

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

**IN THE MATTER OF:
TIVERTON SCHOOL DEPARTMENT
Employer**

Case No. EE: 3630

- 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 January 10, 2000, wherein the Petitioner sought to represent eleven (11) part-time Teacher Aides. 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 January, 25, 2000, 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 February 16, 2000, which was attended by representatives of both the Petitioner and the Employer. No agreement for a consent election could be reached at the informal hearing and the matter was then scheduled for a formal hearing on March 7, 2000. At the formal hearing, neither the Petitioner nor the Employer presented any witness testimony. The Employer submitted one exhibit, over the Union's objection.

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")

A municipal employee is defined as any employee of a municipal employer, whether or not in the classified service of the municipal employer, except:

- (1) Elected officials and administrative officials;

- (2) Board and commission members;
- (3) Certified teachers, police officers, and firefighters;
- (4) Confidential and supervisory employees;
- (5) Casual employees, meaning those persons hired for an occasional period to perform special jobs or functions;
- (6) Seasonal employees meaning those persons employed to perform work on a seasonal basis of not more than sixteen (16) weeks, or who are part of an annual job employment program;
- (7) Employees of authorities except housing authorities not under direct management by a municipality who work less than twenty (20) hours per week. The state labor relations board shall, whenever requested to do so, in each instance, determine who are supervisory, administrative, confidential, casual and seasonal employees. R.I.G.L. 28-9.4-2 (b)

A municipal employer is defined as: "any political subdivision of the state, including any town, city, borough, district, school board, housing authority or other authority established by law, and any person or persons designated by the municipal employer to act in its interest in dealing with the municipal employees." R.I.G.L. 28-9.4-2

(c).

The Employer has objected to the certification of the proposed bargaining unit comprised of 11 part-time Teacher Aides and first argues that part-time teacher aides are not "municipal employees" as defined by the MEAA. In the alternative, the Employer also argues that there is not a sufficient community of interest between the proposed members of the bargaining unit and other existing positions employed by the School Department.

The Employer argues that "according to the plain language of the statute, an employee who is not under the direct management of a municipality, and who works less than twenty hours a week is *not* a municipal employee for purposes of being eligible for admission into a collective bargaining unit." (Emphasis in original) See Employer's brief, p. 4. The Employer argues that R.I.G.L. 16-2-9 vests the entire direct management of the of Tiverton's schools in its School Department and that the "nature of the managerial function performed by the school department is sufficient to bring the part-time teacher aides within the statutory exception from the definition of municipal employees provided in §28-9.4-2."

Thus, the Employer's argument rests on the three propositions:

- 1) That the School Department is an "authority" under the MEAA;

2) The School Department's employees are not under the direct management of a municipality;

3) The employees work less than twenty hours per week.

In support of its position, the Employer relies heavily on the Rhode Island Supreme Court's decision in Board of Trustees, Robert H. Champlin Memorial Library v Rhode Island State Labor Relations Board, 694 A.2d 1185 (R.I. 1997).

While interesting for its creativity, the Employer's argument must be rejected because of the plain language of the governing statute. "School boards", "housing authorities" and "other authorities established by law" are all individually and specifically delineated as being municipal employers. The exclusion from collective bargaining for employees working less than twenty hours per week is clearly limited to "employees of authorities except housing authorities not under direct management by a municipality." It is this Board's considered opinion that if the legislature intended to exclude employees of school departments working less than twenty hours a week, then the legislature would have clearly done so within the statute by specifically including school boards within the exclusion set forth in R.I.G.L. 28-9.4-2 (b).¹ Furthermore, "school boards", "housing authorities" and "other authorities established by law" would not have been specifically and separately identified as distinct entities under R.I.G.L. 28-9.4 (c) if a school board was in fact an "authority". Therefore, the Board finds that the exception set forth at R.I.G.L. 28-9.4-2 (b) which excludes from collective bargaining those "employees of authorities except housing authorities not under direct management by a municipality who work less than twenty (20) hours per week" is not applicable to school boards and that the part-time employees in this case shall not be excluded from collective bargaining on that basis.

The Employer also argues, somewhat confusingly, that the sought after employees do not share a community of interest with other members of the bargaining unit and that they cannot be accreted to the existing bargaining unit. What the Employer clearly fails

¹ The Board also notes that all part-time municipal employees working less than twenty hours per week used to be excluded from collective bargaining, but that Rhode Island Public Law 89-58 eliminated this all encompassing prohibition.

to understand is that this petition does not seek to accrete positions into an existing bargaining unit. This petition is for a separate bargaining unit of part-time teachers aides.

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 unit. A Union is not required to seek an election in the *most* appropriate bargaining unit, but 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 this case, this petition is for a separate bargaining unit of part-time teachers aides who all work less than twenty hours per week for the Tiverton School Department and who make \$7.50 per hour. The Board is satisfied that the part-time Teacher Aides comprise an appropriate unit for collective bargaining.

FINDINGS OF FACT

- 1) The Respondent is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
- 2) The Union is a labor organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers in grievances or other mutual aid or protection and as such is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.
- 3) The Petition filed by the Union 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 January, 25, 2000, and were of sufficient number to warrant the conducting of an election.
- 4) The 11 part-time teacher aides all work for the Tiverton School Department, work less than twenty hours per week, and make \$7.50 per hour.

CONCLUSIONS OF LAW

- 1) The part-time Teacher Aides are all municipal employees within the meaning of R.I.G.L. 28-9.4-2 (b).
- 2) The Tiverton School Department is a municipal employer within the meaning of R.I.G.L. 28-9.4-2 (c).

DIRECTION OF ELECTION

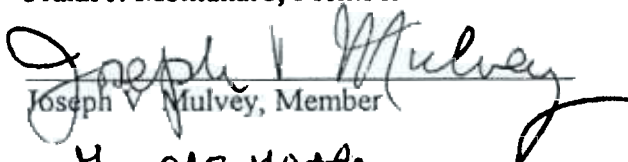
By virtue of and pursuant to the power vested in the Rhode Island State Labor Relations Board by the Rhode Island Labor Relations Act, it is hereby

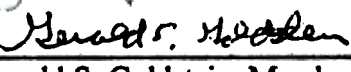
DIRECTED that an election by secret ballot shall be conducted within thirty (30) days hereafter, under the supervision of the Board or its agents, at a time, place and during hours to be fixed by the Board, among the part-time Teacher Aides employed by the Tiverton School Department, who were employed on January 10, 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

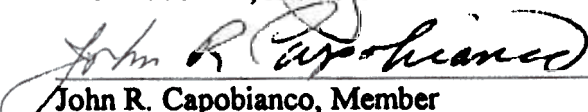

Walter J. Lanni, Chairman


Frank J. Montanaro, Member


Joseph V. Mulvey, Member


Gerald S. Goldstein, Member

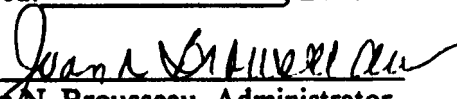

Ellen L. Jordan, Member


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