

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

IN THE MATTER OF

TOWN OF RICHMOND

Employer

- AND -

Case No. EE-3644

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 October 1, 2001, wherein the Petitioner sought to represent the "Town Hall Clerks, Police Dept. Clerk, Deputy Town Clerk". 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 October 3, 2001, 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 November 26, 2001, which was attended by representatives of both the Employees and the Employer. At that time, the parties indicated that no agreement could be reached on any position, on the basis that these positions do not share a community of interest, and that several were not eligible to become members of a bargaining unit because they were either supervisory or confidential employees. Formal evidentiary hearings on the Petition were held on January 24, 2002, and January 31, 2002. Additional testimony was taken by way of deposition, and the transcripts of these depositions were submitted as part of the evidentiary record.

DISCUSSION

MUNICIPAL BARGAINING

Under Rhode Island Law, certain full-time and part-time 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 Union may be certified as the bargaining representative of a group of employees only if those employees constitute an appropriate

bargaining unit In determining whether a proposed bargaining unit is appropriate, the general inquiry made by the Board in such a determination is whether or not the employees share a "community of interest". Factors to determine whether a community of interest exists are:

- 1) Similarity in scale and manner of determining earnings;
- 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)) Rhode Island Public Telecommunications Authority v Rhode Island State Labor Relations Board, 650 A2d 479 Therefore, each of the contested positions must be examined to determine whether or not they share a "community of interest" with each other. The burden of establishing the "community of interest" is on the Petitioner.

Notwithstanding a common "community of interest" with other employees, "supervisory employees and "confidential" employees are excluded from collective bargaining for various public policy and labor stability concerns In the Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board, 694 A.2d 1185, 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))

Under federal 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 33, 150 LRRM 1132 (1996).

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 PROPOSED BARGAINING UNIT

The proposed bargaining unit consists of eight clerical employees of the Town of Richmond. Seven of the employees work for departments located within the Town Hall. These are Deputy Town Clerk, Clerk I in the Office of the Town Clerk, Clerk II in the Office of the Town Clerk, Clerk to the Town Treasurer, Clerk to the Tax Assessor, Clerk to the Tax Collector, Clerk to the Building and Zoning Official. The eighth employee is the Police Department Clerk who works in the “Municipal Building”, located approximately three miles from the Town Hall.

The Town of Richmond employs 44 people; 20 part-time employees and 24 full-time employees. (TR 1/24/02, p. 10) Employees that work 20 or more hours are termed “benefit” employees, and receive either partial or full benefits; including health insurance, sick leave, holiday pay, and vacation pay. Employees working less than 20 hours per week receive no benefits. Full-time employees are those that work at least thirty (30) hours per week year round. A Town Ordinance, adopted by the Town Council, sets forth the personnel rules and regulations and benefits schedule. The Town Council has also adopted a pay schedule with various grades and steps. Merit raises are also possible, but are determined by each department head, without input or interference by the Town Council.

The Town of Richmond is governed by a Town Council, and does not have a Town Manager or Administrator. There is no centralized “personnel office” or human resources department. The day-to-day management of Town Departments is left to the individual department head, who will engage in hiring, firing, and other supervisory functions. There are eight (8) departments within the Town: (1) Office of the Tax Assessor, headed by[†] Elizabeth Fornier; (2) Office of the Tax Collector, headed by Susan Schaffer; (3) Public Works

Department, (4) Police Department, headed by Chief Raymond Driscoll; (5) Planning Department; (6) Office of the Building and Zoning Official, headed by Loren Gengarella; (7) Office of the Town Treasurer, headed by Kathleen Damicis; and (8) Office of the Town Clerk, headed by Patricia Valliere. The Town Treasurer and the Town Clerk are elected positions. The heads of the other six departments are appointed by the Town Council. While all department heads may submit reports to the Town Council, the Town Clerk and Treasurer, as elected officials, do not report to the Council, under a chain of command. (TR 1/31/02, p. 79) Department heads determine working hours (subject to the Town Council's determination that the Town Hall hours are Monday through Friday, from 9:00 a.m. to 4:00 p.m.), determine whether merit pay raises (authorized by the pay ordinance) will be given to employees within their departments, schedule vacations, and issue discipline, (up to and including termination). The department heads are all bound, in these duties, by the Town's Personnel Ordinance

THE COMMUNITY OF INTEREST

.) Similarity in scale and manner of determining earnings.

In this case, all of the positions proposed for inclusion within the bargaining unit are paid according to a wage scale adopted by the Richmond Town Council. (Employer Exhibit #1) All of the proposed positions are paid on an hourly rate basis, except for the Deputy Town Clerk who is paid an annual salary of approximately \$25,000.00. The Employer argues that, because the annual wages for the various employees are so wide-ranging, this factor of the community of interest is not met. However, the "wide range" of wages is purely a function of the number of hours worked by each position. In fact, all the hourly rate employees are paid between \$9.00 per hour and \$9.92 per hour. All of the hourly wages are determined by the same document, which is reviewed annually and set by the Town Council. In addition to the basic wages and annual increases granted by the Town Council, department heads also have the discretion to grant annual "merit" raises to their employees. This concept is embraced by the Town Council, which adopted the "merit pay scale" set forth in Employer's Exhibit #1.¹ In addition, the Town

¹ One of the purposes for these regulations is found at section 2.20.010 (B), which states: "To establish[§] for the town a system of personnel administration based on merit principles and designed to promote the desires and interests of the employees, insofar as they are consistent with the best interests of the town as an employer and of the public serviced."

Council makes the determination as to what pay scale positions are assigned. According to the Town Clerk's testimony, all Clerks are paid on the GS-4 scale. (TR 1/24/02, p. 12)

As for the Deputy Clerk, who earns an annual salary of approximately \$25,000.00, while her salary is a fair amount higher than the other Clerks in the office, the Board notes that if her salary were, in fact, an hourly rate at thirty (30) hours per week, it would be \$16.02 per hour. This wage rate is found within the GS-7 level, only three grades higher than the Clerks. Therefore, the Board finds that there is an identical pay scale for all Clerks, except the Deputy and that hers is similar enough to warrant inclusion under this factor.²

2) Similarity of employment benefits, hours of work, and other terms and conditions of employment.

The Richmond Town Council has adopted a comprehensive set of personnel regulations, which sets forth employee benefits such as holiday, vacation, overtime, sick leave accrual and discharge, leave for injury, military leave, leaves of absence, family illness leave, family and pregnancy leave, special leave, retirement benefits, and health insurance. (Union Exhibit #3) These regulations also establish the business hours for the Town, directions on the appointment, probation and separation of employees, permanent and probationary status of employees, a definition of permanent part-time and permanent full-time employees. The regulations also address physical fitness, working relationships between employees, personnel records, work place safety. The regulations also contain a "conflict of interest" clause. This extensive list of terms and conditions of employment apply to all employees of the Town of Richmond.³

The employer argues that the Rhode Island Supreme Court, in RIPTCA, held that employees who do not receive benefits should not be in a bargaining unit composed of members who do. The Board does not believe that this is an accurate interpretation of that case. In that case, in overturning the Board's decision to accrete, although the Court cited the employees' minimum wages and lack of benefits as dissimilar to the salaries and full-time benefits of the

² In Rhode Island Public Telecommunications Authority v Rhode Island State Labor Relations Board, 650, A.2d 479 (R.I. 1994), the bargaining unit had salary ranges between \$49,952 and \$20,045.00, all within the same bargaining unit.

³ Although there was some testimony about one employee having been "grand-fathered" as a full time employee when she works less than the requisite thirty hours, there is no evidence to suggest that this action is lawful under the circumstances.

existing bargaining unit members, the Court also cited the fact that none of the fundamental characteristics of the union positions (competitive hiring process, number of work hours, etc.) were common to the two employees in question. In this case, none of the employees in question receive minimum wage. Id at 487

In this case, all the wages, except for the Deputy Town Clerk, are within cents of each other. Each employee's eligibility for benefits turns on whether she is part-time or full-time. Were the Board to accept the Employer's proposition, then it would have to conclude that part-time employees are not permitted in a bargaining unit with full-time employees. Such is not the case. In fact, in the Town of Richmond, this Board has previously certified bargaining units with such a mix of employees. (Union Exhibit #1, Certification of Consent Election in Case No. EE-3588 (June 17, 1996) and Case No. EE-3590 (February 3, 1997))⁴

3) Similarity in the kind of work performed.

Nearly all of the proposed members of the bargaining unit have duties that include answering the phone, data entry, typing and/or computer data entry, making photocopies, sending and receiving faxes, and generating reports. Most of the Clerks also assist members of the public and Richmond taxpayers, in some capacity. While each Clerk may have particular duties and perform particular tasks peculiar to their departments, all of these positions are clerical. The dissimilarity of the positions (different computer programs, perhaps or less interaction with the public) is far less than the overwhelming similarity of the duties, and the Board finds that this factor of the community of interest standard is met.

4) Similarity in the qualifications, skills and training of the employees.

None of these positions require a college or advanced degree. Generally, the minimum qualifications include a high school diploma, knowledge of office procedures, computer or typing skills, generally good interactive personal skills. As would be expected, each department of the Town has its own separate and unique functions. The only job description that even suggests further training is that of the Tax Assessor's Clerk, where it suggests that the Clerk take two courses in "Assessment Administration" and "Ethics Seminar". This particular job

⁴ Although the testimony in this case suggested that part-time dispatchers and part-time animal control officers are not part of the actual and recognized bargaining unit established by the Consent Election in Case No. EE-3590 (Town of Richmond and Local 57, I.U.O.E.), there was no testimony as to whether these were "regular part-time" dispatchers or animal control officers as specified by this Board's certification and as defined by the Town of Richmond's personnel ordinance at Section 2.20.030 (E).

description also mentions, and impliedly suggests, a one-day training seminar offered by a vendor in creating report “wizards”. None of these training courses are “required” for the position. The Board is satisfied that these positions are basic clerical positions, and that the positions share similar enough qualifications, skills and training of the employees.

5) Frequency of contact or interchange among employees.

Frequent contact with other employees naturally indicates a community of interest among the employees. However, complete interchange among all members of the bargaining unit is not required and, even units with limited contact, such as in the washroom or during the lunch hour, can be appropriate when other factors converge. NLRA Law & Practice 35.03 (2) citing Donald Carroll Metals, Inc. 185 NLRB 409 (1970).

In this case, seven of the eight employees are located on the same floor, or within one floor of each other, in a rural Town Hall. The one with the most limited contact is the Police Department Clerk, who works in a separate building, and who would necessarily have less frequent contact. She, however, does in fact have telephone contact with various other Clerks while calling for department heads on background checks, and while dealing with financial issues (Allen Deposition p. 6, 7, 10) The other clerk with a more limited contact is the Treasurer’s Clerk, who does have interchange with Ms. Zuercher regarding mail and lunch. (TR 1/31/02 p. 63) Although none of the clerks are “floaters” that are moved from one department to another, there are instances of some Clerks assisting in the Tax Collection Office during busy times. The testimony established that some of the Clerks do need to call on each other, from time to time, regarding work issues. The Tax Collector’s Office is located just a few feet from the Town Clerk’s Office, and interaction is daily among these Clerks. For this factor to be met, there does not need to be “joint work projects,” as suggested by the Employer.

6) Geographic proximity

All of the employees are located within the single rural Town of Richmond, Rhode Island. One employee is located in a separate building, three miles away. However, all these employees are performing similar tasks for the same Employer, under a common set of personnel regulations. Under these circumstances, the Board finds that the Police Department Clerk’s location in a separate building is not enough to destroy the commonality of all the other factors,

and that the Police Department Clerk's geographic proximity satisfies the appropriateness for this unit.

7) Continuity or integration of the production process.

The Town of Richmond's employees are in the business of public service. In fact, the Town's personnel policy notes: "Every employee in the town's service is working for the same public." (Section 2.20.060) Each Department has its own particular aspect of public service to satisfy. The Police Clerk works on background checks for the entire Town, as well as serving members of the public in this capacity. The Building and Zoning Official checks and verifies zoning violations, and forwards to the Police Department. The Town Clerk's and Tax Assessor's Clerks assist in completing Tax Collection. To the extent that any governmental, municipal unit can have "integration of the production process," the Board is satisfied that this factor is also met.

8) Common supervision and determination of labor relations policy.

While it is true that all departments supervise their own Clerks, to the exclusion of other departments, this supervision is not unbridled, but is subject to the rules and regulations of the Town Ordinances, as set forth by the Town Council. The Town's policies include the requirement that the administration of personnel activities be done in such a manner as to ensure that the controlling factor shall always be the merit of the individual, without regard to race, color, national origin, sex, political or religious affiliation, age or handicap. (Union Exhibit #3, Section 2.20.010) All department heads are required to follow the Town's labor relations policies on appointment, probation and separation. (Section 2.20.030) In fact, all employees have the right to appeal termination to the Town Council, and have the right to a hearing. This is not a case where each supervisor or department head could make up his or her own industrial brand of labor policies. As such, the Board finds that this factor is satisfied by the proposed bargaining unit.

9) Relationship to the administrative organization of the employer.

All the Clerks are similarly situated; each works for a department head, who in turn is required to follow the rules and regulations of the Town Council, as promulgated by Ordinances.

10) History of collective bargaining.

While the proposed unit is a new one, and thus has no real bargaining history, the Board notes that the Town of Richmond has previously consented to elections in units that have a mix of both full-time and part-time employees. (Union Exhibit #1, Certification of Consent Election in Case No. EE-3588 (June 17, 1996) and Case No EE-3590 (February 3, 1997))⁵

1) Desires of the affected employees.

The Employer suggests that there is no evidence on the record as to the desires of the employees affected by this petition. The Employer also suggest that, in the absence of testimony from three members of the proposed bargaining unit (Matthewson, Pare and Myers), this Board should conclude that these individuals do not wish to be represented. The Employer notes that trial justices may draw adverse inferences from a party's failure to produce a witness expected to testify on his or her behalf.

The Board notes that it was established, at the second formal hearing in this case, that members of the proposed bargaining unit (paid by hourly wages) who gave testimony at the first formal hearing had their wages docked for the number of hours they were absent from their employment with the Town. Employees paid a "salary" did not have their salaries reduced in any way. The Board believes that it is just as likely that the hourly rate employees scheduled to testify at the second formal hearing could not afford to lose any of their wages, especially since they were all part-time workers to begin with.

As to the desires of the affected employees, the petition was accompanied by cards of interest equal to nearly 75% of the proposed bargaining unit. The Board is satisfied that this number represents an adequate expression of interest by a majority of the employees.

12) Extent of union organization.

As noted above, unions are well established in the Town of Richmond. At the present time, there are three unions representing employees in the Department of Public Works, the Police Department and the Animal Control unit. Thus, the Board finds that this factor is satisfied, as well.

⁵ Although the testimony in this case suggested that part-time dispatchers and part-time animal control officers are not part of the actual and recognized bargaining unit established by the Consent Election in Case No, EE-3590 (Town of Richmond and Local 57, I.U.O.E.), there was no testimony as to whether these were "regular part-time" dispatchers or animal control officers as specified by this Board's certification and as defined by the Town of Richmond's personnel ordinance at Section 2.20.030 (E).

For each of the following positions, the Board has carefully considered the depositions and other exhibits submitted. The Board has also given careful consideration to the arguments raised in both post-hearing briefs.

Police Department Clerk
FINDINGS OF FACT

- 1) Theresa Allen has been employed full-time, by the Employer, as the Police Department Clerk since October 1, 2001. (Allen Deposition, p. 3) Ms. Allen's work hours are Monday through Friday, 8:00 a.m. to 4:00 p.m. By her own choice, she remains on duty at her desk during lunch time. (Allen Deposition, p. 3) Ms. Allen has never worked past 4:00 p.m., and does not work on weekends. (Allen Deposition, p. 7)
- 2) Ms. Allen's job description, submitted as Joint Exhibit #1, fairly and accurately represents her duties, except that she does not maintain or coordinate workman's compensation for the Police Department or prepare or maintain the payroll. (Allen Deposition, p. 4) Ms. Allen's job duties include typing, answering the phone and routing the call, data entry, making photocopies, sending and receiving faxes, and generating reports. (Allen Deposition, p. 4-5, 8) Ms. Allen also greets the public and makes referrals to them. (Allen Deposition, p. 7)
- 3) Ms. Allen receives paid sick leave and is eligible for vacation leave, after her first year of service, and is enrolled in the retirement system. (Allen Deposition, p. 5) (Driscoll Deposition, p. 14) Although she is eligible for health benefits, she elects to receive money for those benefits instead, as her health insurance is provided by her husband's employment. Ms. Allen's rate of pay, as set by the Town's merit pay scale, is \$9.00 per hour. (Driscoll Deposition, p. 13) Chief Driscoll has no authority to grant Ms. Allen any additional vacation pay, sick pay, or other time off. (Driscoll Deposition, p. 21)
- 4) In the course of her employment as Police Clerk, Ms. Allen has the occasion to interact by telephone with the Clerk in the Town Treasurer's Office and various Department Heads. (Allen Deposition, p. 6, 10) (Driscoll Deposition, p. 22-23)
- 5) Ms. Allen does not supervise other employees, she is not involved on the Town's behalf with labor contract negotiations, nor has she ever typed any contract bargaining proposals or correspondence relating to the discipline of other employees. (Allen Deposition, p. 4) There was no evidence in the record to suggest, or establish, that prior Police Clerks have been involved with typing contract proposals, or that Ms. Allen would be required to do so in the future.
- 6) The record is devoid of any evidence that Ms. Allen 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, she regularly has access to confidential information concerning anticipated changes, which may result from collective bargaining negotiations.

CONCLUSIONS OF LAW

- 1) The position of Police Department Clerk shares a sufficient community of interest with the other members of the proposed bargaining unit.
- 2) The position of Police Department Clerk is neither supervisory nor confidential, as those terms are defined by law. Therefore, the position of Police Department Clerk shall not be excluded from the bargaining unit.

Clerk to the Tax Assessor
FINDINGS OF FACT

- 1) Pamela Brennan has been employed, on a full-time basis, by the Employer as the Tax Assessor's Office Clerk for five years. She was hired by the Tax Assessor. (TR 1/31/02, p. 23) The Tax Assessor's Office is located on the second floor of the Town Hall, with the Building Official's Office and the Town Treasurer's Office. (TR 1/31/02, p. 11) Ms. Brennan's work hours are Tuesday through Friday, 9:00 a.m. to 4:00 p.m., exclusive of a one hour lunch break, from 12:00 noon to 1:00 p.m. (TR 1/31/02, p. 9) Although Ms. Brennan's total hours are twenty-four (24), and she would normally not be considered full-time, her position was "grand-fathered" as "full-time" by her Supervisor. (TR 1/31/02, p. 25) If Ms. Brennan needed to work more than her twenty four hours in a week, she would have to ask her supervisor, Ms. Fornier. (TR 1/31/02, p. 21)
- 2) Ms. Brennan is paid at the rate of \$9.92 per hour. She receives health care benefits, with a monthly co-pay of seventy dollars (\$70). (TR 1/31/02, p. 9-11) She earns eight (8) days of vacation per year, one (1) sick day per month, and holidays. (TR 1/31/02, p. 12-13) Vacation time does not accrue monthly; it is awarded, in-full, on employment anniversary dates. (TR 1/31/02, p. 18) Ms. Brennan has received annual salary increases on July 1, and has also received annual merit raises on her employment anniversary. (TR 1/31/02, p. 17)
- 3) Ms. Brennan's duties include assisting taxpayers with problems at the counter, answering the phone, filing, typing, photocopying, sending and receiving faxes, data entry and answering questions. (TR 1/31/02, p. 11, 14) She is responsible for the motor vehicle tax roll, exemptions for senior citizens and social security, and updating title changes to property. (TR 1/31/02, p. 11) In processing the applications for exemptions, she applies a formula, in order to determine whether an applicant qualifies for an exemption. (TR 1/31/02, p. 19) In the course of her duties, she regularly interacts with the other Clerks in the building. (TR 1/31/02, p. 12)
- 4) Ms. Brennan's job description, submitted as Employer Exhibit #5, was prepared by the Tax Assessor in April 2001, and fairly and accurately represents the duties of the position of Clerk to the Tax Assessor.
- 5) Although Ms. Brennan does not normally work in other departments, once a year she does assist the Tax Collector in sending out the tax bills. This work takes place over the course of a few days, and adds up to about a day's work. (TR 1/31/02, p. 28) Ms. Brennan regularly interacts with the other Clerks in the Town Hall. (TR 1/31/02, p. 30-32)
- 6) Ms. Brennan does not hire, fire, transfer, or discipline other employees. (TR 1/31/02, p. 15) She cannot grant, or authorize, merit pay or vacation time to other employees. She cannot adjust grievances. She is not involved with collective bargaining negotiations on the Employer's behalf. (TR 1/31/02, p. 15)
- 7) The record is devoid of any evidence that Ms. Brennan 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, she regularly has access to confidential information concerning anticipated changes, which may result from collective bargaining negotiations.

CONCLUSIONS OF LAW

- 1) The position of Clerk to the Tax Assessor shares a sufficient community of interest with the other members of the proposed bargaining unit.
- 2) The position of Clerk to the Tax Assessor is neither supervisory nor confidential, as those terms are defined by law. Therefore, the position of Clerk to the Tax Assessor shall not be excluded from the bargaining unit.

Clerk to the Tax Collector
FINDINGS OF FACT

- 1) Sandi Myers has been employed, on a part-time basis, by the Employer as the Tax Collector's Office Clerk for five years. She was hired by the Tax Collector, and generally works twelve (12) hours per week. Four times a year, during quarterly tax collection periods, she works four (4) thirty-hour weeks, for a total of sixteen (16) weeks. Ms. Myers' work schedule is not fixed, and is adjusted by the Tax Collector to accommodate Ms. Myers' other employment. She works between the hours of 9:00 a.m. and 4:00 p.m. (TR 1/31/02, p. 40)
- 2) Ms. Myers is paid at the rate of \$9.00 per hour. (TR 1/31/02, p. 36) She does not receive any benefits; such as, health care, vacation, retirement or sick time, even during the sixteen (16) weeks that she works full-time. (TR 1/31/02, p. 42)
- 3) Ms. Myers' duties include assisting taxpayers with problems at the counter, answering the phone, opening mail and posting payments, filing, typing, photocopying, and sending and receiving faxes. (TR 1/31/02, p. 37) Ms. Myers' job description, submitted as Employer Exhibit #6, was prepared by the Tax Collector in April 2001, at the request of the Town Council, and fairly and accurately represents the duties of the position of Clerk to the Tax Collector .
- 4) Ms. Myers does not supervise any other employees. (TR 1/31/02, p. 47) Neither Ms. Myers nor her supervisor, Ms. Schaffer, are involved with collective bargaining negotiations on the Employer's behalf. (TR 1/31/02, p. 48)
- 5) The Tax Collector's Office is located a few feet away from the Town Clerk's Office, and Ms. Myers has occasion to interact with the Clerks in that office. (TR 1/31/02, p. 47)
- 6) The record is devoid of any evidence that Ms. Myers 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, she regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

CONCLUSIONS OF LAW

- 1) The position of Clerk to the Tax Collector shares a sufficient community of interest with the other members of the proposed bargaining unit.
- 2) The position of Clerk to the Tax Collector is neither supervisory nor confidential, as those terms are defined by law. Therefore, the position of Clerk to the Tax Collector shall not be excluded from the bargaining unit.

Clerk /Town Clerk's Office
FINDINGS OF FACT

- 1) Donna Zuercher has been employed, on a full-time basis, by the Employer as a Clerk in the Town Clerk's Office for two years (at the time of the hearing). She works with the Deputy Clerk and another Clerk, Dorothy Pare. Ms. Zuercher works between 30 and 32.5 hours per week, and her hours are Monday through Friday from 9:00 a.m. to 4:00 p.m. (TR 1/31/02, p. 53, 57)
- 2) Ms. Zuercher is paid at the rate of \$9.31 per hour. (TR 1/31/02, p. 62) She receives benefits as set forth in the Town's personnel ordinance, including health care, vacation, retirement, and sick time. (TR 1/31/02, p. 54) Ms. Zuercher receives the annual raises granted by the Town Council, and has also received merit raises each year, although one year the merit raise was held up for a few months for performance issues. (TR 1/31/02, p. 59, 64)

- 3) Ms. Zuercher's duties include assisting members of the public with problems at the counter, answering the phone, filing, typing, photocopying, and sending and receiving faxes. (TR 1/31/02, p. 54-55) In the course of her employment, Ms. Zuercher has the occasion to interact with other Clerks in the Town Hall, by sharing information back and forth. She also assists the Tax Collector with tax bills, but only if directed to do so by her supervisor, Ms. Valliere. (TR 1/31/02, p. 60) Ms. Zuercher also is involved with recording information in the land evidence records and registering voters. (TR 1/31/02, p. 56) Ms. Zuercher has occasionally prepared the Town Council "packets". (TR 1/31/02, p. 61)
- 4) Ms. Zuercher does not supervise any other employees. (TR 1/31/02, p. 56) Ms. Zuercher is not involved with collective bargaining negotiations on the Employer's behalf. (TR 1/31/02, p. 57)
- 5) The record is devoid of any evidence that Ms. Zuercher 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, she regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

CONCLUSIONS OF LAW

- 1) The position of Clerk to the Town Clerk, held by Ms. Zuercher, shares a sufficient community of interest with the other members of the proposed bargaining unit.
- 2) The position of Clerk to the Town Clerk, held by Ms. Zuercher, is neither supervisory nor confidential, as those terms are defined by law. Therefore, the position of Clerk to the Town Clerk shall not be excluded from the bargaining unit.

Clerk /Building and Zoning Official's Office

FINDINGS OF FACT

- 1) Mary Banfield has been employed, on a part-time basis, by the Employer as a Clerk in the Building and Zoning Official's Office for two years. Ms. Banfield works twelve (12) hours per week. (TR 1/31/02, p. 66) Her hours are 9:00 a.m. to Noon, Monday, Tuesday, Thursday and Friday. (TR 1/31/02, p. 69)
- 2) Ms. Banfield is paid at the rate of \$9.31 per hour. She does not receive any employment benefits, such as health care, vacation, retirement or sick time. (TR 1/31/02, p. 66)
- 3) Ms. Banfield's duties include answering the public's questions, answering the phone, filing, typing, photocopying, sending and receiving faxes, data entry and preparing reports. (TR 1/31/02, p. 67-68) Ms. Banfield is also responsible for processing the payroll for the Building Official, the Plumbing Official and the Electrical Official. (TR 1/31/02, p. 71)
- 4) Ms. Banfield's job description, submitted as Employer Exhibit #7, was prepared by the Building and Zoning Official in October, 2001, and fairly and accurately represents the duties of the position of Clerk to the Building and Zoning Official. (TR 1/31/02, p. 96)
- 5) In the course of her employment, Ms. Banfield has the occasion to interact with other Clerks in the Town Hall. (TR 1/31/02, p. 68, 73, 75)
- 6) The record is devoid of any evidence that Ms. Banfield acts in a supervisory capacity to any other employee.
- 7) The record is devoid of any evidence that Ms. Banfield 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, she regularly has access to confidential information concerning anticipated changes, which may result from collective bargaining negotiations.

CONCLUSIONS OF LAW

-) The position of Clerk to the Zoning and Building Official shares a sufficient community of interest with the other members of the proposed bargaining unit.
- 2) The position of Clerk to the Zoning and Building Official is neither supervisory nor confidential, as those terms are defined by law. Therefore, the position of Clerk to the Zoning and Building Official shall not be excluded from the bargaining unit.

Clerk/Treasurer's Office FINDINGS OF FACT

- 1) Nina Matthewson is employed, on a part-time basis, by the Employer as a Clerk in the Treasurer's Office, which is located on the second floor of the Town Hall. (TR 1/31/02, p. 79, 85) Ms. Matthewson is scheduled to work twelve (12) hours per week. (TR 1/31/02, p. 66) Her normal work hours occur between 10:00 a.m. and 4:00 p.m., Tuesday through Friday. There are times when Ms. Matthewson's day-care arrangements do not permit her to complete her work during the day, and she has occasionally worked an evening, or on a weekend. (TR 1/31/02, p. 82)
- 2) Ms. Matthewson does not receive any employment benefits, such as health care, vacation, retirement or sick time. (TR 1/31/02, p. 82)
- 3) Ms. Matthewson's duties include all aspects of accounts payable, including the use of specialized software. (TR 1/31/02, p. 82, 84) According to her supervisor, Ms. Damici, Ms. Matthewson rarely answers the phone, because the only phone in her "department" is on the Treasurer's desk. Ms. Matthewson performs some data entry. (TR 1/31/02, p. 86) Ms. Matthewson's need for typing is very limited and, since there is little contact with the public in this office, Ms. Matthewson's interaction with the public is likewise limited. (TR 1/31/02, p. 87)
- 4) According to Joint Exhibit #2, Ms. Matthewson's duties include vouchering all bills, entering payables, printing and mailing checks, maintaining billsheets and approval sheets, which are provided to the Town Council monthly. This position is also responsible for maintaining the books for the Richmond Water Board, including maintaining the cash receipts journal, writing manual checks, and monthly bank reconciliation.
- 5) Ms. Matthewson has assisted the Tax Collector's Department, on one occasion, when that office was short-staffed. (TR 1/31/02, p. 83)
- 6) Ms. Matthewson does not supervise any other employees. (TR 1/31/02, p. 87)
- 7) The record is devoid of any evidence that Ms. Matthewson 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, she regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

CONCLUSIONS OF LAW

- 1 The position of Clerk to the Treasurer shares a sufficient community of interest with the other members of the proposed bargaining unit.
- 2) The position of Clerk to the Treasurer is neither supervisory nor confidential, as those terms are defined by law. Therefore, the position of Clerk to the Treasurer shall not be excluded from the bargaining unit.

Clerk II /Town Clerk's Office
FINDINGS OF FACT

- 1) Dorothy Pare is employed, on a full-time basis, by the Employer as a Clerk II in the Town Clerk's Office. Ms. Pare did not testify at the hearings in this matter. (TR 1/24/02, p. 32)
- 2) Ms. Pare works twenty-four (24) hours per week, and her hours are Tuesday through Friday, from 8:45 a.m. to 3:30 p.m. (TR 1/24/02, p. 33)
- 3) Ms. Pare is paid at the rate of \$9.00 per hour. (TR 1/24/02, p. 32) She receives a 50% benefits package, as set forth in the Town's personnel ordinance, including health care, vacation, retirement and sick time. (TR 1/24/02, p. 34)
- 4) Ms. Pare's duties include land evidence recordings, registering voters, preparing council packets, assisting members of the public with problems at the counter, answering the phone, filing, typing, photocopying, and sending and receiving faxes. (TR 1/24/02, p. 54-55) In the course of her employment, Ms. Pare has the occasion to interact with other Clerks in the Town Hall, by sharing information back and forth. (TR 1/24/02, p. 48) Ms. Pare's job description, submitted as Employer Exhibit # 4, was prepared by the Town Clerk, and fairly and accurately represents the duties of the position of Clerk II. (TR 1/24/02, p. 37)
- 5) Ms. Pare's duties regarding the council packets bring her into contact with documents that are produced in the course of labor negotiations. Ms. Pare's job includes inserting the document into the council packet. (TR 1/24/02, p. 36) Ms. Pare also is responsible for copying and recording executive session minutes.
- 6) The record is devoid of any evidence that Ms. Pare 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.
- 7) The evidence in the record established that Ms. Pare may, on occasion, in the course of her duties, have access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.
- 8) The Board finds, however, that Ms. Pare's infrequent contact with such documents is insufficient to qualify as "regularly having access". Moreover, since she is copying these documents, it certainly seems that appropriate steps could be utilized to prevent unauthorized access. As such, the second prong of the labor nexus test has not been satisfied and cannot be used as a basis for her exclusion from the bargaining unit.

CONCLUSIONS OF LAW

- 1) The position of Clerk II to the Town Clerk, held by Ms. Pare, shares a sufficient community of interest with the other members of the proposed bargaining unit.
- 2) The position of Clerk II to the Town Clerk, held by Ms. Pare, is neither supervisory nor confidential, as those terms are defined by law. Therefore, the position of Clerk II to the Town Clerk shall not be excluded from the bargaining unit.

Deputy Town Clerk
FINDINGS OF FACT

- 1) Ms. Mary Morgan has been employed, on a full-time basis, by the Employer as the Deputy Town Clerk for fourteen years. She was hired by the Town Clerk. Ms. Morgan's work hours are Monday through Friday, 9:00 a.m. to 4:00 p.m, exclusive of a one hour lunch break. (TR 1/24/02, p. 20) Ms. Morgan is paid on a salary basis of approximately \$25,000.00 per year. (TR 1/24/02, p. 21)

- 2) Ms. Morgan receives full benefits, including health care, retirement, sick time, and vacation time. (TR 1/24/02, p. 21)
- 3) As a Deputy Town Clerk, Ms. Morgan takes an oath of office. (TR 1/24/02, p. 20) In the absence of the Town Clerk, Ms. Morgan has all the powers and authority of the Office of Town Clerk. (TR 1/24/02, p. 22) This includes attendance at Executive Sessions of the Town Council to take minutes. (TR 1/24/02, p. 25) These executive sessions may include discussions concerning labor matters, personnel matters and union contracts. (TR 1/24/02, p. 25)
- 4) Ms. Morgan's job description, submitted as Employer Exhibit #2, was prepared by the Town Clerk several years ago, and fairly and accurately represents the duties of the position of the Deputy Town Clerk. (TR 1/24/02, p. 24) Ms. Morgan does engage in some training of the other Clerks in the Town Clerk's Office. (TR 1/24/02, p. 27, 68) Training employees is not necessarily a supervisory function, especially with such routine matters.
- 5) Ms. Morgan's duties include assisting taxpayers with problems at the counter, answering the phone, filing, typing, photocopying, sending and receiving faxes, data entry and answering questions. (TR 1/24/02, p. 22) She also updates dog licenses in the computer and keeps the Town Clerk's appointment book. She estimates that approximately 80% of her duties are the same as the other Clerks in the office. (TR 1/24/02, p. 69)
- 6) Ms. Morgan has never been involved with disciplining any employee, (i.e., recommending demotion, placing a reprimand in a file). She has never adjusted grievances or been involved with collective bargaining negotiations for the Town. When Ms. Morgan fills in for the Town Clerk, she has the authority to discipline employees, execute town documents, and attend council sessions, regular and executive. (TR 1/24/02, p. 71) Ms. Morgan filled in for the Town Clerk at Council meetings approximately four times in the two years previous to the hearing in this case. (TR 1/24/02, p. 69) When Ms. Morgan fills in for the Town Clerk, she does not use the Town Clerk's private office; she sits in the same place that she always does. (TR 1/24/02, p. 70) At those times, Ms. Morgan will have the key to the Town Clerk's locked office. (TR 1/24/02, p. 72) Ms. Morgan can access the Executive Session minutes. (TR 1/24/02, p. 73)
- 7) The record is devoid of any evidence that Ms. Morgan 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.
- 8) The evidence in the record established that, when the Town Clerk is absent from work, Ms. Morgan may, on occasion, in the course of her duties, have the possibility of access to confidential information concerning anticipated changes which may result from collective bargaining negotiations. The evidence did not establish that this has ever happened, or that Ms. Morgan has ever attended a council session where labor issues were being discussed.
- 9) The Board finds, however, that Ms. Morgan's infrequent contact with such documents is insufficient to qualify as "regularly having access."

CONCLUSIONS OF LAW

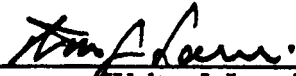
- 1) The position of Deputy Town Clerk shares a sufficient community of interest with the other members of the proposed bargaining unit.
- 2) The position of Deputy Town Clerk is neither supervisory nor confidential, as those terms are defined by law. Therefore, the position of Deputy Town Clerk shall not be excluded from the bargaining unit.

DIRECTION OF ELECTION

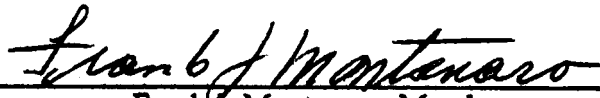
By virtue of and pursuant to the power vested in the Rhode Island State Labor Relations Board by the Rhode Island Labor Relations Act, it is hereby:

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 Police Department Clerk; Clerk to the Tax Assessor; Clerk to the Tax Collector; Clerk to the Town Clerk; Clerk to the Zoning and Building Official; Clerk to the Treasurer; Clerk II to the Town Clerk; and Deputy Town Clerk, employed by the Town of Richmond, who were employed on October 1, 2001, 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



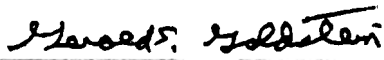
Walter J. Lanni, Chairman



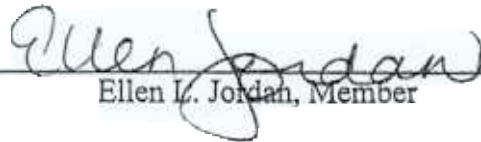
Frank J. Montanaro, Member



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: June 20, 2002

By: 

Joan N. Brousseau, Administrator