

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

IN THE MATTER OF

RHODE ISLAND STATE LABOR
RELATIONS BOARD

-AND-

TOWN OF WEST GREENWICH

CASE NO: EE- 3690

DECISION AND ORDER
TRAVEL OF CASE

The above-entitled matter came on to be heard before the Rhode Island State Labor Relations Board (hereinafter "Board") as a Unit Clarification Petition filed by the RI Laborers District Council, Local 1322, seeking to accrete the position of Animal Control Officer to the existing bargaining unit. The petition was filed on May 3, 2007. An informal hearing was initially scheduled for June 20, 2007, and then postponed to June 27, 2007; which, again, got postponed and resulted in the parties submitting written statements in support of their positions, in lieu of an oral informal hearing with the Board's Agent. Subsequent to the written statements, the Board's Agent conducted an investigation which culminated in a written report dated August 1, 2008.¹ A formal hearing was scheduled and postponed on two (2) occasions, due to scheduling conflicts, and was finally held on May 5, 2009. The Employer, Town of West Greenwich, and the Union had full opportunity to present evidence and to examine and cross-examine witnesses. Upon conclusion of the hearing, the parties also filed briefs. In arriving at the decision herein, the Board has considered the testimony and evidence submitted at the formal hearing and has reviewed both briefs.

FACTUAL SUMMARY

On October 2, 2006, this Board certified the Rhode Island Laborers District Council on behalf of Local 1322 to represent all dispatchers, part-time and full-time,

¹ For a significant period of time, the Board only had the services of one employee, the Administrator. Therefore, there was a time lag in between the informal hearing and the written investigative report.

employed by the Town of West Greenwich, excluding all supervisors, as defined in the Act. When that petition was originally filed, it sought the inclusion of the position of dispatchers. Thereafter, there was interest expressed by Clerks and the Animal Control Officer. In order to secure an uncontested election, the parties agreed to keep the clerks and the animal control officer out of the unit at that time.

In support of the Petition, the Union presented testimony from Ms. Michelle Johnson, who has been employed as an Animal Control Officer in the Town of West Greenwich since December 2003.² Michelle testified that during the first month that she worked, she was paid as if she were an independent contractor, but that shortly thereafter, she was converted to paid employee status, with taxes being deducted from her pay by the municipality. Her initial salary when she was hired was \$200.00 per week and at the time of the hearing her salary was \$246.00 per week. She testified that she had been receiving three percent (3%) annual increases. (TR. p.14) Ms. Johnson's hours of work are non-standard and run from Saturdays at midnight until Wednesday at noon. (TR. p. 16) Previous to this schedule, a few months prior to the hearing in this matter, she was on call twenty-four hours per day/seven days per week. (TR. p. 16)³

Ms. Johnson has an office in the Town Hall in the basement, across the hall from the Police Evidence Room, and down the hall from other Police Department personnel. The dispatch office is located on the floor above. Ms. Johnson testified that when she reports to the building, she advises the dispatchers of her arrival, and that the dispatchers are supposed to "log her in" to the computer. Her office work consists of following up on messages, quarantines, doing paperwork, and maintaining a dog license list. (TR. p. 21) Her position is a civilian position within the Police Department and she reports to the Police Chief. (TR. p.23) The Town provides Ms. Johnson with all the tools of her work, including an animal control vehicle, uniforms, cell phone, cages, traps, and leashes. (TR. p. 24) Ms. Johnson receives health care benefits and has since May 2004. (TR. p. 25)

² Ms. Johnson also works part-time as a dispatcher, normally one shift per week. She is a member of the bargaining unit, as it pertains to her work as a part-time dispatcher.

³ At that time, the Town hired an additional Animal Control Officer.

STANDARD OF REVIEW

The purpose of the accretion doctrine is to permit "industrial stability" by allowing adjustments to existing bargaining units, without requiring an adversarial election every time jobs are created or the industrial routine is altered. Because accretion removes the free choice of employees to select bargaining representatives, successful accretion depends upon the Petitioner to establish that the sought after position shares a community of interest with the other positions in the proposed bargaining unit. (National Labor Relations Act: Law & Practice)

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 Similarity in the kind of work performed
- 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.

RISLRB Rules and Regulations, 8.04.3, 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 (R.I. 1994). The burden of establishing the "community of interest" is on the Petitioner.

The Employer, in this case, argues that the Animal Control Officer position does not share a sufficient community of interest to be included within the proposed bargaining unit, citing the Rhode Island Supreme Court's decision in Rhode Island Public Telecommunications Authority v Rhode Island State Labor Relations Board, 650 A2d 479 (R.I. 1994) Thus, the Board must analyze the facts produced at hearing against the community of interest factors, to determine whether accretion is appropriate in this case. No one factor is controlling and there is no specified number of factors that must be met for a position to be eligible for accretion.

Similarity in scale and manner of determining earnings / Similarity of employment benefits, hours of work, and other terms and conditions of employment

The position of Animal Control Officer (ACO) does not share a close similarity on scale or manner of determining earnings with the Dispatchers. At present, the ACO position is a part-time position that pays approximately \$12,500.00 per year and the dispatchers earn approximately \$35,000.00 per year. At present, both the ACOs and Dispatchers receive Town paid medical benefits, although the Dispatchers also receive other benefits as well. The Dispatchers work a scheduled shift of a set number of hours and work from offices in the Town Hall. The ACOs work a set schedule of 3.5 days per week, but are able to work on-call. The ACOs have an assigned office in Town Hall where paperwork is done and calls are made. The factor for similarity of scale and manner of determining pay has clearly not been met in this case. The pay scales and methods are too dissimilar to indicate a community of interest, on that one factor. However, as already stated, no one factor is controlling and the positions must be examined in relation to all the factors.⁴

Similarity in the kind of work performed / Similarity in the qualifications, skills and training of the employees

Both the Dispatchers and the ACOs interact extensively with members of the public. Both the Dispatchers and the ACOs answer phone calls from the public, complete written reports, forms, and work within the same small Police Department. Both positions report to the Chief of Police. While the ACOs are the only employees who are trained to go out and pick up animals, and are not trained to dispatch emergency calls, the dispatchers also, sometimes, perform some of the more routine aspects of the ACOs job, including looking up dog licenses for members of the public who call in. Both of the jobs require the employee to work in an office/station environment, although the ACO is the only one that will go on the road to answer calls. While both the positions require the ability to communicate effectively with and to serve members of the public, each position does have its own separate set of qualifications and training. With municipal employees, it is not uncommon for the qualifications and training of individual positions to vary from job to job (ie// building

⁴ Indeed, it is likely that the low salary and level of benefits, when compared to other municipal positions, plays a role in the desire of the ACOs to organize with an existing bargaining group.

clerk and tax assessor clerk), but this factor alone does not automatically disqualify bargaining units comprised of a variety of municipal employees. The Board views the Police Dispatcher and the ACOs, both employees within a Municipal Police Department in the same manner.

Frequency of contact or interchange among employees / Similarity in the kind of work performed / Geographic proximity

The Dispatchers and the ACOs work in the same small Town Hall. The ACOs' office is located within the Police Department, on the floor below the Dispatch office, across from the evidence room. When the ACOs arrive in the building, they check-in with the Dispatchers who log them into the computer. The Dispatchers and ACOs communicate about calls from the public or the police officers on the road concerning Animal Control and the ACOs respond to the calls. Both the ACOs use the phones and computer for completing their work. The Board finds that these factors weigh in favor of accretion.

Common supervision and determination of labor relations policy / Relationship to the administrative organization of the employer

Both the Dispatchers and the ACOs work in public safety for the Police Department of a small, rural municipality. A Police Captain and the Police Chief supervise the ACOs. The Town Council ultimately controls the Police Department, so there is clear commonality of supervision and relationship to the administrative organization.

History of collective bargaining

The bargaining unit in this case was created in 2006. At that time, in addition to the dispatchers, the Union was also seeking to organize the Records Clerk, the Administrative Assistant to the Chief, and the ACO. The Records Clerk and the Administrative Assistant to the Chief did not want to be part of the unit; therefore, in order to achieve an uncontested election, these other positions were removed from the petition and only the dispatchers were organized at that time. The Union's decision to have an uncontested election was not a determination as to the appropriateness of the position of ACO, this bargaining unit, or any other bargaining unit. The Employer cites this prior election and the fact that the ACOs were once sought for inclusion as a dispositive factor to exclude them now. The Employer cites

Rhode Island Telecommunications Authority, 650 A.2d 479, (RI 1994) and Stevens Ford, Inc., 773 F.2d at 474 as support for this argument. The Employer argues that because the ACO was explicitly excluded in the original certification, that it is even clearer in this case than in the Telecommunications case, that exclusion is warranted. However, in that case, our state Supreme Court held that production interns were not properly includable in a bargaining unit, in part, because their positions predated the bargaining unit's creation and that "at no time during these twenty-two (22) years had the Union petitioned to organize or accrete any intern position." The Court did not have the same type of facts before it that we have here. If the ACOs had never been petitioned for or there had been at least an informal finding that the positions were not appropriate for the bargaining unit, then the Employer's argument would have more weight.

In Stevens Ford, the Court held that if a group of positions was in existence and excluded from an election, then accretion should not normally be permitted. However, the Court did not say that accretion should *never* be permitted. This Board does not believe that the ACOs are forever disqualified from being accreted into the dispatcher's bargaining unit because they were dropped by the Union in the original petition, due to strategic reasoning and the achievement of labor peace for a larger number of employees. Such is the nature of *collective* bargaining; achieving peace for the greater number of employees when feasible.

Desires of the affected employees/ Extent of Union organization.

Although accretion and unit determination are similar concepts, accretion has been used sparingly because it denies the accreted employees a vote on their choice of bargaining representative. NLRB v Security-Columbian Banknote Co., 541 F.2d 135, 140 (3rd Cir. 1976). The NLRB's hesitancy in using the accretion doctrine rests on the inherent competing policy considerations in the accretion doctrine: stability of labor relations versus the employees' freedom to choose their own bargaining agents. *International Association of Machinists and Aerospace Workers, Local 1414 v. N.L.R.B.*, 759 F.2d 1477, 1480 (9th Cir.1985). In this case, there is only one (1) position in question that of ACO, held by two (2) part-time employees, one of which, at least, is desirous of being a part of the bargaining unit. Most of the

rest of the Police Department is organized, including police officers and dispatchers. As noted previously, the civilian Records Clerk and the Chief's Administrative Secretary do not wish to be part of a bargaining unit and the Union has respected those wishes. If the ACO position was denied accretion to the dispatcher's unit, then there is no other bargaining unit to which the position may rightfully be accreted. So while the community of interest with the dispatchers is perhaps not as strong as this Board would normally like to see, the Board is not required to choose the most appropriate bargaining unit, but only an appropriate bargaining unit. Wil-Kil Pest Control Co. v NLRB, 440 F.2d 371, 375 (7th Cir. 1971). Here, while not all accretion factors have been fully satisfied or established, there certainly is a sufficient community of interest, as outlined above, to warrant an inclusion of the position. Therefore, this Board finds that the position of Animal Control Officer may rightfully be included in this bargaining unit.

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) Both the Dispatchers and the ACOs interact extensively with members of the public, answer phone calls from the public, complete written reports and forms, and work within the same small Police Department offices. Both positions report to the Chief of Police.
- 4) A Police Captain and the Police Chief supervise the ACOs. The Town Council ultimately controls the Police Department, so there is clear commonality of supervision and relationship to the administrative organization.
- 5) In 2006, when organizing existing bargaining unit, the Union was also seeking to organize the Records Clerk, the Administrative Assistant to the Chief, and the ACO. The Records Clerk and the Administrative Assistant to the Chief did not want to be part of the unit; therefore, in order to achieve an uncontested election,

these other positions were removed from the petition and only the dispatchers were organized at that time.

- 6) In this case, there is only one (1) position in question, that of ACO, held by two (2) part-time employees, one of which, at least, is desirous of being a part of the bargaining unit. Most of the rest of the Police department is organized, including police officers and dispatchers.

CONCLUSIONS OF LAW

- 1) The position of Animal Control Officer shares a sufficient community of interest with the bargaining unit to warrant inclusion of the position.

ORDER

- 1) The position of Animal Control Officer shall be accreted to the bargaining unit certified by EE- 3690.

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

IN THE MATTER OF

RHODE ISLAND STATE LABOR
RELATIONS BOARD

-AND-

TOWN OF WEST GREENWICH

CASE NO: EE-3690

NOTICE OF RIGHT TO APPEAL AGENCY DECISION
PURSUANT TO R.I.G.L. 42-35-12

Please take note that parties aggrieved by the within decision of the RI State Labor Relations Board, in the matter of Case No. EE-3690 dated **October 20, 2010**, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **October 20, 2010**.

Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-29.

Dated: ~~October~~ October 20, 2010

By: 

Robyn H. Golden, Administrator

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni

WALTER J. LANNI, CHAIRMAN

Frank J. Montanaro

FRANK J. MONTANARO, MEMBER

Gerald S. Goldstein

GERALD S. GOLDSTEIN, MEMBER

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ELLEN L. JORDAN, MEMBER

John R. Capobianco

JOHN R. CAPOBIANCO, MEMBER

(DID NOT PARTICIPATE IN VOTE)

ELIZABETH S. DOLAN, MEMBER

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

Dated: October 20, 2010

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