

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

IN THE MATTER OF:

STATE OF RHODE ISLAND,
DEPARTMENT OF ADMINISTRATION
Employer

AND -

CASE NO. EE-3565

RI ALLIANCE OF SOCIAL SERVICE
EMPLOYEES
Petitioner

DECISION AND DIRECTION OF ELECTION

This matter comes before the State Labor Relations Board as a result of a Petition by Employees for Investigation and Certification of Representatives dated September 12, 1994, and filed with the Board on September 15, 1994. At the time of filing there were six (6) cards signed by employees out of a unit of nine (9) employees. This involves the Fraud Prevention Unit of the Workers' Compensation Division. It seeks to include in the unit the Chief Investigator, all Fraud Investigators, the Investigative Attorney, and any and all Clerical classifications. The investigation by the Board reveals that there is one (1) Chief Investigator, six (6) Fraud Investigators, one (1) Investigative Attorney, and one (1) Clerical employee.

An informal conference failed to resolve the issue, and accordingly, the matter was set for formal hearing. That hearing took place on May 2, 1995. All of the parties were present and represented by counsel. A transcript was kept of the hearing, witnesses were sworn, and testimony was taken. The transcript was filed with the Board on May 17, 1995. The Brief on behalf of the Union was filed on May 12, 1995, and the Brief on behalf of the Employer was filed with the Board on June 16, 1995. The matter is now ready for Decision and Order.

FACTS

The Rhode Island General Assembly created the so-called Fraud Prevention Unit in its 1993 Legislative Session. That Statute creating the unit is Rhode Island General Laws Chapter 42-11-15 entitled "Fraud Prevention Unit--Appointment--Duties--Qualifications--Annual Report.

unit was organized under and in accordance with that Statute and David Groeneveld became the Chief Investigator. He was the only witness for the State at the formal hearing on May 2, 1995. The only witness for the Union was its president, Nancy R Reed, who also testified at the formal hearing on May 2, 1995.

Mr. Groeneveld, the Chief Investigator, testified that the principal function of the Fraud Prevention Unit is to investigate claims of fraud and such claims as may be made against State employees, private sector employees, doctors, lawyers, hospitals and other entities that supply goods and services to those who are claiming on-the-job injuries

The State objected to the creation of the proposed bargaining unit on the grounds that the employees who would be included are expected to conduct investigations of other State employees when there exists allegations of Workers' Compensation fraud. They claim that there is an inherent conflict of interest if the suspect is a member of a collective bargaining unit, and that this objection is even more compelling if the suspect is a member of a bargaining unit represented by Local 580, the Petitioner in this case. The State also objected on the grounds that the Chief Investigator, the Investigative Attorney, and the Clerical employee would be vital to any negotiations that took place between the Employer and the proposed bargaining unit. These three (3) individuals would, in the opinion of the State, be in a confidential relationship with the Employer when it came to the labor relations aspect of things.

At the opening of the hearing, three 3) joint exhibits were introduced, and they constitute the sole exhibits introduced in the case, as follows: Joint Exhibit #1, which is a job description promulgated by the State; Joint Exhibit #2 is the Statute setting up the unit, to wit, General Laws 42-11-15; and Joint Exhibit #3 is an Organizational Chart that was introduced into evidence showing that the Chief of the Fraud Prevention Unit is at the fourth level of "management."

From the transcript it is abundantly clear that no one of the employees in the proposed bargaining unit has any authority to hire, fire, or even discipline other employees. The Chief Investigator's position provides for supervision of the Clerical and Investigative staff, the management and development of a filing system, coordination of data entry procedures, preparation of written reports as required, and the maintenance of a case management program. Mr. Groeneveld admitted under cross examination that he had nothing to do with discipline, in fact he didn't even understand how the discipline system worked. He went on to say that if a situation arose that required some disciplinary attention, he would take it to his immediate superior and let that immediate superior take over.

It is apparent to the Board that the contention that the Chief Investigator, the Investigative Attorney, and the Clerical position would hold labor-nexus confidential positions in labor relations is speculative at best since there is no evidence that any one of the three of them now occupy any such position, and although there was some agreement that a State witness would testify that in his opinion these three would be appointed to the bargaining unit discussions, the fact remains they are not so appointed now and were not at the time of the hearing. The best that can be said is that the State's absent witness might have attempted to testify along those lines, and the Union's attorney did agree at the

hearing that if allowed to testify he would say that, but that in opinion it was self-serving and irrelevant and he would so contend at the time if the testimony was offered. The testimony never offered except by way of saying that if the individual did not testify did testify, he would attempt to say so

The allegation of labor-nexus confidentiality is, in the opinion of this Board, without merit.

None of the positions would qualify as managerial or policy-making positions, and the Board can see no reason why any of the positions should be excluded

The State made some attempt to assert that there was a possibility that this unit might conceivably be investigating members of the Union itself. This testimony was uncontradicted in

there has never been a case of Workers' Compensation fraud arising from the R.I.A.S.S.E or from which R.I.A.S.S.E members were investigated. It is significant to note that, even if that possibility existed, the unit investigates Workers' Compensation fraud throughout the State in both the public and private sector, and is not merely restricted to State employees. The unit is not restricted to State employees' claims as it investigates fraudulent claims based upon medical reports bills, and attorneys' filings.

The State attempted to contend that the Fraud Investigators themselves are in a confidential relationship to the Employer. The State went on to say in its explanation of its position that the sole reason for the existence of these employees is to conduct investigations of other State employees, many of whom are likely to be members of bargaining units. They frankly admitted that there was no case law on point regarding their argument in this matter, but the fact remains that they have absolutely no labor connection or labor-nexus confidentiality, and the fact that they would obtain information of a confidential nature is not cause for them to be excluded from the bargaining unit

It is the view of this Board that the Petition should be granted and the election held and this Board will so Order

FINDINGS OF FACT

Board based upon the testimony before it finds as a fact:

1. The Union is a labor organization within the meaning of the Rhode Island State Labor Relations Act, which exists and is constituted for the purpose, in whole or in part, of collective bargaining relative to wages, rates of pay, hours, working conditions and other terms and conditions of employment.
2. The State of Rhode Island, Department of Administration, is an employer within the meaning of the Rhode Island State Labor Relations Act.
3. Based upon the evidence produced at the formal hearing, this Board hereby finds that none of the members of the Fraud Prevention Unit created by Rhode Island General Laws 42-11-15 are confidential, supervisory, or managerial employees as those terms are used in labor relations matters, and thus excludable from collective bargaining.

CONCLUSIONS OF LAW

Board holds as a matter of law that the Union has established by a fair preponderance of the credible evidence that the entire Fraud Prevention Unit created by Rhode Island General Laws 42-11-15 constitutes an appropriate unit for collective bargaining purposes.


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 "Chief Investigator, Fraud Investigators, Investigative Attorney, and Clerical Employees" who were employed by the State of Rhode Island, Department of Administration, Fraud Prevention Unit on September 15, 1994, to determine whether they desire to be

represented for the purposes of collective bargaining by the Rhode Island Alliance of Social Service Employees 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 17, 1997

By: 
DONNA M. GEOFFROY, ADMINISTRATOR