

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF:

TIVERTON LIBRARY BOARD OF TRUSTEES  
Employer

AND -

CASE NO. EE-3579

TEAMSTERS LOCAL UNION NUMBER 251  
Petitioner

DECISION AND DIRECTION OF ELECTION

This matter arises out of a Petition by Employees for Investigation and Certification of Representatives Pursuant to Sec. 28-7-16 RIGL 1956, entitled State Labor Relations Act. Petition is dated May 25, 1995 and was filed with the Board on May 30, 1995.

By the petition Teamsters Local Union No. 251 seeks election of employees of a bargaining unit comprised of the following: 1 Library Associates; 2) Assistant Director; 3) Coordinator of Children's Services; and 4 Coordinator of Technical Services

There are in fact four employees who would qualify as Library Associates: Shirley Caron; Judy Sanford; and Dorothy Cable. There is another part-time employee now referred to as a "reference librarian" who took the place of a library associate Grace Levesque, who retired. She had been carried on the rolls as Library Associate for Branches. Thus, the total unit sought was comprised of seven employees. The Associate Director is Elaine Miller, the Coordinator of Children's Services is Janet Kosinsky, and the Coordinator for Technical Services is Annette Perry.

The Town, at the very outset of the initial formal hearing on November 14, 1995, concedes that the Coordinator of Technical Services, Ms. Perry, and the Coordinator for Children's Services, Ms. Kosinsky, are properly included in the bargaining unit issues therefore became twofold: 1 The status of the Assistant Director, Elaine Miller, and her right to belong to the union; and 2) the status of the part-time employees.

There is no question but that the Tiverton Board of Trustees of the Tiverton Public Free Library operates within the framework of RIGL 29-4, sections 5, 6 and 7 thereof, and accordingly, in accordance with the holding of our Supreme Court in the case of Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board, et al dated May 15, 1997, these part-time employees are not municipal employees within the meaning of the Rhode Island State Labor Relations Act, and since there is no question that none of them worked more than 20 hours per week on average throughout the year, they fall within the purview of the Champlin case wherein it was held as follows: "...as a free public library the library was under the trustee's direct management...The Trial Justice concluded that there was '[n]o evidence whatsoever...to show that the ...Town had ever even tried to exercise any management, let alone direct management of the operation of the library.' Therefore, the Superior Court properly excluded the part-time employees from the library's proposed collective bargaining unit under Section 28-9.4-2(b) 7)." In those circumstances this Board must follow the directive of the Rhode Island Supreme Court as expressed in the Champlin case, and accordingly, part-time employees are ruled ineligible to form part of the bargaining unit

This leaves the sole issue then of the status of Elaine Miller as Assistant Director; the question being whether she should be included or excluded from the bargaining unit. The town has taken the position that Ms. Miller should be excluded from the bargaining unit because of her supervisory status. On the other hand, the union takes the position that she is not a supervisory person and should be included in the unit

Ms. Miller testified at length in this proceeding on March 28, 1996. Her testimony appears in Volume II of the transcript beginning at page 58. On direct examination Ms. Miller made it clear that she has been in this position as Assistant Director for some 16 years and in that position she had never hired or fired anyone, nor has she ever disciplined anybody as Assistant

Director. She did not evaluate any of her fellow employees none of her fellow employees report to her. She also reiterated that she did not set policies at the Tiverton Library. did not set schedules for the employees nor did she participate in the budget preparation process. She did say that on occasion she had acted as Director in the Director's absence. At page 69 of the transcript under cross-examination by the town's attorney, she indicated that she never at any time shut down the library and had no part to play in the decision as to whether to shut the library down for weather purposes. She said at line 15 "I'm not part of the decision-making team, sir." In response to the question at line 16, "You didn't do that"?, she answers at line 17, "I don't have the authority." Her analysis of her position is well-expressed in the following direct quote from pages 70, 71, and 72 of the transcript for March 28, 1996.

"Q. What is your job?

A. My job as assistant director is to help the director in any way possible that the Board of Trustees allows. They don't allow me to do every one of the jobs that my director would like me to do.

Q. Okay. What is it you do do?

A. I do routine jobs.

Q. What are those?

A. Well, if I open the library in the morning, I put out the flag, and then I go down and I feed the fish. And then I turn around and I read the E-mail. Do you want me to go on? These are the types of jobs I do that are all routine, and all in the procedures book, and it's jobs that everyone else does.

Q. Okay. Do you exercise independent judgment?

A. No. I can't, because I don't have any authority.

Q. Do you exercise independent judgment when to shut the library down?

A. No, I do not.

Q. Do you exercise when to open it?

A. No, I don't. I open it when it's scheduled to open.

- Q. Do you exercise independent judgment when you tell people to do something or not do something?
- A. I don't tell people what to do
- Q. You don't tell anyone what to do?
- A. No. No, I have no authority to do that. I have been told by all directors, they tell me, 'I'm the boss. If anything you see you don't like, let me know about it.
- Q. And the boss is Miss O'Hara?
- A. Right now it is.
- Q. And she's the director?
- A. She's the director.
- Q. And there are times when she's not at work for more than 30 or 40 days a year?
- A. At one time?
- Q. No. Over a course of a year.
- A. I don't know how many days. I don't watch how many days she's out, she has a vacation, or goes to the doctors. I haven't counted how many days she has out. I couldn't answer that question.
- Q. And there are many days when you're in charge?
- A. When you say 'in charge,' I work downstairs in the basement next to the boiler room. To me a person in charge has to know what is happening in the library. To supervise and to be a supervisor you have to have people to supervise, and I've never been given that authority. Through all the five directors I have worked they have made it very clear, 'You don't supervise, I'm the boss. This is my library.' That's what I've been told by all the directors.
- Q. Let me ask you this. Take a look at your job description?
- A.
- Q. Do you serve as the acting director in that director's absence, yes or no?
- A. No."

From this testimony from the Assistant Director herself, it is clear to this Board that the Assistant Director at the Tiverton Library is not a supervisory person and there is no reason to exclude her from the bargaining unit. Accordingly, she will be included therein.

#### FINDINGS OF FACT

1. The Tiverton Library Board of Trustees is an employer within the meaning of the Rhode Island State Labor Relations Act.

2. The Teamsters Local Union Number 251 is a labor organization 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.

3. The part-time employees of the Tiverton Library do not on average work more than 20 hours per week and accordingly, must be excluded from the bargaining unit since the Tiverton Library is not a municipal agency or arm of a municipal government.

4. Elaine Miller, as Assistant Director, does not occupy a supervisory or managerial position nor a confidential position.

#### CONCLUSIONS OF LAW

1. The Union has established by a fair preponderance of evidence that the Assistant Director of the Tiverton Library, Elaine Miller, is not a supervisory, managerial or confidential employee and that there exists no valid reason to exclude her from the proposed bargaining unit.

2. The Union has established by a fair preponderance of credible evidence that the bargaining unit should be comprised of the Assistant Director of the Library, the Coordinator of Technical Services, and the Coordinator for Children's Services.

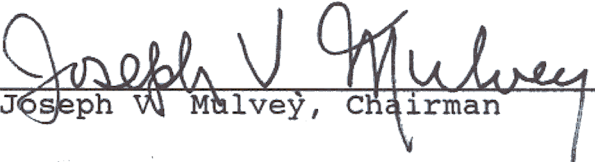
#### DIRECTION OF ELECTION

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

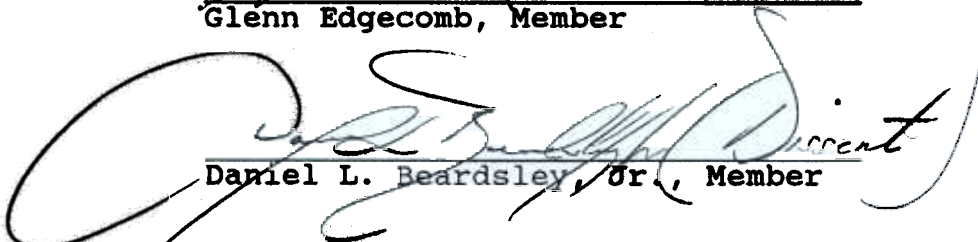
the Board or its agents, at a time, place and during hours to be fixed by the Board among the Assistant Director of the Library, the Coordinator of Children's Services, and the Coordinator of Technical Services to determine whether they desire to be represented by the Teamsters Local Union Number 251 for the purposes of collective bargaining or by no labor organization

RHODE ISLAND STATE LABOR  
RELATIONS BOARD

  
Joseph W. 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: August 19, 1997

BY:   
DONNA M. GEOFFROY, ADMINISTRATOR