
In the Matter of BRISTOL COUNTY RETIREMENT BOARD
and
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA, LOCAL 59

Case No. MCR-4841

34.2 *community of interest*
35.7 *supervisory and managerial employees*
36. *One Person Units*
46.11 *disagreements as to unit composition*
46.16 *showing of interest*
93.3 *petition for certification*

March 14, 2001

Helen A. Moreschi, Chairwoman

Mark A. Preble, Commissioner

David Grunebaum, Esq. *Representing Bristol County
Retirement Board*

David Cabral *Representing Teamsters, Chauffeurs,
Warehousemen and Helpers of
America, Local 59*

DECISION AND DIRECTION OF ELECTION¹

Statement of the Case

The Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 59 (Union) filed a petition with the Labor Relations Commission (Commission) on August 31, 2000 seeking to represent certain administrative employees employed by the Bristol County Retirement Board (Board). The petitioned-for unit included the assistant executive director and administrative assistant positions and excluded the executive director position. On October 30, 2000, Cynthia A. Spahl, a duly-designated hearing officer of the Commission (Hearing Officer), conducted a hearing at which both parties had an opportunity to be heard, to examine witnesses, and to introduce evidence. At the hearing, the Union moved to sequester the witnesses, and the Board moved to dismiss the petition due to an inadequate showing of interest. Each party opposed the other's motion. The Hearing Officer allowed the Union's motion to sequester the witnesses and took the Board's motion to dismiss under advisement. The Union and the Board filed post-hearing briefs on November 16 and November 20, 2000 respectively. The Hearing Officer issued Recommended Findings of Fact on November 29, 2000. The Board filed challenges to the Recommended findings of Fact and a Motion to Strike the Union's post-hearing brief on December 8, 2000.²

1. Pursuant to 456 CMR 13.02 (1), the Commission designated this case as one in which the Commission shall issue a decision in the first instance.

2. Because of the outcome we reach here, it is unnecessary to rule on the Board's motion to strike.

The Union filed a response to the Board's Motion to Strike on December 18, 2000.

Stipulations

1. M.G.L. c. 150E (the Law) applies here.
2. The Union is an employee organization under Section 1 of the Law.
3. The Board is an employer under Section 1 of the Law.
4. The two administrative assistants are statutory employees and are entitled to vote in an election for collective bargaining representatives.

Findings of Fact³

The Board consists of the following five members: Chairman Patrick Harrington (Harrington), William Downey (Downey), Stephen Rivard (Rivard), Cynthia Sevigny (Sevigny), and Edmund Lima (Lima). The Board employs the following employees: Executive Director Cynthia Bernon (Bernon),⁴ Assistant Executive Director Joan Harwood (Harwood),⁵ and Administrative Assistants Beverly Silva (Silva) and Bernice Miller (Miller).⁶ Bernon and Harwood have private offices; Silva and Miller do not.⁷

The Board determines what Bristol County employees will receive a pension, places Bristol County employees into retirement groups within the retirement system, protects assets in the retirement system, and establishes investment priorities. The Board selects and hires investment advisors and counselors. The Board decides whether to purchase real estate and to make capital expenditures for items like computers, software, and office equipment. The chairman of the Board makes hiring decisions. The Board disciplines and terminates employees. The Board determines the employees' compensation and benefits.⁸ The Board votes on an annual budget. The Board's budget establishes the number of employees, employees' wages and benefits, and compensation for investment advisors and counselors. The Board reviews and gives final approval on all office expenditures.

Bernon reports directly to the members of the Board. Bernon oversees the office on a daily basis and assigns job duties to the administrative assistants and assistant executive director. If an employee has a question about a job duty or requires training, either Bernon or Silva answer the question or provide the training. Bernon

sometimes interviews prospective employees and makes hiring and wage recommendations to the Board. However, she is not involved in the hiring process if the decision to hire is based on political considerations. Bernon occasionally conducts staff meetings with the assistant executive director and administrative assistants. Although Bernon is responsible for reporting problems with employee attendance and job performance to the Board, she has never attended an executive session when Board members discussed an employee's job performance.

The administrative assistants and assistant executive director must ask Bernon for permission to take vacation leave and personal days. Bernon authorizes their requests provided there is adequate office staffing. Harwood, Silva, and Miller must also ask Bernon for permission if they need to leave the office during the day. Bernon is able to leave the office in case of an emergency without obtaining prior permission from the Board members. However, if she plans to be absent for an extended period, she informs the Board members.⁹ From 1983 to November 1999, Silva filled in for Bernon when she was absent and performed Bernon's job duties. Since November 1999, Harwood has filled in for Bernon when she has been absent and has performed some of Bernon's job duties.

Bernon purchases office supplies. Bernon opens and distributes the office mail.¹⁰ Bernon receives phone calls from and conducts interviews with employees in the Bristol County retirement system seeking benefit estimates. She processes disability applications, wires money, monitors custodial accounts, and performs benefit calculations according to a formula. If other staff members are absent, Bernon processes pension checks and files affidavits. Bernon is the only employee who attends seminars and conferences.¹¹ When Board members attend conferences, she makes the necessary arrangements. Bernon notifies active and retired members in the retirement system of any changes in regulations, laws, and proposed legislation. She communicates with the software provider for the office computer system.

Bernon pays bills and balances the office ledgers. She is responsible for presenting payment vouchers to the Board and handling the office payroll. Bernon prepares and submits to the Board for approval draft budgets, annual statements on the financial condition of the retirement system, and monthly trial balances to the Public Employee Retirement Administration Commission (PERAC). Bernon must receive the Board's approval to expend additional amounts beyond the expenses allocated in the budget and to authorize employee overtime. Bernon tracks the Board's

3. The Commission's jurisdiction is uncontested.

4. Bernon has been the executive director since 1983. From 1979 to 1983, Bernon worked as a principal clerk. The Board changed the titles of principal clerk and senior clerk to administrative assistant in 1989 or 1990.

5. In November 1999, Harrington hired Harwood to fill the newly created position of assistant executive director.

6. Although job descriptions exist for the positions of executive director, assistant executive director, and administrative assistant, the Board has never voted to approve the job descriptions.

7. When Harrington hired Harwood, Bernon vacated her office and moved into another office. Harwood took Bernon's prior office. Harwood's office overlooks the workspace of the two administrative assistants.

8. Bernon earns \$1,250 per week. Harwood earns \$1,005 per week. Silva earns \$669.40 per week. Miller works four days per week and receives \$460.84 per week.

9. Bernon is entitled to five weeks of vacation leave, three personal days, one and a quarter sick days per month, and a few days of bereavement leave. From approximately October 1999 to October 2000, Bernon took between three to four weeks off from work.

10. In Bernon's absence, Silva opens and distributes the mail. However, Harwood recently performed these duties when both Bernon and Silva were absent.

11. Prior to approximately October 1999, Bernon attended national conferences in California, Texas, and Florida. She did not attend any conferences after that date due to family matters. When she attends conferences, the Board pays her wages, hotel and airline costs, and a per diem expense.

monthly expenditures and notifies the Board of the budget balance. Bernon also tracks appropriation monies and tells the Board when excess funds are available for investment.

Prior to a Board meeting, Bernon prepares the agenda and assembles all the materials that the Board must consider like retirement applications. Bernon gives the agenda to Harwood to type on the computer before the meeting. Bernon and Harwood attend Board meetings. Bernon takes notes while Harwood tapes the meeting. Harwood subsequently prepares minutes of the meeting and mails the minutes to the Board members for review and comment.¹²

Harwood makes deposits and does postings. If Harwood is unable to make a deposit or needs help with the postings, Miller assists her. Harwood oversees member enrollments. Harwood has never attended an executive session of the Board pertaining to policy, procedures, hiring, firing, or discipline.

Opinion

The Board argues that the petitioned-for unit consisting of the assistant executive director and administrative assistant positions is inappropriate because the assistant executive director is a supervisory employee and belongs in a separate supervisory bargaining unit with the executive director. The Board further asserts that, if the assistant executive director is not a supervisory employee, the executive director position should be included in the bargaining unit with the assistant executive director and administrative assistant positions to avoid a one-person supervisory bargaining unit. The Union, however, contends that the executive director's position should be excluded from the petitioned-for unit because that position is either managerial or supervisory. Therefore, we first examine whether the executive director is a managerial employee.

Managerial

Section 1 of M.G.L. c.150E, sets forth the criteria for determining whether an employee is a managerial employee:

Employees shall be designated as managerial employees only if they (a) participate to a substantial degree in formulating or determining policy, or (b) assist to a substantial degree in the preparation for or the conduct of collective bargaining on behalf of a public employer, or (c) have a substantial responsibility involving the exercise of independent judgment of an appellate responsibility not initially in effect in the administration of a collective bargaining agreement or in personnel administration.

Under Section 3 of the Law, an employee must be excluded from an appropriate bargaining unit if the employee's actual duties and responsibilities satisfy any one of the three statutory criteria.

Managerial employees make policy decisions that are of major importance to the mission and objectives of the public employer. *Wellesley School Committee*, 1 MLC 1389, 1400 (1975), *aff'd School Committee of Wellesley v. Labor Relations Commission*,

376 Mass. 112 (1978). Neither limited participation in the decision-making process nor attending and participating in policy-making discussions is sufficient to consider an employee managerial if the person's input is merely informational or advisory in nature. *Town of Medway*, 22 MLC 1261, 1268 (1995). Here, the evidence shows that Bernon is not involved to a substantial degree in formulating or determining policy. Rather, the Board makes all policy-related decisions like what Bristol County employees will receive a pension, how to protect assets in the retirement system, and what the investment priorities are.

To be considered a managerial employee under the second part of the statutory definition, a person must participate to a substantial degree in preparing for or conducting collective bargaining. *Commonwealth of Massachusetts*, 25 MLC 121, 124 (1999). Because the Board is currently unorganized for the purposes of collective bargaining, the second statutory criterion is inapplicable here.

Under the third part of the statutory definition, the Commission has determined that the use of independent judgment requires that an employee exercise discretion without consultation or approval. *Id.* There must be more than a coincidence of recommendation and acceptance by a higher authority. *Wellesley School Committee*, 1 MLC at 1408. To be substantial, the responsibility must not be perfunctory or routine and must have some impact and significance. *Id.* However, the record here does not contain any evidence indicating that the executive director exercises independent judgment. Accordingly, the executive director is not a managerial employee under any of the three statutory criteria.

Supervisory

We next examine whether the assistant executive director and executive director are supervisory employees. In determining whether an employee is a supervisory employee, the Commission considers the following factors: whether the employee has the independent judgment and authority to assign and to direct the work of employees; the authority to initiate and to recommend discipline; the authority to adjust grievances; and the independent authority to make or the power to recommend effectively personnel decisions like hire, transfer, suspend, promote or discharge employees. *Town of Bolton*, 25 MLC 62, 67 (1998). Additionally, the Commission has concluded that non-binding recommendatory authority in hiring decisions indicates supervisory status. *Eastham School Committee*, 22 MLC 1190, 1197 (1995). To be considered a supervisory employee, it is not necessary that all of the employee's job duties involve supervisory responsibilities. *Town of Bolton*, 25 MLC at 67; *City of Westfield*, 7 MLC 1245, 1252 (1980).

Here, Harwood types Board meeting agendas, tapes Board meetings, prepares and mails Board meeting minutes, makes deposits, does postings, and oversees member enrollments. None of these duties indicate any supervisory authority. Because the assistant executive director is not a supervisory employee and

12. The Board's usual practice is to approve the Board meeting minutes at the next Board meeting.

shares a community of interest with the administrative assistants, that position is properly included in the bargaining unit.

Bernon's responsibilities, however, demonstrate that she has supervisory authority. For example, Bernon assigns job duties to the assistant executive director and administrative assistants and oversees the office on a daily basis. When the decision to hire is not based on political considerations, Bernon makes hiring recommendations to the Board. Although Bernon does not discipline employees, she reports problems with employee attendance and job performance to the Board. Nevertheless, because we are reluctant to create one-person bargaining units where there is a larger appropriate unit, we include the executive director position in the bargaining unit because that position shares a community of interest with the assistant executive director and administrative assistant positions. *Barnstable County*, 26 MLC 183 (2000); *Freetown-Lakeville Regional School District*, 11 MLC 1508, 1517, n.6 (1985); *Chatham School Committee*, 6 MLC 1042 (1975).

Showing of Interest

The final issue raised by the Board is whether the showing of interest submitted by the Union is adequate. The sufficiency of a showing of interest is an administrative determination made by the Commission and cannot be litigated by the parties to a representation petition. *Commonwealth of Massachusetts*, 10 MLC 1557 (1984). Here, the Commission has investigated the sufficiency of the showing of interest in the petitioned-for unit and in the expanded unit and found that it complies with Section 14.05 of the Commission's regulations.

CONCLUSION AND DIRECTION OF ELECTION

Based on the record and for the reasons stated above, we conclude that a question of representation has arisen concerning certain employees of the Bristol County Retirement Board and that the following constitutes an appropriate bargaining unit within the meaning of Section 3 of the Law:

All full-time and regular part-time administrative employees employed by the Bristol County Retirement Board in the following classifications: executive director, assistant executive director, and administrative assistants but excluding all managerial, confidential and casual employees and all other employees.

IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted to determine whether a majority of the employees in the above-described bargaining unit desires to be represented by the Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 59 or by no employee organization. The eligible voters shall include all those persons within the above-described unit whose names appear on the Board's payroll for the payroll period for the week ending Saturday, March 3, 2001 and who have not yet since quit or been discharged for cause. To ensure that all eligible voters shall have the opportunity to be informed of the issues and the statutory right to vote, all parties to this election shall have access to a list of voters and their addresses which may be used to communicate with them.

Accordingly, IT IS HEREBY FURTHER DIRECTED that two (2) copies of an election eligibility list for each of the bargaining units containing the names and addresses of all eligible voters must be filed by the Board with the Executive Secretary of the Commission, 399 Washington Street, 4th Floor, Boston, MA 02108-5213 not later than fourteen (14) days from the date of this decision.

The Executive Secretary shall make the list available to all parties to the election. Failure to submit this list in a timely manner may result in substantial prejudice to the rights of the employees and the parties, therefore, no extension of time for filing the list will be granted except under extraordinary circumstances. Failure to comply with this direction may be grounds for setting aside the election, should proper and timely objections be filed.

SO ORDERED.

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