

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

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IN THE MATTER OF

RHODE ISLAND STATE LABOR  
RELATIONS BOARD

-AND-

TOWN OF TIVERTON

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CASE NO: EE- 3724

**DECISION AND ORDER OF DISMISSAL**  
**TRAVEL OF THE CASE**

The above entitled matter came on to be heard on a Petition by Employees for Investigation and Certification of Representatives (hereinafter "Petition") filed by R.I. Council 94 (hereinafter "Union") on September 6, 2011, wherein the Petitioner sought to represent the following positions: Tax Assessor, Wastewater Collections Superintendent, Building/Zoning Official, Town Planner, Senior Center Director, Tax Collector, Director of Public Works, all employees within the Town of Tiverton.

The Board's Administrator conducted an informal hearing on the Petition on October 5, 2011, which was attended by representatives of both the Petitioner and the Respondent-Employer. The Employer objected to the inclusions of these positions in the bargaining unit, on the grounds that these employees were supervisory and/or managerial employees and ineligible for collective bargaining. At that time, the parties indicated that no agreement could be reached to create a bargaining unit. Formal evidentiary hearings on the Petition were held on February 14, 2012 and March 29, 2012. Both the Employer and the Union were represented and afforded a full and fair opportunity to examine and cross-examine witnesses; as well as the opportunity to submit documentary evidence in support of their respective positions. Upon conclusion of the hearings, the parties submitted briefs.

**DISCUSSION**

The Employer in the case has challenged all the positions sought to be included in a bargaining unit on the basis that they are supervisory and/or managerial employees and are ineligible for collective bargaining. In addition, the Employer argues that the positions do not share a community of interest with each other and for that reason, as well, are ineligible to join a municipal employee Union.

In 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))

Thus, in order for supervisory status to exist, three (3) criteria must be met: (1) the individual must have the authority to engage in one of the twelve (12) functions set forth in the aforementioned definition; (2) the exercise of such authority must require the use of independent judgment; and (3) the individual must hold the authority in the interest of the Employer. NLRB v Health Care & Retirement Corp., 511 US 571, (1994) Under federal labor 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, 153 LRRM 1132 (1996). It also includes individuals who possess the authority to recommend any of the foregoing actions. However, as a practical matter, an individual who fails to exercise any of the indicia of statutory authority will rarely be found to be a supervisor. Capitol Transit Company, 114 NLRB 617, 37 LRRM 1005 (1955) enforced, 38 LRRM 2681 (D.C. 1956)

Determining whether an individual uses independent judgment in the exercise of functions indicative of supervisory status is extraordinarily fact intensive analysis. N.L.R.A. Law & Practice 2.03 (4) In analyzing the indicia of “assignment” and “responsibly directing” employees, it is clear that “not all assignments and directions given by an employee involve the exercise of supervisory authority”. For example, work assignments made to equalize work on a rotational basis or assignment based on skills when the differences in skills are well known to the employee is routine. Further, assigning tasks that clearly fall within an employee’s job description does not require the use of “independent judgment”.

Finally, since the definition of “supervisor” is highly specific and requires a legal conclusion, the statement of employees who either claim or agree they are “supervisors” is not given extensive weight by the Board. In the experience of this Board, there are

many occasions when an employee would like to believe that he or she is a supervisor or that a job description claims that an employee is responsible for supervising others.

However, when a detailed examination is made of the employee's actual authority to undertake the actions as described in the definition of supervisor, many times the employee fails the "test". For instance, there have been occasions when an employee erroneously thinks he or she is a supervisor because he or she has simply initialed time cards of employees who have reported their hours or who have made assignment to employees within the scope of their regular duties. Therefore, the Board analyzes the actual authority of employees against their statements or job descriptions and makes a legal conclusion as to whether positions are supervisory or not. Since an employee may be classified as a supervisor if he or she has the authority to undertake only just one (1) of the functions set forth in the aforementioned definition (ie, hire, fire, etc) the Board's inquiry will end as to the other functions.

"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 DISPUTED EMPLOYEE POSITIONS

#### TAX ASSESSOR

Mr. David Robert has served as the Tax Assessor for the Town of Tiverton since 2005 and presently serves under an employment contract which he negotiated with the Town. (Union Exhibit # 2) Mr. Robert testified on direct examination that he does not have the ability to hire, fire, suspend, lay-off, transfer, recall, or promote an employee.

(TR. 2/14/12. pgs. 10-11) He also testified that he does not have the ability to adjust grievances. On cross-examination, Mr. Robert readily stated that he supervised a senior clerk and a regular part-time clerk, as set forth on the Employer's organizational chart. (Employer's Exhibit # 1) Mr. Robert testified that he was "not under the impression" that he had any authority to resolve grievances and that he was under the impression that he would have to bring any such problems to the attention of the Town Administrator. (TR. 2/14/12, p. 16) He further testified that as to hiring, he has not had the ability to even weigh-in on hiring decisions, stating that with a recent retirement, he was not even asked his opinion on that employee's replacement. (TR. 2/14/12, p. 18) However, on further cross-examination, Mr. Robert acknowledged that he does have the ability to go to the Town Administrator to "reject" any employee within the first thirty (30) days of work. (TR. 2/14/12 p. 28)

Employer Exhibit # 2, a memorandum from Mr. Robert to the employees within the Tax Assessor's Office, dated February 22, 2006, in which he lays out directives as to the types of unacceptable employee behaviors in which he states: "any action/activity that is detrimental to this office or the Town will be subject to disciplinary action." Mr. Robert acknowledges having sent this memo to his staff. (TR 2/14/12, pgs. 20-21) Employer Exhibit # 3 are two memos, both of which establish that Mr. Robert's administrative duties as head of the Tax Assessor's Office include approving vacation carry-over and verifying sick-leave requests. Mr. Robert also has the ability to deny time off requests. (TR 2/14/12, p. 30) On cross-examination concerning Employer Exhibit # 4, a performance review dated December 3, 2007, Mr. Robert testified that he has the authority to determine how his staff handles certain job functions and tells them so. Mr. Robert acknowledged that he has the authority and responsibility to oversee staffing and under the evaluation, was praised by his supervisor for the "turn-around" in that office and the current level of professionalism. (TR. 2/14/12, p. 26) Mr. Robert's "staff" in the Tax Assessor's Office are members of an AFSCME bargaining unit and under that contract, would be required to bring their grievances to Mr. Robert, as the Administrator, of "Step 1" of their grievance process. While Mr. Robert may not have been fully aware of this or may not have performed this function to date, his position holds that authority.

#### **WASTEWATER COLLECTIONS SUPERINTENDENT**

Mr. John Lincourt serves as the Town of Tiverton's Wastewater Collections Superintendent and has held this position since 2006. Mr. Lincourt testified on direct examination that he has not had the occasion to hire, fire, suspend, discipline, lay-off,

transfer, recall, or promote an employee. He has not had the occasion to adjust a grievance of any employee. (TR 2/14/12, pgs. 33-34) On cross-examination, Mr. Lincourt testified that he did not believe that he had the authority to issue discipline and that he would have to go to the Town Administrator for disciplinary issues and then recommend discipline. (TR 2/14/12, p. 36) In addition, Mr. Lincourt acknowledged on cross-examination that he has one (1) employee that "works for" him and that if she had a problem and came to him, he would try to resolve it, but thought he would have to consult with the Town Administrator. Mr. Lincourt was, however, successful in effectively recommending and securing an increase in work hours for her. (TR 2/14/12, pgs. 38, 40)

Union Exhibit # 4, Mr. Lincourt's employment contract describes his duties as managerial, in administering his responsibilities under Section 1010 of the Town's Charter, which deals with the Wastewater Management Commission and the Town's sewage system. (TR 2/14/12, p. 40) As part of these managerial duties, Mr. Lincourt prepares the annual budget for his department, with input from the Wastewater Management Commission. (TR 2/14/12, p. 41)

#### **BUILDING/ZONING OFFICIAL**

Mr. Gareth Eames has served as the Town of Tiverton's Building/Zoning Official since 2005. Mr. Eames' employment contract, which he helped to negotiate, included in his responsibilities: "the supervision and overall operation of the Building/Zoning Department" and to fulfill the duties of Section 908 of the Tiverton Town Charter. On direct examination, Mr. Eames testified that he does not have the authority to hire, fire, or suspend employees and that he has not had the occasion to lay-off, transfer, recall, or promote an employee. Although Mr. Eames could not recall having had any input into the hiring process, (Employer Exhibit # 6) Mr. Eames' annual evaluation dated August 2007, states: "in working with him to replace Kelly Van Hoc, I have enjoyed listening to his insight in the hiring process." (TR 2/14/12, pgs. 49-50)<sup>1</sup> Mr. Eames testified that he has never adjusted a grievance for an employee. (TR. 2/14/12, p. 44)

On cross-examination, Mr. Eames reluctantly acknowledged that he supervises the work of not only his clerk, but that of independent contractors serving as electrical, mechanical and plumbing inspectors. (TR 2/14/12, pgs. 46-47) The evidence established that Mr. Eames was effective in recommending goals and policies in the interest of his Employer and that the implementation of these goals and processes is an ongoing venture. (TR 2/14/12, pgs. 51-52) Mr. Eames also acknowledged that he would serve as

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<sup>1</sup> Document prepared by former Town Administrator, Glenn Stechman.

the Administrator for "Step 1" of the grievance process for his clerk. (TR 2/14/12, pgs 53-54)

On further cross-examination, Mr. Eames again reluctantly acknowledged that if he experienced a problem with the clerk that works for him, he would try to sit down with her and work it out in a "collegial fashion", but that if he couldn't, he would then take his conversation and recommendation to the Town Administrator. (TR 2/14/12, p. 54) Mr. Eames also conceded that he has the ability to reprimand his clerk, including putting a written reprimand in her personnel file. (TR 2/14/12, p. 55) In his annual evaluation for 2007, Mr. Eames was given high marks for his personnel and budget management skills. (Employer Exhibit # 6).

### **TOWN PLANNER**

Christopher Spencer has served as the Town of Tiverton's Planner since 2007 and was involved in negotiating his employment contract. Mr. Spencer testified that he does not have the authority to hire, fire, suspend, discipline, lay-off, transfer, recall, or promote an employee. Further, Mr. Spencer has never adjusted any employee's grievance. (TR 2/14/12, pgs. 60-61)

On cross examination, Mr. Spencer testified that his employment contract requires that he prepare an annual budget for the Planning Department and that he does so. (TR 2/14/12, p. 63) Mr. Spencer also acknowledged that as part of his duties (as set forth in his contract) he develops short, medium, and long-term plans for the Department's operations, in the interests of his Employer and the citizens it serves. (TR 2/14/12, p. 65) Additionally, Mr. Spencer is charged with creating and managing the Department's annual budget. On further cross-examination, Mr. Spencer agreed that while he has not had the occasion to issue discipline, he retains the authority, including placing a written reprimand in his subordinate's personnel file. (TR 2/14/12, p. 67) He also acknowledged that if there were a severe problem, he would consult with the Town Administrator and provide his opinion as to the recommended level of discipline. (TR 2/14/12, pgs. 67-68) On re-direct examination, Mr. Spencer testified that within the goals and policies set for the Department, he has "leeway" and does not have to consult with the Town Administrator when departing from the goals and policies. (TR 2/14/12, pgs. 73-74)

### **SENIOR CENTER DIRECTOR**

Ms. Janice Gomes has served as the Town's Senior Center Director since 2003 and participated in negotiating her contract. (Union Exhibit # 7) (TR. 2/14/12, p. 80)

Ms. Gomes testified that she does not have the authority to hire, fire, suspend, discipline, lay-off, transfer, recall, or promote employees. She has never adjusted an employee grievance. (TR 2/14/12, p. 78)

On cross-examination, Ms. Gomes agreed that if employees were not performing their jobs, she would have the ability to recommend disciplinary action. (TR 2/14/12, p. 81) In fact, she testified that although she wasn't sure if she could issue discipline without first going to the Town Administrator, she would not seek him out first. She would try, herself, to resolve the issue with the employee. (TR 2/14/12, pgs. 81-82) Ms. Gomes also understands that she has the responsibility to serve at "Step 1" of the grievance process for AFSCME employees in her Department. Ms. Gomes is responsible for the annual preparation of her Department's budget. (TR 2/14/12, p. 85) Ms. Gomes acknowledged that she in fact does "manage subordinates" as reported in her performance evaluation. (Employer Exhibit # 10) On cross-examination, Ms. Gomes acknowledged that she supervises two (2) part-time clerks, maintenance personnel, and a bus driver. (TR 2/14/12, p. 87)<sup>2</sup> Her performance evaluation praised her as running a "virtually problem-free" operation. (Employer's Exhibit # 10)

#### **TAX COLLECTOR**

Tori Lyn McGowan has served as the Town's part-time Tax Collector since 2009 and was involved in negotiating the terms of her employment contract, even though she did not get the salary she was seeking at the time of her hiring. (TR. 2/14/12 pgs. 97-98) Ms. McGowan testified that she does not have the authority to hire, fire, suspend, discipline, lay-off, transfer, recall, or promote employees. She has never adjusted an employee grievance. (TR 2/14/12, p. 95)

On cross-examination, Ms. McGowan acknowledged that three (3) AFSCME Union employees, who work in the Tax Collector's Department, do report to her. She acknowledged that if there were a performance or disciplinary issue with one of these employees, she would try to resolve it with the employee, prior to seeking out the assistance of the Town Administrator. (TR. 2/14/12, p. 100) When it comes to a written reprimand, she testified that while she would do it, she thinks that she would speak to the Town Administrator first. (TR. 2/14/12, p. 103) Ms. McGowan indicated that the other

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<sup>2</sup> Employer's Exhibit # 21 is a certified copy of a portion of Special Meeting minutes from a Town Council meeting held on September 19, 2011. In these minutes is a reference to statement made by Ms. Gomes, to the Town Council, which reads as follows: "Other issues we have is AFSCME employees who work under us. We are supervising them and they have better benefits than we have. We're their supervisors. Right now, in this Town, we have the Fire Chief Secretary who makes more money than I do as a Department Head and that's straight time, no overtime. I manage the Senior Center, the volunteers, the budgets; I have building that I have to stay on top of maintaining, and I make less money than a secretary."

employees in the Tax Collector's Office have all been employed there longer than she has and that they do not require much in the way of supervision. (TR. 2/14/12, p. 104) However, she also acknowledged that she has goals and visions for the Department that she shares with these employees and encourages them to meet those standards. (TR. 2/14/12, p. 104) Ms. McGowan is responsible for preparing the budget for her department. (TR. 2/14/12, p. 105)

### **PUBLIC WORKS DIRECTOR**

Mr. Stephen Berlucci has served as the Director of Public Works for the Town of Tiverton since 2008. His employment contract states that he is responsible for the "supervision and overall operations" of the Department; and that his function includes carrying out the responsibilities as described in the Town's Home Rule Charter. (Union Exhibit # 9, Town's Exhibit # 12) Mr. Berlucci's annual salary is \$80,000.00. On direct examination, Mr. Berlucci testified that he "does not believe" that he has the authority to hire or fire employees. (TR. 3/29/12, p. 8) He acknowledged that in the course of his position, he has had the occasion to issue a written reprimand to an employee who was being "lazy" and not following landfill procedures. (TR. 3/29/12, pgs. 9, 20) (Employer's Exhibit # 16) Further, Mr. Berlucci testified that if other employees were not doing their jobs, he would reprimand them as well. (TR. 3/29/12, p. 27)

Mr. Berlucci testified that he has not had the occasion to lay-off, transfer, recall, or promote an employee. (TR. 3/29/12, p. 9) Mr. Berlucci has, however, on at least one (1) occasion, submitted a letter recommending a promotion. (Employer Exhibit # 17) Mr. Berlucci has not adjusted any employee grievances. (TR. 3/29/12, p. 9) Although Mr. Berlucci would not fully concede that he serves as the Administrator of "Step 1" of the grievance procedures for his unionized employees, he does agree that he has the authority to try, in his capacity as their "immediate supervisor", to resolve employee issues. (TR. 3/29/12, p. 22)

On cross-examination, Mr. Berlucci acknowledged that he is responsible for overseeing the entire Public Works Department, which encompasses ten (10) labor employees and one administrative assistant, all of whom are unionized employees. (TR. 3/29/12, pgs. 12-13) In reviewing the organizational chart, Mr. Berlucci acknowledged that he has "supervision" over the foreman, clerk, landfill operations, street maintenance and equipment maintenance employees. (TR. 3/29/12, p. 14) (See Employer's Exhibit # 13) In addition, he further testified that he is "responsible for"

all of them. (TR. 3/29/12, p. 16) Mr. Berlucci prepares the annual Department budget. Mr. Berlucci has the authority to develop policies for the Department, but feels that the ones he has issued to date are more like "standard operating procedures" instead of policies. (TR. 3/29/12, p. 16) (See Employer's Exhibit # 14) Mr. Berlucci agreed that he has the responsibility to recommend new policies and procedures and to develop and monitor the operating capital budgets. (TR. 3/29/12, p. 19)

Upon conclusion of testimony from the employees who hold the petitioned for positions, the Employer presented the testimony of Mr. James Goncalo, the Town Administrator, for the Town of Tiverton. At the time of his testimony, Mr. Goncalo had worked for the Town for approximately four and one-half years and, during that time, had not received a pay-increase. (TR. 3/29/12, p. 29) Mr. Goncalo's initial testimony was centered on the educational requirements and work hours for the various positions; some of which required college degrees and some of which required significant hours outside of the "normal" work day of 8:30 a.m. - 4:30 p.m. Mr. Goncalo testified that he considered these department head employees to be managerial and high-level supervisors, because he places his trust in them and utilizes them as his "advisers." (TR. 3/29/12, p. 37) Mr. Goncalo testified that he has weekly staff meetings with them, normally on Friday mornings. Mr. Goncalo testified that these department heads have the authority to determine policies and procedures within their departments; they prepare and monitor budgets and they serve as the Administrators of the "Step 1" level of grievance resolution, pursuant to existing Union contracts. (TR. 3/29/12, p. 37) (See Employer Exhibits # 19 & 20) Mr. Goncalo testified that the department heads have the authority to issue disciplinary action and to recommend suspension or termination. (TR. 3/29/12, p.41)

The testimony and documentary evidence submitted in this proceeding overwhelmingly established that each and every one of the positions sought, meet the test for supervisory and/or managerial status. As such, they are wholly ineligible to engage in collective bargaining under the Municipal Employees Arbitration Act. Since they are disqualified from participating in a Municipal Union, by virtue of their position as supervisory and/or managerial, we do not reach the question of whether the employees share a community of interest with each other.

#### **FINDINGS OF FACT**

1) The Petitioner 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 employees in

grievances or other mutual aid and protection, and as such, is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.

- 2) The Respondent is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
- 3) On September 6, 2011 the Union filed a petition seeking to hold an election to represent the Tax Assessor, Wastewater Collections Superintendent, Building/Zoning Official, Town Planner, Senior Center Director, Tax Collector, and the Director of Public Works.
- 4) The Board conducted Formal Hearings on February 14, 2012 and March 29, 2012.
- 5) Mr. David Robert is the Tax Assessor for the Town of Tiverton. He supervises a senior clerk and a regular part-time clerk, as set forth on the Employer's organizational chart. Mr. Robert has the ability, in the interest of his Employer to issue directives about acceptable employee conduct within his office. Mr. Robert has the ability to approve and/or deny time off and the responsibility to verify sick leave requests. He has the authority and responsibility to oversee staffing. Mr. Robert supervises AFSCME employees who have a grievance procedure in their contract. Mr. Robert serves as the administrator of the first step in the grievance procedure, if a grievance were to be filed.
- 6) Mr. John Lincourt serves as the Town of Tiverton's Wastewater Collections' Superintendent and has been in this position since 2006. Mr. Lincourt has not had the occasion to hire, fire, suspend, discipline, lay-off, transfer, recall, or promote an employee. He has not had the occasion to adjust a grievance of any employee. Mr. Lincourt has been successful in securing an increase in work hours for one (1) of his staff members. Mr. Lincourt acknowledged on cross-examination that he has one (1) employee that "works for" him. Mr. Lincourt's employment contract describes his duties as managerial, in administering his responsibilities under Section 1010 of the Town's Charter, which deals with the Wastewater Management Commission and the Town's sewage system. As part of these managerial duties, Mr. Lincourt prepares the annual budget for his Department, with input from the Wastewater Management Commission.
- 7) Mr. Gareth Eames is the Town of Tiverton's Building/ Zoning Official. His employment contract, which he helped to negotiate, included in his responsibilities: "the supervision and overall operation of the Building/Zoning Department" and to fulfill the duties of Section 908 of the Tiverton Town Charter. Although Mr. Eames could not recall having had any input into the hiring process, Mr. Eames' annual evaluation dated August 2007, states: "in working with him to replace Kelly Van Hoc, I have enjoyed listening to

his insight in the hiring process.” During his testimony, Mr. Eames reluctantly acknowledged that he supervises the work of not only his clerk, but that of independent contractors serving as electrical, mechanical, and plumbing inspectors. The evidence established that Mr. Eames was effective in recommending goals and policies in the interest of his Employer and that the implementation of these goals and processes is an ongoing venture. Mr. Eames also acknowledged that he would serve as the Administrator for “Step 1” of the grievance process for his clerk. Mr. Eames also conceded that he has the authority, in the interest of his Employer, to reprimand his clerk, including putting a written reprimand in her personnel file.

8) Christopher Spencer is the Town of Tiverton’s Planner. As part of his contractual duties, Mr. Spencer prepares an annual budget and he develops short, medium, and long term plans for the Department’s operations, in the interests of his Employer, and the citizens it serves. Mr. Spencer understands and acknowledges that he has the authority to discipline subordinate employees, including written reprimands. Mr. Spencer testified that within the goals and policies set for the Department, he has “leeway” and does not have to consult with the Town Administrator when departing from the goals and policies.

9) Ms. Janice Gomes is the Town’s Senior Service Director. Ms. Gomes is responsible for the annual preparation of her Department’s budget. Ms. Gomes acknowledged that she “manages subordinates.” Ms. Gomes agreed that she has the authority to try to resolve problems with an employee, before seeking out the Town Administrator. Ms. Gomes also understands that she has the responsibility to serve at “Step 1” of the grievance process for AFSCME employees in her Department. On cross-examination, she acknowledged that she supervises two (2) part-time clerks, maintenance personnel, and a bus driver. In addition, Ms. Gomes has self-identified and described herself as a supervisor, when discussing salary increases with the Town Council.

10) Tori Lyn McGowan is the Town of Tiverton’s part-time Tax Collector, with three (3) unionized employees who “report to” her. In her testimony, she acknowledged that if there were a performance or disciplinary issue with one (1) of these employees, she would try to resolve it with the employee prior to seeking out the assistance of the Town Administrator. Ms. McGowan has goals and visions for the Department that she shares with these employees and encourages them to meet those standards. Ms. McGowan is responsible for preparing the budget for her Department.

11) Mr. Stephen Berlucci has served as the Public Works Director for the Town of Tiverton since 2008. His employment contract states that he is responsible for the

“supervision and overall operations” of the Department; and that his function includes carrying out the responsibilities of as described in the Town’s Home Rule Charter. Mr. Berlucci has had the occasion to issue a written reprimand to an employee who was being “lazy” and not following landfill procedures. Mr. Berlucci testified that if other employees were not doing their jobs, he would reprimand them as well. Pursuant to existing Union contracts, Mr. Berlucci would serve as “Step 1” of the grievance procedures. Mr. Berlucci acknowledged that he is responsible for overseeing the entire Public Works Department, which encompasses ten (10) labor employees and one (1) administrative assistant, all of whom are unionized employees. Mr. Berlucci acknowledged that he has “supervision” over the foreman, clerk, landfill operations, street maintenance and equipment maintenance employees and that he is “responsible for” all of them. Mr. Berlucci prepares the annual Department budget. Mr. Berlucci has the authority to develop policies for the Department. Mr. Berlucci agreed that he has the responsibility to recommend new policies and procedures and to develop and monitor the operating capital budgets.

#### **CONCLUSIONS OF LAW**

- 1) The position of Tax Assessor is managerial and supervisory, as those terms are defined by the Board’s Rules and Regulations § 1.01.18 and § 1.01.25 and as codified by Rhode Island case law. As such, the position of Tax Assessor is not eligible for inclusion within a bargaining unit.
- 2) The position of Wastewater Collections Superintendent is managerial and supervisory, as those terms are defined by the Board’s Rules and Regulations § 1.01.18 and § 1.01.25 and as codified by Rhode Island case law. As such, the position of Wastewater Collections Superintendent is not eligible for inclusion within a bargaining unit.
- 3) The position of Building/Zoning Official is managerial and supervisory, as those terms are defined by the Board’s Rules and Regulations § 1.01.18 and § 1.01.25 and as codified by Rhode Island case law. As such, the position of Building/Zoning Official is not eligible for inclusion within a bargaining unit.
- 4) The position of Town Planner is managerial and supervisory, as those terms are defined by the Board’s Rules and Regulations § 1.01.18 and § 1.01.25 and as codified by Rhode Island case law. As such, the position of Town Planner is not eligible for inclusion within a bargaining unit.

5) The position of Senior Center Director is managerial and supervisory, as those terms are defined by the Board's Rules and Regulations § 1.01.18 and § 1.01.25 and as codified by Rhode Island case law. As such, the position of Senior Center Director is not eligible for inclusion within a bargaining unit.

6) The position of Tax Collector is managerial and supervisory, as those terms are defined by the Board's Rules and Regulations § 1.01.18 and § 1.01.25 and as codified by Rhode Island case law. As such, the position of Tax Collector is not eligible for inclusion within a bargaining unit.

7) The position of Director of Public Works is managerial and supervisory, as those terms are defined by the Board's Rules and Regulations § 1.01.18 and § 1.01.25 and as codified by Rhode Island case law. As such, the position of Director of Public Works is not eligible for inclusion within a bargaining unit.

**ORDER\*\*\***

1) The Petition for Investigation of Controversies as to Representation, filed by RI Council 94, AFSCME, AFL-CIO, in regard to the positions of: Tax Assessor, Wastewater Collections Superintendent, Building/Zoning Official, Town Planner, Senior Center Director, Tax Collector, Director of Public Works, is hereby dismissed.

\*\*\* Board Members Frank Montanaro and John Capobianco dissented from the Order in the aforementioned matter.

RHODE ISLAND STATE LABOR RELATIONS BOARD



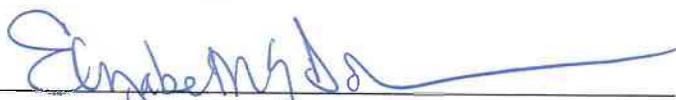
Walter J. Lanni, Chairman



Frank Montanaro, Member



Ellen L. Jordan, Member



Elizabeth S. Dolan, Member

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

Dated: NOVEMBER 7, 2012

By: Robyn H. Golden  
Robyn H. Golden, Administrator

EE-3724

**NOTE: BOARD MEMBERS GERALD GOLDSTEIN AND JOHN CAPOBIANCO  
WERE NOT PRESENT TO SIGN THE DECISION & ORDER AS  
WRITTEN.**

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
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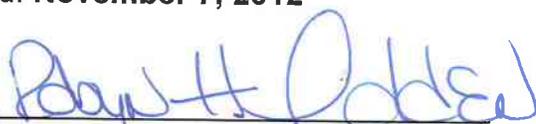
**NOTICE OF RIGHT TO APPEAL AGENCY DECISION  
PURSUANT TO R.I.G.L. 42-35-12**

Please take note that parties aggrieved by the within decision of the RI State Labor Relations Board, in the matter of Case No. EE-3724 dated November 7, 2012 may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **November 7, 2012**.

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

Dated: **November 7, 2012**

By:

  
Robyn H. Golden, Administrator

EE- 3724