

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

IN THE MATTER OF	:
MARION J. MOHR MEMORIAL LIBRARY	:
Employer	:
- AND -	: Case No. EE: 3688
UNITED SERVICE & ALLIED WORKERS OF RHODE ISLAND	:
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 the United Service and Allied Workers of Rhode Island (hereinafter "Petitioner") on December 7, 2005 wherein the Petitioner sought to represent three Professional Librarians, including: "Reference Librarian, Young Adult Librarian, and Children's Librarian." 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 December 14, 2005, 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 January 9, 2006 which was attended by representatives for both the Employee and the Employer. A formal evidentiary hearing on the Petition was held on March 30, 2006.

DISCUSSION

The proposed bargaining unit consists of three professional librarians employed at the Marion J. Mohr Library: Reference Librarian, Young Adult Librarian, and Children's Librarian. The Employer objects to the formation of a bargaining unit by these librarians on the basis that they are considered part of the "chain of command" and that they are considered by the Board of Trustees to be "part of management."

The Marion J. Mohr Library was founded in 1960 and in 1964 was established as the municipal public library for the Town of Johnston. (Exhibit # 1) The Library employs nine full-time employees and eight part-time employees. Three of the full-time employees are professional librarians. On September 5, 2000, this Board issued a certification to RI Council 94, AFSCME, AFL-CIO as the certified bargaining representative for several other job classifications including: Aide, Bookkeeper & Head of Aides; Desk Clerk, Head of Circulation, Aide, Tech Services/ Children's Assistant; Aide, Desk Clerk, and Desk Clerk. Excluded from that certification were: "Reference /Tech Services Librarian, Children & Young Adults Librarian; and all other current full time employees and those excluded by law." (Board's certification: EE 3634)

Under Rhode Island Law, certain full-time and part-time municipal employees are permitted to engage in collective bargaining. A Union may be certified as the bargaining representatives 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) The history of collective bargaining;
- 11) The desires of the affected employees;
- 12) The extent of union organization within the employer's ranks.

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.

In this case, the Union submitted three exhibits for the Board's consideration: (1) The Library's Policies, (2) The Library's Personnel Policy, dated August 23, 2005 and (3) Job descriptions, dated November 30, 2005. The Union also presented the testimony of Meri Carney, the Children's Librarian since April 2004. Her responsibilities include serving at the library desk, providing reference services to children and their parents, providing reader advisory services, running a variety of programs (story times, craft programs, book parties, and summer reading) and organizing and running special events. (TR. p. 8) Ms. Carney testified that she is familiar with the duties of the other two librarians and that the job descriptions set forth in Exhibit # 3 accurately reflect the duties of all three librarians.

Ms. Carney testified that since the library is very small, all three librarians work closely together and share a lot of responsibilities. (TR. p. 9) She stated that neither she nor the other librarians supervise any employees. She does assign tasks to a temporary summer employee who comes in to help with the increase in volume due to summer reading programs. (TR. pgs. 10-11) Neither she nor any of the other two librarians have any role in the following tasks: contract negotiations, employee discipline, hiring, firing or layoff, evaluating employees or setting performance standards, approving or denying sick leave or vacation leave, or establishing the budget. (TR. p. 11-12) Neither she nor the other two librarians had any role in creating any of the job descriptions, nor did they participate in the establishment of any of the library policies. (TR. p. 13)

Ms. Carney testified that she and the other librarians all work in the same building, work the same number of hours (but different schedules), enjoy the same fringe benefits, all are salaried employees and all work under the direct supervision of the Library Director, Mr. Jon Anderson. (TR. p. 14) She also testified that recently (to the date of the formal hearing) the librarians were informed that a chain of command had been set up on a seniority basis. Based upon these facts, the Board finds that the three professional librarians share a

community of interest with each other and that the make-up of the proposed bargaining unit is appropriate. Additionally, the Board finds that the bargaining unit should be designated as a professional bargaining unit.¹

Notwithstanding a common "community of interest" with other employees, "supervisory" employees and "managerial" 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 this case, the library is a very small employer and each individual librarian serves essentially as the entire department for their own subject matters. Although the library does hire a temporary employee for the summer reading program and the librarians assign that individual certain tasks, the Board finds that this temporary function is simply clerical and ministerial and does not rise to the level of supervisory authority.

¹ **Professional employees** are defined by the Board's rules and regulations at Section 1.01.23 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 or herself to become a professional employee as defined in paragraph (a)."

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

The Employer did not call any witnesses or submit any documentary evidence in this matter, although the Union’s exhibits should fairly be viewed as joint exhibits. These documents establish that it is the Library Director, not the individual librarians, who is vested with managerial authority by the Board of Trustees, but that even his authority is not autonomous from the Board. Hiring and firing is done by the Director, but only with the authorization of the Board of Trustees. (Union Exhibit # 3, p. 5) The Director is tasked with the responsibility of developing and revising policies, but again, these actions must be in conjunction with the Board of Trustees. Once the policies are established or revised, the Director is responsible for informing the rest of the staff of any changes to policies or procedures. (Union Exhibit # 3, p. 5) The ultimate responsibility for selection of library materials rests with the Library Director who operates within the framework of the Board of Trustee’s policies. (Union Exhibit #1, p. 11) The Director determines what materials shall be withdrawn from the

library's collection and he is required to use accepted professional practice and exercise professional judgment in making those decisions. (Union Exhibit #1, p. 12) The Library Director is also charged with the responsibility of responding to complaints from patrons (which the library staff has been unable to rectify) concerning censorship and challenges to the collection. (Union Exhibit #1, p. 12)

The Board of Trustees determines and establishes the hours of operation and holiday closure schedule. (Union Exhibit #1, p. 16) The individual librarians are required to punch a time clock and must phone the Director if they are going to be late or absent from work. (Union Exhibit #2, p. 2) The Director is also responsible for reviewing requests from all employees for personal leave and vacation time. (Union Exhibit #2, p. 3) Requests for leave without pay are reviewed by the Board of Trustees or the Library Director. (Union Exhibit #2, p. 4) As to labor relations matters, step one of the grievance procedure is to contact the Library Director, not the individual librarians. Based upon these facts, the Board finds that the individual librarians are not managerial employees as that term is defined by law.

FINDINGS OF FACT

- 1) The Marion J. Mohn Library was founded in 1960 and in 1964 was established as the municipal Public Library for the Town of Johnston. (Exhibit # 1) The Library employs nine full-time employees and eight part-time employees. Three of the full-time employees are professional librarians. On September 5, 2000, this Board issued a certification to RI Council 94, AFSCME, AFL-CIO as the certified bargaining representative for several other job classifications including: Aide, Bookkeeper & Head of Aides; Desk Clerk, Head of Circulation, Aide, Tech Services/ Children's Assistant; Aide, Desk Clerk, and Desk Clerk. Excluded from that certification were: "Reference /Tech Services Librarian, Children & Young Adults Librarian and all other current full time employees and those excluded by law." (Board's certification: EE 3634)
- 2) None of the three (3) librarians have any role in the following tasks: contract negotiations, employee discipline, hiring, firing or layoff, evaluating employees or setting performance standards, approving or denying sick leave or vacation leave, or establishing the budget. None of the librarians had any role in creating any of the job descriptions, nor did they participate in the establishment of any of the library policies.
- 3) Each individual librarian serves essentially as the entire department for his/her own subject matters. The library does hire a temporary employee for the summer reading program and the librarians assign that individual certain tasks. There was no testimony that the librarians engaged in any other assignments of work to the other regular full-time or part-time employees.

- 4) Hiring and firing is done by the Director, but only with the authorization of the Board of Trustees. The Director is tasked with the responsibility of developing and revising policies, in conjunction with the Board of Trustees. Once the policies are established or revised, the Director is responsible for informing the rest of the staff of any changes to policies or procedures.
- 5) The ultimate responsibility for selection of library materials rests with the Library Director who operates within the framework of the Board of Trustees' policies. The Director determines what materials shall be withdrawn from the library's collection and he is required to use accepted professional practice and exercise professional judgment in making those decisions. The Library Director is charged with the responsibility of responding to complaints from patrons (which the library staff has been unable to rectify) concerning censorship and challenges to the collection.
- 6) The Board of Trustees determines and establishes the hours of operation and holiday closure schedule. The individual librarians are required to punch a time clock and must phone the Director if they are going to be late or absent from work. The Director is also responsible for reviewing requests from all employees for personal leave and vacation time. Requests for leave without pay are reviewed by the Board of Trustees or the Library Director.
- 7) As to labor relations matters, step one of the grievance procedure is to contact the Library Director, not the individual librarians.

CONCLUSIONS OF LAW

- 1) The proposed bargaining unit of three librarians shares a community of interest and is an appropriate unit for collective bargaining purposes.
- 2) The proposed bargaining unit shall be a professional bargaining unit.
- 3) None of the three librarians are either supervisory or managerial as those terms are defined and interpreted by labor law.

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 and place, and during hours to be fixed by the Board, among the employees employed by the Marion J. Mohr Library, who were employed as of the date of this order, to determine whether they wish to be represented for the purposes of collective bargaining, as provided for in the Act, by the United Service and Allied Workers of Rhode Island by no labor organization.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni

WALTER J. LANNI, CHAIRMAN

Frank J. Montanaro

FRANK J. MONTANARO, MEMBER

Joseph V. Mulvey

JOSEPH V. MULVEY, MEMBER

Gerald S. Goldstein

GERALD S. GOLDSTEIN, MEMBER

Ellen L. Jordan

ELLEN L. JORDAN, MEMBER

John R. Capobianco

JOHN R. CAPOBIANCO, MEMBER

Elizabeth S. Dolan

ELIZABETH S. DOLAN, MEMBER

ENTERED AS AN ORDER OF THE
RHODE ISLAND STATE LABOR RELATIONS BOARD

Dated: MAY 10, 2006

By: *Robyn H. Golden*
ROBYN H. GOLDEN, ADMINISTRATOR

EE-3688