a position at the Library, she makes up a folder with the persons name on it and included in the folder is the application itself and then the folder is given to the Director who keeps the same and is not seen by her thereafter (Tr. Vol. II, Pgs. 5 and 6). In relation to "Trustee's Meetings", she clarified her testimony at Pages 6 and 11 of Volume II of the Transcript when she made it clear that she does not type up the minutes of the meetings of the Board of Trustees but only makes copies thereof for the Director and Assistant Director and the members of the Board of Trustees. The actual typing of the Trustee's meeting minutes is done by the person who is the Secretary of the Trustees (Tr. Vol. II, Pg. 21). These records are kept in a book in the office behind her desk (Tr. Vol. II, Pg. 7 and as far as she is concerned they are records open to the public (Tr. Vol. II Pg. 7 In addition she has access to payroll information, settles cash deposits and processes supply orders (Tr. Vol. II, Pg. 7

There was much speculative testimony as to what she might have to do in relation to collective bargaining if the employees became unionized and collective bargaining negotiations took place. What might or might not happen in the future cannot be a basis for determining whether the current position of "Secretary" is of such confidential nature as to be excluded from the proposed bargaining unit. It could well be that the current "Secretary" would be assigned full-time to her Technical Service duties and another

¹¹ The spread sheets are the budget (Tr. Vol. II, Pg. 8) and checking accounts spread sheets (Tr. Vol. II, Pg. 9). She also balances the check book monthly (Tr. Vol. II, Pg. 9).

¹² The evidence later established that to her personal knowledge, she has never been asked by a member of the public to access or look at such records (Tr. Vol. II, Pg. 15) but that they are public records and she was so told by the Director (Tr. Vol. II, Pg. 16). The Director herself at Page 40 of Volume III of the Transcript verified the fact that such records are open to the public.

person would be hired as a full-time Executive Secretary to Director. This type of speculation could go on and on and the Board is not prepared to engage in speculation but deems it essential to determine whether the present position of "Secretary" based upon current duties, is confidential.

A review of all of the testimony of the "Secretary" and Director makes it clear to the Board that the position of "Secretary", as it currently exists, is not one of a confidential nature.

In the first instance, there was no showing that "Secretary" assisted or acted in a confidential capacity to anyone who formulated, determined or effectuated management policies in the field of labor relations. The Trustees, if anyone does, formulate, determine, and effectuate management policies in relation to personnel matters. It was and is the Board of Trustees who hire professional staff and who must be consulted by the Director in the hiring of other employees. It was and is the Board of Trustees who adopted and approved the staff manual under which the Library is operated and employees are governed. The "Secretary" does not work for or with the Board of Trustees and does not attend their meetings nor type up the minutes of their meetings.

Clearly, the position of "Secretary" does not fall within the first category of employees under the "Labor-Nexus" test.

Further, the position of "Secretary" does not fall within the second category of employees under the "Labor-Nexus" test. Whatever information the occupant of the position of "Secretary" has access to is not of a confidential nature. Clearly, payroll records are public documents as are all the financial records of the Library. The "Secretary" herself testified that to her knowledge, she had never typed up a confidential letter. In fact much of the Director's typing is done by the Director herself.

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 relation material does not, without more, imply confidential status...

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

The record in this case is devoid of any evidence that "Secretary" typed confidential information for either the Board of Trustees or the Director. Clearly, there was and could be no testimony that the "Secretary" had access to labor negotiations for none have ever taken place. Further, there was no evidence the "Secretary" was involved in grievance matters or other issues relating to personnel.

In conclusion, neither the documentary evidence nor the testimony established that the "Secretary" had regular and considerable access to confidential information concerning labor matters so as to classify the position as a confidential one within the second category of the "Labor-Nexus" test.

A. FINDINGS OF FACT

The Board of Trustees is the ultimate policymaker in relation to personnel matters.

2. The Board of Trustees hires and fires professional staff.

3. The Board of Trustees must be consulted by the Director before hiring employees other than professional staff.

4. The staff manual, which sets forth employee policies, benefits, working hours and other conditions of employment, is adopted by and is amended by the Board of Trustees.

5. The "Secretary" is not a member of the Board of Trustees.

6. The "Secretary" does not attend meetings of the Board of Trustees

7. The "Secretary" does not type up the minutes of meetings of the Board of Trustees

8. The "Secretary" makes copies of minutes of the meetings of the Board of Trustees for distribution to the individual members of the Board of Trustees, the Director and Assistant Director.

9. The "Secretary" is not in a confidential work relationship with the Board of Trustees which establishes personnel policies.

The "Secretary" works less than fifty (50) percent of her time as "Secretary". The remaining portion of her work day is devoted to Technical Services, which have no confidentiality attached to it.

11. The "Secretary" has not typed up confidential letters.

12. The records kept by the "Secretary" in the cabinet, in the office, located behind her desk are records open to public inspection.

13. The "Secretary" does not assist or act in a confidential capacity to the Board of Trustees which formulates, determines and effectuates personnel policies.

The "Secretary" is not in a confidential work relationship to any managerial employee responsible for labor policy.

B. CONCLUSIONS OF LAW

1. The Respondent has failed to prove by a fair preponderance of the credible evidence that the "Secretary" is a confidential employee within the meaning of R.I.G.L. 28-9.4-2 (b) (4) as determined by the Board, 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 "Secretary" is a confidential employee within the standards of the "Labor-Nexus" test as approved by the Supreme Court of the State of Rhode Island in the Barrington School Committee, case, supra.

VI. CUSTODIAN

The "Custodian", Raymond Pacheco, testified as to his responsibilities and duties which were clearly of a nature as to allow his inclusion within the proposed bargaining union. In fact the Respondent agreed that if there was an appropriate unit, he should be included.

Based upon the testimony and the consent of the Respondent, the position of "Custodian" shall be included within the bargaining unit.

VII. PART-TIME EMPLOYEES

There are seven 7) "Part-Time Employees" who work less than twenty (20) hours per week. None of them work more than nineteen hours per week on average nor more than one thousand (1,000) hours per year (Tr. Vol. III, Pgs. 19; 74-75). Their hours are closely monitored to ensure that they retain their part-time status

Vol. III, Pg. 76, Employer Exhibits 19 and 20) and schedules are adjusted so that they do not exceed or work, on average, twenty (20) hours or more. It is clear from the record that the seven 7 "Part-Timers" are in fact "Part-Timers" who do not work, on average, twenty (20) hours or more per week and the Board so finds.

The basic issue to be resolved is whether the seven 7 "Part-Timers" who work less than twenty (20) hours per week should be excluded from the bargaining unit on the basis that they work for an authority not under the direct management of the Town of West Warwick

R.I.G.L. 28-9.4-2 7) excepts from the definition of "Municipal Employee" "employees of authorities except housing authorities not under direct management by a municipality who work less than 20 hours per week".

The testimony established that, while the Board of Trustees prepares its annual budget, the substantial portion of the money to support such budget is appropriated by the Town (Tr. Vol. II, Pg.

The final say on the budget rests with the Town Council (Tr. III, Pg. 43)

When funds were not appropriated by the Town, the Library shut down in the summer of 1993 and had to be reorganized by reducing the number of hours that Library was open and by a substantial reduction in staff.

Funds for the construction of an addition to the Library were approved by the taxpayers of the Town of West Warwick by a bond referendum (Tr. Vol. II, Pgs. 73-74

All employees of the Library are paid by checks drawn by the Town of West Warwick and signed by the Mayor (Tr. Vol. III, Pg. 45). In addition, all full-time employees are: (1) covered by the Town of West Warwick's retirement plan (Tr. Vol. III, Pg. 36); (2) covered by the Town of West Warwick's health program including Blue Cross semi-private, prescription drugs, Major Medical and Delta Dental (Tr. Vol. III, Pg. 37).

There can be no doubt but that the Library could not function independently or as part of the Town of West Warwick without the appropriation of funds. Without funds, the Library would cease to exist, for the Board of Trustees has no independent authority to raise funds for the day-to-day operation of the Library. Additionally, additions to the Library are dependent upon bond referendum whereby the obligation for the bonds rests with the Town of West Warwick and not with the Board of Trustees. The testimony showed that all Library employees are paid by checks signed by the Mayor and all full-time employees participate in the Town's retirement and health programs.

Work performed by the seven (7) "Part-Timers" is also performed by the full-time Library employees.

From a review of all of the documentary evidence and oral testimony, the Board concludes that the Board of Trustees is not an authority independent of the Town of West Warwick so as to require the exclusion of the seven (7) "Part-Timers", as part of the bargaining unit

A. FINDINGS OF FACT

1. The substantial portion of funds to operate the Library come from annual budget appropriations approved by the Town of West Warwick

2. Funds for additions to the Library are obtained through bonds, the issuance of which are approved by the voters of the Town of West Warwick.

3. The bonds referred to in Finding of Fact 2 above are the obligation of the Town of West Warwick and not the obligation of the Board of Trustees.

4. All Library employees, including the seven (7) "Part-Timers" are paid by checks issued by the Town of West Warwick and signed by the Mayor.

5. Full-time employees of the Library are members of the Town of West Warwick's retirement plan.

6. Full-time employees of the Library participate in the Town of West Warwick's health care program.

7. Work performed by the seven (7) "Part-Timers" is also performed by full-time employees of the Library.

8. The Board of Trustees of the Library is not such an independent authority from the Town of West Warwick so as to require exclusion of the seven (7) "Part-Timers" from the proposed bargaining unit.

B. CONCLUSIONS OF LAW

1. The Respondent has failed to prove by a fair preponderance of the credible evidence that the Board of Trustees is an authority independent of the Town of West Warwick.

2. The Respondent has failed to prove by a fair preponderance of the credible evidence that the seven (7) "Part-Timers" come within the exclusion provisions of R.I.G.L. 28-9.4-2 (b) (7)

3. The seven (7) "Part-Timers" are to be included within the proposed bargaining unit

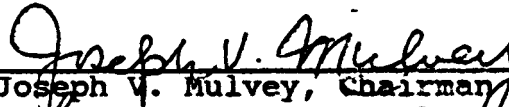
DIRECTION OF ELECTION

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

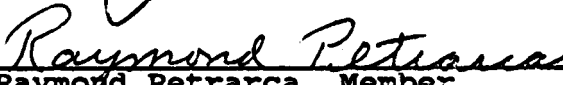
DIRECTED: that an election by secret ballot shall be conducted within ninety (90) days hereafter, under the supervision of the Board or its Agents, at a time, place and during hours to be fixed by the Board among the employees of the Library in a unit composed of:

"Head of Reference Services, Head of Children's Services, Reader's Advisor and Interlibrary Loan Manager, Circulation Department Manager, Secretary, Custodian and all Part-Time employees working less than an average of twenty (20) hours per week excluding all other employees employed by the employer".


RHODE ISLAND STATE LABOR RELATIONS BOARD


Joseph V. Mulvey, Chairman


Frank J. Montanaro, Member



Raymond Petrarca, Member


Glenn H. Edgecomb, Member


Daniel L. Beardsley, Jr., Member

Entered as Order of the
Rhode Island State Labor Relations Board

Dated: May 3, 1994

By: 
AGENT OF THE BOARD