

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

IN THE MATTER OF

RHODE ISLAND ECONOMIC
DEVELOPMENT CORPORATION
Employer

-AND-

CASE NO: EE-3589
and EE-3593
Consolidated for hearing

RHODE ISLAND LABORERS' DISTRICT COUNCIL
on behalf of LOCAL UNION 808
Petitioner

DECISION AND ORDER

TRAVEL OF CASE

The above matter came on to be heard on a two "Petitions by Employees For Investigation and Certification of Representatives" (hereinafter Petitions) filed by the Rhode Island Laborer's District Council, Local Union 808 (hereinafter Petitioner). The first Petition (EE 3589) was filed in May 6, 1996 and sought to represent 22 employees. Agents of the Board conducted an investigation on May 15, 1996 and verified the signatures submitted with the Petition. During the investigation, the Union informed the Agents of the Board that it was actually seeking to represent 25 employees in two locations. Thereafter, an Amended Petition was submitted clarifying the locations sought and the specific job titles to be included and excluded.² All signature cards which had been submitted were verified and, as indicated, were of sufficient number. An informal

¹ Publicity Specialist, Assistant Publicity Specialist, Tourism Information Assistant, Program Administrator, Principal Clerk Typist, Research Analyst, Research Specialist, Technical Permitting Specialist, Administrative Assistant, Secretary, Federal Procurement Administrator, Fiscal Clerk, Financial Secretary, Fiscal Administrative Manager, Assistant Controller, General Secretary, Switchboard Operators and General Maintenance and all non-managerial personnel included under the Act.

² The following employees employed within the Providence Office and the following employees employed within the Welcome Center: Administrative Assistant, Assistant Controller, Customer Service Receptionist, Assistant Publicity Specialist, Clerk, Financial Secretary, Federal Procurement Administrator, Fiscal Administrative Manager, Fiscal Clerk, General Maintenance Person, Program Administrator, Publicity Specialist, Research Analyst, Research Specialist, Secretaries, Technical Permitting Specialist and Principal Clerk Typist. Excluding employees working for the R.I. Port Authority, Quonset Point Facility and the following employees working within the Providence Facility and Welcome Centers: Account Representative, Chief Planner, Communicators Coordinator, Customer Service Receptionist, Director of Business Development, Director Marketing, Communications, Film Director, Financial Analyst, Network Manager, Office Managers, Project Coordinator, Program Director, Research Manager, Sports Council Director, Welcome Center Manager, all employees working for the

conference was held June 3, 1996 at 9:00 A.M. to see if the parties could agree to a consent election. The Employer objected on several grounds and the matter was then scheduled for a formal hearing.

On August 7, 1996, the Petitioner filed Petition EE 3593 seeking to represent 15 employees located at the Employer's Quonset Repair and Maintenance Facility.³ Agents of the Board conducted an investigation on August 15, 1996 and verified the signatures submitted with the Petition. All signature cards which had been submitted were verified

as indicated, were of sufficient number. An informal conference was held on September 16, 1996 at which the parties agreed to postpone the matter to see if they could reach a settlement. The matter was then heard informally on October 22, 1996. Although the parties still could not agree to a settlement of this matter, they did agree that both Petitions, EE 3589 and EE 3593, could be scheduled for formal hearing at the same

The formal hearing was held on February 25, 1997, by the State Labor Relations Board. At said hearing, the Respondent continued to challenge the scope of the proposed bargaining units.

DISCUSSION

It is well established that a Union can be certified as the bargaining representatives of a group of employees, only if those employees constitute an appropriate bargaining

A Union is not required to seek an election in the *most* appropriate bargaining unit, it must request an election in *an* appropriate unit. Rhode Island Public Telecommunications Authority v Rhode Island State Labor Relations Board, 650 A2d 479 citing Wil-Kil Pest Control Co. v. N.L.R.B., 440 F2d 371, 375 (7th Cir. 1971). In determining whether a proposed bargaining unit is appropriate, the general inquiry made by the Board is such a determination, is whether or not the employees share a "community of interest" Factors to determine whether a community of interest exists

1) Similarity in scale and manner of determining earnings

Executive Director to include: Deputy Director, Associate Deputy Director, Legal Counsel, Executive Assistant, Executive Secretary, Confidential Secretary and any employee excluded by law.

³ of the following employees: Senior Technician, Foreman, Mechanic, Technician, GM-2, Inmate Supervisor, Laborer, GM-1 and Systems Operator employed at the Quonset Repair and Maintenance facility and the Quonset Water Department, excluding all employees presently represented by another labor organization.

- 2) Similarity of employment benefits, hours of work, and other terms and conditions of employment
- 3) Similarity in the kind of work performed
- 4) Similarity in the qualifications, skills and training of the employees
- 5) Frequency of contact or interchange among employees
- 6) Geographic proximity
- 7) Continuity or integration of the production process
- 8) Common supervision and determination of labor relations policy
- 9) Relationship to the administrative organization of the employer
- 10) History of collective bargaining
- 11) Desires of the affected employees
- 12) Extent of union organization.

N.L.R.B. v. Saint Francis College, 562 F.2d 246, 249 (3d Cir. 1977) (citing Robert A. Gorman , Basic Text on Labor Law, Unionization, and Collective Bargaining, 69 (1976))

Establishing the community of interest for bargaining units is important for several reasons. First and foremost, it ensures that similarly situated employees are created similarly, thereby minimizing strife and instability in working conditions. In addition, a clearly defined “community of interest” is important when a Union later seeks to accrete positions into a unit. “In determining whether accretion of employees to existing bargaining units is proper, the National Labor Relations Board (NLRB) considers many of the same factors that determine community of interest questions for purpose of bargaining unit determination, namely, such factors as integration of operations, centralization of managerial and administrative control, geographic proximity, similarity of working conditions and skills, common control over labor relations, collective bargaining history and interchangeability of employees. Rhode Island Public Telecommunications Authority v Rhode Island State Labor Relations Board, 650 A2d 479, N.L.R.B. v Security-Columbian Banknote Co., 541 F.2d 135, 140 (3d Cir. 1976).

It is a Petitioner’s burden to establish that the members of the unit(s) it seeks to represent share a community of interest. Although the provision of the State Labor Relations Act are to be liberally construed, the Board cannot relieve a Petitioner of its burden of proof.⁴ If a Petitioner does not present sufficient evidence to support a finding

⁴ The Rhode Island Labor Relations Act, enacted in 1941, sets forth the basic philosophy and policy for the enactment of the same.

R.I.G.L. 28-7-2 provides in pertinent part: “Experience has proved that protection by law of the right of employees to organize and bargain collectively, removes certain recognized sources of industrial strife and unrest, encourages practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions, and tends to restore equality of bargaining power between and among employees and employers, thereby advancing the interest of employers, as well as employees.

of appropriateness for the unit it seeks, then the Board's inquiry goes no further and does not reach or examine the merits of an employer's objections. In the instant matter, the Petitioner did not set forth even minimally sufficient information, evidence or testimony under the community of interest test for the Board to make an informed decision concerning the appropriateness of the unit it seeks to represent. Therefore, the Board cannot make a determination at this time as to the appropriateness of the unit and has no alternative but to deny and dismiss the Petitions.

FINDINGS OF FACT

- 1) The Petitioner, Rhode Island Laborer's District Council, Local Union 808 is a labor organization, which exists and is constituted for the purpose, in whole or in part, of collective bargaining relative to wages, rates of pay, hours, working conditions and all other terms and conditions of employment and of dealing with employers concerning grievances or other mutual aid and protection.
- 2) On May 6, 1996, the Petitioner filed with the Board a "Petition for Investigation and Certification of Representatives" (EE 3589) seeking to have Local 808 certified as the collective bargaining representatives for 22 employees.
- 3) The Petitioner, amended EE 3589 on May 7, 1996 to seeking represent 25 employees in two locations.
- 4) On August 7, 1996, the Petitioner filed Petition EE 3593 seeking to represent 15 employees located at the Employer's Quonset Repair and Maintenance Facility.
- 5) The Respondent Department of Economic Development/ R.I. Economic Development Corporation/ R.I. Port Authority is an employer operating within the State of Rhode Island.
- 6) The Respondent objected to the Petitions EE 3589 (originally and as amended) and EE 3593 on the grounds that the two proposed bargaining units were inappropriate and that a "wall to wall" unit of all eligible employees under the Act would be a more appropriate unit.

aid and protection, free from the interference, restraint or coercion of their employers. All the provisions of this chapter shall be liberally construed for the accomplishment of this purpose".

- 7) By agreement of the parties, Petitions EE 3589 and EE 3593 were consolidated for formal hearing.
- 8) Petitioner did not present any witnesses or submit any evidence in support of its petitions.

CONCLUSIONS OF LAW

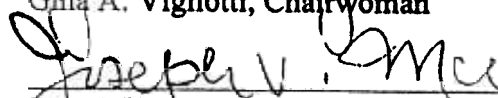
- 1 The Petitioner has failed to prove by a fair preponderance of the evidence that the proposed bargaining unit is an appropriate bargaining unit.

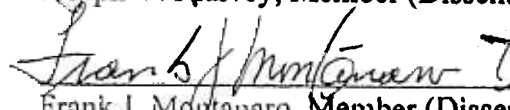
ORDER

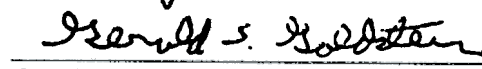
- 1) The Petition is denied and dismissed without prejudice.

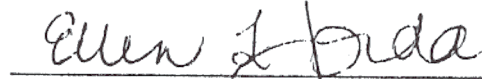
RHODE ISLAND STATE LABOR RELATIONS BOARD


Gina A. Vigliotti, Chairwoman


Joseph V. Mulvey, Member (Dissent)

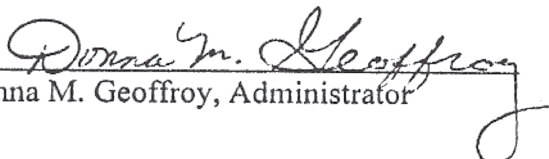

Frank J. Montanaro, Member (Dissent)


Gerald S. Goldstein, Member


Ellen L. Jordan, Member

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

Dated: July 8, 1997

By: 
Donna M. Geoffroy, Administrator