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

IN THE MATTER OF NATIONAL FRATERNAL ORDER OF POLICE -AND- DONALD W. WYATT DETENTION FACILITY	:	CASE NO. EE-3762

DECISION AND DIRECTION OF ELECTION

TRAVEL OF CASE

The above-entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") on a Petition for Representation of Lieutenants and Captains within the Donald W. Wyatt Detention Facility (hereinafter "Employer") filed by the National Fraternal Order of Police (hereinafter "Union"). The petition was filed by the Union on April 13, 2023.

Following the filing of the Petition, the Board assigned its investigator to conduct an investigation of the claims contained in the Petition. An informal hearing was scheduled and held on May 3, 2023. At the informal hearing, the Employer refused to agree to a consent election and, instead, challenged the petition which sought to unionize the positions of Lieutenant and Captain by claiming that the positions were not eligible to be members in a Union or to be included in collective bargaining because they were supervisory positions. The case was presented to the Board at its June 13, 2023 meeting for determination. After review of the information and evidence presented at the informal hearing, the Board voted to proceed to a formal hearing. After postponements were requested by both parties, a formal hearing was held on December 5, 2023.

At the conclusion of the formal hearings, post-hearing briefs were filed by the Union on December 22, 2023 and the Employer on January 8, 2024. In arriving at the Decision herein, the Board has reviewed and considered the testimony and exhibits submitted at the hearing and the arguments contained within the post-hearing briefs submitted by the parties.

FACTUAL SUMMARY

The Employer is a maximum-security facility that provides detention services for the federal government. The Union currently represents Correctional Officers and Sergeants in the bargaining unit. The facility operates 24/7 and is organized around 13 housing units or pods that house the prisoners held at the facility. (Transcript at pages 23; 25). Correctional Officers are assigned to posts on one of the three shifts. Sergeants, who are

in the bargaining unit with the Correctional Officers, act as Shift Supervisors and directly supervise the activities of the Correctional Officers. Lieutenants and Captains act as Shift Commanders and supervise the work of the Correctional Officers and Sergeants and are responsible for the operation of the shift to which they are assigned. Lieutenants fill in for Captains as Shift Commanders on weekends, holidays and vacations. (Transcript at page 25; 38). A Shift Commander has the authority to assign Correctional Officers to posts and may transfer a Correctional Officer to a different position during a shift. (Transcript at pages 25; 33 – 34; 35 – 36). It is also routine for a Shift Commander to inform a Correctional Officer that he/she is being held over to work another shift. (Transcript at page 37).

The Employer operates as a para-military organization. (Transcript at page 33). Lieutenants do not have the authority to hire, fire or suspend an employee, lay off, recall or promote an employee, provide a reward or adjust grievances. (Transcript at pages 15 – 16; 51). Similarly, Captains cannot hire or fire, nor can they suspend an employee, layoff, recall or promote an employee. (Transcript at pages 18; 51). The overwhelming majority of decisions made involving the Correctional Officers and Sergeants is done by either the Major or the Warden. (Transcript at pages 18 – 19; 20 – 22; 39; 42; 45; 52; 56).

In 2014 this Board was presented with a representation petition to include Lieutenants and Captains, along with Sergeants, in the then existing bargaining unit. (See *Central Falls Detention Facility Corporation and Fraternal Order of Police, Local 50*, EE-3717 (October 29, 2014)). In a lengthy decision, the Board analyzed each of the identified positions under the standards for eligibility to vote in a representation election, i.e., were the positions either supervisory, managerial, or confidential. Based on its analysis, the Board determined that the Lieutenants and Captains should be excluded from the bargaining unit as they satisfied the criteria as statutory supervisory employees. (See *Central Falls Detention Facility Corporation and Fraternal Order of Police, Local 50*, EE-3717, at pages 13 – 19; 19 – 22).

DISCUSSION

Under Rhode Island law, certain municipal employees are permitted to engage in collective bargaining. (See R.I.G.L. 28-9.4-1 et seq., the Municipal Employees Arbitration Act). It is, however, well settled case law that managerial and supervisory personnel are not permitted to unionize or join existing bargaining units (see *State of RI v. Local 2883, American Federation of State, County & Municipal Employees*, 463 A.2 186 (R.I. 1983)).[1] The rationale for this exclusion has been expressed by the Rhode Island Supreme Court as follows: "To allow managers and supervisors to participate in the collective bargaining

[1] It is also well settled that employees determined to be confidential in nature will be excluded from any bargaining unit. See *Barrington School Committee v. Rhode Island State Labor Relations Board,* 694 A.2d 1185 (RI. 1992). In the present case, neither party raised the issue or presented any evidence to suggest that either the Lieutenant or Captain positions were confidential as that term was defined in the *Barrington* case or as set forth in the Board's Rules and Regulations. (See Board Rules and Regulations, Section 1.2A No.13). Therefore, the Board has no reason to address that category in this case.

process would be to create a conflict of interest. Managers and supervisors are those who carry out and often help formulate the employer's policies." *Id.,* 463 A.2d at 191; see *Fraternal Order of Police, Westerly Lodge 10 v. Town of Westerly*, 659 A.2d 1104, 1107 (R.I. 1995).

In the Board's 2014 decision, as noted above, the Board determined that Lieutenants and Captains were not eligible to be included in the bargaining unit. In that case, the Board determined that Captains were both managerial and supervisory in nature and the Lieutenants were found to be supervisory employees. (See *Central Falls Detention Facility Corporation and Fraternal Order of Police, Local 50*, EE-3717, at pages 13 – 19; 19 – 22). Because the Union has once again brought before this Board a claim that the Lieutenants and Captains should be included in a bargaining unit for collective bargaining purposes, the Board must decide whether the noted positions fall within either the managerial or supervisory definitions established by this Board and the courts. (See Board Rules and Regulations, Section 1.2A No.31 and No. 52; *Fraternal Order of Police, Westerly Lodge 10 v. Town of Westerly*, 659 A.2d 1104 (R.I. 1995); *NLRB v. Yeshiva University*, 444 US 672 (1980)). The Employer, as might be expected, objects to the Union's petition claiming that there has been no change in the status of either Lieutenants and/or Captains and that the Board's 2014 decision was correctly decided and should be followed by the Board again in the present case.

This Board's regulations codify the term "managerial employees" as follows:

> Those employees who formulate and effectuate management policies by expressing and making operative the decisions of their employers. Managerial employees must exercise discretion within or even independently of, established employer policy and must be aligned with management. An employee may be excluded from a bargaining unit as managerial only if he or she represents management's interests by taking or recommending discretionary actions that effectively control or implement employer policy.
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> Board General Rules & Regulations, 1.2A No. 27

The above definition, as noted, follows both State and Federal law regarding the exclusion from bargaining unit membership of managerial employees. (See *Fraternal Order of Police, Westerly Lodge 10 v. Town of Westerly*, *supra* at 1107; *NLRB v. Yeshiva University*, *supra* at 690). Thus, an employee may be excluded as managerial only if he/she represents management interests by taking or recommending discretionary actions that control or implement employer policy. "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.

Similar to the exclusion for managerial employees, the courts have also excluded employees from inclusion in a bargaining unit who are defined as supervisory. Adopting

the definition set forth in the National Labor Relations Act, the Rhode Island Supreme Court defined a supervisor as

> 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.
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> *Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board*, 694 A.2 1185, 1189 (R.I. 1997).

The Board's regulations track this definition of a supervisory employee (see Board Rules & Regulations, 1.2A No. 52). In applying the definition of a supervisor, the United States Supreme Court has approved a three-part test for determining supervisory status. The Court identified the test as follows:

> Employees are statutory supervisors if (1) they hold the authority to engage in any [one] of the [twelve] listed supervisory functions, (2) their exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment, and (3) their authority is held in the interest of the employer.
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> *NLRB v. Kentucky River Community Care*, 532 US 706, 713 (2001).

To find that an employee has satisfied the first prong of the Supreme Court's test, a fact finder need only find that the employee has the authority to perform any single one of the twelve enumerated duties. An employee need not actually perform an enumerated duty to satisfy the first prong of the test so long as the employee has the authority to do so for it is the power and not the frequency of its use which is dispositive. See *Beverly Enterprises Virginia, Inc. v. NLRB,* 165 F.3d 290, 294 (4th Cir. 1999). See also *Maine Yankee Atomic Power Co. v. NLRB,* 624 F.2d 347, 360 (1st Cir. 1980). This also includes individuals who possess the authority to recommend any of the duties identified by the Court.

The second prong of the test for supervisory status requires that the employee exercise his/her authority with independent judgment. Determining whether an individual uses independent judgment in the exercise of functions indicative of supervisory status is an extraordinarily fact intensive analysis. See *Bristol County Water Authority and Teamsters Local Union No. 251,* EE-3636 at p. 3. To satisfy this test, the employee/claimed supervisor must exercise his/her authority in a non-ministerial fashion so as to achieve management goals. In other words, the exercise of the independent judgment must be substantive in form and not merely a rote assignment or application. As the United States Supreme Court has stated, "it is certainly true that the statutory term "independent judgment" is ambiguous with respect to the *degree* of discretion required for supervisory status. See *NLRB v. Health Care & Retirement Corp. of America, supra*,

at 579. Many nominally supervisory functions may be performed without the "exercise [of] such a degree of...judgment and discretion...as would warrant a finding" of supervisory status under the Act." (see *Kentucky River,* 532 US at 713). However, it must be emphasized that employees who do not formulate or effectuate the employer's policies are generally not viewed as exercising independent judgment (see *State v. Local No. 2883, AFSCME*, 463 A.2d 186, 190 R.I. 1983). Further, the courts have been clear that not every person who gives an order or direction is necessarily a supervisor and not all assignments and directions given by an employee involve the exercise of supervisory authority. See *NLRB v. Yeshiva University*, 444 U.S. 672, 690 (1980); *Neighborhood Legal Services, Inc.*, 236 N.L.R.B. 1269, 1273 (1978); *Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board*, 694 A.2 1185 (R.I. 1997).

In the third portion of the test, the claimed supervisor must use his/her authority to promote the interest of the employer. In describing this standard, the United States Supreme Court has noted as follows: "Consistent with the ordinary meaning of the phrase in the interest of the employer, the Court has held that acts within the scope of employment or on the authorized business of the employer are in the interest of the employer." (See *NLRB v. Health Care & Retirement Corporation of America*, 511 US at 577, citing *Packard Motor Car Co. v. NLRB,* 330 U.S. 485, 488 – 489 (1947)).

Applying the above definitions and standards to the facts in the present case and as will be discussed in more detail below, the Board finds that Lieutenants are neither managerial nor supervisory in exercising their duties and responsibilities and, therefore, may be included in a bargaining unit for collective bargaining purposes. As for Captains, the Board has found that there is a lack of credible evidence sufficient to demonstrate that Captains are neither managerial and/or supervisory and, therefore, Captains must continue to be excluded from any bargaining unit and are not eligible for collective bargaining.

A. Lieutenants

The Employer currently, as of the date of the formal hearing, has eight (8) Lieutenants assigned to various sectors of its facility. (See Petitioner Exhibit 2; Transcript at pages 13 – 14). The generic duties of Lieutenants are set forth in the job description. (Joint Exhibit 1; Transcript at pages 14 – 15). The testimony before the Board from the Union's sole witness, Lieutenant Andrew Laprade, is that Lieutenants do not possess any of the traditional authority outlined in the Board's definition of a supervisor. (See Transcript at pages 15 – 17). Lieutenants do, however, have the authority to transfer or change an officer's post assignment. (Transcript at page 17; 19). Lieutenants also fill in as Shift Commanders for Captains when the latter are not available. (Transcript at page 25). When working as a Shift Commander, the Lieutenant may have the occasion to make decisions regarding assignments of Correctional Officers or to transfer a Correctional Officer to a different post. (Transcript at page 25 – 26). While the focus of the Union's questioning of the witness was on whether Lieutenant's (and, to a

lesser extent, Captains) had the authority to exercise any of the factors denominated in the definition of a supervisor (see Transcript at pages 15 – 23) and the focus of the Employer's questioning was on how Lieutenants exercised their assignment/transfer authority and whether Lieutenants could effectively recommend discipline (see Transcript at pages 25 – 37), there was very little discussion of whether the Lieutenants exercise their authority based on his/her independent judgment and whether the authority was exercised in the interest of the Employer.

Applying the three-part test described above to the duties of the Lieutenant, it is clear to the Board that the position does not fit within the entire definition of a supervisor. Initially, it is obvious that Lieutenants do not exercise any of the indicia of supervisory authority set forth in the definition of a supervisor in the Board's Rules and Regulations with the exception of the ability to transfer. (See Transcript at pages 15 – 17). However, the exercise of the authority to transfer a Correctional Officer from one post to another (Transcript at page 17) does satisfy the first prong of the supervisory test,[2] it is not, by itself, sufficient to declare Lieutenants supervisors. The Board must also determine whether the exercise of the authority demonstrates that the Lieutenant uses independent judgment in the exercise of functions indicative of supervisory status and such exercise is in the interest of the employer. In the Board's view, the case for excluding Lieutenants from a bargaining unit based on their supervisory status falls apart because of the lack of use of independent judgment when transferring or assigning individuals (the Board believes that the actual decision to transfer a Correctional Officer is performed in the interest of the Employer).

The testimony before the Board, as noted, is that Lieutenants have the authority, when acting as Shift Commanders, to assign and/or staff posts and transfer an individual from one post to another. (Transcript at page 17; 25; 34 – 36). While the Union's witness acknowledged that he used his "expertise and knowledge of the facility" in making staffing decisions (Transcript at page 36), it is the Board's view that these types of decisions do not rise to the level of use of independent judgment sufficient to satisfy the regulatory standard established by the Board's Rules and Regulations and the case law. As this Board has previously noted, when analyzing such factors as "assignment" or "responsibly directing" employees it is apparent that not all assignments and directions given by an employee involve the exercise of supervisory authority. See *Central Falls Detention Facility Corporation and Fraternal Order of Police, Local 50*, EE-3717, at page 7. Thus, as noted by one court,

> If any authority over someone else, no matter how insignificant or infrequent, made an employee a supervisor, our industrial composite would be predominantly supervisory. Every order giver is not a supervisor. Even the traffic director tells the president of a company where to park his car.
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> *Providence Hospital*, 320 NLRB 717 (1996).

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[2] Under federal labor law, the 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. See *Rest haven Living Center*, 322 NLRB No. 33 (1996).

In other words, and as the Board noted in its *Central Falls Detention Facility* decision, "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." See *Central Falls Detention Facility Corporation and Fraternal Order of Police, Local 50*, EE-3717, at page 7.

In the instant case, the Board believes the evidence demonstrates that the exercise of this authority is only a minor part of a Lieutenant's day to day activities and only occurs when the Lieutenant is acting as a Shift Commander, a role that is primarily the responsibility of a Captain. The evidence, in the Board's view, shows that the exercise by Lieutenants of this transfer or assignment authority is more ministerial in nature than a product of their independent judgment. In other words, the evidence before the Board shows that the transfer authority exercised by Lieutenants is not substantive in form but merely a rote assignment or application. Based on the evidence before the Board, Lieutenants are aware of who is on a particular shift and whether the individual has worked in a particular pod previously or is in his/her probationary status and how that would impact a shift. (Transcript at page 17). That type of exercise of transfer or reassignment authority is, in the Board's view, of a routine or ministerial nature.

Similarly, the Board has found no substantive evidence to support the notion that Lieutenants have the ability to effectively recommend action to a superior on one of the 12 indicia of supervisory status. (Transcript at pages 20; 29). While the Employer presented a large number of corrective action forms designed, apparently, to suggest that Lieutenants and Captains are involved in the disciplinary process (see Employer Exhibits 3 – 27), the evidence before the Board was clear that disciplinary decisions were made by the Major or the Warden and not Lieutenants or Captains. (Transcript at page 18). Further, the evidence showed more than a few times where even when a Lieutenant made a recommendation of action, the Major or Warden would ignore the recommendation and take a different position. (Transcript at pages 21; 28; 48 – 49; 55 – 56). While it is apparent that a Lieutenant can make a recommendation, whether that recommendation is followed is totally within the discretion of the Major and/or the Warden. (See Transcript at page 20). In short, in this Board's view, Lieutenants do not have or exercise the authority to "effectively recommend" action on any of the 12 indicia of supervisory authority set forth in the Board's Rules and Regulations.

Finally, in the Board's 2014 decision, it determined that because the Lieutenants served in the capacity of Shift Commander and performed the duties of a Captain at those times, that Lieutenants had "the authority to issue discipline, if and when necessary." See *Central Falls Detention Facility Corporation and Fraternal Order of Police, Local 50*, EE-3717, at page 21. The Board also concluded that Lieutenants exercised independent judgment in evaluating subordinate officers. *Id.* at page 22. This evidentiary finding in the 2014 case did not survive in the present case before the Board. As already discussed, Lieutenants do not possess any disciplinary authority on their own nor do they have the ability to "effectively recommend" such action. Similarly, their evaluation authority is fairly

limited and demonstrates little, if any, independent judgment or authority. (Transcript at page 45 – 46).

For the above stated reasons, the Board finds that Lieutenants are not supervisors as that term is defined in the Board's Rules and Regulations and are, therefore, eligible for collective bargaining if not otherwise prohibited.

The Board's determination that Lieutenants are not supervisors does not end its analysis of whether Lieutenants are eligible for collective bargaining. The Board must also look to see whether Lieutenants could be managerial employees and, thus, excluded from eligibility for collective bargaining.

As noted above, to be found to be managerial employees Lieutenants must show that they represent management interests by taking or recommending discretionary actions that control or implement employer policy. As the U.S. Supreme Court stated in *NLRB v. Yeshiva University*, 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." *Id.* at 690. As discussed in the supervisory section above, there is, simply stated, no evidence before this Board to substantiate a finding that Lieutenants are managerial employees. There is no evidence the Board can point to that supports Lieutenants performing their duties in anyway other than the "routine discharge of professional duties..." *Id.* at 690. It is also interesting to note that in its 2014 decision, this Board only found that Lieutenants were supervisors and did not find that they satisfied the managerial employee standard. See *Central Falls Detention Facility Corporation and Fraternal Order of Police, Local 50*, EE-3717, at pages19 – 22. As such, the Board finds that Lieutenants are not managerial employees and are, therefore, eligible for collective bargaining.

B. Captains

The Employer currently, as of the date of the formal hearing, has three (3) Captains assigned to its facility. (See Petitioner Exhibit 2; Transcript at pages 13 – 14). The generic duties of Captains are set forth in the job description. (Joint Exhibit 2; Transcript at page 15). As noted in the discussion regarding Lieutenants, the Union presented only a single witness, a Lieutenant, and did not offer any firsthand testimony from a Captain regarding the duties and responsibilities of the position.[3] This lack of firsthand testimony from someone who occupies the position of Captain makes it that much more difficult for the Board to determine whether the position satisfies the criteria to be either a supervisor or a managerial employee or both and, therefore, legitimately be excluded from collective bargaining. While the Union's witness did assert that Captains do not possess many of the indicia of supervisor set forth in the Board's definition in its Rules and Regulations (Transcript at page 17 – 18), this testimony, in the Board's view was, at best, incomplete. What does appear to be clear to the Board is that as the regular Shift Commander the

[3] The Union's witness did assert that he was "familiar" with the role of a Captain (Transcript at page 15). The witness acknowledged, when questioned by the Employer, that at least one Captain was aware that he (the witness) was at the hearing testifying that the Captain was "not a supervisor or a manager..." (Transcript at pages 31 – 32).

Captains have day-to-day operational control of each shift. (Joint Exhibit 2). More importantly, there appears to be little evidence to support the Union's claim that the duties and responsibilities of the Captain position have changed significantly from what they were when the Board issued its 2014 decision. See *Central Falls Detention Facility Corporation and Fraternal Order of Police, Local 50*, EE-3717, at pages 13 – 19. Other than to present testimony that Captains do not have the authority to hire, fire, suspend, lay off, recall, or promote (Transcript at page18), the Union presented no evidence to show whether Captains meet or fail to satisfy the factors set forth in the three part supervisory test[4] or exercise the independent judgment crucial to demonstrating supervisory status or being determined to be a managerial employee. This paucity of evidence from the Union leads the Board to the inevitable conclusion that there has been no significant change in the duties and responsibilities of Captains from the time of the Board's decision in 2014.

In the instant case and as argued by the Employer, the Union has failed to submit sufficient evidence to this Board to demonstrate that there has been a change in circumstances as to how Captains perform their duties in the facility to warrant a finding by this Board that Captains can be included in a bargaining unit for collective bargaining purposes. Therefore, based on a review of the reliable evidence on the record in this case, it is this Board's determination that Captains should be excluded from collective bargaining as they carry the indicia of supervisory and managerial employees as those terms are defined in this Board's Rules and Regulations and case law.

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

3. The Employer is a maximum-security facility that provides detention services for the federal government. The facility operates 24/7and is organized around 13 housing units or pods that house the prisoners held at the facility.

4. The Union currently represents Correctional Officers and Sergeants in the bargaining unit. Correctional Officers are assigned to posts on one of the three shifts.

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[4] It is clear from the evidence that Captains have the authority to transfer and/or assign Correctional Officers to a different shift or post, thereby satisfying the first factor in the supervisory test. In addition, because the term acting in the "interests of the employer" is so broad, the Board finds that Captains exercise their transfer and assignment authority in the interest of the Employer's operation.

5. Sergeants are also in the bargaining unit with the Correctional Officers and act as Shift Supervisors and directly supervise the activities of the Correctional Officers.

6. In 2014 this Board was presented with a representation petition to include Lieutenants and Captains, along with Sergeants, in a then existing bargaining unit. The Board determined that the Lieutenants and Captains should be excluded from the bargaining unit as they satisfied the criteria as statutory supervisory employees.

7. In April 2023 the Union filed a petition, docketed as EE-3762, seeking to represent three (3) Captains and eight (8) Lieutenants in a collective bargaining unit.

8. Captains act as Shift Commanders and supervise the work of the Correctional Officers and Sergeants and are responsible for the operation of the shift to which they are assigned.

9. Lieutenants fill in for Captains as Shift Commanders on weekends, holidays and vacations.

10. A Shift Commander has the authority to assign Correctional Officers to posts and may transfer a Correctional Officer to a different position during a shift. It is routine for a Shift Commander to inform a Correctional Officer that he/she is being held over to work another shift.

11. The evidence in the record supports a finding that Lieutenants do not have the authority to hire, fire or suspend an employee, lay off, recall or promote an employee, provide a reward or adjust grievances.

12. The evidence in the record supports a finding that Captains cannot hire or fire, nor can they suspend an employee, layoff, recall or promote an employee.

13. The evidence in the record supports a finding that the majority of decisions made involving Correctional Officers, Sergeants, Lieutenants and Captains are made by either the Major or the Warden.

14. The evidence in the record supports a finding that Lieutenants, in performing their job duties and responsibilities, do not exercise independent judgment in a substantive form or manner and do not formulate or effectuate the Employer's policies.

15. The evidence in the record supports a finding that Lieutenants do not take or recommend discretionary actions that effectively control or implement employer policy.

16. There is no evidence in the record to support a change in the supervisory status of Captains.

CONCLUSIONS OF LAW

1. The evidence in the record does not establish that Lieutenants formulate and effectuate management policies by expressing and making operative the decisions of the Employer, or that the position exercises discretion within or even independently of established Employer policy.

2. The evidence in the record does not establish that Lieutenants have the authority, in the interest of the Employer, to hire, fire, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances, or effectively recommend such action. Further, the evidence in the record does not establish that Lieutenants exercise of the foregoing authority was not of a merely routine or clerical nature nor did it require the use of independent judgment.

3. The position of Lieutenant is not supervisory or managerial and is, therefore, permitted to engage in collective bargaining.

4. The position of Captain is supervisory and, therefore, excluded from engaging in collective bargaining.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Scott G. Duhamel, Member

Aronda R. Kirby, Member (Dissent)

Stan Israel, Member

****BOARD MEMBERS KENNETH B. CHIAVARINI, HARRY F. WINTHROP AND LAWRENCE PURTILL WERE ABSENT FOR VOTING ON THE CONCLUDED CASE.**

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

Dated: *April 16, 2024*

By: _____
Thomas A. Hanley, Administrator

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

IN THE MATTER OF DONALD W. WYATT DETENTION FACILITY -AND- NEW ENGLAND POLICE BENEVOLENT ASSOCIATION, LOCAL 808	CASE NO. EE- 3762

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- 3762, dated April 16, 2024, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **April 17, 2024.**

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

Dated: April 17, 2024

By: /S/ Thomas A. Hanley
Thomas A. Hanley
Administrator