

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

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IN THE MATTER OF

STATE OF RHODE ISLAND  
DEPARTMENT OF ADMINISTRATION,  
LIBRARY SERVICES

-AND-

RI COUNCIL 94, AFSCME, AFL-CIO  
and RIASSE, LOCAL 580

CASE NO: EE-1789  
and EE-3085  
Unit Clarification:  
Information Services  
Technician II

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**DECISION AND ORDER**  
**TRAVEL OF CASE**

The above matter came on to be heard on a Request for Accretion (hereinafter Petition) for the position of "Information Service Technician II". The petition was filed with the Rhode Island State Labor Relations Board (hereinafter "Board") on February 8, 1999 by R. Council 94, AFSCME. On March 3, 1999, the Board received a letter from the Employer which indicated that although it had no preference as to the specific union, the Employer did feel that Local 580, RIASSE should be included in any proceedings. The Employer also felt that all of the Information Services Technician IIs should be in the *same* bargaining unit.

Pursuant to R.I.G.L. 28-7-9 (b) (5), an informal hearing was held on March 5, 1999. Representatives of both the Union and the Employer were present and provided extensive information to the Board's investigative Agent. On March 8, 1999, the Board's Agent forwarded a copy of her four (4) page written report to the parties, with instructions that written responses would be accepted by the Board for a period of thirty (30) days. Local 580, RIASSE also received a copy of the report because it had been representing the positions for the previous two years. Local 580 RIASSE filed an objection to Council 94's petition to accrete on April 7, 1999.

On February 24, 2000, the Board reviewed the matter and determined that the matter could not be decided even preliminarily, without the benefit of a formal hearing. In accordance with R.I.G.L. 28-7-9 (b) (5), the Board then conducted a formal hearing on May 11, 2000. Representatives from the Employer and both Unions participated and were provided with a full

fair opportunity to examine and cross examine witnesses and to submit appropriate documentary evidence. The parties were then directed to file any post hearing briefs by June 15,

After receiving an extension, the Employer filed its brief on July 5, 2000. The Petitioner

filed its brief on August 16, 2000 and the Intervenor Union (Local 580, RIASSE) filed its brief on June 21, 2000. The matter was then considered by the Board at a regular monthly meeting held on September 26, 2000.

### FACTUAL BACKGROUND

On or about June 20, 1968, the Rhode Island State Employees Association (a predecessor to Council 94) was certified by the Board to represent: "all personnel in the Department of State Library Services excluding the Director, Deputy Director, Chief of Library Extension Services, Chief, Division of Interrelated Library Services, Supervisor of Adult Services, Supervisor of Young Readers' Services, Supervisor of Technical Services, Institutional Librarian, Librarian for the Handicapped, Sr. Accountant, Bookmobile Librarian, Catalog Librarian, Reference Librarian, and Library Aide. (EE-1789.)

On or about September 1, 1975, the Rhode Island Alliance of Social Service Employees, Local 580, SEIU, AFL-CIO (RIASSE, Local 580) was certified by the Board to represent: all Department of Library Services employees excluding top level supervisors, confidential secretaries and clerks, but including: "Supervisor of Technical Services, Supervisor of Adult Services, Supervisor of Institutional Library Services, Supervisor of Media Services, Supervisor of Services to the Handicapped, Supervisor of Young Readers' Services, Community Library Consultant, Sr. Accountant, Librarian for the Blind, Bookmobile Librarian, Reference Librarian, Institutional Consultant, Cataloger for Audio-Visual Materials, Senior Cataloger, and Library Aide."

In 1996, the Rhode Island General Assembly decided to revamp the Department of Library Services into an Office of Library and Information Services and consolidate it with the Department of Administration. As part of that consolidation, the Legislature provided that "all employees who are in the Department of Library Services, who are transferred into the classified service by virtue of these provisions, shall retain their present job titles, receive comparable salary, and those employees with one (1) year or more of service in the Department will be considered to have permanent status in the classified service.

In effectuating the mandates of the Legislature, the State soon ran into some practical difficulties, which it addressed. First, the employees who worked in the Department of Library

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The Intervenor later filed a corrected brief on July 25, 2000.

Services were in the unclassified service and were paid in accordance with the unclassified pay plan. Second, the job titles in the unclassified pay plan and the classified pay plans were different, so adjustments had to be made to find the most comparable title within the classified plan schedule. Finally, there was the need to place positions within the appropriate bargaining units, since both Council 94 and Local 580 both represented titles from the former Department of Library Services

The State and the two Unions participated in a series of meetings in early 1997 to implement the consolidation. The State proposed to create two new classifications, Information Services Technician (Grade 18) and Information Services Technician II (Grade 20); both in the classified service. The State also proposed to put the Library Technicians and the Senior Library Technicians (Council 94 positions) into the Information Services Technician position, and the Library Aides and Senior Library Aides into the Information Services Technician II position (Local 580)

At the time, Mr. Salvatore Lombardi, President of the Local 2884 of Council 94 objected to the new positions being put into two separate bargaining units. He felt that the job descriptions for the two new positions were too similar to be able to truly distinguish their work. He felt the positions belonged within the same bargaining unit and that they should go into Council 94. Local 580, RIASSE did not object to the proposed classifications and the plan was implemented without formal protest by either of the unions. At the time of the implementation, only one person (Ms. Kathy Riley) transferred into the Information Services Technician II position. The other Information Services Technician II positions were unfilled. At least two of the Information Services Technician positions (Kelly Lima and Alicia Waters) were filled.

Thereafter, Ms. Waters and Ms. Lima filed applications for "desk audits" or classification questionnaires, a process in State government employment by which an employee who believes that he/she is performing work of a higher classification, can request that the Division of Personnel evaluate the duties being performed. If the employee is found to be actually working in a higher classification, he/she can be upgraded to that level. Both Ms. Lima and Ms. Waters were determined to be working out of classification and were promoted into the higher level.

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<sup>2</sup> The unclassified titles were Library Aide, Senior Library Aide, Library Technicians and Senior Library Technicians. The Library Aide and Senior Library Aide positions were in Council 94. The Library Technicians and Senior Library Technicians were in Local 580 RIASSE.

positions as Information Services Technician IIs. As a result of their promotions, they were supposed to both leave Council 94 and become members of Local 580's bargaining unit. However, as the result of a clerical error on internal processing paperwork, Ms. Waters was not moved (on paper) into the Local 580 unit. When Mr. Lombardi discovered that there was ostensibly one Information Services Technician II in Council 94 and one Information Services Technician II in Local 580, he filed the instant petition to accrete the Information Services Technician II position into Council 94's bargaining unit.

### POSITION OF THE PARTIES

Council 94 argues that the Information Services Technician and the Information services Technician II positions are nearly indistinguishable, and therefore the Information Services Technician IIs should be accreted into Council 94's unit because Council 94's certification is for technical positions. Further, Council 94 argues that the State clearly erred when it unilaterally classified Library Aides and Sr. Library Aides as Information Services Technician IIs.

Local 580 advances several arguments. First, it argues that Council 94's petition is "woefully out of time" and that if Council 94 had a problem with the classifications, it should have done something two years earlier than it did. Second, the legislature intended to uphold the status quo when it consolidated the Department of Library Services into the Department of Administration. Third, Local 580 argues that the Information Services Technician Is and the Information Services Technician IIs are clearly distinct and separate positions and are not virtually indistinguishable, as alleged by Council 94. Fourth, Local 580 argues that Council 94 has not met its burden of proof and that it did not present any evidence at all to support its argument that Information Services Technician IIs share a community of interest with Council 94's unit. Finally, Local 580 argues that the Board should order the State to correct the clerical error made on Ms. Waters' form.

The State initially argued that it really had no preference for bargaining units for the Information Services Technician IIs; the State's only objection was that the Information Services Technician II positions not be splintered or fragmented into both units. Although the State indicated that it would accept the decision of the Board (provided all Information Services Technician IIs were placed in the same bargaining unit), it did go on to argue that in its opinion,

Local 580, RIASSE should prevail; and all individuals in the Information Services Technician II position belong in RIASSE, not Council 94. In addition, the State argues that if the Board were to permit the one Information Services Technician II (Waters) to remain in Council 94 because of the clerical error, then the Board will have created a new standard of “accretion by error,” and that the same would be folly and could lead to weakening of bargaining units by a devious employer.

### DISCUSSION

Although the original request filed in this matter by Council 94 was to accrete one Information Services Technician II position (held by Ms. Kelly Lima), it was clear, from the testimony in this case, that Council 94 had adopted the position that the Information Services Technician II position held by Ms. Waters was *already in* Council 94. Therefore, the argument is that only one position needs to be accreted to the bargaining unit. Thereafter, the Employer also filed a letter in the case, asking the Board to decide where all of the Information Services Technician IIs would belong - either Council 94 or Local 580. Since the State has a considerable interest in the outcome of Council 94’s request to accrete, and since it filed its own letter on the matter, the Board is going to treat this case as a petition for unit clarification by the State, as well as a petition to accrete one Information Services Technician II by Council 94.

First, the Board finds that, notwithstanding the clerical error on Ms. Water’s paperwork, her position at the time this petition was commenced was Information Services Technician II and that she was a member of Local 580’s bargaining unit, in accordance with the actions taken during the consolidation in early 1997. To hold otherwise would, in fact, permit Council 94 to gain this position through the process of “accretion by error.” Such a result is unjust, and flies in the face of common sense or any notion of fair play or substantial justice. Furthermore, such a ridiculous tenor would wreak havoc with established labor relations and could invite chaos from a “devious employer” Indeed, had Council 94 been on the opposite side and had lost a position due to clerical error, this Board has no doubt that Council 94 would be singing a completely different tune. Therefore, to the extent that Council 94’s petition “assumed” that it gets to keep Ms. Waters’ position because of a clerical error, this union stands corrected.

Having disposed of Council 94’s threshold assumption, the Board looks to its case in chief, the accretion of Technician II to Council 94’s unit. In support of its claim for the

Technician IIs, Council 94 argues that the positions are virtually indistinguishable. It also claims that “buttressing this argument is the fact that the Tech I positions were reclassified to Tech II after only having been in the position for six months.” However, as set forth in the brief of both the State and Local 580, when the job descriptions for Information Services Technician I and Information Services Technician II are compared, there are indeed significant differences. (See chart at p. 8 of State’s brief.) The Information Services Technician position is clearly a technical position which includes: Assisting in answering requests, making routine contacts, disseminating documents, compiling data and statistics, maintaining inventory of supplies and performing simple routine repairs to equipment. The position requires only a high school education.

The Information Services Technician II position clearly has a much higher level of functioning required, including: Answering requests, making important contacts, preparing information service documents for publication, compiling web pages for publication, participating in the design of web pages, updating and maintaining on line files, supervising staff.

The Information Services Technician II position does not maintain inventory, perform repairs, or answer the telephone. This higher functioning position also requires a higher education.

There can be no question that the two positions are different on paper. The question in the Board Members’ minds is whether or not the two positions actually perform the functions set forth on these job descriptions or whether their actual duties are in fact the same. Council 94 completely failed in producing any evidence whatsoever on this crucial issue. Its only witness, Mr. Lombardi, testified that he had no idea what the duties of either the Information Services Technician II or Information Services Technician I were. He did not know the names of the affected employees or whether Ms. Reilly’s duties (who became an Information Services Technician II at the time of the consolidation) were different than those of either Ms. Waters or Ms. Lima (both of whom had received desk audits and were upgraded to Information Services Technician II). Indeed, the only thing that Mr. Lombardi had a grasp on was the fact that, due to the upgrades, Council 94 now represented two less filled positions than it did before the promotion of Waters and Lima. In fact, Mr. Lombardi readily admitted that his chief complaint was not based upon what these people actually do or what classifications they belong to, but the fact that they’ve been taken out of Council 94’s bargaining unit.

In response to Mr. Lombardi's position, the first thing that the Board will make clear is that these positions were not "taken" from Council 94. These two women were upgraded, due to the work they were performing. The fact that the Council 94 positions were vacated when these women were promoted is an inevitable outcome of the promotion process. This Board has no authority to order the State to cease performing desk audits, nor should it. This is a method for employees to be recognized for performing out-of-grade work and to be upgraded, and the Board is pleased that such a mechanism exists, at least for State employees.

So that Council 94 is clear on this issue, the Rhode Island State Labor Board does not sit to prevent the ebb and flow of positions in unions due to the normal life cycle of promotions or retirements. Furthermore, the Board has no role in determining whether desk audits have been formed correctly or whether job descriptions have been properly written. The Board's function in an accretion petition is to determine whether the petitioner has satisfied its burden of a showing that the position(s) sought shares a community of interest with the bargaining unit.<sup>3</sup> In this case, since the petitioner knew nothing of the duties of either Information Services Technician or Information Services Technician II, either in theory or in practice, the Board has no choice but to dismiss Council 94's petition.<sup>4 5</sup>

Although the Board has disposed of the Petitioner's request by dismissing the same, there are some other issues raised by the Parties that the Board finds appropriate for comment. In this case, both the State and Local 580 complained that Council 94's petition was woefully out of time and should not be entertained. However, R.I.G. . 28-7-9 permits petitions for unit classifications to be filed at *any* time. Therefore, it is this Board's opinion that it did not have jurisdiction to dismiss Council 94's petition on timeliness grounds, as was urged by Local 580.

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<sup>3</sup> "In determining whether accretion of employees to existing bargaining units is proper, the National Labor Relations Board (NLRB) considers many of the same factors that determine community of interest questions for purpose of bargaining unit determination, namely, such factors as integration of operations, centralization of managerial and administrative control, geographic proximity, similarity of working conditions and skills, common control over labor relations, collective bargaining history and interchangeability of employees." Rhode Island Public Telecommunications Authority v Rhode Island State Labor Relations Board, 650 A2d 479, N.L.R.B. v Security-Colombian Banknote, Co. 541 F.2d 135, 140 (3d Cir. 1976).

<sup>4</sup> The Board is very disturbed by the apparent lack of preparation put into this case by the Petitioner. In fact, it is nearly insulting to appear before the Board complaining that a union's numbers are decreasing in a given unit and not have any knowledge of the positions being discussed. It appears that the union's true position is that because it was losing membership, the Board must take some steps to restore numbers to the bargaining unit. Lest any other union be entertaining such a notion, this case should make it clear that it is the petitioner, not the Labor Board, that has the burden of establishing the community of interest when seeking to accrete any position into an existing bargaining unit.

<sup>5</sup> Conversely, even though Local 580 did not seek to accrete the Technician IIs because of voluntary recognition, and it established that all the Technician IIs belonged together, the question still remains as to whether they truly share a community of interest with Local 580.

Additionally, neither Council 94 nor Local 580 filed any documents in 1997 to amend their respective certifications to reflect the agreed<sup>6</sup> upon results of the consolidation. Had each party identified the “community of interest” with its own bargaining unit, and had the State agreed to it in writing, perhaps much of the turmoil in this case could have been avoided. Although there is no prohibition against voluntary recognition, later problems can be avoided if the issue is reduced to writing.

### **FINDINGS OF FACT**

- 1) The Petitioner, R.I. Council 94, AFSCME, is a labor organization, which exists and is constituted for the purpose, in whole or in part, of collective bargaining relative to wages, rates of pay, hours, working conditions and all other terms and conditions of employment and of dealing with employers concerning grievances or other mutual aid and protection.
- 2) The State of Rhode Island, Department of Administration is an “Employer” within the meaning of the Rhode Island State Labor Relations Act.
- 3) On or about June 20, 1968, the Rhode Island State Employees Association (a predecessor to Council 94) was certified by the Board to represent: “all personnel in the Department of State Library Services excluding the Director, Deputy Director, Chief of Library Extension Services, Chief, Division of Interrelated Library Services, Supervisor of Adult Services, Supervisor of Young Readers’ Services, Supervisor of Technical Services, Institutional Librarian, Librarian for the Handicapped, Sr. Accountant, Bookmobile Librarian, Catalog Librarian, Reference Librarian, and Library Aide. (EE-1789.)
- 4) On or about September 11, 1975, the Rhode Island Alliance of Social Service Employees, Local 580, SEIU, AFL-CIO (RIASSE, Local 580) was certified by the Board to represent: all Department of Library Services employees excluding top level supervisors, confidential secretaries and clerks, but including: “Supervisor of Technical Services, Supervisor of Adult Services, Supervisor of Institutional Library Services, Supervisor of Media Services, Supervisor of Services to the Handicapped, Supervisor of Young Readers’ Services, Community Library Consultant, Sr. Accountant, Librarian for the Blind, Bookmobile

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<sup>6</sup> Despite Council 94’s objections to the Technician IIs going into Local 580, Council 94 agreed that it would accept the Technician I position.



Librarian, Reference Librarian, Institutional Consultant, Cataloger for Audio-Visual Materials, Senior Cataloger, and Library Aide.”

- 5) In 1996, the Rhode Island General Assembly decided to revamp the Department of Library Services into an Office of Library and Information Services and consolidate it with the Department of Administration. In order to effectuate the mandates of the consolidation, the State created two new employment classifications, Information Services Technician (Grade 18) and Information Services Technician II (Grade 20); both in the classified service. The State also put Library Technicians and the Senior Library Technicians (Council 94 positions) into the Information Services Technician I position, and the Library Aides and Senior Library Aides into the Information Services Technician II position (Local 580).
- 6) Council 94 voiced an objection to the Information Services Technician IIs being put into Local 580, but took no formal action on the matter until two (2) Information Services Technician Is were upgraded to Information Services Technician IIs and left Council 94. At the time of the consolidation, Council 94 accepted the Information Services Technician Is and Local 580 accepted the Information Services Technician IIs.
- 7) Pursuant to R.I.G.L. 28-7-9 (b) (5), the Board held both informal and formal hearings on this matter.
- 8) The Information Services Technician and the Information Services Technician II positions are clearly different positions and are not one in the same, as alleged by Council 94. Information Services Technician is a technical position which includes: Assisting in answering requests, making routine contacts, disseminating documents, compiling data and statistics, maintaining inventory of supplies and performing simple routine repairs to equipment. The position requires only a high school education. The Information Services Technician II position has a much higher level of functioning required, including: Answering requests, making important contacts, preparing information service documents for publication, compiling web pages for publication, participating in the design of web pages, updating and maintaining on line files, supervising staff. The Information Services Technician II position does not maintain inventory, perform repairs, or answer the telephone. This higher functioning position also requires a higher education.

- 9) Council 94's only witness testified that he had no idea what the duties of either the Information Services Technician II or Information Services Technician I were. He did not know the names of the affected employees or whether Ms. Reilly's duties (who became an Information Services Technician II at the time of the consolidation) were different than those of either Ms. Waters or Ms. Lima (both of whom had later received desk audits and were upgraded to Information Services Technician II).
- 10) Council 94 failed to produce any credible, reliable evidence as to the community of interest of Information Services Technician IIs with the Council 94 bargaining unit.
- 11) Accretion cannot be accomplished by clerical error.

#### **CONCLUSIONS OF LAW**

- 1) The Petitioner did not establish by a preponderance of the evidence that Information Services Technician IIs share a community of interest with Council 94's local bargaining unit.
- 2) The community of interest standard dictates that all Information Services Technician IIs shall be members of the same bargaining unit.

#### **ORDER**

- 1) The Petition to accrete position of "Information Service Technician II" is hereby denied and dismissed.
- 2) The Petition to clarify that all "Information Services Technician IIs" belong in the same bargaining unit is hereby granted.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni  
Walter J. Lanni, Chairman

Frank J. Montanaro  
Frank J. Montanaro, Member

Joseph V. Mulvey  
Joseph V. Mulvey, Member

Gerald S. Goldstein  
Gerald S. Goldstein, Member

Ellen L. Jordan  
Ellen L. Jordan, Member

John R. Capobianco  
John R. Capobianco, Member

Elizabeth S. Dolan  
Elizabeth S. Dolan, Member

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

Dated: 2/5/01

By: Joan M. Brousseau  
Joan M. Brousseau, Administrator