

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

IN THE MATTER OF:

TOWN OF PORTSMOUTH  
Employer

CASE NO. EE-3554

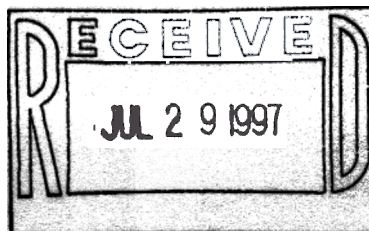
NATIONAL EDUCATION ASSOCIATION  
RHODE ISLAND  
Petitioner

DECISION AND DIRECTION OF ELECTION

This case arises out of a Petition by Employees for Investigation and Certification of Representatives dated March 30, 1994, and filed with the Board on March 31, 1994. It seeks to organize approximately twenty (20) employees within the Town of Portsmouth. The parties were unable to agree at an informal hearing held on Wednesday, May 18, 1994 upon a consent election, and accordingly, formal hearings were held by the Board on September 20, 1994; December 8, 1994; January 12, 1995; and February 14, 1995. The Petition was amended to include the Benefits Administrator/Coordinator at the formal hearing held on January 12, 1995 (transcript pg. 65-66).

Of the positions sought, three 3) were agreed to by the Union to be excluded from the unit, to wit, 1 Town Administrator, 2) Personnel/Finance Director, and 3) Executive Secretary to the Planning Board. (transcript 9/20/94, pg. 4, 8; transcript 2/14/95, pg. 9-10).

There were thirteen (13) titles which the Town agreed could be included in the unit, to wit: 1) Town Clerk's Record Clerk, 2) Accounts Payable/Receivable Clerk, 3 Tax Assessor's Records Clerk, 4) Tax Collector's Records Clerk, 5) Animal Control Officer, 6) Prudence Island Special Police Officer, 7 Building Official, 8) Minimum Housing Inspector, 9) Inspection Clerk, 10) Assistant Deputy Town Clerk, 11 Deputy Tax Assessor/Collector, 12) Police



Clerk, and 13) Payroll/Personnel Clerk. (Transcript 2/14/95, 3, 14-15).

This leaves ten (10) positions subject to the proceedings presently before the Board, to wit: 1) Executive Secretary to Town Administrator, 2 Deputy Personnel/Finance Director, 3) Assessor/Collector, 4) Town Planner, 5) Director of Public Works, 6) Deputy Director of Public Works, 7) Town Clerk, 8) Deputy Town Clerk, 9) Canvassing Authority Registrar, and 10) Benefits Administrator/Coordinator. We will deal in this Decision with each of these positions.

Executive Secretary to Town Administrator

As stated in Employer's Brief at pages 2-4:

"It is the town's position that the town administrator's executive secretary is a confidential employee, as that term is defined under the 'labor nexus' test. She acts 'in a confidential capacity to' the town administrator, who is a person who 'formulates, determines, and effectuates management policies in the field of labor relations.' In addition, in the regular course of her duties she regularly has 'access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.' Barrington School Committee vs. Labor Relations Board, 608 A2d 1126 (1992) at 1136.

In order to determine whether the town administrator's executive secretary is a confidential employee, it is necessary to examine the role of the town administrator with regard to collective bargaining contract matters and the relationship between the positions of the administrator and his executive secretary. The town presented the current holders of both positions as witnesses.

It is clear from the testimony of the town administrator and the executive secretary that:

1. The executive secretary and the administrator work personally and closely together on a daily basis (Transcript 9/20/94 pp. 10, 36.)
2. No one gains access to the town administrator's office except through the office of the executive secretary. This has been true for years and was the case in the old town hall, the new town hall and the emergency town hall. (Tr. 9/20/94 pp. 10-11.)
3. The executive secretary serves only the town administrator and no other department heads or employees. (Tr. 9/20/94 p. 11.)
4. She does all the typing and handles all communications coming into the town administrator's

office. (Tr. 9/20/94 pp. 11-12.) In fact, even when the executive secretary is on leave, the typing and correspondence will be held for her to do on her return. (Tr. 9/20/94 pp. 38-39.) The typing includes documents relating to prospective collective bargaining negotiations. (Tr. 9/20/94 p., 33.)

5. The town administrator formulates and determines management policies in the field of labor relations, recommending to the town council positions it should take in collective bargaining. He is present for all collective bargaining sessions, which are conducted by the town council, and attends its private caucuses. At those caucuses the council seeks his advice about proposals to be made to unions. (Tr. 9/20/94 pp. 1213 (sic).)
6. The town administrator is involved in all grievance procedures. (Tr. 9/20/94 p. 14.) His executive secretary handles the correspondence relating to grievances and would, in the normal course, become aware of the administrator's communications before the union or the grievant would be. The same is true about information concerning collective bargaining, including upcoming negotiations. (Tr. 9/20/94 p. 34.) The work she does in this regard is confidential and not open to the public. (Tr. 9/20/94 p. 35.)
7. The town's files on collective bargaining, including prospective negotiations, are kept in the executive secretary's office, and, as part of her job, she has complete access to them. (Tr. 9/20/94 p. 33.)

The conclusion is clear and inescapable that the town administrator's executive secretary is a confidential employee under the labor nexus test."

#### Deputy Personnel/Finance Director

Although the Town makes a strong argument that the Deputy Personnel/Finance Director should be excluded from the bargaining unit since she works in such close conjunction with the Personnel Finance/Director, the fact is that the Deputy Personnel/Finance Director revealed during testimony that her position is responsible the deposit and disbursement of town funds and maintenance of financial records. The fundamental duties are therefore ministerial in nature. This position has no input into collective bargaining; has access only to information which is characterized as "public information;" has no authority to hire, fire, or discipline subordinates; and does not establish performance

standards for subordinates. We note that it is the Personnel/Finance Director who established the fact that it was she who had a direct role in collective bargaining negotiations including proposal formulation and participation in bargaining sessions, thus the Deputy/Personnel Finance Director has no role to play in these matters. Accordingly, the Board will direct the inclusion of the Deputy Personnel/Finance Director within the bargaining unit.

### III. Tax Assessor/Collector

From testimony adduced at the hearing and as stated in Employer's Brief at page 11, it is the Tax Assessor/Collector who:

"...determines when the department's part time seasonal employee will work, both as to days and hours. (Tr. 12/8/94 p. 5.) He moves employees within his department from one function to another and directs them in the performance of their jobs (Tr. 12/8/94 pp. 5-6, 7, 8.) without obtaining orders from any superior, (Tr. 12/8/94 p. 8.) and checks their work. (Tr. 12/8/94 p. 9.) He is paid by salary and receives no overtime compensation. (Tr. 12/8/94 p. 6.) He has his own office. (Tr. 12/8/94 p. 7.) He is responsible for the output of his department. (Tr. 12/8/94 p. 7.) He has the authority to allow time off and to make changes in working hours. (Tr. 12/8/94 p. 8.) He has made a recommendation concerning dismissal of an employee and that recommendation was followed. (Tr. 12/8/94 p. 9.) Matters of minor discipline he handles by himself. (Tr. 12/8/94 pp. 9-10.)"

As a result of this testimony, the Tax Assessor/Collector shall be excluded from the bargaining unit.

### IV. Director of Public Works

This employee spends virtually all of his time directing other employees and does none of the manual labor himself. As stated in Employer's Brief at pages 11-12:

"The Portsmouth Department of Public Works consists of 16 workers: the director, the deputy director, two foremen, and 12 other workers known as utilitymen, operators, and mechanics. (Tr. 12/8/94 pp. 4142 (sic). The director spends an estimated 70% of his time on personnel placement, such as assigning work, scheduling work, and prioritizing work. (Tr. 12/8/94 pp. 22, 29.) He does no manual labor. (Tr. 12/8/94 pp. 23, 29.) The rest of his time is spent inspecting work in progress and as it comes in to the department. (Tr. 12/8/94 p. 29.)

The director attends town council meetings, responds to questions from the council and makes recommendations. (Tr. 12/8/94 pp. 29-30.) He decides when to call in extra help and

whom to call. (Tr. 12/8/94 p. 31.) He gives daily directions to the foremen as to what work is to be done. (Tr. 12/8/94 pp. 35-36.) He receives a salary and no overtime pay. (Tr. 12/8/94 p. 38.) He has authority to authorize an employee to leave work (Tr. 12/8/94 p. 38.) and to discipline. (Tr. 12/8/94 p. 39.)

The director makes his decisions about staff assignment and reassignment and work priorities without input from superiors, except on rare occasion. (Tr. 12/8/94 pp. 49-50, 52-54.) He is responsible for the department's output. (Tr. 12/8/94 p. 50.) He works out of an office shared with the deputy director. (Tr. 12/8/94 p. 58.)"

As a result of the above analysis, the Director of Public Works in the Town of Portsmouth shall be excluded from the bargaining unit.

#### V. Deputy Director of Public Works

The testimony in connection with the Deputy Director of Public Works which appears in the Transcript for December 8, 1994, at or around page 19 and continues through page 48 and picks up again at page 55 through page 65 makes it clear that the Deputy Director of Public Works has no role in collective bargaining negotiations, has no authority to discipline subordinates, has no authority to hire employees, and operates the same equipment as subordinates in the department. The Deputy Director does not set performance standards for subordinates nor does he schedule or assign work of subordinates. It is the view of this Board that the Deputy Director of Public Works should be included in the bargaining unit.

#### VI. Town Planner

As stated in Item 6 of the Brief of the National Education Association Rhode Island:

"Testimony established that the Town Planner has no authority to hire or fire any employee, to impose discipline, to enforce the provisions of a collective bargaining agreement, to participate in collective bargaining negotiations, or to establish performance standards for subordinate employees. Although the secretarial/clerical duties in the office are performed by a part-time, temporary employee, who is supervised by the position, the level of supervision exercised is not of such a nature to exclude the position from the proposed unit.

The Union submits that the position of Town Planner, even if it should be construed as a 'professional employee', should not be excluded from the proposed unit since a professional

employee is not an exception to the definition of 'municipal employee' as set forth in RIGL 29-9.4-2, and the position does not perform any duties of a supervisory or managerial nature so as to exclude him from the proposed unit."

VII. Town Clerk

As stated in Employer's Brief at pages 13-14:

"It is clear from the town charter (Employer's Exhibit 4, p. 14) and from the oral testimony (Tr. 1/12/95 p. 7) that the Portsmouth town clerk is elected to office. She is therefore excluded from the bargaining unit under § 28-9.4-2(b)(1), General Laws of Rhode Island, 1956, 1986 Reenactment, as amended."

VIII. Deputy Town Clerk

The testimony in connection with the position of Deputy Town Clerk appears in the January 12, 1995, transcript. It clearly establishes that the duties of the Deputy Town Clerk are of a clerical/ministerial nature. The position does not have the authority to hire or fire and does not have an active role in collective bargaining negotiations. The position does not establish or participate in the establishment of performance standards for subordinate employees. The Town attempted to establish that because the Deputy Town Clerk fills in when the Town Clerk is not available, that the position of Deputy Town Clerk should be excluded from the unit; however the Town, in the opinion of this Board, failed to establish that the Town Clerk was unavailable on any substantial or routine basis. This Board fails to see any reason why the Deputy Town Clerk should be excluded from the bargaining unit, and accordingly, will be included in such.

IX. Canvassing Authority Registrar

As stated in Item 9 of the Brief of the National Education Association Rhode Island:

"The focus of the dispute concerning the Canvassing Registrar were not the duties and responsibilities performed by the position, but rather whether the position was an employee of the Town or of the Canvassing Authority. Based upon the evidence, the union submits that it was not clearly established that the position was an employee of the Canvassing Authority rather than the Town of Portsmouth. The position is paid by a regular Town payroll check, and functions on a day to day basis as a Town employee."

Most significant however, is the letter of appointment to the incumbent employee holding the position. By letter dated April 17, 1984 (Employer Exhibit 6) the Town Personnel Director informed Ms. Hall of her appointment to the position, and further informed her that her '...employment with the Town will begin on April 30, 1984.' (emphasis added)

It is evident from this correspondence that the Town Personnel Director understood that the position of Canvassing Authority was a Town employee. Thus, the position is appropriate to the bargaining unit."

X. Benefits Administrator/Coordinator

As stated in Item 10 of the Brief of the National Education Association Rhode Island:

"This position did not exist at the time the election petition was filed, and by agreement of the parties, the petition was amended to include it. The job specification (Employer Exhibit 8) was developed after the formal hearings had convened, and conveniently includes, under the Essential Duties and Responsibilities, that the position 'assists with collective bargaining negotiation...' However, since the position was newly created, there is no historical basis to determine what duties the position will actually perform, and to what extent, if any, it will be directly involved in collective bargaining activities.

The Union asserts that the duties currently performed by the Personnel/Finance Director in regards to collective bargaining negotiations relieve the Benefits Administrator/Coordinator from direct participation in bargaining sessions. If, as testimony indicated, the position will be responsible for costing out Union proposals, this activity is not sufficient for the position to be excluded from the proposed unit.

Accordingly, the Union submits that because the position of Benefits Administrator/Coordinator has no authority to hire or fire any employee, to impose discipline, to participate in the development of collective bargaining strategy, or to enforce the provisions of a Collective Bargaining Agreement, it is thus appropriate to the proposed unit."

SUMMARY

From the above, it is the position of this Board that following positions should be excluded from the bargaining unit, wit: 1 Executive Secretary to Town Administrator, 2) Assessor/Collector, 3) Director of Public Works, and 4) Town Clerk.

It is the opinion of this Board that the following positions should be included in the bargaining unit, to wit: 1 Deputy Personnel/Finance Director, 2 Town Planner, 3) Deputy Director

of Public Works, 4) Deputy Town Clerk, 5) Canvassing Authority Registrar, and 6) Benefits Administrator/Coordinator

These six (6) titles, together with the thirteen (13) titles which the Town, as indicated earlier in this Decision, had agreed would be included in the bargaining unit, shall constitute the unit that will be eligible to cast votes in the election directed by this Board.

#### FINDINGS OF FACT

The Board finds as a fact that the following positions are either confidential or supervisory or managerial in nature and so should not be included in the bargaining unit, to wit: 1 Executive Secretary to Town Administrator, 2) Tax Assessor/Collector, 3) Director of Public Works, and 4) Town Clerk.

The bargaining unit shall therefore consist of: 1 Deputy Personnel/Finance Director, 2) Town Planner, 3) Deputy Director of Public Works, 4) Deputy Town Clerk, 5) Canvassing Authority Registrar, and 6) Benefits Administrator/Coordinator, together with the thirteen (13) titles earlier detailed above which the Town had agreed would be included in the unit. These nineteen (19) titles shall constitute the appropriate bargaining unit for the election to be directed by the Board.

#### CONCLUSIONS OF LAW

The Board is satisfied that the Union has, by a fair preponderance of the credible evidence, established that there are nineteen (19) titles that should be included in the election to be held as directed by this Board. They are detailed above in the Findings of Fact and cited earlier in this Decision

#### 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:



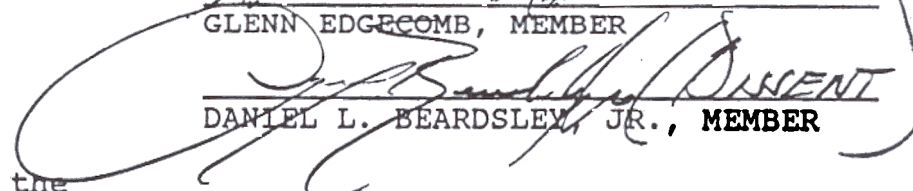
DIRECTED that an election by secret ballot shall be conducted within ninety (90) days hereof under the supervision of the Board or its agents, at a time, place and during hours to be fixed by the Board among, "Town Clerk's Record Clerk, Accounts Payable/Receivable Clerk, Tax Assessor's Records Clerk, Tax Collector's Records Clerk, Animal Control Officer, Prudence Island Special Police Officer, Building Official, Minimum Housing Inspector, Inspector Clerk, Assistant Deputy Town Clerk, Deputy Tax Assessor/Collector, Police Clerk, Payroll/Personnel Clerk Deputy Personnel/Finance Director, Town Planner, Deputy Director of Public Works, Deputy Town Clerk, Canvassing Authority Registrar, Benefits Administrator/Coordinator; but excluding the Town Administrator, Personnel/Finance Director, Executive Secretary to the Planning Board, Executive Secretary to the Town Administrator, Tax Assessor/Collector, Director of Public Works, and Town Clerk", who were employed by the Town of Portsmouth on February 14, 1995, to determine whether they desire to be represented for the purposes of collective bargaining by the National Education Association Rhode Island or by no labor organization.

RHODE ISLAND STATE LABOR  
RELATIONS BOARD

  
JOSEPH V. MULVEY, CHAIRMAN

  
RAYMOND PETRARCA, MEMBER

  
GLENN EDGECOMB, MEMBER

  
DANIEL L. BEARDSLEY, JR., MEMBER

Entered as Order of the  
Rhode Island State Labor Relations Board

Dated: July 28, 1997

By:   
DONNA M. GEOFFROY, ADMINISTRATOR