

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

ROGER WILLIAMS UNIVERSITY

Employer

and

ROGER WILLIAMS UNIVERSITY
ASSOCIATION OF CLERICAL-TECHNICALS,
LOCAL 892, NATIONAL EDUCATION
ASSOCIATION OF RHODE ISLAND

Petitioner

Case 1-UC-803

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Employer is a university with its principal campus in Bristol, Rhode Island. The Petitioner claims that two positions at the Bristol campus, the administrative assistant to the Employer's Vice President of Finance/Chief Financial Officer and the administrative assistant to the Employer's Vice President of Enrollment and Retention, are accretions to its existing collective-bargaining unit.¹ The Employer disagrees,

¹ There are currently 82 employees in the bargaining unit.

claiming that the administrative assistants to the University's Vice Presidents have historically been excluded from the unit.²

I find that because the position of administrative assistant to the Employer's Vice Presidents has historically been excluded from the Unit, the petition should be dismissed.

FACTS³

On December 27, 1978, the Petitioner was certified as the exclusive representative for the purposes of collective bargaining of "[a]ll clerical employees" of Roger Williams College, as the Employer was then known, at its Bristol, Providence, and Quonset, Rhode Island campuses. The unit description in the certification references two attached lists of employees. One list, Attachment A, contains the 36 clerical positions which were included in the unit. The other, Attachment B, lists 42 positions which were excluded from the unit. Among the list of exclusions on Attachment B are the positions of "Executive Secretary to President," "Executive Secretary to Board," and five secretary positions, including "Secretary to Vice President." A job category denominated "administrative assistant" does not appear in either list.

In academic year 1977-78, the year before the Petitioner was certified, the Employer did not employ anyone with the title "Vice President," but there was an Executive Vice President named William Rizzini. An "executive secretary" named Pat Hogan reported to Mr. Rizzini.

There is no information in the record as to whether there was an Executive Vice President or Vice President in 1978-79 or what clerical positions may have reported to such person or persons, if any.

As of the 1979-80 academic year, the Executive Vice President position had disappeared, but that of Vice President for Administration and Student Affairs had been created and its incumbent was Robert McKenna. Mr. McKenna was in this position through the 1985-86 academic year, at the end of which the position was eliminated. Mr. McKenna was then the reinstated Executive Vice President from 1986-87 through 1993-94, after which the position of Executive Vice President was eliminated and Mr.

² The Employer also claimed that the administrative assistant to the Vice President of Finance was not included in the existing unit for the additional reason that it was a confidential position. The record is insufficient to make a determination of this issue and, accordingly, it will not be considered further herein.

³ The Employer submitted into evidence, without objection, a summary drawn from its annual catalogues for the academic years from 1977-78 through 2002-03, except for academic year 1978-79, for which no catalogue was found. This summary, and the unchallenged testimony of the two management figures who were the only witnesses presented at the hearing, establish much of the record.

McKenna no longer appears to have held any position with “Vice President” in the title. Throughout Mr. McKenna’s tenure as either Vice President for Administration and Student Affairs or Executive Vice President, his administrative assistant was not included in the bargaining unit.

In 1990-91, the position of Vice President for Academic Affairs was instituted, or perhaps reinstated, and has been continued to the present. In this entire period, Lorie Barry has been the administrative assistant to this position. Ms. Barry has never been included in the bargaining unit.

In 1991-92, the position of Vice President for Development was instituted. It was continued, with an unexplained gap in 1994-95, through 1995-96. An administrative assistant always reported to this position and was not included in the bargaining unit.

In 1992-93 and 1993-94, the Dean of the School of Law was also a Vice President. An administrative assistant always reported to this vice presidential position and was not included in the bargaining unit.

The position of Vice President of Human Resources was instituted in 1994-95 and was continued through the 2001-02 academic year. An administrative assistant always reported to this position and was not included in the bargaining unit.

In 1995-96, the position of Vice President of Finance/Chief Financial Officer was instituted and has been continued to the present. An administrative assistant has always reported to this position and has never been included in the bargaining unit. Diane Soares became the current administrative assistant to this position in October 2002. Ms. Soares had previously held a bargaining unit position in the Engineering Department.

In 1998-99, the Employer instituted the position of Vice President University Advancement and continued it through 2001-02.⁴ An administrative assistant always reported to this position and was not included in the bargaining unit.

For the academic year 1999-2000, there was a Senior Vice President/Chief Operating Officer. The administrative assistant who reported to this position was not in the bargaining unit.

For the academic year 2002-03, the Provost was made Senior Vice President and as such has shared the services of Ms. Barry with the Vice President Academic Affairs.

In the summer of 2002, the Employer instituted the position of Vice President Enrollment Management and Retention and appointed Lynn Fawthrop to the position. At the time of her appointment Ms. Fawthrop had been Dean of Enrollment Management. This latter position was abolished upon creation of Ms. Fawthrop’s new position.

⁴ In the academic year 2001-02, this position was retitled Vice President Institutional Advancement.

As Dean, Ms. Fawthrop was responsible for admissions and financial aid matters. She has retained these duties as Vice President, but also acts as registrar and is responsible for, among other things, alumni affairs, certain research functions concerning the standing of the University, and the Employer's program to ensure that students complete their degrees.

For the last nine months of Ms. Fawthrop's tenure as Dean, Jane Schinigoj had been her administrative assistant, which was a bargaining unit position. Ms. Schinigoj was selected to be Ms. Fawthrop's administrative assistant when she became Vice President. As administrative assistant to the Vice President of Enrollment and Retention, Ms. Schinigoj appears to have retained most of her former duties, but there has been an expansion of her responsibilities as well. For example, since Ms. Fawthrop now spends more time away from the office than she did in her former position, Ms. Schinigoj has more contact with parents and must take a greater hand in attending to the smooth functioning of the office. She has also been given research responsibilities in connection with Ms. Fawthrop's institutional research function and, as part of the retention program, has been trained to give "exit interviews" to students who are withdrawing from the University.

As indicated above, currently there are four Vice Presidents: the Provost/Senior Vice President, the Vice President/Chief Financial Officer, the Vice President Academic Affairs, and the Vice President Enrollment Management and Retention. The current vice-presidential administrative assistants are Lorie Barry, Diane Soares, and Jane Schinigoj.

The term of the current collective-bargaining agreement runs from July 1, 2000 until June 30, 2003.

DETERMINATION

I find that the petition here should be dismissed.

Unit clarification is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, fall within a newly established classification or within an existing classification that has undergone recent substantial changes so as to create a real doubt as to whether the individual continues to fall within the category--excluded or included--that the individual occupied in the past. Clarification is not appropriate, however, for upsetting an established practice of the parties concerning the unit placement of an individual. Thus, where the positions in question have historically been excluded from a unit, the Board will not entertain a petition to include them in that unit by way of accretion. *Bethlehem Steel Corporation*, 329 NLRB 243, 243-244 (1999), citing *Union Electric Co.*, 217 NLRB 666, 667 (1975).

Here, the evidence is undisputed that throughout this lengthy bargaining relationship, administrative assistants to the Employer's vice presidents have been uniformly excluded from the bargaining unit. Indeed, the position which Ms. Soares

assumed in October 2002 had existed in the same form since 1995. Thus, this position has clearly been historically excluded from the collective bargaining relationship. As to the second position, when Ms. Fawthrop was promoted to her current position as an Employer vice president, Ms. Schinigo became a member of this historically excluded group of administrative assistants.⁵ Where the classification of administrative assistant to the Employer's vice presidents has historically been excluded from the unit, the request to add them to the unit in this case, raises a question concerning representation that may not be resolved in a unit clarification proceeding. *Monongahela Power Co.*, 198NLRB 1183 (1972).

ORDER

IT IS HEREBY ORDERED that the petition is dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this decision may be filed with the Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by March 19, 2003.

/s/ Ronald S. Cohen
Ronald S. Cohen, Acting Regional Director
National Labor Relations Board
First Region
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, Massachusetts 02222-1072

Dated at Boston, Massachusetts
this 5th day of March, 2003

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⁵ In addition, although she had previously acted in an administrative capacity to Ms. Fawthrop, her job functions changed substantially when she became the administrative assistant to a vice president.