



WHELAN CORRENTE & FLANDERS LLP

**RI State Labor Law Updates
2022-2023**

Matthew H. Parker – mparker@whelancorrente.com

401-270-4500

Agenda

- *Recent Cases Addressing Who Can Unionize*
 - **(1) Confidential Employees**
 - **(2) Managerial Employees**
- *Information Requests*
- *Withdrawal of Recognition*

Refresher on Confidential Employees

- *Barrington School Committee*, 608 A.2d 1123 (R.I. 1992) (“Labor-Nexus Test”):

1) Labor Relations Actors/Assistors:

- Employee acts or assists in confidential capacity with member of management; **and**
- Their superior must formulate, determine, or effectuate management’s labor relations policies.

• 2) Labor Relations Insiders:

- Employee has regular, considerable, and consistent access to confidential labor relations material that directly implicates labor functions.

Confidential Employees – Pawtucket v. SLRB

- *City of Pawtucket v. R.I. State Labor Rels. Bd.*, No. PC-2014-3560, 2022 R.I. Super. LEXIS 83 (R.I. Super. Ct. Nov. 17, 2022) (Nugent, J.).
 - **Labor Relations Actors/Assistor?**
 - Yes.
 - Administrative Assistant to Chief of Police worked directly w/ Chief to develop and manage ongoing labor policy.
 - **Labor Relations Insider?**
 - Yes.
 - Administrative Assistant had a confidential work relationship with the Chief and regularly had access to confidential information regarding collective bargaining negotiations.

Confidential Employees – RIDE v. SLRB

- *R.I. Board of Regents v. R.I. State Labor Rels. Bd.*, PC-2015-5683, 2023 R.I. Super. LEXIS 48 (R.I. Super. Ct. June 29, 2023) (Taft Carter, J.).
 - **Labor Relations Actors/Assistors?**
 - No.
 - Occasional assistance and brief consultations with superior not regular/consistent enough to satisfy first prong.
 - Not enough evidence that superiors (Chief Legal Counsel and Commissioner) impacted management's labor policy.
 - **Labor Relations Insiders?**
 - No.
 - Mere ability to access confidential labor information / conduct grievance arbitrations not enough without consistent access / work
 - Must have access to confidential info re: employer's employees; not those of other employers

Refresher on Managerial Employees

- *State v. Local No. 2883, Am. Fed'n of State, Cnty. & Mun. Emps.*, 463 A.2d 186 (R.I. 1983):
- Exclusion to prevent conflicts of interest between:
 - Employee's loyalty to union/coworkers, and
 - Employee's allegiance to management.
- **Managerial Employee if:**
 - Formulate and effectuate management labor policies.
 - Must be aligned with management.
 - Must exercise discretion within, or independently of, established employer labor policy.

Managerial Employees – RIDE v. SLRB

- *R.I. Board of Regents v. R.I. State Labor Rels. Bd.*, PC-2015-5683, 2023 R.I. Super. LEXIS 48 (R.I. Super. Ct. June 29, 2023).
- **Managerial Employees?**
 - No.
 - Managerial employees should not be confused with professional employees such as doctors, lawyers, or engineers, who are generally included in collective bargaining units.
 - The employee's *possibility* of influence over labor policy is insufficient to satisfy the standard.
 - Record evidence did not show that employees had present independent authority to influence labor policy.

Refresher on Information Requests

- Employer has duty to provide relevant information needed by union to perform its duties as the employees' bargaining representative.
- For example:
 - Information relevant to processing/understanding grievance, or
 - Information necessary to engage in contract negotiations.
- The Test: Whether the information requested is of “probable or potential relevance.”
- Why?
 - Equalizes the parties' bargaining power.
 - Allow unions to fully understand and advocate for employees.

Information Requests – DCYF – ULP-6330

- *Rhode Island State Labor Relations Board and State of Rhode Island Department of Children, Youth and Families – ULP 6330*
- Information Requested: All documents related to the termination of employee.
- Information Denied: On the basis that employer had no duty to provide information while employee was in “probational period” because probationary employee could not grieve/arbitrate his termination.
- Board Determined:
 - Employer violated RIGL 28-7-13 (6) and/or (10).
 - Probationary period / inability to grieve firing had no bearing on relevance.
 - Refusal deprived Union of ability to advocate for employee pre-termination.

Refresher on Withdrawal of Recognition

- Under federal law, to withdraw recognition, the employer must be able to prove that the union lacks majority support. *Levitz Furniture*, 333 NLRB 717 (2001).
- The employer cannot have committed an unfair labor practice that undermines union's support.
- *Generally*, cannot withdraw recognition during the term of a CBA...

Withdrawal of Recognition – W. Warwick Housing Authority – ULP -6328

- “It is the Employer’s burden of proof to demonstrate that it had a good faith doubt in the Union’s majority status.” (page 5)
 - ...lower standard than *Levitz – see Celanese Corp.*, 95 NLRB 664 (1951)
- Ways employer can show good faith doubt:
 - Employee inactivity within the union
 - Inactivity of the union
 - The filing of a decertification petition
- Employer wins:
 - No request for bargaining over 6.5 years
 - No demand for interest arbitration
 - Union did not know if it had a locally appointed representative or officer
 - No evidence of union meetings



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QUESTIONS

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