

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

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IN THE MATTER OF	:	
	:	
EAST PROVIDENCE SCHOOL COMMITTEE	:	
	:	
	:	CASE NO: EE- 3265
	:	<b>Unit Clarification:</b>
-AND-	:	Conflict Resolution Specialist
	:	
EAST PROVIDENCE TEACHERS'	:	
ASSISTANT ASSOCIATION/NEARI	:	

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**DECISION AND ORDER OF DISMISSAL**

**TRAVEL OF CASE**

The above-entitled matter came on to be heard before the Rhode Island State Labor Relations Board (hereinafter "Board") on a Request for Accretion (hereinafter "Petition") for two (2) tions of Conflict Resolution Specialist currently held by Mr. Marc Thibault and Mr. Roger Farmer. The Petition was filed by the East Providence Teachers' Association on October 7, 2009. An informal hearing was originally scheduled for October 21, 2009, but after several other postponed dates, the matter was heard on December 2, 2009. Upon completion of the informal process, the Board's agent filed an investigative report with the Board on October 7, 2010 and provided a copy of the same to the parties. The Employer submitted a written response to the investigative report on November 8, 2010. The members of the RI State Labor Relations Board met on December 2, 2010, reviewed the investigative report and Employer's response and made a preliminary determination that the matter should proceed to formal hearing. A formal hearing was scheduled for March 1, 2011 and then re-scheduled to April 14, 2011. Representatives from the Employer and Union participated and were provided a full and fair opportunity to examine and cross-examine witnesses and to submit appropriate documentary evidence. Upon conclusion of the hearing, both parties submitted their Briefs on July 15, 2011.

**DISCUSSION**

The Union argues that the position of Conflict Resolution Specialist is eligible for accretion into the existing bargaining unit because the evidence and testimony at hearing support a finding that the position shares a community of interest with the rest

of the bargaining unit and that the proposed bargaining unit is an appropriate bargaining unit. The Employer argues that there is not a sufficient community of interest with the existing bargaining unit and highlights the fact that the employees holding the two (2) positions do not desire to be part of the bargaining unit.

### **SUMMARY OF FACTS & TESTIMONY**

The position of Conflict Resolution Specialist (hereinafter "CRS") was created in August, 2009. This position serves to assist students with personal conflicts, disputes, disciplinary issues and mediated resolutions to a variety of situations. The CRS's immediate supervisor is the East Providence High School Vice Principal. The CRS works in the Conflict Resolution Center and also operates in the classrooms, corridors, cafeteria, and school parking lots. The CRS works to de-escalate conflicts of all types before they "boil over." (TR. p. 13) The CRS engages in individual counseling and group counseling and works with parents, police and outreach agencies. (TR. p. 86) The CRS is active with the high school's "2-5-2" program, an intervention program for students in academic jeopardy because of having had two suspensions, five (5) tardies and failing two (2) classes. (TR. pgs. 75-76). The CRS supervises after-school detention, school dances, and after-school activities. (TR. pgs. 64-65) The CRS facilitates seminars and group conferences for students with attendance problems and students who are considered "at-risk" for dropping out. (TR. p. 15) The CRS is involved with anti-bullying programs and seminars, and presentations with outside groups and foundations. (TR. p. 16) The CRS is in radio contact with the administration and the School Resource Officer (SRO) throughout the day, on an as-needed basis. The CRS is active with school security and code reds. (TR. p. 34)

The two (2) CRSs in this case, Mr. Thibault and Mr. Farmer, both have indicated a desire to not be included in the Union. The Union conducted a direct examination of each of these employees, pursuant to a subpoena. Mr. Thibault testified that prior to being appointed as a CRS in August 2009, he had worked for nine (9) years as an Educational Specialist (a classroom position). Mr. Thibault holds a Master's Degree in Human Development from St. Mary's University and was awarded his Bachelor's Degree from the University of Rhode Island. Mr. Thibault has an employment contract with the School Department, which runs from November 18, 2010 through

November 18, 2013, which he testified that he entered into freely and voluntarily. (TR. p. 31)

Mr. Thibault testified that the minimum education requirement to apply for the Educational Specialist position was an Associate's Degree, with a Bachelor's Degree preferred, and for the CRS, the minimum was a Bachelor's Degree, with a Master's Degree preferred. (TR. p. 31) The hiring process for the CRS was "rigorous" and required a cover letter, resume, interview, letters of professional reference, and two (2) 500-word essays, whereas for the Educational Specialist, the process includes the standard resume, cover letter, and interview. (TR. p. 32) Mr. Thibault testified that the duties and responsibilities of the CRS were, in his opinion, "vastly different" than the position of Educational Specialist. (TR. p. 33) He explained that an Educational Specialist works in a classroom, with one teacher and the assigned students and that they work on educational issues and sometimes on behavioral issues. The CRS works all over the building and with any student who needs assistance for a wide range of issues, including truancy, discipline, conflicts with others, and emotional issues that require a referral. (TR. p. 33) He explained that when there is a "security breach" in the school, he responds; Educational Specialists stay in the classroom. (TR. p. 34)

Mr. Roger Farmer also provided testimony concerning the duties and responsibilities of the position of CRS and his testimony in this regard was substantially the same as Mr. Thibault. Mr. Farmer also testified that he negotiated his own employment contract and that he enjoys the feeling that this independence from a union provides to him. (TR. p. 54) Mr. Farmer testified that when he worked as an Educational Specialist, he saw so many things that he would have liked to do, but was not able to because it wasn't within his job description. As a CRS, he feels that he can make a difference to every student in the building by creating a safe environment in which to learn. (TR. p. 55) As an educational specialist, he worked with about ten (10) students and one (1) teacher in an isolated part of the building. As a CRS, he gets involved with parents who call him and ask him to "affect the lives of their kids." (TR. p.56) He meets directly with the Principal of the school on a weekly basis to discuss the well being of kids that are in a particular counseling program. He said that of the student population, about four percent (4%) of kids act out and constantly require interaction, but that he

also has the ability to and does choose to interact with the entire student population. (TR. p. 57)

Mr. Farmer also described the differences in the employment performance evaluations process between the position of Educational Specialist and the CRS. As a CRS, he meets with the Principal to set goals, objectives and milestones and that the principal evaluates his performance. When he worked as an Educational Specialist, his job performance was reviewed by the classroom teacher. (TR. pgs. 57-58)

The Employer presented the testimony of Dr. Mario Cirillo, the Superintendent of Schools in East Providence. He testified that the CRS position was created to be "proactive" in the social and emotional welfare of the children in the school and to create an environment where children would feel safe and where discussions and an environment of "de-escalation" could occur. (TR. p. 72) Mr. Cirillo testified that both CRS positions are grant-funded as "early intervention" services for drop-out prevention. Mr. Cirillo confirmed Mr. Thibault's and Mr. Farmer's testimony as to their level of involvement with the entire population of the school as opposed to one limited class of students. Mr. Cirillo also confirmed that the CRSs report to the administrators of the school and not to classroom teachers. (TR. p. 74) Mr. Cirillo also testified that the CRSs are actively involved in devising policies, especially in connection with the "2-5-2" program which differs significantly from educational specialists who have no role in that initiative. (TR. p. 76)

Mr. Cirillo also testified as to the CRSs' success in the school; in the first year, the suspension rate went down thirty-two percent (32%). In the year before they were hired, the school experienced eighty-four (84) "serious incident occurrences." By the time of the formal hearing in this matter, in April 2011, there were only twenty-three (23) serious incident occurrences. (TR. pgs. 78-79) Mr. Cirillo described this as a strong indicator that this proactive initiative is paying off and that the CRSs are clearly affecting the entire school population and the culture of the school. Mr. Cirillo testified that he didn't think there had been even one incident of smoking during the 2010-2011 school year. He also testified that this dramatic difference is not confined to school grounds and that while there used to regularly be incidences of problems at the strip mall across the street from the high school, that these have been eliminated. (TR. pgs. 79-80)

Finally, Mr. Cirillo testified that while the official CRS job description focuses on disciplinary issues, these particular employees have really transformed the job into much more of a proactive position, preventing problems, rather than disciplining kids who have created problems.

### DISCUSSION

The Union has filed this petition to accrete the CRS position into the bargaining unit certified by Case No EE-3265 which was originally certified on November 5, 1980 and which consisted of Special Education Aides, Bilingual Aides, Bus Aides and Classroom Aides. Since the original certification, the titles of Supervisory Aide and Educational Specialist have been added to the bargaining unit. As noted by the Employer in its Brief, accretion is a process by which new positions and the employees occupying the positions are added to an existing bargaining unit provided the new positions share a "community of interest" with the existing bargaining unit and have no separate identity. According to the Board's Rules and Regulations, the Petitioner has the burden of proof of establishing a sufficient community of interest, which is determined by the Board after consideration of the following factors:

- Similarity in scale and manner of determining earnings;
- Similarity of employment benefits, hours of work, and other terms and conditions of employment;
- Similarity on kinds of work performed;
- Similarity in the qualifications, skills, and training of employees;
- Frequency of contact or interchange among employees;
- Geographic proximity;
- Continuity or integration of production processes;
- Common supervision and determination of labor relations policies;
- Relationship to the administrative organization of the employer;
- History of collective bargaining;
- Desires of the affected employees;
- Extent of union organization within the Employer's ranks.

See Rule 1.01.8, Also see, Rhode Island Public Telecommunications Authority v Rhode Island State Labor Relations Board, 650 A.2d 479,486 (R.I. 1994). No one factor is

controlling or more important and the Board considers the totality of the facts and evidence when arriving at a determination. However, accretion is a process that is used sparingly because it takes away the voice and vote of the affected employees; a right afforded to employees in an election. Id at 487.

### **FACTORS TENDING TO FAVOR ACCRETION**

#### **Similarity in scale and manner of determining earnings:**

The existing membership of the bargaining unit has a variety of titles, some of who are paid on an hourly basis and some of whom are paid on a salary basis. The other title in the bargaining unit that requires at least some degree and is paid on a salary basis is the Education Specialist. The pay scale of \$55,600 is close enough to the CRSs pay of approximately \$58,000.00, especially when it is considered that the CRSs work ten (10) days more than the Education Specialists. This factor, if it were the only factor to consider, would weigh in favor of accretion.

#### **Geographic proximity:**

This is a single-site Employer and all of the positions in the bargaining unit work within one building - the East Providence High School. This factor, if it were the only factor to consider, would weigh in favor of accretion.

#### **Common supervision and determination of labor relations policies:**

The Principal is the ultimate Supervisor of all positions within the school. The Principal, the Superintendent, and the School Committee, in varying degrees, form the labor relations policies that cover all School Department personnel. This factor, if it were the only factor to consider, would weigh in favor of accretion.

### **FACTORS TENDING TO DISFAVOR ACCRETION**

#### **Similarity of employment benefits, hours of work, and other terms and conditions of employment:**

Both the CRS and the Education Specialists work a similar, though not identical work-day (school day). The CRS does have some additional work time after school for detention and school dances. Both positions enjoy the same holidays during the school year. However, the CRS starts work one week earlier at the beginning of the school year and works one week longer than the Educational Specialists. The CRS is entitled to twenty-three (23) sick days (maximum accumulation to 150 days) and zero (0)

personal days, for a total number of days leave of twenty-three (23) per year. The Education Specialists within the bargaining unit are entitled to twenty (20) sick days per year (maximum accumulation to 150 days) and two (2) personal days, for a total of twenty-two (22) days of leave per year. Both types of employees are required to contribute to their health insurance benefits, although the method of calculating contribution is different. The CRS contract does not provide for any leave without pay, but the Education Specialists could obtain up to one year upon request. The CRSs contract does not provide for any on-the-job-injury benefits, but the Education Specialists receive up to one (1) year's pay, with no deduction of sick time. After considering all of these elements, the Board finds that this factor tends more to disfavor accretion.

Similarity of kinds of work performed:

The majority of the positions within this title are Aides of one type or another, which act in an assisting capacity. The Education Specialists, which have greater educational requirements, assist the classroom teachers, but also assist the students directly, in their academic setting on academic issues. The CRSs enjoy a very unique, very autonomous role in the school. They have the ability to travel anywhere in the school at any time and are building relationships with the faculty, staff, the entire student body and their parents, as opposed to just one classroom of students and one teacher. The CRSs have their own office within the Conflict Resolution Center and they interact with outside parties such as the police, social workers and speakers. The CRSs' job is very fluid and dynamic and they have the ability to react and interact with all students to build trusting relationships. The position of CRS is clearly one of high visibility within the school community and is designed to foster a safe and nurturing environment for all students and for staff as well. This is a very different role than an Educational Specialist and is vastly different from that of an Aide, of any type which are far more ministerial in nature and do not require the use of independent professional judgment. This factor demonstrates the dissimilar nature of this position from others within the bargaining unit.

Desires of the affected employees:

The two (2) individuals holding the CRS positions have both stated their desire to not be part of the bargaining unit. The Employer argues that this factor, above all others,

should be paramount under the circumstances. The Union argued that the CRSs don't want to be part of the bargaining unit because they are afraid that there will be changes to their jobs. However, this opinion was not expressed during testimony. In fact, Mr. Thibault testified quite candidly that he didn't have a "positive experience" when he was previously part of the bargaining unit as an Education Specialist and that he did not want to be "part of that clique." (TR. p. 32) Mr. Farmer testified that he negotiated his own contract and liked the feeling of this independence. Both witnesses were quite frank in their expressions that they did not wish to be part of the bargaining unit and these reasons were rational. Therefore, this factor tends to weigh against accretion.

Similarity in the qualifications, skills, and training of employees:

The CRS position requires a higher minimum base of education than the positions within the bargaining unit - a Bachelor's Degree, with a Master's Degree preferred. In addition, the position requires a certification in crisis management, which is not required by an Education Specialist or any of the other aides in the bargaining unit. This factor does not support a finding that the CRSs share a community of interest with the other members of the bargaining unit.

Frequency of contact or interchange among employees:

All the employees of the High School work in the same building. The CRSs work all over the building and apparently have the ability to interact with the entire faculty, staff, students, administrators, parents, police, and other members of the public. The Education specialists work only in one classroom with one teacher and do not engage in broad-range interaction with others outside the classroom. No evidence was submitted as to how other classes of employees interact with each other. This factor does not tend to favor accretion.

**FACTORS THAT NEITHER FAVOR NOR DISFAVOR ACCRETION**

Relationship to the administrative organization of the Employer:

All employees of a School Department are subject to the same administrative organizational structure. The Principal is the Administrator of the building and reports to the Superintendent, who in turn reports to the School Committee. This factor is not useful under these circumstances to ascertain whether a particular bargaining unit is an appropriate bargaining unit.

Extent of union organization within the Employer's ranks / History of collective bargaining:

The East Providence High School, like most others in Rhode Island, is heavily organized by labor and has several distinct bargaining units. This fact, however, is not useful in determining whether the proposed bargaining unit is an appropriate bargaining unit for the position of CRS.

Continuity or integration of production processes:

This factor is not applicable within the educational employment setting.

**FINDINGS OF FACT**

- 1) The Respondent is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
- 2) The Petitioning Union is a labor organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers in grievances or other mutual aid or protection and as such is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.
- 3) There exists a similarity in scale and manner of determining earnings between the members of the bargaining unit and the position of Conflict Resolution Specialist.
- 4) This is a single-site Employer and all of the positions in the bargaining unit work within one (1) building - the East Providence High School. There is a community of interest in regards to the geographic proximity of the bargaining unit and the position of Conflict Resolution Specialist.
- 5) There exists common supervision and determination of labor relations policies.
- 6) The two (2) employees holding the position of Conflict Resolution Specialist do not desire to become members of the bargaining unit.
- 7) While the Conflict Resolution Specialist salaries are slightly higher than other members of the bargaining unit, the CRS also works a longer school year and is required to work some after school hours for detention and dances.
- 8) The minimum education qualification for the position of CRS is higher than the minimum qualification for other positions within the bargaining unit.

- 9) The CRSs work is not confined to one (1) room or location but rather they work throughout the high school building and parking lot. The CRSs have the ability to interact daily with the entire faculty, staff, students, administrators, parents, police and other members of the public.
- 10) The CRSs report directly to the Principal of the building and meet once a week with the Principal to review student progress.

#### **CONCLUSION OF LAW**

- 1) Of the twelve (12) community of interest factors to consider for an accretion, only three (3) factors favor accretion of the position of Conflict Resolution Specialist. There is an insufficient community of interest between the positions of Conflict Resolution Specialist and the other positions within the existing bargaining unit.

#### **ORDER**

- 1) The petition to accrete the position of Conflict Resolution Specialist to the bargaining unit certified by Case No. EE-3265 is hereby denied and dismissed.



RHODE ISLAND STATE LABOR RELATIONS BOARD



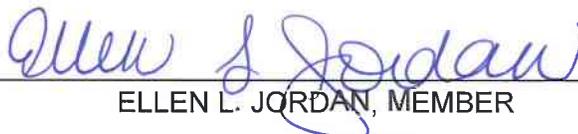
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JOHN R. CAPOBIANCO, MEMBER



ELIZABETH S. DOLAN, MEMBER

ENTERED AS AN ORDER OF THE  
RHODE ISLAND STATE LABOR RELATIONS BOARD

Dated: APRIL 3, 2012

By: Robyn H. Golden  
ROBYN H. GOLDEN, ADMINISTRATOR