

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

IN THE MATTER OF
THE CITY OF EAST PROVIDENCE
Employer

- AND -

Case No. EE-3585

RHODE ISLAND COUNCIL 94
AFSCME, AFL-CIO
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 Rhode Island Council 94, AFSCME, AFL-CIO (hereinafter "Petitioner") on March 27, 1996 wherein the Petitioner sought to represent the "Assistant Directors, Planners, Supervisors, Librarians, Superintendent, etc." ¹ The Petition was accompanied by signature cards, which, if verified, were sufficient in number to warrant the conducting of an election. All signature cards, which had been submitted were verified on April 3, 1996 and, as indicated, were of sufficient number to warrant the conducting of an election.

Two informal hearings on the Petition were conducted by the Board's Administrator; the first on April 22, 1996, and the second on May 31, 1996. Both hearings were attended by representatives of both the Union and the Employer. At that time, the Employer objected to all the positions on the grounds that they are either supervisory or confidential. The case was then set down for formal hearing on August 29, 1996. The City requested a postponement of this hearing, due to a scheduling conflict and the matter was rescheduled to September 7, 1996. Thereafter, the Board postponed the hearing so that the Board could be reconfigured pursuant to recent legislation, changing the makeup of the Board from five to seven members. After some additional postponements, the first formal hearing was finally held on October 30, 1997.

At that time, the Board decided that since there were still approximately forty (40) positions in dispute that the Board's agent would conduct an investigation and report her findings to the Board, with the hopes that the number of disputed positions could be reduced. The Board's

¹ At the time of the formal hearing, there were four "contested" positions, which were vacant. The Board does not include vacant positions in either elections or unit clarifications. If and when the positions are filled and a Union has been selected by the employees, a unit clarification petition for these positions may be filed at that time.

Agent did conduct an investigation, and she submitted a forty-page report. The Board then reviewed the report and made a preliminary determination on all the requested positions. On October 16, 1998, a copy of this report, and the Board's preliminary determination were provided to the parties with directions to submit their written responses within thirty days. Both parties did respond to the Board in writing as requested, and the Union moved to amend its petition to include two additional titles. Unfortunately, the parties still could not resolve their differences of opinion over the bulk of the requested positions, so the Board set the matter down for formal hearing. Hearings were held on February 4, 1999; June 1, 1999; June 8, 1999; June 22, 1999; August 31, 1999; and September 30, 1999. Upon the conclusion of the formal hearings, the parties were directed to submit their briefs within sixty (60) days of their receipt of the transcripts. Thereafter, the parties requested and were granted four extensions of time in which to file briefs. Both parties filed their briefs on February 29, 2000. In reaching the decision herein, the Board has carefully reviewed the transcripts and exhibits and has considered the arguments set forth in the respective briefs.

DISCUSSION

Under Rhode Island Law, certain municipal employees are permitted to engage in collective bargaining. (See Title 28, Chapter 9.4-1 et seq., the Municipal Employees Arbitration Act.) Supervisory, confidential or managerial employees are excluded from collective bargaining for various public policy and labor stability concerns. Professional employees are permitted to engage in collective bargaining, provided they are not otherwise excludable as supervisory, confidential, or managerial

Supervisory Employees:

In the Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board, 694 A.2d 185, 189 (R.I. 1997), the Rhode Island Supreme Court adopted the following federal definition of "supervisor"

"any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." (29 U.S.C. § 152(11))

Under federal labor law, this list of supervisory functions has been determined to be disjunctive; that is, a supervisor is an individual with the authority to undertake any one of these functions.

Rest Haven Living Center, Inc. 322 NLRB, no. 33, 153 LRRM 132 (1996). It also includes individuals who possess the authority to recommend any of the foregoing actions. However, as a practical matter, an individual who fails to exercise any of the indicia of statutory authority will rarely be found to be a supervisor. Capitol Transit Company. 14 NLRB 617, 37 LRRM 1005 (1955) enforced, 38 LRRM 2681 (D.C. 1956)

Determining whether an individual uses independent judgement in the exercise of functions indicative of supervisory status is extraordinarily fact intensive analysis. N.L.R.A. Law & Practice 2.03 (4) In analyzing the indicia of “assignment” and “responsibly directing” employees, it is clear that “not all assignments and directions given by an employee involve the exercise of supervisory authority. As stated by the Fifth Circuit

‘If any authority over someone else, no matter how insignificant or infrequent, made an employee a supervisor, our industrial composite would be predominantly supervisory. Every order giver is not a supervisor. Even the traffic director tells the president of a company where to park his car.’” N.L.R.A. Law & Practice 2.03 (4) citing Providence Hospital, 320 NLRB 717 (1996).

Determining whether an employee has used independent judgment in making an assignment requires careful analysis of the facts. For example, work assignments made to equalize work on a rotational basis or assignment based on skills when the differences in skills are well known to the employer is routine. Further, assigning tasks that clearly fall within an employee’s job description does not require the use of “independent judgment”

Confidential employees:

In Barrington School Committee v. Rhode Island State Labor Relations Board, 694 A.2d 1185 (R.I. 1992) the Rhode Island Supreme Court considered the question of which employees qualify as “confidential” and held

“Two categories of employees are recognized as confidential under the test and are therefore excluded from collective bargaining. The first category comprises those confidential employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. ... The second category consists of employees who, in the course of their duties, regularly have access to confidential information concerning anticipated changes which may result from collective bargaining negotiations. (Barrington at p. 1136, quoting NLRB v. Hendricks County Rural Electric Membership Corp., 454 U.S. 170 at 189)

The definition of “confidential” for collective bargaining purposes, as set forth in Barrington, is purposefully and narrowly constricted to two types of employees, because “a more expansive application of the exclusionary rule would deprive a great number of employees, in an unwarranted fashion, of the statutory right to collectively bargain’ Barrington at 136,

referencing, Note, “The Labor-Nexus” Limitation on the Exclusion of Confidential Employees—
NLRB v. Hendricks County Rural Electric Membership Corp., 16 Ga. L. Rev. 745, 754 (1982).

Thus, the word “confidential” within the scope of labor relations has a very specific legal meaning which departs significantly from the routine dictionary definition of confidential (treated with confidence, private, secret). In all employment situations, there are countless types of information that are considered “private” or “secret”, depending upon the relationship of the party seeking the information to the person who has control of the information. For instance, most employee personnel information is private or secret (i.e. “confidential”) to the individual employee and designated members of a department of human resources. This does not mean that clerks or secretaries in human relations or personnel departments are ineligible for collective bargaining. Further, employees with access to investigative pre-employment reports and reports of disciplinary actions including written reprimands do not meet the definition of “confidential” for collective bargaining purposes.

Managerial employees:

“Managerial” employees are employees who “formulate and effectuate management policies by expressing and making operative the decisions of their employers. Fraternal Order of Police, Westerly Lodge 10 v. Town of Westerly, 659 A.2d 1104,1107 (1995); State v. Local 2883 AFSCME, 463 A.2d 186, 190 (1983) citing and quoting in part NLRB v. Bell Aerospace Co., 416 U.S. 267, 278 (1974). Managerial employees must exercise discretion within or even independently of established employer policy and must be aligned with management N.L.R.B. v Yeshiva University, 444 U.S. 672 (1980). An employee may be excluded as managerial only if he represents management interests by taking or recommending discretionary actions that control or implement employer policy. Id. “Employees whose decision-making is limited to the routine discharge of professional duties in projects to which they have been assigned cannot be excluded from coverage even if union membership arguably may involve some divided loyalty. Only if an employee’s activities fall outside the scope of the duties routinely performed by similarly situated professionals will he be found aligned with management.” Id at 690.

Professional employees:

Professional employees, who are permitted to engage in collective bargaining are defined as:

“(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine, manual, or physical processes; or

“(b) any employee who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph a, and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).”

Therefore, each of the contested positions must be examined in light of the foregoing definitions of supervisory employee, confidential employee, managerial employee, professional employee. In the event that an employee is either supervisory, managerial or confidential and also professional, the employee is precluded from participating in collective bargaining.

For each of the following positions, the Board has carefully considered the transcripts and exhibits. The Board has also given careful consideration to the arguments made by legal counsel for the respective parties. The Board will take each position in turn and will make separate findings of fact and conclusions of law. However, before we address the specific positions there are two other issues that merit some independent discussion.

The first issue is the history of collective bargaining between the City and the East Providence Professional, Managerial and Technical Employees Association (hereinafter EPPMTEA). The EPPMTEA has been the recognized, but not certified, bargaining agent for the bulk of the positions sought by the Petitioning Union in this case. The EPPMTEA has negotiated several multi-year contracts with the City, under this voluntary recognition, with the latest being negotiated on October 1996, with an end date sometime in 2001. The City's long-standing voluntary recognition of this unit demonstrates to this Board that the scope of the proposed unit is appropriate, provided the individual positions are not excludable for some other grounds.

The second significant issue that warrants a separate discussion is the City's Charter and the limitation of true control for hiring, firing, demotions, suspensions, and transfers to the "appointing authority". The East Providence City Charter defines "appointing authority" as: city manager or the person lawfully delegated by that officer who has final authority to make the appointment to the position to be filled in the city service." The "appointing authority" is also

vested with the power to transfer, promote, demote, suspend, layoff or discharge employees. See Union Exhibit 5A, City Charter, Sections -66 through -69. In addition, Section 3-3 of the Charter provides that the City Manager has the power and is required to appoint and when necessary for the good of the service, remove all officers and employees of the city except as otherwise provided and except as he may authorize the head of a department or office to appoint. See Union Exhibit 5A, p. 8. While the definition of "appointing authority" and the powers set forth in Section 3.3 of the Charter clearly permit the City Manager to *delegate his powers of "appointing authority"* to some other "officer", the record in this case is abundantly clear that the City Manager has not, in fact, delegated the powers of the "appointing authority" to anyone. As for hiring, witness after witness testified that, in accordance with Section -66 (c) of the Charter, the City utilizes a list of top three names from the employment list for hiring. While many of the witnesses certainly participated in the interview process and provided valuable input to the Manager, the record is abundantly and repeatedly clear that the Manager has retained all the powers of the appointing authority in hiring and has not delegated any of these powers to anyone else in City service. Therefore, the power to make the ultimate decision on hiring is fully and completely vested in the City Manager (as to all the occasions referenced in this record) and none of the positions sought herein qualify as "supervisory" on the basis of authority to hire other employees.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Assistant Director of Recreation

FINDINGS OF FACT

- 1) Alba Curti has been employed full time by the Employer as the Assistant Director of Recreation since 1989. Prior to 1989, she worked as the Special Needs Coordinator since 1980. (TR 2/4/99 p. 16)
- 2) Ms. Curti has been a member of the East Providence Professional, Managerial and Technical Employees Association since 1980 and has served as an officer in that organization. (TR 2/4/99 p. 16, 18)
- 3) Ms. Curti's duties as the Assistant Director of Recreation include: overseeing special events, and planning and organization of special needs recreation for both adults and children. (TR 2/4/99 p. 19) These activities include escorting clients to the movies, to bowling, arts and crafts, and taking field trips. (TR 2/4/99 p. 23) In order to determine the type of programming, Ms. Curti surveys the community and then plans and implements the programs with a staff of eight counselors. (TR 2/4/99 p. 23-24)
- 4) In the course of her employment, Ms. Curti has not had regular access to labor relations materials on behalf of her employer. (TR 2/4/99 p. 19)
- 5) In the course of her employment, Ms. Curti has not hired, fired, transferred, demoted, or suspended any permanent city employee. Nor has she ever placed a written reprimand in any employee's personnel file, granted any merit pay increase to any employee, granted any

additional vacation leave for any employee or sustained a grievance for any employee.(TR 2/4/99 p. 20)

- 6) Ms. Curti oversees eight part time employees whose duties are to supervise the adult or youth consumers, making sure their needs are taken care of and making sure that they have access to the City's resources and recreational areas. (TR 2/4/99 p. 24)
- 7) Ms. Curti sometimes sits in on the interviewing with the Recreation Director, Mr. Crook, when hiring these part-time counselors. (TR 2/4/99 p. 25) Ms. Curti has also sat in on interviews for a clerk typist within the Recreation Department and given her opinion of the candidate to the Recreation Director. (TR 2/4/99 p. 31-32) Ms. Curti does not have the independent authority to hire any employee, either part or full-time.
- 8) In the event that one of the part time employees was not performing his or her duties satisfactorily, Ms. Curti would speak with the individual in an informal manner. In the event the situation was not resolved, she would then bring it to the Director of Recreation's attention. (TR 2/4/99 p. 27) Ms. Curti clearly lacks either the ability or authority to issue reprimands.
- 9) In the event that the Director of Recreation is out for vacation or sick time, Ms. Curti is responsible for the day-to-day operations of the Department, signing purchase orders and the like. (TR 2/4/99 p. 32-33) During the Director's recent hospitalization for a heart attack, Ms. Curti was in telephone contact with him approximately every other day. (TR 2/4/99 p. 39) During the Director's absence, the City Manager contacted Ms. Curti to make sure things were running smoothly in the Director's absence. (TR 2/4/99 p. 43)
- 10) Ms. Curti does not have any input into developing the Department's annual budget. (TR 2/4/99 p. 34)
- 1) At the request of her supervisor, Ms. Curti has occasionally attended the City Manager's meetings of Department Heads. (TR 2/4/99 p. 40) The meetings that she has attended have mostly been a roundtable discussion and reporting of the status of each department's programs. (TR 2/4/99 p. 40-41) At these meetings, the City Manager often makes suggestions to the Department Heads. (TR 2/4/99 p. 41) After the meeting, Ms. Curti will type up her notes from the meeting to give to the Director. (TR 2/4/99 p. 42) Ms Curti's function at these meetings is clearly clerical and ministerial to the Director's needs and does not require the use of independent judgement.
- 12) The record in this case is devoid of evidence that Ms. Curti assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that in the course of her duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.
- 13) The record in this case is devoid of evidence that Ms. Curti formulates and effectuates management policies by expressing and making operative the decisions of her employer or that she exercises discretion within or even independently of established employer policy.
- 14) The record is devoid of evidence that Ms. Curti has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, other than in a merely routine or clerical nature that does not requires the use of independent judgment.
- 15) The record established that Ms. Curti's decision-making is limited to the routine discharge of her professional duties in developing and administering recreational projects and programs for the City's special consumers.

CONCLUSION OF LAW

- 1) The position of Assistant Director of Recreation is not confidential, supervisory or managerial as those terms are defined by law. Therefore the position of Assistant Director of Recreation shall not be excluded from the bargaining unit.

Building Official FINDINGS OF FACT

- 1) Albert Quattrucci has been employed full time by the Employer as the Building Official since 1996. From 1992 to 1996, Mr. Quattrucci was the temporary Building Official, and from 1989 to 1992, he was a part-time Building Inspector. (TR 2/4/99 p. 46)
- 2) Mr. Quattrucci's immediate supervisor is Julia Forge, the Director of Public Works. (TR 2/4/99 p. 47)
- 3) The Building Official's duties include reviewing drawings for all permit applications in the City, overseeing the work of the various trades inspectors (electrical, mechanical, plumbing) to make sure their work is done with a minimum amount of complaints. (TR 2/4/99 p. 51-52) The inspectors' schedules are determined by the demand for inspections, which get called into the office. The Building Official receives a copy of the schedules after the inspections have been performed. In the event that the Building Official felt that a particular inspection should receive priority in scheduling, he could make such a decision. (TR 2/4/99 p. 52)
- 4) In the course of his employment as Building Official, Mr. Quattrucci has sat in with the Director of Public Works on an interview for a clerk, but the record is devoid of any evidence that Mr. Quattrucci made a recommendation, effective or not, for the filling of this position. (TR 2/4/99 p. 54) In January of 1999, the part-time Plumbing and Mechanical Inspector was increased from a part-time to full-time status. Mr. Quattrucci was notified orally and in writing by the Director of Public Works, at the same time as the employee, that this upgrade had occurred. (TR 2/4/99 p. 48-49) Clearly then, Mr. Quattrucci did not hire or upgrade this employee, this action was taken at a higher level of the administration.
- 5) In the event that one of the employees that Mr. Quattrucci oversees was not performing satisfactorily, he would speak to that person. In the event that the situation was not resolved, Mr. Quattrucci would report the person to the Director of Public Works for disciplinary action. (TR 2/4/99 p. 58) Mr. Quattrucci clearly lacks either the ability or authority, or both, to issue reprimands.
- 6) In the past, Mr. Quattrucci has spoken to the City Manager about one employee's (electrical inspector) unsatisfactory job performance, but the record is devoid of evidence as to whether Mr. Quattrucci effectively recommended any disciplinary action. (TR 2/4/99 p. 59)
- 7) Mr. Quattrucci has written a letter to the Director recommending a raise for one employee, but the record is devoid of evidence as to how or whether Mr. Quattrucci's recommendation was effective. (TR 2/4/99 p. 59)
- 8) In his capacity as Building Inspector, Mr. Quattrucci has not hired, demoted, transferred, or suspended any employee. Mr. Quattrucci has not placed any written reprimand in another employee's file, has not granted any merit pay increase or granted any additional vacation leave time for meritorious service. (TR 2/4/99 p. 47-48) Mr. Quattrucci has never participated in any grievance hearings. Mr. Quattrucci has never prepared a probationary report for any employee. (TR 2/4/99 p. 50)
- 9) In his capacity as Building Inspector, Mr. Quattrucci does not have regular access to confidential labor relations matters (TR 2/4/99 p. 50)
- 10) In his capacity as Building Inspector, Mr. Quattrucci has never been involved with contract negotiations on behalf of his Employer. (TR 2/4/99 p. 50)
- 1) The record in this case is devoid of evidence that Mr. Quattrucci assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that in the course of his duties, regularly has access to

confidential information concerning anticipated changes which may result from collective bargaining negotiations.

- 12) The record in this case is devoid of evidence that Mr. Quattrucci formulates and effectuates management policies by expressing and making operative the decisions of his employer or that he exercises discretion within or even independently of established employer policy.
- 13) The record is devoid of evidence that Mr. Quattrucci has the authority, in the interest of his employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them in anything but a routine manner, or to adjust their grievances, or effectively to recommend such action, other than in a merely routine or clerical nature that does not requires the use of independent judgment.
- 14) The record established that Mr. Quattrucci's decision-making is limited to the routine discharge of his professional duties.

CONCLUSION OF LAW

- 1) The position of Building Official is not confidential, supervisory, or managerial as those terms are defined by law. Therefore, the position of Building Official shall not be excluded from the bargaining unit.

City Engineer and Deputy Director of Public Works

FINDINGS OF FACT

- 1) Stephen Coutu has been employed as the City Engineer and the Deputy Director of Public Works since July, 1997. (TR. 2/4/99 p. 64)
- 2) Mr. Coutu's immediate supervisor is Julia Forge, the Director of Public Works. (TR 2/4/99 p. 64)
- 3) Mr. Coutu has been a member of the East Providence Professional, Managerial and Technical Employees Association continuously since shortly after the date of his hiring. (TR 2/4/99 p. 64)
- 4) Mr. Coutu holds a Bachelor of Science degree and a professional engineering license with the State of Rhode Island. (TR 2/4/99 p. 65, 85)
- 5) Mr. Coutu's duties include directing the activities of the engineering office and its staff which develops plans, surveys and specifications for Public Works improvements within the City. Mr. Coutu is also responsible to see that all work within the City is done to the City's standards and specifications. He also assists in the day-to-day operations of the department, particularly as it relates to construction work and engineering studies performed by other divisions within the department. (TR 2/4/99 p. 69) Mr. Coutu directs the work projects and ensures that the projects proceed according to schedule and that the work is done correctly. (TR 2/4/99 p. 70) Mr. Coutu also serves as a technical adviser to the Planning Board on subdivisions and other projects. (TR. 2/4/99 p. 84)
- 6) In the course of him employment, Mr. Coutu has not had the occasion to hire, fire, demote, transfer or suspend any other employee. (TR 2/4/99 p. 65) Mr. Coutu has never placed any written reprimand in anyone's file or sustained a grievance. (TR 2/4/99 p. 65) If Mr. Coutu were to experience a problem with the work performance of one of the people he oversees, he would speak to the person. If the problem was not resolved, he would bring the problem to the Director of Public Works. (TR 2/4/99 p. 73) Mr. Coutu could issue a written recommendation for a reprimand, but Mr. Coutu believes that the reprimand itself would have to come from someone higher than him. (TR 2/4/99 p. 95) Mr. Coutu has "conferred" with the Director of Public Works about the job performance of some employees. (TR. 2/4/99 p. 81)
- 7) Mr. Coutu has never granted any merit pay increase or granted any additional vacation time. (TR 2/4/99 p. 65-66) Although Mr. Coutu has participated with the Director of Public Works in interviewing candidates for an Engineering I position, the list of candidates was determined by the Personnel Department and the Director's final recommendation to the City

Manager was limited to that list. (TR 2/4/99 p. 68) The record does not indicate whether Mr. Coutu selected or concurred in the selection of the candidate who was appointed.

- 8) Mr. Coutu has not been involved with developing or implementing labor relations policies. (TR 2/4/99 p. 68)
- 9) Although Mr. Coutu testified that he decides how to assign work to the Engineering Aide I or II, he also testified that the Engineering Aide I is essentially a draftsman position and that the Engineering Aide II position can assume more responsibility for design and investigative work in the field. (TR. p. 73) Assigning tasks that clearly fall within an employee's job description does not require the use of independent judgment.
- 10) Mr. Coutu has conferred with the City Manager concerning the selection of consultants for City projects and regarding the status of the City's Public Works projects. (TR. 2/4/99 p. 81-82)
 -) When the Director of Public Works is out of work, Mr. Coutu assumes the duties of the Director. (TR. 2/4/99 p. 86) In this capacity, Mr. Coutu has attended one "Department Heads" meeting with the City Manager which he described as a discussion where each department head gave an update as to what was happening in their individual areas and to answer any questions the City Manager may have of them. (TR. 2/4/99 p. 92) Mr. Coutu presented whatever the Director had asked him to present. (TR. 2/4/99 p. 100) Clearly, Mr. Coutu, when relaying information, as directed by his supervisor, is not using independent judgement.
- 12) Mr. Coutu has participated in closed-door strategy sessions with other City employees concerning negotiations between the City and the Town of Barrington for an agreement for a joint use of a sewerage treatment plant. (TR. 2/4/99 p. 87) His participation in these sessions has been to provide technical details within his area of professional expertise that should be addressed within the agreement. (TR. 2/4/99 p. 87)
- 13) The record in this case is devoid of evidence that Mr. Coutu assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that in the course of his duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.
- 14) The record in this case is devoid of evidence that Mr. Coutu formulates and effectuates management policies by expressing and making operative the decisions of his employer or that he exercises discretion within or even independently of established employer policy. Mr. Coutu's interaction with management interests has been to provide professional/technical assistance for details for a sewer use contract.
- 15) The record is devoid of evidence that Mr. Coutu has the authority, in the interest of his employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign other than in a routine manner, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, other than in a merely routine or clerical nature that does not requires the use of independent judgment.
- 16) The record established that Mr. Coutu's decision-making is limited to the routine discharge of his professional duties.

CONCLUSION OF LAW

- 1) The position of City Engineer and Deputy Director of Public Works is not confidential, supervisory, or managerial as those terms are defined by law. Therefore the position of City Engineer and Deputy Director of Public Works shall not be excluded from the bargaining unit.

Superintendent of Public Buildings

FINDINGS OF FACT

- 1 Richard Roderick has been employed as the Superintendent of Public Buildings since 1990. Prior to this position, Mr. Roderick was a custodian for seven years. (TR. 6/1/99 p. 5)

- 2) Mr. Roderick's duties include: control of all the custodians, switchboard operators, carpentry shop, and the animal shelter. (TR. 6/1/99 p. 5) He is also in charge of 13 City Buildings, including the City Hall, the Police Department, Recreational Center, the Animal Shelter, three Libraries, the Highway Complex, the Community Center, the Senior Center, and the Welfare building. (TR. 6/1/99 p. 10) Mr. Roderick is responsible for all maintenance in these buildings and for making a determination whether repairs will be done "in-house" or whether an outside contractor should be used. (TR. 6/1/99 p. 11) Employer's Exhibit # 3 is a true and accurate representation of the duties of the position of Superintendent of Public Buildings. (TR. 6/1/99 p. 19)
- 3) Mr. Roderick has participated in interviewing candidates for positions, but does not have the final say on the hiring. (TR. 6/1/99 p. 6) Mr. Roderick has effectively recommended the termination of one probationary employee. (TR. 6/1/99 p. 6)
- 4) Mr. Roderick has been a member of the East Providence Professional, Managerial and Technical Employees Association continuously since approximately 1991. (TR. 6/1/99 p. 7)
- 5) Mr. Roderick supervises nine (9) custodians, switchboard operators, one carpenter, and two pound-keepers. (TR. 6/1/99 p. 11) Mr. Roderick makes the daily work assignments for these employees and arranges for coverage when employees are out sick. (TR. 6/1/99 p. 12)
- 6) The record in this case is devoid of evidence that Mr. Roderick assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations, or that in the course of his duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.
- 7) The record in this case is devoid of evidence that Mr. Roderick formulates and effectuates management policies by expressing and making operative the decisions of his employer or that he exercises discretion within or even independently of established employer policy.
- 8) Mr. Roderick has however given verbal disciplinary warnings and has given a written warning as well. In the case of the written warning, Mr. Roderick also participated in a meeting with the disciplined employee, an associate engineer, and a union representative. (TR. 6/1/99 p. 13) Clearly then, Mr. Roderick has the authority in the interest of his employer to discipline employees and to adjust grievances.

CONCLUSION OF LAW

- 1) The position of Superintendent of Public Buildings is a supervisory employee as that term is defined by law. Therefore, the position of Superintendent of Public Buildings shall be excluded from the bargaining unit.

Treasurer and Tax Collector

FINDINGS OF FACT

- 1) Kevin Fitzgerald has been employed as the Treasurer and Tax Collector for the City of East Providence since November of 1989. (TR. 6/1/99 p. 22)
- 2) Mr. Fitzgerald has been a member of the East Providence Professional, Managerial and Technical Employees Association continuously since early 1990. (TR. 6/1/99 p. 23)
- 3) Mr. Fitzgerald's immediate supervisor is the Finance Director. (TR. 6/1/99 p. 23)
- 4) During the course of his employment, four full time permanent positions have been filled in the Department and Mr. Fitzgerald has recommended each employee. (TR. 6/1/99 p. 32) The candidates are interviewed from a city-mandated list of "top three" candidates. (TR. 6/1/99 p. 23) During the interviews, the City's Affirmative Action Officer and the Personnel Director are also present, but do not ask any of the questions. (TR. 6/1/99 p. 31) Upon conclusion of the interview, it is Mr. Fitzgerald's recommendation that gets forwarded to the actual hiring authority. (TR. 6/1/99 p. 32)

- 5) Employer's Exhibit #5 is a true and accurate representation of the job duties and responsibilities of the position of Treasurer/Tax Collector. (TR. 6/1/99 p. 33)
- 6) Mr. Fitzgerald is not privy to labor contract negotiations. (TR. 6/1/99 p. 22)
- 7) Mr. Fitzgerald has not fired, demoted, transferred or suspended, or issued any written reprimand to any employee. Mr. Fitzgerald has never granted a merit pay increase, but he has recommended the granting of meritorious vacation time for one employee. Mr. Fitzgerald could not make the actual grant of the vacation leave, but his recommendation was accepted by the City Manager. (TR. 6/1/99 p. 24) Mr. Fitzgerald does approve vacation and sick leave for the employees in the office, according to the terms of their contracts. (TR. 6/1/99 p. 26)
- 8) Mr. Fitzgerald oversees a total of eight employees, including two temporary workers, the Deputy Treasurer, and five Account Maintenance Clerks. (TR. 6/1/99 p. 25, 29)
- 9) The Department has two temporary employees that come in during the time of year when tax bills go out to assist in answering the phone, opening the mail, and answering taxpayers' questions. (TR. 6/1/99 p. 28-29) Mr. Fitzgerald determines when the temporary employees should come to work, what they do while there, and whether they will continue to return to work. (TR. 6/1/99 p. 28)
- 10) Mr. Fitzgerald "rates" probationary employees using an approved City form. (TR. 6/1/99 p. 33)
- 11) The record in this case is devoid of evidence that Mr. Fitzgerald assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that in the course of his duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.
- 12) The record in this case is devoid of evidence that Mr. Fitzgerald formulates and effectuates management policies by expressing and making operative the decisions of his employer or that he exercises discretion within or even independently of established employer policy.
- 13) The record is devoid of evidence that Mr. Fitzgerald has the authority, in the interest of his employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, other than in a merely routine or clerical nature that does not requires the use of independent judgment.

CONCLUSION OF LAW

- 1) The position of Treasurer/Tax Collector is not confidential, supervisory or managerial as those terms are defined by law. Therefore the position of Treasurer/Tax Collector shall not be excluded from the bargaining unit.

Superintendent of Distribution and Collection Division

FINDINGS OF FACT

- 1) Kenneth Booth has been employed as the Superintendent of Distribution and Collection for the City of East Providence since December of 1990. (TR. 6/1/99 p. 35).
- 2) Mr. Booth has been a member of the East Providence Professional, Managerial and Technical Employees Association continuously since November of either 1985 or 1986. (TR. 6/1/99 p. 38)
- 3) Mr. Booth's job duties include being responsible for the day-to-day operations of the City's water and sewer system. His immediate supervisor is the Director of Public Works. (TR. 6/1/99 p. 39) He oversees two "labor supervisors" and a "water meter supervisor" (although the water meter supervisor position was vacant at the time of the formal hearing). (TR. 6/1/99 p. 43)

- 4) In his capacity as Superintendent, Mr. Booth has participated in a number of grievance hearings at the first level wherein he sits down with the employee and the Steelworker's union shop steward to see whether the grievance can be resolved. In most instances, the matter has been referred higher up in the City's administration for resolution, but he has settled or adjusted some grievances at this level. (TR. 6/1/99 p. 35-36, 42)
- 5) Mr. Booth has not hired, fired, demoted, transferred, or suspended any permanent city employee. (TR. 6/1/99 p. 36) Mr. Booth has, however, hired temporary employees and has given oral reprimands and placed written warnings in permanent employees' personnel files. (TR. 6/1/99 p. 37, 42)
- 6) Mr. Booth has never granted any employee a merit pay increase. (TR. 6/1/99 p. 38)
- 7) Employer's Exhibit #6 generally represents a fair and accurate description of the duties of Mr. Booth's position. (TR. 6/1/99 p. 46)
- 8) The record in this case is devoid as of any evidence that Mr. Booth assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that in the course of his duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.
- 9) The record in this case is devoid of any evidence that Mr. Booth formulates and effectuates management policies by expressing and making operative the decisions of his employer or that he exercises discretion within or even independently of established employer policy.

CONCLUSION OF LAW

-) Due to Mr. Booth's participation in grievance hearings in the interest of his employer and his ability to issue both oral and written reprimands, the position of Superintendent of Distribution and Collection is supervisory as, that term is defined by law. Therefore, the position of Superintendent of Distribution and Collection shall be excluded from the bargaining unit.

Assistant Superintendent /Water Pollution Control Facility

FINDINGS OF FACT

- 1) Thomas Azevido has been employed as the Assistant Superintendent of the Water Pollution Control Facility for the City of East Providence since February of 1991. Mr. Azevido reports to the Superintendent of the Water Pollution Control Facility, who in turn reports to the Director of Public Works. (TR. 6/1/99 p. 49)
- 2) Mr. Azevido has been a member of the East Providence Professional, Managerial and Technical Employees Association continuously since six months after his date of employment. (TR. 6/1/99 p. 49)
- 3) Mr. Azevido holds a Rhode Island Grade 4 Wastewater Treatment Operator's license. (TR. 6/1/99 p. 58)
- 4) Mr. Azevido's duties include reviewing daily logs from the previous shifts of the operation of the water pollution control plant, making process control decisions as to the operations of the facility, setting up daily work schedules, and assigning maintenance staff to correct problems. He also participates in the physical operations with other workers, setting up pumps and pumping down tanks. (TR. 6/1/99 p. 51) One day a week he tries to spend in an office environment. (TR. 6/1/99 p. 53) Employer's Exhibit #7 fairly represents the duties and responsibilities of the position of Assistant Superintendent of the Water Pollution Control Facility, except for the references to laboratory procedures. (TR. 6/1/99 p. 57)
- 5) In his capacity as Assistant Superintendent, Mr. Azevido has never fired, demoted, transferred, or suspended any other employee, and when disciplinary action may be warranted, he would bring the matter to the attention of the Superintendent. (TR. 6/1/99 p. 55) Mr. Azevido would also talk one on one with an employee, but the record is devoid of any evidence that such a talk constitutes an oral reprimand with the force and authority of disciplinary action. (TR. 6/1/99 p. 56)

- 6) In his capacity as Assistant Superintendent, Mr. Azevido has never hired any employee, either temporary or permanent, although he has participated in the interviewing process with the Superintendent and the Director of Public Works. (TR. 6/1/99 p.50, 52) Mr. Azevido does not believe that he could make a recommendation for hiring that would supercede the Superintendent's recommendation. (TR. 6/1/99 p.53)
- 7) Mr. Azevido has never placed any written reprimand in any other employee's personnel file, never granted a merit pay increase, or granted any additional vacation leave time for meritorious service. (TR. 6/1/99 p.50) Mr. Azevido has never participated in any grievance hearings, although none have ever been filed during his tenure. (TR. 6/1/99 p.50)
- 8) When the Superintendent is absent from work, Mr. Azevido would be the "person in charge", and when the Superintendent is present, Mr. Azevido considers himself the "captain of the team" at the Water Pollution Control Facility. (TR. 6/1/99 p.54)
- 9) In his capacity as Assistant Superintendent, Mr. Azevido does not have the authority in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign anything but in a routine manner, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, using his independent judgement.
- 10) The record in this case is devoid of evidence that Mr. Azevido, when filling in for the Superintendent would be able, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them in anything but a routine manner, or to adjust their grievances, or effectively to recommend such action, using his independent judgement.
- 11) The record in this case is devoid of evidence that Mr. Azevido assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that in the course of his duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.
- 12) The record, in this case, is devoid of evidence that Mr. Azevido formulates and effectuates management policies by expressing and making operative the decisions of his employer, or that he exercises discretion within or even independently of established employer policy.

CONCLUSION OF LAW

- 1) The position of Assistant Superintendent of the Water Pollution Control Facility is not confidential, supervisory, or managerial, as those terms are defined by law. Therefore, the position of Assistant Superintendent of the Water Pollution Control Facility shall not be excluded from the bargaining unit.

Superintendent of the Central Garage

FINDINGS OF FACT

- 1) Richard Francis had been employed as the Superintendent of the Central Garage (repair division) for the City of East Providence for approximately five years at the time of the formal hearing. Prior to this position, Mr. Francis had been employed as a Labor Supervisor of the garage. (TR. 6/1/99 p. 59)
- 2) Mr. Francis has been a member of the East Providence Professional, Managerial and Technical Employees Association continuously since 1990. (TR. 6/1/99 p. 64)
- 3) Mr. Francis is in charge of maintenance for the City's fleet of 350 vehicles. (TR. 6/1/99 p. 60) Employer's Exhibit # 8 is a fair and accurate representation of the scope of Mr. Francis' duties and responsibilities, except that he also prepares the budget for the Department. (TR. 6/1/99 p. 68)
- 4) Mr. Francis' staff includes five mechanics, a welder, a secretary, and two mechanics helpers. (TR. 6/1/99 p. 60)

- 5) In his capacity as Superintendent, Mr. Francis has participated in the interviewing process with the Director of Public Works and has made recommendations for hiring. (TR. 6/1/99 p. 62)
- 6) In his capacity as Superintendent, Mr. Francis made a recommendation to the Director of Public Works to fire an auto mechanic who failed to show up for work. (TR. 6/1/99 p. 62)
- 7) The record in this case is devoid of evidence that Mr. Francis assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that in, the course of his duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.
- 8) The record in this case is devoid of evidence that Mr. Francis formulates and effectuates management policies by expressing and making operative the decisions of his employer or that he exercises discretion within or even independently of established employer policy.
- 9) However, Mr. Francis does participate in hearings at the first step for written grievances filed within his department. He has the authority to either settle or deny a grievance, and he alone makes the determination as to whether the grievance will be settled at his level. (TR. 6/1/99 p. 67)

CONCLUSION OF LAW

- 1) Due to Mr. Francis' participation in grievance hearings in the interest of his employer the position of Superintendent of the Central Garage is supervisory as that term is defined by law. Therefore, the position of Superintendent of the Central Garage shall be excluded from the bargaining unit.

City Assessor

FINDINGS OF FACT

- 1) Alberto S. Ereio had been employed as the City Assessor for the City of East Providence for approximately nine years at the time of the formal hearing. (TR. 6/1/99 p. 72) His supervisor is the Director of Finance, Mr. James McDonald. (TR. 6/1/99 p. 73)
- 2) Mr. Ereio has been a member of the East Providence Professional, Managerial and Technical Employees Association continuously since his employment. (TR. 6/1/99 p. 72)
- 3) Mr. Ereio is in charge of assessing commercial and industrial properties within the city limits. He actually goes in the field to perform this work on a daily basis and spends about 50 percent of his time performing assessments. The rest of his time is spent dealing with lawsuits related to the assessment. (TR. 6/1/99 p. 72-73, 76)
- 4) Within the Assessor's office, there are also two deputy assessors who also assess properties, one who does residential real estate and the other does personal property. (TR. 6/1/99 p. 74) There are also three clerical workers; one who does title work, one who does computer input and another that handles field cards, title cards and customer inquiries. (TR. 6/1/99 p. 73)
- 5) During his tenure as City Assessor each of the other positions within the Assessor's office has become vacant and been filled with a new employee. Mr. Ereio has participated in all of the interviews, along with the Personnel Director and sometimes with the Finance Director. (TR. 6/1/99 p. 75) All of these positions required testing. (TR. 6/1/99 p. 75) Mr. Ereio testified that although he made a recommendation to his supervisor, who in turn made a recommendation to the City Manager, it was the Manager who actually made the selections. (TR. 6/1/99 p. 76) In each case, the City Manager hired the person recommended by Mr. Ereio. (TR. 6/1/99 p. 79) Mr. Ereio does not know whether he could reject all three candidates and ask for more to choose from. (TR. 6/1/99 p. 81)
- 6) Just prior to the formal hearing in this case, Mr. Ereio recommended a "reorganization" of the City Assessor's office and within the scope of that reorganization, recommended "upgrades" for some of the positions. (TR. 6/1/99 p. 78)

- 7) Mr. Ereio considers himself the "supervisor" of the people in his office and testified that he makes the decision as to which properties will be assessed. (TR. 6/1/99 p. 77) Each of the employees however have a separate and distinct role to perform and assigning work to these individuals according to their duties does require the use of "independent judgment."
- 8) Mr. Ereio performs the "rating" or evaluation of new employees within his office, utilizing a "check off" form generated by the City. (TR. 6/1/99 p. 80)
- 9) The record in this case is devoid of evidence that Mr. Ereio has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them in anything but a routine manner, or to adjust their grievances, or effectively to recommend such action, using his independent judgement.
- 10) The record in this case is devoid of evidence that Mr. Ereio assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that in the course of his duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.
- 1) The record in this case is devoid of evidence that Mr. Ereio formulates and effectuates management policies by expressing and making operative the decisions of his employer or that he exercises discretion within or even independently of established employer policy.

CONCLUSION OF LAW

- 1) The position of City Assessor is not confidential, supervisory, or managerial as those terms are defined by law. Therefore the position of City Assessor shall not be excluded from the bargaining unit.

Deputy Treasurer/ MIS Coordinator

FINDINGS OF FACT

- 1) Elizabeth Rynda had been employed as the Deputy Treasurer/ MIS Coordinator for the City of East Providence for approximately five years at the time of the formal hearing. (TR. 6/8/99 p. 4) Her supervisor is the Treasurer, Mr. Fitzgerald. (TR. 6/8/99 p. 21) About 85% of her time is spent on her duties as Deputy Treasurer and 15% as MIS Coordinator. (TR. 6/8/99 p. 23)
- 2) She has been a member of the East Providence Professional, Managerial and Technical Employees Association continuously since her employment. (TR. 6/8/99 p. 4)
- 3) Employer's Exhibit #9 is a fair and accurate representation of the duties and responsibilities of the position of Deputy Treasurer/MIS Coordinator. (TR. 6/8/99 p. 20)
- 4) In her capacity as Deputy Treasurer/MIS Coordinator, she has not hired, fired, demoted, suspended, issued a written reprimand, or transferred any other employee. Nor has she granted any merit pay increase or additional merit vacation time. (TR. 6/8/99 p. 4-5) Ms. Rynda has participated in interviewing for some temporary positions within the Treasury Department. (TR. 6/8/99 p. 15)
- 5) She has not participated in collective bargaining on the behalf of her employer or been involved in the adjustment of grievances of other employees. (TR. 6/8/99 p. 6)
- 6) Within the Treasury Division, Ms. Rynda oversees the work of account clerks and within the MIS Department, she oversees the work of the computer information specialists and the computer programmers. (TR. 6/8/99 p. 7) She assigns work tasks throughout the day and makes sure that there is sufficient staff coverage during lunch hours. (TR. 6/8/99 p. 8) These are merely routine tasks, which do not require the use of independent judgment.
- 7) Ms. Rynda testified that although she has issued oral reprimands by telling people they have done wrong, she has never issued a written reprimand. (TR. 6/8/99 p. 13)

- 8) In her capacity as Deputy Treasurer and MIS Coordinator, Ms. Rynda maintains personnel files and is responsible for filing information such as leave requests and letters of commendation from taxpayers. (TR. 6/8/99 p. 17) The Treasurer actually approves and signs off on all requests for leave, but Ms. Rynda coordinates the staff coverage in the office. (TR. 6/8/99 p. 22)
- 9) When Ms. Rynda is absent from work (such as on maternity leave) her duties are performed by either the Treasurer or Senior Account Maintenance Clerks. (TR. 6/8/99 p. 24-25)
- 10) The record in this case is devoid of evidence that Ms. Rynda has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them in anything but a routine manner, or to adjust their grievances, or effectively to recommend such action, using her independent judgement.
- 11) The record in this case is devoid of evidence that Ms. Rynda assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that in the course of her duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.
- 12) The record in this case is devoid of evidence that Ms. Rynda formulates and effectuates management policies by expressing and making operative the decisions of her employer or that she exercises discretion within or even independently of established employer policy.

CONCLUSION OF LAW

-) The position of Deputy Treasurer/MIS Coordinator is not confidential, supervisory, or managerial as those terms are defined by law. Therefore the position of Deputy Treasurer/MIS Coordinator shall not be excluded from the bargaining unit.

Confidential Secretary/ Director of Public Works

FINDINGS OF FACT

- 1) Donna McMahon has been employed full-time by the Employer as the Confidential Secretary to the Director of Public Works since 1996. (TR 6/8/99 p. 54) Her immediate supervisor is the Director of Public Works. (TR 6/8/99 p. 54)
- 2) Ms. McMahon has been a member of the East Providence Professional, Managerial and Technical Employees Association continuously since her full-time employment. (TR. 6/8/99 p. 56)
- 3) Ms. McMahon works in an office room shared with the Division of Engineering on the second floor of City Hall. Her desk is located in a room that is at least 50 or 60 feet in length, and her desk is located approximately five feet from the office of the Director of Public Works. (TR 6/8/99 p. 54, 58, 74) The Director's files are all physically located within unlocked file cabinets in the Director's office which gets locked at the end of each day. (TR. 6/8/99 p. 75, 92)
- 4) Ms. McMahon's duties as the Confidential Secretary to the Director of Public Works include: typing all interoffice correspondence from the Director of Public Works, including correspondence with the City Manager and the City Solicitor (TR 6/8/99 p. 58); retrieving, opening and sorting mail (TR 6/8/99 p. 61); setting up files, including files for grievances and doing filing (TR 6/8/99 p. 55, 61); typing up drafts of written reprimands issued by the Director (TR 6/8/99 p. 62, 77); filing probationary evaluations (TR 6/8/99 p. 63, 78); typing memos to files for the Director, including memos on disciplinary matters involving grievances (TR 6/8/99 p. 58-59, 64); and maintaining files for the Federal Drug and Alcohol Testing program. (TR 6/8/99 p. 68).
- 5) Ms. McMahon does not participate in the interviewing process for new employees, but does type up a list for interviews. (TR 6/8/99 p. 55)

- 6) Ms. McMahon does not participate in the grievance process for any employees, but does see all the information on grievances that comes in the Department. (TR 6/8/99 p. 55)
- 7) Ms. McMahon does not know whether the Director of Public Works participates in the negotiation of new contracts. (TR. 6/8/99 p. 65)
- 8) Employer's Exhibit #10 is a fair and accurate representation of the duties and responsibilities of the position of Confidential Secretary to the Director of Public Works, except that the Dictaphone is no longer used and that the administration of the Federal Drug and Alcohol testing program is omitted from the list of duties. (TR. 6/8/99 p. 68)
- 9) While Ms. McMahon has access to memos and files concerning discipline and grievance matters, the record in this case is devoid of evidence that Ms. McMahon assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations; or that in the course of her duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.
- 10) The record in this case is devoid of evidence that Ms. McMahon formulates and effectuates management policies by expressing and making operative the decisions of her employer or that she exercises discretion within or even independently of established employer policy.
- 1) The record is devoid of evidence that Ms. McMahon has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, other than in a merely routine or clerical nature that does not requires the use of independent judgment.

CONCLUSION OF LAW

- 1) Despite its title, the position Confidential Secretary to the Director of Public Works is not confidential, supervisory, or managerial as those terms are defined by law. Therefore, the position of Confidential Secretary to the Director of Public Works shall not be excluded from the bargaining unit.

Deputy City Clerk

FINDINGS OF FACT

- 1) At the time of the hearing, Mary Gadouas had been employed full-time by the Employer as the Deputy City Clerk for eleven (11) years. (TR 6/22/99 p. 5) Prior to this position, she was employed as a Clerk Typist and was a member of a bargaining unit represented by the Steelworkers. (TR 6/22/99 p. 6)
- 2) Ms. Gadouas has been a member of the East Providence Professional, Managerial and Technical Employees Association for eleven (11) years. (TR 6/22/99 p. 8)
- 3) Ms. Gadouas duties and responsibilities include: signing documents (certified copies of deeds, maps, marriage and death certificates, payroll, claim vouchers, purchase requisitions) in the absence of the City Clerk (TR 6/22/99 p. 17-18) and attending probate court (TR 6/22/99 p. 17). In the absence of the City Clerk, Ms. Gadouas assumes all the duties of that position. On occasion, when acting as the City Clerk, Ms. Gadouas has met with the City Council in executive session. (TR 6/22/99 p. 21).
- 4) The office staff consists of several Clerk Typists, each assigned to a specific area or function. These are Probate Clerk, Recording Clerk, Licensing Clerk, Vital Records Clerk, and Council Docket Clerk. (TR 6/22/99 p. 27)
- 5) Ms. Gadouas monitors and tracks the use of vacation, sick and personal leave used by the employees within the City Clerk's office, according to their collective bargaining agreement. (TR 6/22/99 p. 28, 31) Ms. Gadouas has had the occasion to deny the scheduling of personal leave and vacation time without the input of the City Clerk, but she generally confers with the City Clerk as to vacation time. (TR 6/22/99 p. 20, 30-31) Scheduling, monitoring and recording personal and vacation leave pursuant to contract and/or in conformance with the

City's regulations is merely clerical or routine and does not require the use of independent judgement.

- 6) Ms. Gadouas has had the occasion to issue a verbal reprimand to one girl in the office in early 1999. (TR 6/22/99 p. 18)
- 7) Ms. Gadouas has never hired, fired, demoted, transferred, or suspended any employee. Nor has she issued any written reprimand, granted additional vacation time for meritorious service, or sustained an employee's grievance. (TR 6/22/99 p. 6-7)
- 8) Ms. Gadouas has never participated in grievance hearings. (TR 6/22/99 p. 23)
- 9) Ms. Gadouas has sat in on interviews and asked some of the questions. The interviewees are selected from the city's list of "top three" candidates. After the interview is concluded, she then confers with the City Clerk, who makes a recommendation to the City Manager who then has the final say on hiring. (TR 6/22/99 p. 29)
- 10) The only time that labor relations issues were discussed in an executive session of the City Council at which the Deputy Clerk was present, she excused herself and the City Solicitor took the minutes for that meeting. (TR 6/22/99 p. 21-22)
- 11) The record in this case is devoid of evidence that Ms. Gadouas assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that in the course of her duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.
- 12) The record in this case is devoid as of evidence that Ms. Gadouas formulates and effectuates management policies by expressing and making operative the decisions of her employer or that she exercises discretion within or even independently of established employer policy.
- 13) The record is devoid of evidence that Ms. Gadouas has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, other than in a merely routine or clerical nature that does not requires the use of independent judgment

CONCLUSION OF LAW

- 1) The position of Deputy City Clerk is not confidential, supervisory, or managerial as those terms are defined by law. Therefore, the position of Deputy City Clerk shall not be excluded from the bargaining unit.

Confidential Secretary/ Chief of Police

FINDINGS OF FACT

At the time of the formal hearing on June 22, 1999, Donna Hall had been employed full-time by the Employer, as the Confidential Secretary to the Chief of Police for eight years. (TR 6/22/99 p. 32)

- 2) Ms. Hall has been a member of the East Providence Professional, Managerial and Technical Employees Association for eight years. (TR. 6/22/99 p. 36)
- 3) Ms. Hall's duties include: transcribing dictation, typing, composing routine correspondence, receiving and sorting mail, setting up and maintaining files, receive and screen calls and visitors, place calls for the chief and schedule appointments for the chief. (TR. 6/22/99 p. 34-35)
- 4) Ms. Hall has never, hired, fired, demoted, transferred, or suspended any other employee. (TR. 6/22/99 p. 35) Ms. Hall has never granted a merit pay increase to any employee nor sustained an employee's grievance. (TR. 6/22/99 p. 36)

- 5) Ms. Hall has access to and sees investigative reports, employment information, and background checks for all prospective employees of the Police and Fire Departments (TR. 6/22/99 p. 37, 39, 42) Ms. Hall types letters of discipline for the Chief. (TR. 6/22/99 p. 37) The investigative reports are prepared by an internal affairs officer, who is a member of the police union. (TR. 6/22/99 p. 49-50)
- 6) Ms. Hall occasionally prepares memoranda from the Chief to the City Manager or City Solicitor that involve collective bargaining issues and the contracts. (TR. 6/22/99 p. 44) She also files memos received by the Chief from the City Manager, or City Solicitor regarding collective bargaining. Only the Chief, Deputy Chief, and Ms. Hall would have access to these memos, as filed in their offices. (TR. 6/22/99 p. 44-45)
- 7) Ms. Hall's work space is located between the offices of the Chief and the Deputy Chief in a suite that is located behind a closed door. (TR. 6/22/99 p. 48) The Chief and the Deputy frequently talk back and forth to each other through the open doors from their offices and sometimes those discussions are related to disciplinary matters and collective bargaining. Ms. Hall can hear these discussions. (TR. 6/22/99 p. 49)
- 8) The record in this case is devoid of evidence that Ms. Hall formulates and effectuates management policies by expressing and making operative the decisions of her employer or that she exercises discretion within or even independently of established employer policy.
- 9) The record is devoid of evidence that Ms. Hall has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, other than in a merely routine or clerical nature that does not requires the use of independent judgment
- 10) The record in this case is devoid of evidence that Ms. Hall assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that in the course of her duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

CONCLUSION OF LAW

- 1) The position of Confidential Secretary/ Police Department is not confidential, supervisory, or managerial as those terms are defined by law. Therefore, the position of Confidential Secretary/ Police Department shall not be excluded from the bargaining unit.

Superintendent /Water Pollution Control FINDINGS OF FACT

- 1) Thomas White has been employed as the Superintendent of the Water Pollution Control Division for the City of East Providence since 1990. Prior to that he served as the Assistant Superintendent from 1979. (TR. 6/22/99 p. 52) His immediate supervisor is the Director of Public Works. (TR. 6/22/99 p. 51)
- 2) Mr. White's duties include: overall responsibility for the administration of the Water Pollution Control Division which encompasses a 10.4 million-gallons per day treatment facility. He is also responsible for approximately 19 pumping stations located throughout the City of East Providence. (TR. 6/22/99 p. 52) He occasionally attends meetings of the City Council and public hearings. (TR. 6/22/99 p. 66) He also considers himself on call 24 hours per day, 7 days per week. (TR. 6/22/99 p. 64) He also prepares the Department budget. (TR. 6/22/99 p. 69)
- 3) Employer's Exhibit # 12 is a fair and accurate representation of the duties and responsibilities of the position of Superintendent of Water Pollution Control. (TR. 6/22/99 p. 66)
- 4) Mr. White's position requires that he hold a Grade 4 Certification of Wastewater Treatment Operators. (TR. 6/22/99 p. 52)

- 5) Mr. White has not participated in collective bargaining on behalf of the City, but he has participated during his tenure as President of the East Providence Professional, Managerial and Technical Employees Association. (TR. 6/22/99 p. 53)
- 6) In his capacity as Superintendent, Mr. White has participated in the interviewing process for several operator's positions and has made recommendations to the Director of Public Works and the City Manager for hiring. (TR. 6/22/99 p. 57) During the course of the interview process, Mr. White checks to make sure that the candidates are properly licensed. (TR. 6/22/99 p. 57)
- 7) After an employee is hired, Mr. White would complete a city-wide form required for probationary employees. (TR. 6/22/99 p. 59)
- 8) Mr. White monitors the use of vacation and sick time according to the contract and seniority regulations. (TR. 6/22/99 p. 68-69)
- 9) The record in this case is devoid of evidence that Mr. White formulates and effectuates management policies by expressing and making operative the decisions of his employer or that he exercises discretion within or even independently of established employer policy.
- 10) The record in this case is devoid of evidence that Mr. White assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that in the course of his duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

CONCLUSION OF LAW

Due to Mr. White's authority and responsibility to participate in grievance hearings in the interest of his employer, the position of Superintendent of Water Pollution Control is supervisory as that term is defined by law. Therefore, the position of Superintendent of Water Pollution Control shall be excluded from the bargaining unit.

Highway Superintendent FINDINGS OF FACT

- 1) Stephen Durfee has been employed as the Highway Superintendent for the City of East Providence since December of 1998. Prior to that he served as the Acting Superintendent since 1990. (TR. 6/22/99 p. 70)
- 2) Within the Highway Department, Mr. Durfee oversees the work of thirty one employees, including Labor Supervisors, lead workers, heavy equipment operators, truck drivers, laborers, and an account clerk. (TR. 6/22/99 p. 70) These employees are responsible for maintaining city streets and sidewalks. (TR. 6/22/99 p. 75) Employer's Exhibit #13 is a fair and accurate representation of the scope of duties and responsibilities of the position of Highway Superintendent. (TR. 6/22/99 p. 82)
- 3) Mr. Durfee participates with the Park Superintendent, the Public Works Director, and the Superintendent of Collection and Distribution when interviewing new employees. (TR. 6/22/99 p. 71) Mr. Durfee makes his recommendation for hiring to the Public Works Director. (TR. 6/22/99 p. 71)
- 4) Mr. Durfee has issued verbal discipline and placed written letters of reprimand in the division personnel files of some of his employees after consultation with the Director of Public Works. (TR. 6/22/99 p. 79) Mr. Durfee has also met with the City Manger, on several occasions, to discuss potential disciplinary matters for the employees within his Department, after consultation with the Director of Public Works. (TR. 6/22/99 p. 83)
- 5) Mr. Durfee completes the probationary report for new employees. (TR. 6/22/99 p. 73)
- 6) Mr. Durfee determines, on an overall basis, the work assignments for the members of his department; and he has the authority to override the work assignments given by Labor Supervisors. (TR. 6/22/99 p. 76)

- 7) On one occasion when Mr. Durfee was serving as Acting Superintendent, he was asked to review new contract provisions being proposed within collective bargaining. (TR. 6/22/99 p. 88)
- 8) The record in this case is devoid of evidence that Mr. Durfee formulates and effectuates management policies by expressing and making operative the decisions of his employer or that he exercises discretion within or even independently of established employer policy.

CONCLUSION OF LAW

- 1) Due to Mr. Durfee's authority and responsibility to issue verbal and written discipline to employees, the position of Highway Superintendent is supervisory as that term is defined by law. Therefore the position of Highway Superintendent shall be excluded from the bargaining unit.

Superintendent of Parks

FINDINGS OF FACT

- 1) Gregory Gammell has been employed as the Superintendent of Parks for the City of East Providence since September of 1990. (TR. 6/22/99 p. 84) Mr. Gammell has been a member of the East Providence Professional, Managerial and Technical Employees Association since the end of his probationary period in March or April of 1991. (TR. 6/22/99 p. 91)
- 2) Within the Parks Department, Mr. Gammell oversees the work of sixteen employees, including Labor Supervisors. (TR. 6/22/99 p. 85) Employer's Exhibit #14 is a fair, and accurate representation of the scope of duties and responsibilities of the position of Superintendent of Parks (TR. 6/22/99 p. 95)
- 3) Gammell participates with the Highway Superintendent, the Public Works Director, and the Superintendent of Collection and Distribution when interviewing new employees. As a group, they select a candidate, and the Director of Public Works then submits a letter to the City Manager. (TR. 6/22/99 p. 87)
- 4) Mr. Gammell completes probationary reports for new employees. (TR. 6/22/99 p. 88)
- 5) Mr. Gammell has issued verbal discipline and placed written letters of reprimand in the division personnel files of some of his employees. (TR. 6/22/99 p. 89) At the direction of the City Manager, Mr. Gammell has fired five employees, four temporaries and one permanent. (TR. 6/22/99 p. 89)
- 6) Mr. Gammell has participated as a member of City management in first step grievance hearings. (TR. 6/22/99 p. 90) He has also met with Union officials and employees to discuss problems before they became grievances. (TR. 6/22/99 p. 94)
- 7) The record in this case is devoid of evidence that Mr. Gammell formulates and effectuates management policies by expressing and making operative the decisions of his employer or that he exercises discretion within or even independently of established employer policy.
- 8) The record in this case is devoid of evidence that Mr. Gammell assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that in the course of his duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

CONCLUSION OF LAW

- 1) Due to Mr. Gammell's authority and responsibility to issue verbal and written discipline to employees, and authority and responsibility to participate in grievance hearings in the interest of his employer, the position of Superintendent of Parks is supervisory as that term is defined by law. Therefore the position of Superintendent of Parks shall be excluded from the bargaining unit.

Zoning Officer
FINDINGS OF FACT

- 1) Gary A. Butterworth has been employed as the Zoning Officer for the City of East Providence since July of 1990. Prior to this position, Mr. Butterworth also served as Planner II and Planning Technician. In all Mr. Butterworth had been an employee in the Planning Department for 21 years, prior to his appointment as Zoning Officer. (TR. 8/31/99 p. 8-9)
- 2) Mr. Butterworth's responsibility is to enforce the Zoning Enabling Act. In this capacity, Mr. Butterworth advises applicants whether they may proceed with a particular development project under the City's zoning ordinance. (TR. 8/31/99 p. 10) He also serves as a clerk to the Zoning Board of Review. (TR. 8/31/99 p. 10-11) He also suggests alternative development scenarios that would permit an applicant to avoid having to request a variance. (TR. 8/31/99 p. 16-17) Employer's Exhibit #15 is generally a fair and accurate representation of the scope of duties and responsibilities of the position of the Zoning Officer (TR. 8/31/99 p. 17)
- 3) There are two clerical employees within the Building Division; one who is "assigned" to Mr. Butterworth and one who is assigned to the Building Official. (TR. 8/31/99 p. 12) Mr. Butterworth's clerk is primarily responsible for work generated by him; after that work is completed, she is available to do work for other members of the building division. In the event that a clerk would refuse to perform work for Mr. Butterworth, he would take the matter up with a "division head". (TR. 8/31/99 p. 14) Mr. Butterworth's ability to assign tasks to the clerk that clearly fall within her "assigned" job description does not require the use of "independent judgment", but is merely routine.
- 4) In the course of his employment, Mr. Butterworth has not hired, fired, transferred, demoted, or suspended any city employee. (TR. 8/31/99 p. 19-20) Nor has he ever placed a written reprimand in any employee's personnel file, granted any merit pay increase to any employee, granted any additional vacation leave for any employee, or sustained a grievance for any employee. (TR. 8/31/99 p. 20)
- 5) Mr. Butterworth has been a member of the East Providence Professional, Managerial and Technical Employees Association since its inception in the City of East Providence. (TR. 8/31/99 p. 20)
- 6) The record is devoid of evidence that Mr. Butterworth has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action.
- 7) The record in this case is devoid of evidence that Mr. Butterworth formulates and effectuates management policies by expressing and making operative the decisions of his employer or that he exercises discretion within or even independently of established employer policy.
- 8) The record in this case is devoid of evidence that Mr. Butterworth assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that in the course of his duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

CONCLUSION OF LAW

-) The position of Zoning Officer is not confidential, supervisory, or managerial as those terms are defined by law. Therefore the position of Zoning Officer shall not be excluded from the bargaining unit.

Recycling Coordinator
FINDINGS OF FACT

- 1) Steven Mutter has been employed as the Recycling Coordinator for the City of East Providence since August of 1987. (TR. 8/31/99 p. 22) Mr. Mutter also performs the services of a the "community service liaison", in conjunction with the Juvenile Hearing Board and the Administrative Adjudicative Court. (TR. 8/31/99 p. 33) Employer's Exhibit #16 is

generally a fair and accurate representation of the scope of duties and responsibilities of the position of the Recycling Coordinator (TR. 8/31/99 p. 44)

- 2) Mr. Mutter has been a member of the East Providence Professional, Managerial and Technical Employees Association since 1987. (TR. 8/31/99 p. 56)
- 3) Mr. Mutter's responsibilities include the design and implementation of the recycling programs (including bottles, cans, paper, compost, oil, antifreeze, appliances, etc) within the City of East Providence, the OSCAR program (litter patrol) and the MOTORRING program. (TR. 8/31/99 p. 32, 43) Mr. Mutter writes grants for funding, contracts with vendors for both recycling and rubbish collection. (TR. 8/31/99 p. 23-24) He investigates the qualifications of vendors and makes recommendations to the City Manager. (TR. 8/31/99 p. 25-26) Within the composting program, Mr. Mutter monitors equipment operators (from the Highway Department) and makes sure that temperatures are taken in the composting piles on a weekly basis. (TR. 8/31/99 p. 27-28) Mr. Mutter monitors and collects the funds from the facility and transfers the money to the treasury division. (TR. 8/31/99 p. 30) Mr. Mutter also receives and responds to citizen's inquiries concerning rubbish service and recycling. (TR. 8/31/99 p. 37) Mr. Mutter also prepares and submits a budget for the rubbish and recycling programs. The budget includes the amount of the contracts for rubbish collection (\$694,000.00) and the recycling (\$302,000.00). (TR. 8/31/99 p. 58)
- 4) The OSCAR program runs for eight weeks during the summer and uses temporary or seasonal employees. (TR. 8/31/99 p. 32) Mr. Mutter selects the participants from a list generated by the City's personnel department. Although Mr. Mutter has never terminated any of these employees, he believes that he would have the authority to recommend their termination to the Personnel Director or the City Manger. (TR. 8/31/99 p. 32-33. 60)
- 5) In his capacity as the "community service liaison", Mr. Mutter receives directions from the Administrative Adjudicative Court and the Juvenile Hearing Board on the amount of community service, such as counting out yard waste bags into bundles of ten, that must be performed as a part of an individual's sentence. (TR. 8/31/99 p. 49-51) Mr. Mutter then keeps track of the hours performed. (TR. 8/31/99 p. 33) He then signs off on a letter of fulfillment to acknowledge completion of the community service. (TR. 8/31/99 p. 35) The people performing the community service are not employees of the City of East Providence.
- 6) In the event that one of the highway employees assigned to the composting operation is not working properly, Mr. Mutter would confer with the Highway Supervisor and together with him would write any incident reports. (TR. 8/31/99 p. 29) In the event that the rubbish vendor has missed a stop, Mr. Mutter arranges for a couple of available city employees to pick up the trash so that the resident is happy. (TR. 8/31/99 p. 40)
- 7) In the course of his employment, Mr. Mutter has not fired, transferred, demoted or suspended any city employee. (TR. 8/31/99 p. 55-56) Nor has he ever placed a written reprimand in any employee's personnel file, granted any merit pay increase to any employee, granted any additional vacation leave for any employee or sustained a grievance for any employee. (TR. 8/31/99 p. 56)
- 8) The record is devoid of evidence that Mr. Mutter has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action.
- 9) The record in this case is devoid of evidence that Mr. Mutter formulates and effectuates management policies by expressing and making operative the decisions of his employer or that he exercises discretion within or even independently of established employer policy.
- 10) The record in this case is devoid of evidence that Mr. Mutter assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that in the course of his duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

CONCLUSION OF LAW

The position of Recycling Coordinator is not confidential, supervisory, or managerial as those terms are defined by law. Therefore the position of Recycling Coordinator shall not be excluded from the bargaining unit.

Planner III FINDINGS OF FACT

- 1) Diane Feather has been employed as a Principal Planner, in the pay grade known as Planner III, for the City of East Providence since 1994. Prior to this position, she was a Senior Planner from 1990. (TR. 9/30/99 p. 4)
- 2) Within the Planning Department, there is a Director of Planning, an Economic Development Planner, Principal Planner, Senior Planners (pay grade Planner II) and Junior Planners (pay grade Planner I), although the Junior Planner is presently a vacant position. (TR. 9/30/99 p. 9-10)
- 3) Ms. Feather's duties and responsibilities include site plan review for commercial developments, writing the City's comprehensive plan, subdivision regulations and zoning ordinances and attends department head meetings. (TR. 9/30/99 p. 5) She also reviews the more controversial residential subdivisions. (TR. 9/30/99 p. 12) She also reviews the recommendations of the other Planners for consistency. (TR. 9/30/99 p. 13) She also reviews work of Planning Interns from the University of Rhode Island. (TR. 9/30/99 p. 14) She also attends meetings of the City Council from time to time. (TR. 9/30/99 p. 19)
- 4) The work assignments within the Department are essentially done on the basis of each individual's area of expertise. (TR. 9/30/99 p. 15)
- 5) When the Director of Planning is absent from work, Ms. Feather has served as the Acting Director. (TR. 9/30/99 p. 16) As Acting Director, Ms. Feather has signed the payroll, claim vouchers and invoices, approved the use of vacation, sick and personal time for other members of the department, and has made sure that staffing levels have been adequate. (TR. 9/30/99 p. 16-17) She has also occasionally attended the City Manager's department head meetings. (TR. 9/30/99 p. 18)
- 6) Ms. Feather has participated in the interview process of the City's "top three" candidates. (TR. 9/30/99 p. 17)
- 7) The record is devoid of evidence that Ms. Feather has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action.
- 8) The record in this case is devoid of evidence that Ms. Feather formulates and effectuates management policies by expressing and making operative the decisions of her employer or that she exercises discretion within or even independently of established employer policy.
- 9) The record in this case is devoid of evidence that Ms. Feather assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that in the course of her duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

CONCLUSION OF LAW

-) The position of Planner III is not confidential, supervisory, or managerial as those terms are defined by law. Therefore the position of Planner III shall not be excluded from the bargaining unit.

Substance Abuse Prevention Coordinator

FINDINGS OF FACT

- 1) Mary Ann Martinez has been employed as the Substance Abuse Prevention Coordinator by the City of East Providence since October of 1996 (TR. 9/30/99 p. 49)
- 2) Ms. Martinez's duties and responsibilities include the implementation of that portion of the State of Rhode Island's strategic plan as it relates to substance abuse prevention as directed by the Center for Substance Abuse Prevention, the Department of Health and the State's MHRH Department. (TR. 9/30/99 p. 40) The Substance Abuse Taskforce, which is a grass roots volunteer board, with Ms. Martinez's assistance develops programming which Ms. Martinez then implements. (TR. 9/30/99 p. 42-43)
- 3) When Ms. Martinez was hired as Coordinator, she had an interview with the Substance Abuse Task Force, as well as a second interview with City officials, but the final appointment was made by the City Manager (TR. 9/30/99 p. 43, 50)
- 4) Ms. Martinez oversees the work of a part-time Youth Coordinator who manages activities with youths who reside within the City of East Providence. (TR. 9/30/99 p. 44) The Youth Coordinator was interviewed by the Youth Task Force and the Adult Task Force. Ms. Martinez then made a recommendation to the Personnel Director and to the City Manager. (TR. 9/30/99 p. 45-46, 58)
- 5) The position of Substance Abuse Prevention Coordinator is grant funded to the City of East Providence through the State of Rhode Island and the federal government. Ms. Martinez enjoys a salary of thirty four thousand dollars per year and receives health care benefits, sick time and three weeks of vacation time. In 1999, she earned an additional week of meritorious vacation time, which was awarded to her by the City Manager. (TR. 9/30/99 p. 53)
- 6) Employer's Exhibit # 18 is generally a fair and accurate representation of the duties and responsibilities of the position of Substance Abuse Prevention Coordinator, although the position has had some additional responsibilities added since the job description was first written. (TR. 9/30/99 p. 47-48)
- 7) Ms. Martinez's immediate supervisor is the City's Director of Personnel. (TR. 9/30/99 p. 52) She also has a reporting responsibility to the City's Substance Abuse Task Force.
- 8) Ms. Martinez keeps track of her own hours and works a non-standard workweek based on a thirty-five hour week. When her weekly hours exceed thirty-five, she later takes "comp" time and makes a report of this adjustment to the Personnel Director. (TR. 9/30/99 p. 56) The part time Youth Coordinator who works about 10 hours per week reports her hours to Ms. Martinez when requested to do so. (TR. 9/30/99 p. 56)
- 9) The record is devoid of evidence that Ms. Martinez has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action.
- 10) The record in this case is devoid of evidence that Ms. Martinez assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that in the course of her duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.
- 10) The record in this case is devoid of evidence that Ms. Martinez formulates and effectuates management policies by expressing and making operative the decisions of her employer or that she exercises discretion within or even independently of established employer policy.

CONCLUSION OF LAW

- 1) The position of Substance Abuse Prevention Coordinator is not confidential, supervisory, or managerial as those terms are defined by law. Therefore the position of Substance Abuse Prevention Coordinator shall not be excluded from the bargaining unit.

Purchasing Agent
FINDINGS OF FACT

- 1) Mr. John M. Andrews has been employed by the City of East Providence as the Purchasing Agent since February of 1990. (TR. 9/30/99 p. 63) The Purchasing Agent is responsible for purchasing all the materials and services for the City of East Providence, for the municipal needs; the school system has a separate business manager. (TR. 9/30/99 p. 63)
- 2) Mr. Andrews oversees the work of one Purchasing Clerk I, by assigning and reviewing her work. (TR. 9/30/99 p. 64) He also reviews her attendance and punctuality.
- 3) During Mr. Andrews' tenure as Purchasing Agent, the Purchasing Clerk I position was vacated and he conducted interviews for the new hire. Mr. Andrews also completed the Purchasing Clerk I's probationary report. (TR. 9/30/99 p. 65-66)
- 4) Employer's Exhibit #19 is generally a fair and accurate representation of the duties and responsibilities of the position of Purchasing Agent, except the purchasing authority has been increased by the City Council from \$500.00 to \$5,000.00 and that this position is no longer responsible for reviewing all City invoices. (TR. 9/30/99 p. 67)
- 5) The record in this case is devoid of evidence that Mr. Andrews formulates and effectuates management policies by expressing and making operative the decisions of his employer or that he exercises discretion within or even independently of established employer policy.
- 6) The record is devoid of evidence that Mr. Andrews has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action.

CONCLUSION OF LAW

- 1) The position of Purchasing Agent is not confidential, supervisory, or managerial as those terms are defined by law. Therefore the position of Purchasing Agent shall not be excluded from the bargaining unit.

Recreation Center Coordinator
FINDINGS OF FACT

- 1) Diane Sullivan has been employed as the Recreation Center Coordinator for the City of East Providence since about 1987. (TR. 9/30/99 p. 78)
- 2) Ms. Sullivan's primary office is located within the Recreation Center while the Recreation Department's primary office is located in the City Hall. (TR. 9/30/99 p. 79)
- 3) Ms. Sullivan's duties and responsibilities include developing and coordinating activities such as recreation, arts & crafts, and exercise for all age groups, from pre-schoolers to adults. (TR. 9/30/99 p. 79-80)
- 4) There is one other full-time City employee who works at the Recreation Center and who serves as an evening supervisor of the various programs. (TR. 9/30/99 p. 80) The number of part-time employees varies with the season, with about a dozen during the school year and forty or fifty in the summer months. (TR. 9/30/99 p. 80)
- 5) During the summer, the Department sponsors an organized playground program in 14 play-sites throughout the City to keep children busy with arts & crafts and sports activities. (TR. 9/30/99 p. 81) Ms. Sullivan is responsible for scheduling and coordinating all of these activities and assigning personnel to each activity. (TR. 9/30/99 p. 81-82)
- 6) Ms. Sullivan has conducted interviews for hiring part-time positions and sometimes makes recommendations to the Director on who should be hired. However, there are also times when she conducts an interview and makes no recommendations for hiring because, with the tight labor market, as long as the applicant passes the background check and has a pulse, the applicant is hired. (TR. 9/30/99 p. 84) She described the process as "pretty informal" and that the Department is usually in need of everyone that applies. (TR. 9/30/99 p. 85)

- 7) In the event that an employee were not performing his or her job properly, she would first speak to the employee informally. In the event that the employee's work performance did not improve, she would then report the matter to the Recreation Director. (TR. 9/30/99 p. 85) She does not normally make recommendations to the Director on discipline issues. (TR. 9/30/99 p. 85-87)
- 8) Employer's Exhibit #20 is generally a fair and accurate representation of the duties and responsibilities of the position of Recreation Center Coordinator, except that she does not perform budgetary preparations. (TR. 9/30/99 p. 88)
- 9) Ms. Sullivan's immediate supervisor is the Assistant Director of Recreation. (TR. 9/30/99 p. 89)
- 10) Ms. Sullivan has never issued a written reprimand, suspended any employees, recommended any meritorious pay increase, or granted any meritorious vacation leave. She has never adjusted any employee's grievance or transferred any employee. (Tr. 9/30/99 p. 91-93)
- 11) Ms. Sullivan has served as a negotiator for the union in contract negotiations. (TR. 9/30/99 p. 93)
- 12) The record is devoid of evidence that Ms. Sullivan has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action.
- 13) The record, in this case, is devoid of evidence that Ms. Sullivan formulates and effectuates management policies by expressing and making operative the decisions of her employer or that she exercises discretion within or even independently of established employer policy.
- 14) The record, in this case, is devoid of evidence that Ms. Sullivan assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or that, in the course of her duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

CONCLUSION OF LAW

- 1) The position of Recreation Center Coordinator is not confidential, supervisory, or managerial as those terms are defined by law. Therefore, the position of Recreation Center Coordinator shall not be excluded from the 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 Labor Relations Act, it is hereby:

DIRECTED that an election by secret ballot shall be conducted within sixty (60) 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 professional/technical employees employed by the City of East Providence

INCLUDING: Librarian I, Librarian II, Labor Supervisor (Highway), Plumbing & Mechanical Inspector, Labor Supervisor (Central Garage), Labor Supervisor (Parks), Laboratory Director/Sr. Chemist, Pretreatment Coordinator, Collection & Distribution System Supervisor, Computer

Information Specialist, Computer Programmer, Recreation Center Supervisor, Sr. Citizens Coordinator, Planner II, Assistant Electrical/Maintenance Supervisor, Electrical/Mechanical Maintenance Supervisor, Assistant Recreation Director, Building Official, City Engineer and Deputy Director of Public Works, Treasurer/Tax Collector, Assistant Superintendent of Water Pollution Control, City Assessor, Deputy Treasurer/MIS Coordinator, Confidential Secretary to the Director of Public Works, Deputy City Clerk, Confidential Secretary/Police Department, Zoning Officer, Recycling Coordinator, Planner III, Substance Abuse Prevention Coordinator, Purchasing Agent, and Recreation Center Coordinator; and;

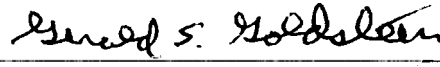
EXCLUDING: Personnel Clerk, Assistant Library Director, Controller, Superintendent of Public Buildings, Superintendent of Distribution and Collection, Superintendent of Central Garage, Superintendent of Water Pollution Control, Highway Superintendent, and Superintendent of Parks; who were employed on February 29, 2000, to determine whether they wish to be represented, for the purposes of collective bargaining, as provided for in the Act, by Council 94, AFSCME, AFL-CIO or by no labor organization.

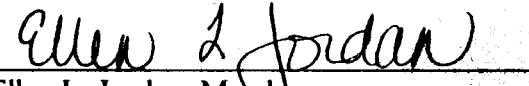
RHODE ISLAND STATE LABOR RELATIONS BOARD

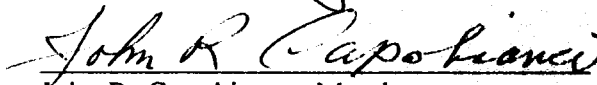

Walter J. Lawli, Chairman


Frank J. Montanaro, Meml


Joseph M. Mulvey, Member

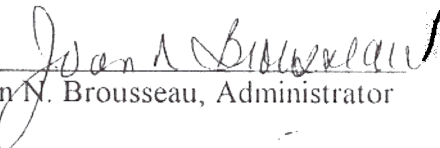

Gerald S. Goldstein, Member


**Ellen L. Jordan, Member


John R. Capobianco, Member

Entered as an Order of the
Rhode Island State Labor Relations Board

Dated: August 25 2000

By: 
Joan N. Brousseau, Administrator

** Board Member Ellen L. Jordan is dissenting on the Decision & Direction of Election relative to the positions of Tax Assessor; Confidential Secretary/Director of Public Works; and Confidential Secretary/Chief of Police.