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

IN THE MATTER OF

BRISTOL COUNTY WATER AUTHORITY
Employer

Case No. EE-3636

- AND -

TEAMSTERS LOCAL UNION NO. 251
Petitioner

DECISION AND DIRECTION OF ELECTION

NATURE AND TRAVEL OF THE CASE

The above entitled matter came on to be heard on a "Petition by Employees for Investigation and Certification of Representatives" dated April 21, 2000 (hereinafter "Petition"), and filed by the Teamsters Local Union No. 251 (hereinafter "Petitioner") on April 24, 2000, wherein the Petitioner sought to represent eight positions employed by the Bristol County Water Authority, (hereinafter "Employer"). The Petition was amended on or about May 22, 2000 to include two additional positions. The positions sought are: Administrative Assistant, Personnel and Purchasing Coordinator, Engineering Technician, Distribution Superintendent, Assistant Engineer, Manager of Customer and Commercial Services, Water Quality Supervisor, Production Superintendent, Operations Manager, and Manager of Accounting and MIS. The petition was accompanied by seven (7) signature cards, which were verified on May 22, 2000 and, were of sufficient number to warrant the conducting of an election.

An informal hearing on the Petition was conducted by the Board's Administrator on May 22, 2000, with representatives of both the Employees and the Employer present. At that time, the Employer objected to all the positions on the grounds that they are either supervisory, managerial, or confidential Formal hearings on this matter were held on August 31, 2000, and January 9, 2001 In addition, the Board also authorized witness testimony via deposition, and such depositions were held on January 30, 2001, and February 5, 2001. At the commencement of the formal hearing, the Employer indicated that it was not contesting the inclusion of the positions of Assistant Engineer and Engineering Technician within the proposed bargaining unit. Upon the conclusion of the formal hearings, the parties requested and were granted four (4)

extensions of time in which to file their briefs. The Employer's brief was filed on April 12, 2001, and the Union's brief was filed on April 16, 2001

On April 27, 2001, the Union filed a charge of Unfair Labor Practice (ULP-5533). May 22, 2001, the Board, in accordance with its policies, voted to hold this election petition in abeyance until ULP-5533 was resolved. On June 14, 2001, the Union filed a request to proceed with the election petition. On June 21, 2001, the Employer filed an objection to the request to proceed. On August 28, 2001, the Board granted the Union's request to proceed and made the within determinations regarding the contested positions.

In reaching the decision herein, the Board has carefully reviewed the transcripts and exhibits and has considered the arguments set forth in the respective briefs.

THE EMPLOYMENT SETTING

The Bristol County Water Authority is an entity charged with treating and providing the public water supply for the Town of Barrington, the Town of Bristol, and the Town of Warren, Rhode Island. The Authority services 16,000 customers, which represent a total population of approximately 50,000. (TR. #1, p. 10) The Authority is governed by a nine (9) member Board (three from each Town) that serves as the policy making authority with regard to the operation of the Authority and is the ultimate decision maker, relative to personnel decisions. Authority's Board is divided into three separate committees; the "Engineering" Committee, the "Audit/Finance" Committee and the "Personnel/Retirement" Committee. (*See Petitioner's Exhibit #1: Organizational chart.)* The day-to-day operations of the Authority are carried out by its Executive Director, Mr. Pasquale DeLise, who reports to the Board of Directors. (TR. #1, p. 5)

The Employees at issue in this petition are generally those whose titles appear within the blocks on the organizational chart. There are also quite a few other employees (laborers, customer service personnel, meter readers) who are already represented by another labor organization, the Brotherhood of Utility Workers.

DISCUSSION

The first issue that the Board will address is its procedural decision to proceed with the election despite the existence of an old Board policy, which on its face, prohibits the Board from proceeding with an election petition while an unfair labor practice is pending. The Board has

rejected the use of this policy within recent years and will now follow federal guidelines in considering the same. As noted in the Union's petition to proceed, by allowing a petitioner's charge to act as an impediment to the election process, the Board would be providing an incentive for employers to engage in conduct constituting unfair labor practices.

Under Rhode Island Law, certain municipal employees are permitted to engage in collective bargaining. (See Title 28, Chapter 9.4-1 et seq., the Municipal Employees Arbitration Act.) Supervisory, confidential or managerial employees are excluded from collective bargaining for various public policy and labor stability concerns. Professional employees are permitted to engage in collective bargaining, provided they are not otherwise excludable as supervisory, confidential or managerial

Supervisory Employees:

In the Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board, 694 A.2d 1185, 189 (R.I. 1997), the Rhode Island Supreme Court adopted the following federal definition of "supervisor":

> "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." (29 U.S.C. § 152(11))

Under federal 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, no. 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 judgement 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." As stated by the Fifth Circuit:

> '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.'" N.L.R.A. Law & Practice 2.03 (4) citing Providence Hospital, 320 NLRB 717 (1996).

Determining whether an employee has used independent judgment in making an assignment requires careful analysis of the facts. 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 employer is routine. Further, assigning tasks that clearly fall within an employee's job description does not require the use of "independent judgment". Likewise, issuing discipline according to a set schedule set forth in company handbooks is merely ministerial and does not require the use of independent judgment.

Confidential employees:

In Barrington School Committee v. Rhode Island State Labor Relations Board, 694 A.2d 1185 (R. 1992), the Rhode Island Supreme Court considered the question of which employees qualify as "confidential" and held:

> "Two categories of employees are recognized as confidential under the test and are therefore excluded from collective bargaining. The first category comprises those confidential employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. ... The second category consists of employees who, in the course of their duties, regularly have access to confidential information concerning anticipated changes which may result from collective bargaining negotiations." (Barrington at p. 1136, quoting NLRB v. Hendricks County Rural Electric Membership Corp, 454 U.S. 170 at 189)

The definition of "confidential" for collective bargaining purposes, as set forth in Barrington, is purposefully and narrowly constricted to two types of employees, because 'a more expansive application of the exclusionary rule would deprive a great number of employees, in an unwarranted fashion, of the statutory right to collectively bargain". Barrington at 1136, referencing, Note, "The Labor-Nexus" Limitation on the Exclusion of Confidential Employees—NLRB v. Hendricks County Rural Electric Membership Corp., 16 Ga. L. Rev. 745, 754 (1982).

Thus, the word "confidential", within the scope of labor relations, has a very specific legal meaning, which departs significantly from the routine dictionary definition of confidential (treated with confidence, private, secret). In all employment situations, there are countless types of information that are considered "private" or "secret", depending upon the relationship of the

party seeking the information to the person who has control of the information. For instance, most employee personnel information is private or secret (ie "confidential") to the individual employee and designated members of a department of human resources. This does not mean that clerks or secretaries in human relations or personnel departments are ineligible for collective bargaining. Further, employees with access to investigative pre-employment reports and reports of disciplinary actions including written reprimands do not meet the definition of "confidential" for collective bargaining purposes.

Managerial employees:

"Managerial" employees are employees who "formulate and effectuate management policies by expressing and making operative the decisions of their employers." Fraternal Order of Police, Westerly Lodge 10 v. Town of Westerly, 659 A.2d 1104,1107 (1995); State v. Local 2883 AFSCME, 463 A.2d 186, 190 (1983) citing and quoting in part NLRB v. Bell Aerospace Co., 416 U.S. 267, 278 (1974). Managerial employees must exercise discretion within or even independently of established employer policy and must be aligned with management. N.L.R.B. v Yeshiva University, 444 U.S. 672 (1980). An employee may be excluded as managerial only if he represents management interests by taking or recommending discretionary actions that control or implement employer policy. Id. "Employees whose decision-making is limited to the routine discharge of professional duties in projects to which they have been assigned cannot be excluded from coverage even if union membership arguably may involve some divided loyalty. Only if an employee's activities fall outside the scope of the duties routinely performed by similarly situated professionals will he be found aligned with management." Id at 690.

Professional employees:

Professional employees, who are permitted to engage in collective bargaining are defined as:

> "any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science of learning customarily acquired by a prolonged course of specialized intellectual; instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine, manual, or physical processes; or

(b) any employee who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph a, and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

Therefore, each of the contested positions must be examined in light of the foregoing definitions of supervisory employee, confidential employee, managerial, employee and professional employee. In the event that an employee is either supervisory, managerial or confidential, and also professional, the employee is precluded from participating in collective bargaining.

For each of the following positions, the Board has carefully considered the transcripts and exhibits. The Board has also given careful consideration to the arguments made by legal counsel for the respective parties. Although the Board will take each position in turn and will make separate findings of fact and conclusions of law, there are some factual issues that warrant a general discussion on the Board's conclusions: these include the issue of "approving" time sheets and "authorizing overtime".

The record will show that for many of the contested positions, the particular employee had some function in signing or initialing weekly attendance/payroll sheets. The Employer argues that "approving" these sheets makes a particular employee a "supervisor". This Board does not agree with such a conclusion. In many instances, the payroll "approval" is nothing more than a review of the sheets that have been prepared by the various foremen and signed by the individual employees. This Board believes that this type of action is merely a ministerial administrative function, designed to be a double check on the veracity of hours worked. The issue of actually ordering people to work overtime is a related, yet separate issue, which must be analyzed according to the factual circumstances.

Distribution Superintendent

FINDINGS OF FACT

1) Mr. Charles Lewis has held the position of Distribution Superintendent since April 2000 and has been employed by the Authority continuously in various positions since 1974. (TR. 8/31/00 p. 17-19) His job description as Distribution Superintendent was submitted into evidence as Petitioner's Exhibit # 2.

2) Mr. Lewis is responsible for overseeing the everyday operations of the water distribution system, to make sure that it is maintained and that the customers are properly served. (TR. 8/31/00 p. 18-19, 22) Mr. Lewis "reports" to Mr. Michael Munroe, the Operations Manager on a daily basis. (TR. 8/31/00 p. 20, 31)

3) Mr. Lewis served on committees for interviewing candidates for employment, which in turn made recommendations to the Executive Director, but he does not have the authority on his own to either hire or fire employees. (TR. 8/31/00 p. 20, 32)

4) Mr. Lewis has never issued any discipline to any employee. (TR. 8/31/00 p. 23)

5) Mr. Lewis has never been involved with planning or assisting in labor negotiations in his position as Operations Manager. (TR. 8/31/00 p. 21, 26)

6) Mr. Lewis schedules routine work for the employees in his department, and he checks to see whether the work is being performed in the field. Mr. Lewis has the ability to require overtime from the employees. (TR. 8/31/00 p. 22, 27)

7) Within the Production Department, selection of vacation time is done according to seniority. (TR. 8/31/00 p. 36) On a weekly basis, the Foreman is responsible for filling out the time sheets of employees and forwarding to Mr. Lewis for his initials. (TR. 8/31/00 p. 36-37)

8) In emergency situations, the Plant Operator, a member of the Utility Workers Union, has the authority to assign overtime work. (TR. 8/31/00 p. 37)

CONCLUSIONS OF LAW

1) The evidence in the record does not establish that Mr. Lewis has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action.

2) The evidence in the record does not establish that Mr. Lewis assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or, that in the course of his duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

3) The evidence in the record does not establish that Mr. Lewis formulates and effectuates management policies by expressing and making operative the decisions of his employer, or that he exercises discretion within or even independently of established employer policy.

4) The position of Distribution Superintendent is not confidential, managerial, or supervisory and shall not be excluded from the bargaining unit.

Water Quality Supervisor

FINDINGS OF FACT

1) Mr. Dalton Whitford has held the position of Water Quality Supervisor since 1986. He holds a Bachelor's Degree in Resource Development. (TR. 8/31/00 p. 41) His job description as Water Quality Supervisor was submitted into evidence as Petitioner's Exhibit # 3.

2) Mr. Whitford is responsible for monitoring and maintaining the water quality on the treatment process and distribution system. He reports to Mr. Michael Munroe, the Operations Manager. (TR. 8/31/00 p. 41)

3) Mr. Whitford has served on committees for interviewing candidates for employment, which in turn made recommendations to the Executive Director, but does not have the authority on his own to either hire or fire employees. (TR. 8/31/00 p. 42, 43) The interview committee does not establish the qualifications for positions or negotiate salary and benefits with potential employees. (TR. 8/31/00 p. 52)

4) Mr. Whitford has never issued any discipline to any employee, but one time did recommend to the Executive Director that an employee be discharged. (TR. 8/31/00 p. 43, 44)

CONCLUSIONS OF LAW

1) The evidence in the record does not establish that Mr. Whitford has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action.

2) The evidence in the record does not establish that Mr. Whitford assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or, that in the course of his duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

3) The evidence in the record does not establish that Mr. Whitford formulates and effectuates management policies by expressing and making operative the decisions of his employer, or that he exercises discretion within or even independently of established employer policy.

4) The position of Water Quality Supervisor is not confidential, managerial, or supervisory and shall not be excluded from the bargaining unit.

Manager of Customer and Commercial Services

FINDINGS OF FACT

1 Ms. Jan Williams has held the position of Manager of Customer and Commercial Services since 1995. Her job description as Manager of Customer and Commercial Services was submitted into evidence as Petitioner's Exhibit # 4. She works in the Bristol office building, on the first floor. (TR. 8/31/00 p. 61)

2) Ms. Williams is responsible for overseeing the customer service and meter reading area, cash receipts, accounts payable and payroll. (TR. 8/31/00 p. 55) She reports to Mr. Webster Goodwin, the Manager of Accounting and MIS. (TR. 8/31/00 p. 56) She oversees ten employees who are members of the Utility Workers Union., including four customer service representatives, two accountants, a foreman, meter readers and customer service technicians. (TR. 8/31/00 p. 60, 61)

3) Ms. Williams has served on committees for interviewing candidates for employment, which in turn made recommendations to the Executive Director, but does not have the authority on her own to either hire or fire employees. (TR. 8/31/00 p. 55) On all occasions but one, the Executive Director hired the recommended candidate. (TR. 8/31/00 p. 67) Ms. Williams does not conduct performance evaluations for the employees who report to her. (TR. 8/31/00 p. 55)

4) Ms. Williams has issued written warnings to employees on three occasions, but in each instance obtained prior clearance from Mr. Goodwin. (TR. 8/31/00 p. 58)

5) Ms. Williams does not participate or sit in on labor negotiations. (TR. 8/31/00 p. 60)

6) Ms. Williams reviews time sheets and can authorize overtime. She can also authorize unscheduled vacation time and personal time. Ms. Williams also prepares work schedules for meter readers, according to a predetermined schedule of readings. (TR. 8/31/00 p. 64, 72) When absences occur, Ms. Williams can reschedule employees. (TR 8/31/00 p. 71-72)

7) Ms. Williams is paid by salary, and the other people within her department are paid hourly (TR. 8/31/00 p. 69) Ms. Williams and some of the other employees carry business cards (TR. 8/31/00 p. 69-70)

8) Ms. Williams does not have the independent ability to promote employees, but has recommended that an employee be accelerated through the automatic progression of time steps. (TR. 8/31/00 p. 71)

CONCLUSIONS OF LAW

1) The evidence in the record does not establish that Ms. Williams has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action.

2) The evidence in the record does not establish that Ms. Williams assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or, that in the course of her duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

3) The evidence in the record does not establish that Ms. Williams formulates and effectuates management policies by expressing and making operative the decisions of her employer, or that she exercises discretion within or even independently of established employer policy.

4) The position of Manager of Customer and Commercial Services is not confidential, managerial, or supervisory and shall not be excluded from the bargaining unit.

Administrative Assistant

FINDINGS OF FACT

1) Ms. Cidalia Harper is employed as an Administrative Assistant. Her job description as Administrative Assistant was submitted into evidence as Petitioner's Exhibit # 5.

2) Ms. Harper is responsible for providing administrative assistance including typing, filing, and answering the telephone. She types monthly reports and agendas for the Board of Directors (TR. 8/31/00 p. 74-75) She prepares the notice of meeting for the Board, to comply with the Open Meetings Law and attends the monthly Board meeting. Ms. Harper's office is located right outside the Executive Director's door. (TR. 1/19/01 p. 36) Ms. Harper does all the typing for the Executive Director. (TR. 1/19/01 p. 46)

3) Ms. Harper attends Executive Sessions of the Board, when requested to do so. (TR. 8/31/00 p. 75-77) During Executive Session, some issues concerning negotiations with the Utility Workers have been discussed on a few occasions. (TR. 8/31/00 p. 79) Ms. Harper also prepares the minutes of the Executive Session meetings.

4) Ms. Harper does not attend grievance meetings or arbitration hearings involving the Utility Workers Union or prepare minutes of those meetings. (TR. 8/31/00 p. 77)

5) Ms. Harper does not have any role in the preparation of the Authority's budget. (TR. 8/31/00 p. 78)

CONCLUSIONS OF LAW

1) The evidence in the record does not establish that Ms. Harper has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action.

2) The evidence in the record does not establish that Ms. Harper assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or, that in the course of her duties, *regularly* has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

3) The evidence in the record does not establish that Ms. Harper formulates and effectuates management policies by expressing and making operative the decisions of her employer, or that she exercises discretion within or even independently of established employer policy.

4) The position of Administrative Assistant is not confidential, managerial, or supervisory and shall not be excluded from the bargaining unit.

Personnel and Purchasing Coordinator

FINDINGS OF FACT

1) Ms. Maria Neves has been employed as the Personnel and Purchasing Coordinator for eleven years and has been employed by the Authority for over nineteen (19) years. (TR. 1/9/01 p. 4) Her job description as Personnel and Purchasing Coordinator was submitted into evidence as Petitioner's Exhibit # 6. The job description is generally an accurate description of her duties and responsibilities, although there are a few things which are no longer functions of her position.

2) As part of her job, Ms. Neves maintains and updates the personnel files for items such as salary changes, filing employee commendations and thank you letters. (TR. 1/9/01 p. 9-10)

3) Ms. Neves does not participate in any collective bargaining negotiations or in the grievance procedure for other employees. (TR. 1/9/01 p. 10)

4) Ms. Neves does not have any role in employee performance evaluations. (TR. 1/9/01 p. 10)

5) Ms. Neves served as a member of the interviewing committee(s) that successfully recommended the hiring of seven employees. (TR. 1/9/01 p. 12-13)

CONCLUSIONS OF LAW

1) The evidence in the record does not establish that Ms. Neves has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action.

2) The evidence in the record does not establish that Ms. Neves assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or, that in the course of her duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

3) The evidence in the record does not establish that Ms. Neves formulates and effectuates management policies by expressing and making operative the decisions of her employer, or that she exercises discretion within or even independently of established employer policy.

4) The position of Personnel and Purchasing Coordinator is not confidential, managerial, or supervisory and shall not be excluded from the bargaining unit.

Production Department Superintendent

FINDINGS OF FACT

1) Mr. Dominic Soignoli has been employed as the Production Department Superintendent since June 1996 and has been employed by the Authority for twenty one (21) years. (TR. 1/9/01 p. 15) His job description as Production Department Superintendent was submitted into evidence as Petitioner's Exhibit # 7. He reports to Mr. Munroe, the Operations Manager. (TR. 1/9/01 p. 16) Eight employees report to Mr. Soignoli. (TR. 1/9/01 p. 19)

2) Mr. Soignoli has served on committees for interviewing candidates for employment, which in turn made recommendations to the Executive Director, but does not have the authority on his own to either hire or fire employees. (TR. 1/9/01 p. 20)

3) Since 1996, Mr. Soignoli has not had the occasion to issue any warnings or discipline, although he thinks he might have the authority to do so. (TR. 1/9/01 p. 18)

4) Mr. Soignoli has never participated in collective bargaining sessions. (TR. 1/9/01 p. 19)

5) Mr. Soignoli issues work assignments to mechanics. (TR. 1/9/01 p. 23) The plant operators work a fixed repeating schedule. (TR. 1/9/01 p. 23)

6) Although Mr. Soignoli has the authority to issue overtime on his own, he tries to avoid doing so and tries to involve the Operations Manager in his decision. (TR. 1/9/01 p. 24)

7) Mr. Soignoli does not issue performance evaluations for other employees. (TR. 1/9/01 p. 19)

8) Mr. Soignoli maintains a scheduling calendar that tracks the work and vacation schedules for the employees in the department. (TR. 1/9/01 p. 27) Some of the scheduling is done by the foreman, pursuant to a preset rotating schedule dictated by the collective bargaining agreement. (TR. 1/9/01 p. 28, 34)

9) Mr. Soignoli had the occasion to extend the probationary period of one employee, Mr. Phillip Brooks, but the same was only done with the advice and consent of Mr. Munroe. (TR. 1/9/01 p. 29-30)

CONCLUSIONS OF LAW

1) The evidence in the record does not establish that Mr. Soignoli has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action.

2) The evidence in the record does not establish that Mr. Soignoli assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or, that in the course of his duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

3) The evidence in the record does not establish that Mr. Soignoli formulates and effectuates management policies by expressing and making operative the decisions of his employer, or that he exercises discretion within or even independently of established employer policy.

4) The position of Production Department Superintendent is not confidential, managerial, or supervisory and shall not be excluded from the bargaining unit.

Manager of Accounting & MIS

FINDINGS OF FACT

1) Mr. Webster Goodwin has been employed by the Authority for six (6) years as the Manager of Accounting & MIS. (Depo. p. 4) He holds a Bachelor of Science Degree from Bryant College and a Master of Science in Accounting from the University of Rhode Island. He reports to Mr. DeLise, the Executive Director. (Depo. p. 4) His job description as Manager of Accounting & MIS was submitted into evidence as Petitioner's Exhibit # 8.

2) Mr. Goodwin is responsible for preparing monthly financial statements, analyses and reconciling accounts. He determines how the Authority's assets are to be depreciated and assists in the preparation of the annual report. Mr. Goodwin is also responsible for monthly reports on water consumption, and he serves as the Plan Administrator for the company's

pension plan. (Depo. p. 5-7) Mr. Goodwin handles the transfer and investment of funds pursuant to a bond resolution. (Depo. p. 7) Mr. Goodwin is responsible for developing financial policies and procedures, such as a depreciation policy. (Depo. p. 8) Mr. Goodwin is responsible for the investment of thirteen to fifteen million dollars. (Depo. p. 8)

3) Like many of the other employees, Mr. Goodwin also has served on an interviewing committee which has made recommendations for hiring to Mr. DeLise. (Depo. p. 11) Mr. Goodwin is not aware of any time that the Executive Director did not accept the recommendation of the hiring committee. (Depo. p. 12)

4) Mr. Goodwin has served with Mr. Munroe and Mr. Delise on the Authority's negotiating committee during collective bargaining with the Utility Workers Union during 2000 and 1997. (Depo. p. 12, 17) Mr. Goodwin drafted and presented a proposal on a vacation policy, which was put before the union and accepted. (Depo. p. 13) Mr. Goodwin believes that he has the authority to independently propose changes with regard to the union contracts. (Depo. p. 49) Mr. Goodwin has also attended Executive Sessions of the Board, where negotiations were discussed. (Depo. p. 16) Mr. Goodwin has also answered grievances filed by members of the Utility Workers Union.

5) Mr. Goodwin testified that he approves or disapproves of vacation and personal time for Jan Williams and gives her work assignments four or five times a month. (Depo. p. 22)

6) Mr. Goodwin cannot hire, fire or suspend employees, but feels he can recommend such actions. (Depo. p. 47)

CONCLUSIONS OF LAW

1) The evidence in the record does not establish that Mr. Goodwin has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action.

2) The evidence in the record does not establish that Mr. Goodwin assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or, that in the course of his duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

3) The evidence in the record does not establish that Mr. Goodwin formulates and effectuates management policies by expressing and making operative the decisions of his employer, or that he exercises discretion within or even independently of established employer policy.

4) The position of Manager of Accounting & MIS is not confidential, managerial, or supervisory and shall not be excluded from the bargaining unit.

Operations Manager

FINDINGS OF FACT

1) Mr. Michael Munroe has been employed by the Authority for forty seven (47) years and presently holds the title of the Operations Manager. (Depo. p. 3) His job description as Operations Manager was submitted into evidence as Petitioner's Exhibit # 9.

2) Mr. Munroe has the authority to approve or disallow employee requests for vacation other leave. (Depo. p. 7) Mr. Munroe also signs off on employee time sheets. (Depo. p. 8)

3) During the course of his employment, Mr. Monroe has participated in and served on thirty (30) or more interviewing committees. (Depo. p. 10) Mr. Munroe testified that Mr. DeLise has never rejected a hiring recommendation from the committees. Mr. Munroe has no authority to hire or fire on his own. (Depo. p. 45-46) Mr. Munroe issued one letter of

discipline during his entire career, which did not require the use of independent judgment because the penalty was set forth in the Company manual. (Depo. p. 47-49)

4) Mr. Munroe has served for longer than twenty (20) years on the negotiating committee that negotiates with the unionized employees. (Depo. p. 15) Mr. Munroe has no authority to sign the collective bargaining agreement. (Depo. p. 39-40)

CONCLUSIONS OF LAW

1) The evidence in the record does not establish that Mr. Munroe has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action.

2) The evidence in the record does not establish that Mr. Munroe assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations or, that in the course of his duties, regularly has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

3) The evidence in the record does not establish that Mr. Munroe formulates and effectuates management policies by expressing and making operative the decisions of his employer, or that he exercises discretion within or even independently of established employer policy.

4) The position of Operations Manager is not confidential, managerial, or supervisory and shall not be excluded from the bargaining unit.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the Rhode Island State Labor Relations Board by the Rhode Island Labor Relations Act, it is hereby

DIRECTED that an election by secret ballot shall be conducted within sixty (60) days hereafter, under the supervision of the Board or its agents, at a time, place and during hours to be fixed by the Board, among Assistant Engineer, Engineering Technician, Distribution Superintendent, Water Quality Supervisor, Manager of Customer and Commercial Services, Administrative Assistant, Personnel and Purchasing Coordinator, Production Department Superintendent, Manager of Accounting and MIS, and Operations Manager, employees of the Bristol County Water Authority who were employed on August 31, 2000, to determine whether they wish to be represented, for the purposes of collective bargaining, as provided for in the Act, by Teamsters Local Union No. 251 or by no labor organization.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Frank J. Montanaro, Member

Joseph V. Mulvey, Member

Gerald S. Goldstein, Member
(Dissent to inclusion of 8 contested positions)

Ellen L. Jordan, Member
(Dissent to inclusion of 8 contested positions)

John R. Capobianco, Member

Elizabeth S. Dolan, Member
(Dissent to inclusion of 8 contested positions)

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

Dated: December 13, 2001

By: Joan N. Brousseau, Administrator