

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

**IN THE MATTER OF:
THE TOWN OF HOPKINTON
Employer**

Case No. EE-3623

- AND -

**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 July 29, 1999, wherein the Petitioner sought to represent the "Town Planner, Tax Assessor, Building Inspector, Recreation Director, Police Chief and Tax Collector". 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 September 10, 1999, and, as indicated, were of sufficient number to warrant the conducting of an election.

An informal hearing on the Petition was conducted by the Board's Investigative Agent on Friday, September 10, 1999 which was attended by representatives of both the Petitioner and the Employer. At that time, the Board's Agent directed that the title of Police Chief be deleted from the Petition because the Municipal Employees' Act specifically excludes police, and because the Board's certification for the Hopkinton Police (EE-3353) specifically includes the Chief of Police. The Petition was also amended to add the title of Public Works Director. At the informal hearing, the Hopkinton Town Solicitor objected to the inclusion of each and every position on the basis that these positions were either administrative officials, supervisory or confidential employees. A formal evidentiary hearing on the Petition was held on January 4, 2000.

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 hereinafter "MEAA")

"Administrative officials" and employees who are found to be "supervisory," "confidential" or "managerial" are excluded from collective bargaining for various public policy and labor stability concerns.

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 what 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)

"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.

In the Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board, 694 A.2d 185, 1189 (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))

Although neither the MEAA nor case law defines the meaning of the term “administrative official”, this Board has previously determined the term refers to the highest members of a municipality’s executive department - the “officials”. Employees who simply have some or all administrative or clerical type duties are not included within the term “administrative official”.¹

Therefore, each of the contested positions must be examined in light of the foregoing definitions of confidential employee, supervisory employee and administrative official to determine if they are indeed eligible to engage in collective bargaining. For each of the following positions, the Board has carefully considered the exhibits submitted. The Board has also given careful consideration to the arguments raised in both post hearing briefs.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Tax Assessor FINDINGS OF FACT

- 1) John Majeika has been employed full time by the Employer as the Tax Assessor since 1995 (TR p. 5)
- 2) The Tax Assessor oversees the work of one full time clerk. (TR. p. 5)
- 3) In the course of his employment as Tax Assessor, Mr. Majeika has never recommended any disciplinary action against another employee, never hired or fired any employees, never recommended the demotion or transfer of an employee, never

¹ Black’s Law Dictionary 6th Edition defines “official” as:

“ n. An officer; a person invested with the authority of an office, (See also officer).”

“Officer” is defined as: “Person holding office of trust, command or authority in corporation, government, armed services or other institution or organization”

Finally, Blacks defines an “Administrative officer” as: Politically and as used in constitutional law, an officer of the executive department of the government, and generally one of inferior rank; legally a ministerial or executive officer, as distinguished from a judicial officer.

granted any pay increase to any employee and has never placed a written reprimand in anyone's file. (TR. p. 5-6)

- 4) The Tax Assessor's salary and benefits are determined by the Town's Personnel Ordinance and Mr. Majeika has never negotiated these terms. (TR. p. 6)
- 5) Mr. Majeika does not participate on behalf of the Employer in any type of negotiations with unionized employees. Mr. Majeika does not supervise any unionized employees. (TR. p. 7)
- 6) Mr. Majeika does not handle any grievances for any unions. (TR. p. 8)
- 7) Mr. Majeika makes sure that the clerk he works with works the hours that are assigned to her position by the town ordinance. (TR. p. 11)
- 8) The Tax Assessor and the Clerk each perform separate specific duties. (TR. p. 11)
- 9) Mr. Majeika prepares an annual budget for the Tax Assessor's Office which does not include either his own salary or that of the clerk. (TR. p. 12)
- 10) If Mr. Majeika were to have a grievance or concern regarding his working conditions, he would speak to Ms. Susan Schaffer, the Town Council Personnel Liaison. (TR. p. 12)
- 11) If the Clerk in the Tax Assessor's office were to have a grievance relative to her working conditions, she could talk to Mr. Majeika or the Town Council Personnel Liaison, depending upon what the Clerk and the Tax Assessor agree to. (TR. p. 13)
- 12) Since Mr. Majeika has been employed as Tax Assessor, there have been no instances in which the Clerk has had a problem that needed resolving. Before Mr. Majeika was employed, when there were problems within that office, the Clerk went to the Town Council, not to the Department Head. (TR. p. 14)
- 13) The record is devoid of any evidence that the Tax Assessor is an employee who assists and 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 that he regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

CONCLUSION OF LAW

- 1) The position of Tax Assessor is neither an administrative official nor a confidential or supervisory employee as those terms are defined by law. Therefore the position of Tax Assessor shall not be excluded from the bargaining unit.

Town Planner FINDINGS OF FACT

- 1) Katherine Maxwell has been employed full time by the Employer as the Town Planner since 1998 (TR. p. 14)
- 2) The Town Planner's office is located in the Town Hall Annex, opposite the Town Hall. (TR. p. 15)
- 3) The Town Planner's salary and benefits are determined by the Town's Personnel Ordinance (TR. p. 15)
- 4) The Town Planner's duties include development plan review, subdivision review, zoning ordinance and comprehensive plan review and rendering written advice to the public and developers and attending Town Council meetings on a frequent basis. (TR. p. 16)

- 5) In the course of her employment as Town Planner, Ms. Maxwell has never recommended any disciplinary action against another employee, never hired or fired any employees, never granted any pay increase to any employee, never been involved in any type of grievance procedure representing the Town against another employee, and has never been involved in contract negotiations on the Town's behalf with unionized employees. (TR. p. 16-17)
- 6) Ms. Maxwell works with one part time employee who works about eight to ten hours per week. (TR. p 17)
- 7) When the part time employee was hired, Ms. Maxwell interviewed the employee and recommended hiring to the Town Council. (TR. p. 18)
- 8) The record is devoid of any evidence that the Tax Assessor is an employee who assists and 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 that she regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

CONCLUSION OF LAW

- 1) The position of Town Planner is neither an administrative official nor a confidential or supervisory employee as those terms are defined by law. Therefore the position of Town Planner shall not be excluded from the bargaining unit.

Public Works Director

FINDINGS OF FACT

- 1) At the time of the formal hearing, Charles H. Niles had been employed full time by the Employer as the Public Works Director for eight years. (TR p. 21)
- 2) The Public Works Director supervises foreman, truck drivers, equipment operators, mechanics and groundskeepers (TR. p. 21)
- 3) Mr. Niles has participated in contract negotiations with unionized employees on behalf of his employer. (p. 25-26)
- 4) In the event that a grievance were filed by one of the unionized employees that Mr. Niles supervises, he would handle the first step of the grievance procedure. (TR. p. 27)

CONCLUSION OF LAW

- 1) The position of Public Works Director is supervisory and confidential as those terms are defined by law. Therefore the position of Public Works Director shall be excluded from the bargaining unit.

Director of Parks and Recreation

FINDINGS OF FACT

- 1) At the time of the formal hearing, Mary Gardner had been employed full time by the Employer as the Director of Parks and Recreation since July, 1999. Prior to July of 1999, Ms. Gardner worked on a part time basis, since November, 1997. (TR. p. 29)
- 2) Ms. Gardner's office is located at 181 Main Street in Ashaway, Rhode Island. (TR. p. 30)
- 3) Ms. Gardner's benefits are determined by the Town's Personnel Ordinance and her salary is set on an annual basis by the Town Council. (TR. p. 30)
- 4) Ms. Gardner does not supervise any full time employees. (TR. p. 30)

- 5) Ms. Gardner has been involved with the Recreation Commission in interviewing two part time seasonal employees. (TR. p 30)
- 6) Ms. Garner has never participated in contract negotiations as a representative of her employer. (TR. p. 31)

CONCLUSION OF LAW

- 1) The position of Director of Parks and Recreation is neither an administrative official nor a confidential or supervisory employee as those terms are defined by law. Therefore the position of Director of Parks and Recreation shall not be excluded from the bargaining unit.

Building and Zoning Inspector
FINDINGS OF FACT

- 1) At the time of the hearing, Charles Mauti had been employed full time by the Employer as the Building and Zoning Inspector for about one year. (TR p. 33)
- 2) The Building and Zoning Inspector oversees the work of a part time town clerk and part time inspectors. (TR. p. 34)
- 3) Mr. Mauti does not assign work to the part time inspectors; they schedule their own work according to requests made by contractors. (TR. p. 34)
- 4) Mr. Mauti's duties (about 50% of the time) include conducting inspections. (TR. p. 34)
- 5) In the course of his employment as Building and Zoning Inspector, Mr. Mauti has never hired or fired any employees, never been involved in adjusting the grievances of other employees, never granted any bonus or merit raise to another employee and never been involved with any labor negotiations on behalf of his employer, (TR. p.35)
- 6) Mr. Mauti did make a recommendation to the Town Council on the hiring of the Plumbing and Mechanical Inspector and the Town Council hired the person he recommended. (TR. p. 37)
- 7) At the time of the hearing, there was one part time clerk within the Zoning office, Mr. Leon Williams. In the event that Mr. Williams were to have a problem within the office, he would speak to Mr. Mauti for assistance in resolving the same. (TR. p 37)

CONCLUSION OF LAW

- 1) The position of Building and Zoning Inspector is neither an administrative official nor a confidential or supervisory employee as those terms are defined by law. Therefore the position of Building and Zoning Inspector shall not be excluded from the bargaining unit.

Tax Collector
FINDINGS OF FACT

- 1) Rita Deane has been employed full time as the Tax Collector since July 1995. (TR. p. 38)
- 2) The office of the Tax Collector is located in the Town Hall in Hopkington. (TR. p. 41)
- 3) There is one part time employee within the Tax Collector's office who works 15 hours a week, on average, except during the four collection periods when the hours increase to approximately 36 hours. (TR. p. 39, 47-48)
- 4) The duties of a Tax Collector are established primarily by state law. (TR. p. 40)

- 5) Ms. Deane has never been involved on the Town's behalf in negotiating raises for union members. (TR. p. 41)
- 6) Ms. Deane has had the occasion to recommend disciplinary action against a Deputy Tax Collector and that the Deputy Tax Collector be terminated from employment with the Town, however the Town Council did not follow the recommendation. (TR. p. 41-42)
- 7) The Tax Collector's salary and benefits are determined by the Town's Personnel Ordinance. (TR. p. 42)
- 8) Ms. Deane was present in executive session with the Town Council when it considered the Deputy Tax Collector's termination of employment. (TR. p. 44)

CONCLUSION OF LAW

- 1) The position of Tax Collector is neither an administrative official nor a confidential or supervisory employee as those terms are defined by law. Therefore the position of Tax Collector shall not be excluded from the bargaining unit.

DIRECTION OF ELECTION

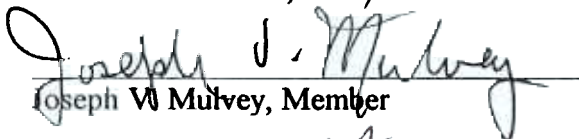
By virtue of and pursuant to the power vested in the Rhode Island State Labor Relations Board by the Rhode Island Labor Relations Act, it is hereby:

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. The unit shall include the Tax Assessor, Town Planner, Director of Parks and Recreation, Building and Zoning Inspector, and Tax Collector; and exclude the Public Works Director, who were employed by the Town of Hopkinton on May 16, 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

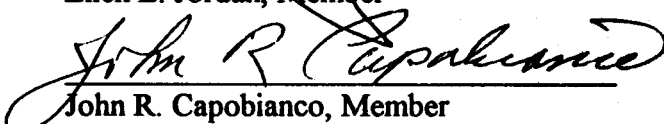

Walter J. Lanni, Chairman


Frank J. Montanaro, Member


Joseph W. Mulvey, Member


Gerald S. Goldstein, Member

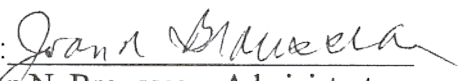

Ellen L. Jordan, Member


John R. Capobianco, Member


Elizabeth S. Dolan, Member

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

Dated: May 16, 2000

By: 
Joan N. Brousseau, Administrator