

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

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| IN THE MATTER OF | : | |
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| RHODE ISLAND STATE LABOR | : | |
| RELATIONS BOARD | : | |
| | : | |
| -AND- | : | |
| | : | |
| DEPARTMENT OF HEALTH | : | |
| PROFESSIONAL STAFF | : | CASE NO. EE-3406A |
| ASSOCIATION/NEARI | : | |
| | : | |
| -AND- | : | |
| | : | |
| RHODE ISLAND COUNCIL 94, AFSCME, | : | |
| AFL-CIO, LOCAL 2870 | : | |
| | : | |

DECISION AND ORDER

TRAVEL OF CASE

The above-entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") on a Petition for Unit Clarification within the Rhode Island Department of Health (hereinafter "Employer") between Rhode Island Council 94, AFSCME, AFL-CIO, Local 2870 (hereinafter "Council 94"), and the Department of Health Professional Staff Association/NEARI (hereinafter "NEARI") for the position of Community Program Liaison Worker (hereinafter "CPLW"). The petition was filed by Council 94 on May 19, 2022. The contested position is currently in the NEARI bargaining unit.

Following the filing of the Petition, the Board assigned its investigator to conduct an investigation of the claims contained in the Petition. After an informal hearing was scheduled and held, the Board's investigator proceeded with interviews of the effected employees in the contested position and the employees' supervisors. These interviews were conducted in July 2022 (the employees) and on September 2, 2022 (the supervisors). An investigative report was prepared and submitted to the Board on September 19, 2022. The investigative report recommended the transfer of the CPLW position from NEARI to Council 94. On October 18, 2022, Council 94 submitted its response to the investigative report. On October 19, 2022, NEARI presented its response to the investigative report and on the same date Council 94 submitted a response to NEARI's response to the investigative report. On November 15, 2022, the Board voted to preliminarily accept the investigative report as written recommending the transfer of the CPLW position from NEARI to Council 94.

On December 15, 2022, NEARI requested a formal hearing on the Unit Clarification question. The Board held two formal hearings, the first on March 30, 2023 and the second on June 29, 2023.

At the conclusion of the formal hearings, post-hearing briefs were filed by Council 94 and NEARI on August 1, 2023. In arriving at the Decision herein, the Board has reviewed and considered the testimony and exhibits submitted at the hearing and the arguments contained within the post-hearing briefs submitted by the parties.

FACTUAL SUMMARY

The facts in this matter are not in dispute. Council 94 is the certified representative for all positions at the Employer excluding nurses, professionals and supervisory employees. NEARI is the certified representative for all professional employees at the Employer. In the Spring of 2022, the Employer posted a CPLW position designated as part of NEARI. Council 94 reviewed the job description (Joint Exhibit 4) and questioned whether the position was properly classified as a professional position as Council 94 believed the position was more clerical in nature and, therefore, more closely aligned with positions in the Council 94 bargaining unit. (Tr. Vol. II, dated June 29, 2023, at page 52; page 59). It was subsequent to its review of the job description (Joint Exhibit 4) that Council 94 filed a Unit Clarification Petition with the Board seeking to have the CPLW position removed from the NEARI bargaining unit and placed in the Council 94 bargaining unit.

DISCUSSION

The issue before the Board is whether the CPLW position, presently located in the NEARI bargaining unit, rightfully belongs in the Council 94 bargaining unit. The CPLW position has been classified as a professional position and has been included in the NEARI bargaining unit for many years, but Council 94 argues that the position is actually more clerical in nature and, therefore, should be moved to the Council 94 bargaining unit. NEARI objects to Council 94's characterization of the CPLW position as clerical and contends the position has always been professional and continues to remain a professional position as that term is defined by the State Labor Relations Act (hereinafter "Act").

When a Unit Clarification Petition is brought before the Board, it is the Petitioner's burden to demonstrate that the position in question, in this case the CPLW position, shares a community of interest with the bargaining unit into which Petitioner wants the position placed. Community of Interest is a term applied by the Board to demonstrate that the position in question shares similar aspects of the job with other positions in the identified bargaining unit. Rule 1.10 of the Board's Rules and Regulations lists twelve factors that the Board may consider in attempting to determine a Community of Interest. Those factors are:

- a. The similarity in scale and manner of determining earnings;
- b. Similarity of employment benefits, hours of work, and other terms and conditions of employment;
- c. Similarity in the kind of work performed;
- d. Similarity in the qualifications, skills, and training of the employees;
- e. Frequency of contact or interchange among employees;

- f. Geographic proximity;
- g. Continuity or integration of production processes;
- h. Common supervision and determination of labor relations policies;
- i. Relationship to the administrative organization of the employer;
- j. The history of collective bargaining;
- k. The desires of the affected employees; and
- l. The extent of union organization within the employer's ranks.

In the present matter, Council 94 argues that the CPLW position shares a community of interest with positions represented in the Council 94 bargaining unit. NEARI, while acknowledging there is some overlap in some of the community of interest factors between the CPLW position and those positions in Council 94, also argues that several critical factors in the community of interest test are not comparable and do not exist between the CPLW position and the Council 94 bargaining unit and it is these factors to which the Board should give the most weight. A review of the above community of interest factors shows that, while the CPLW is closely aligned with both Council 94 and NEARI in some of the identified items, the latter group has, in the Board's view, a slight advantage regarding the community of interest factors.

A. The Similarity In Scale And Manner Of Determining Earnings

Initially, Council 94 argues that the CPLW position shares a commonality with positions in the Council 94 bargaining unit regarding wages. (Tr. Vol. II dated June 29, 2023, at page 53). The evidence presented to the Board by Council 94 on this issue was that the wages of the CPLW position and how those wages are determined fall within the range of wage classifications associated with positions in the Council 94 bargaining unit. (Tr. Vol. II dated June 29, 2023, at page 53; see also Council 94 Memorandum at page 4). NEARI did not dispute this community of interest argument.

B. Similarity of employment benefits, hours of work, and other terms and conditions of employment

Similar to the wage argument, Council 94 also argues that the benefits received, hours of work and terms of employment for the CPLW position are the same as those received by Council 94 bargaining unit members. (Tr. Vol. II dated June 29, 2023, at pages 53 – 54; Joint Exhibit 6; see also Council 94 Memorandum at page 4). NEARI did not dispute this community of interest argument.

C. Similarity in the kind of work performed

Council 94 asserted that the work performed by individuals in the CPLW position was similar to work performed by positions contained in the Council 94 bargaining unit. (See also Council 94 Memorandum at page 4). Council 94 presented the testimony of the Local 2870 Union president, Stephanie Pontes. Ms. Pontes described the type of work performed by members of her Local and testified that she believed the work performed in

the CPLW position was similar in nature to the work performed by members of her bargaining unit. (Tr. Vol. II dated June 29, 2023, at page 52 – 53). NEARI disputed Ms. Pontes’s conclusions through the testimony of two individuals, Barbara Melfi and Emma Reynoso, who both work as CPLWs. Both Ms. Melfi and Ms. Reynoso testified that their work as CPLWs was different from the clerical work performed by members of the Council 94 bargaining unit. (Tr. Vol I dated March 30, 2023 at page 18; pages 34 – 36).

D. Similarity in the qualifications, skills, and training of the employees

Council 94 also provided testimony from Ms. Pontes regarding the skills, education and qualifications required for the CPLW position as compared to positions within the Council 94 bargaining unit. (Tr. Vol. II dated June 29, 2023, at pages 55 – 58; see also Petitioner Exhibits 1 – 2). As described by Ms. Pontes, the positions in her bargaining unit, i.e., Program Planner and Human Services Policy and Systems Specialist, have the same or a similar educational and qualifications requirement when compared with the CPLW position.

E. Frequency of contact or interchange among employees

Council 94 also presented testimony from Ms. Pontes regarding the frequent contact and/or interaction between the CPLW position and members of her bargaining unit. (Tr. Vol. II dated June 29, 2023, at page 59; see also Council 94 Memorandum at page 5). NEARI did not dispute this community of interest argument.

F. Geographic proximity

Council 94 also presented testimony from Ms. Pontes regarding the geographic proximity between CPLWs and members of the Council 94 bargaining unit. As Ms. Pontes testified without dispute, the CPLWs work in the “same office location” as members of Council 94 (“right across from each other”). (Tr. Vol. II dated June 29, 2023, at page 59; see also Council 94 Memorandum at page 5). NEARI did not dispute this community of interest argument.

G. Continuity or integration of production processes

There was no dispute between Council 94 and NEARI that all employees of the Employer must adhere to and comply with the Employer’s mission.

H. Common supervision and determination of labor relations policies

Similarly, NEARI did not dispute Council 94’s assertion that the CPLW position and members of Council 94 share common supervision as the positions are within the same divisions and report to one (1) of two (2) Associate Directors.

I. Relationship to the administrative organization of the employer

NEARI also did not dispute Council 94's assertion that both the CPLWs and members of the Council 94 bargaining unit are employed by the Employer and are subject to the personnel rules of the State of Rhode Island.

J. The history of collective bargaining

Council 94 asserted that it has a long bargaining history with the Employer. While this evidence is accurate, it is also true that NEARI has a long bargaining history with the State. As impacts the instant dispute, NEARI has a significant bargaining history with the State that includes bargaining for the CPLW position as part of the NEARI bargaining unit.¹ (See NEARI Memorandum at page 5).

K. The desires of the affected employees

The evidence provided to the Board regarding this particular factor overwhelmingly supported the CPLW position remaining in the NEARI bargaining unit. Both Ms. Melfi and Ms. Reynoso, the two bargaining unit members who work as CPLWs and testified before the Board indicated that they want to remain in the NEARI bargaining unit and feel they are being well represented by NEARI. (Tr. Vol. I dated March 30, 2023, at pages 18 – 19; pages 36 – 37).

L. The extent of union organization within the employer's ranks

There is no dispute between the parties that the Employer's organization is heavily unionized.

In reviewing the Community of Interest factors, it is clear, as previously noted, that there is some overlap between NEARI and Council 94 regarding the CPLW position. Where the disparity clearly exists is in the bargaining history NEARI has with the Employer as concerns the CPLW position (which has been represented by NEARI for bargaining purposes for at least the last fifteen (15) years; see Tr. Vol. I dated March 30, 2023 at pages 36 – 37) and the desires of the employees who occupy the CPLW position (both Ms. Melfi and Ms. Reynoso expressed a desire to remain represented by NEARI – see Tr. Vol. I dated March 30, 2023 at pages 18 – 19; pages 36 – 37). In reviewing all the reliable and probative evidence presented, the Board is convinced that the bargaining history and desires of the employees to remain with NEARI tips the scales in NEARI's favor regarding the assessment of the Community of Interest factors.²

One aspect of the Community of Interest test that is particularly important to the instant question before the Board involves the similarity of the work performed by the disputed

¹ According to the testimony received from Ms. Melfi and Ms. Reynoso, Ms. Melfi has been in the CPLW position for nine (9) years and Ms. Reynoso has been in the CPLW position for fifteen (15) years. (Tr. Vol. I dated March 30, 2023 at page 13; pages 23 – 24; pages 36 – 37). NEARI has been representing the CPLW position for bargaining purposes for at least the past fifteen (15) years.

² Obviously, the Board has also taken into account the work aspects of the CPLW position and its similarity/dissimilarity to positions contained in the Council 94 bargaining unit. Those distinctions are discussed herein.

position when compared with positions in the unit to which it may be accreted. In the present case, the CPLW position has been classified for many years as a professional position. However, Council 94 claims that the position is incorrectly classified as professional and that the duties of the position (along with the education and qualifications requirements) are more closely aligned with the clerical duties and responsibilities of positions in the Council 94 bargaining unit.

Under the Board's Rules and Regulations at 1.2(40), a Professional employee is defined as follows:

(a) Any employee engaged in work

- (1) predominantly intellectual and varied in character; as opposed to routine mental, manual, mechanical or physical work;
- (2) involving the consistent exercise of discretion and judgment in its performance;
- (3) of such a character that the output produced, or the result accomplished, cannot be standardized in relation to a given period of time;
- (4) requiring knowledge of an advanced type in a field of science or 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

- (1) has completed the courses of specialized intellectual instruction and study described in § 1.2 (A)(40)(a)(4) of this Part; and
- (2) is performing related work under the supervision of a professional person to qualify himself or herself to become a professional employee as defined in § 1.2 (A)(40)(a) of this Part.

Council 94 argues that the testimony of Ms. Melfi and Ms. Reynoso, the language in the job description and the testimony of Council 94's Local Union president all substantiate its position that the work performed by the CPLW position is more aligned with the clerical work performed by Council 94 members than professional work as defined by the Board. (See Council 94 Memorandum at pages 4 – 5; pages 7 – 8; Tr. Vol. II dated June 29, 2023 at page 52 – 53; pages 54 – 58; Joint Exhibit 4). In contrast, NEARI claims that the CPLW position is properly within its bargaining unit as the job description and testimony of its witnesses makes clear that the CPLW position is professional in nature.

A review of the testimony and the exhibits presented to the Board in this case makes it clear that while the comparison may not be perfect, the position of CPLW more clearly fits within the professional category in the NEARI unit than compared to the jobs within the Council 94 unit. Initially, the Board has reviewed the job description of the CPLW. (See Joint Exhibit 4). The job description includes numerous items that demonstrate the

CPLW exercises discretion and independent judgment in the exercise of its daily duties. Whether this involves monitoring and assisting local agencies with compliance with various federal and/or state regulatory requirements, conducting formal reviews of the programs and operations of local agencies, providing technical assistance and training, taking complaints and interviewing complainants (see Joint Exhibit 4), it is the Board's view, based on a review of this evidence, that the CPLW does exercise discretion and judgment in areas that are not routine or menial and performs duties that cannot be standardized in relation to a given period of time. While the Board's review of the job description did not reveal an educational component that was strictly within the guidelines set forth in Rule 1.22(40), the Board believes that the study necessary for a CPLW to understand and be familiar with the various federal, state and local laws, rules and regulations effecting and impacting the programs a CPLW administers is sufficient evidence to establish compliance with the intent of the Rule.

The Board has reached a similar conclusion after reviewing the testimony of Ms. Melfi and Ms. Reynoso. Both individuals are long term occupants of the CPLW position (Tr. Vol. I dated March 30, 2023 at page 13; pages 23 – 24) and are clearly knowledgeable regarding the duties and responsibilities of the position. (See Tr. Vol. I dated March 30, 2023 at pages 14 – 16; pages 24 – 31). Both Ms. Melfi and Ms. Reynoso described how they each had to exercise their judgment and discretion in the performance of their daily job duties (Tr. Vol. I dated March 30, 2023 at pages 16 – 18; pages 32 – 33) and how the performance of their duties was neither routine nor menial in nature (Tr. Vol. I dated March 30, 2023 at pages 17 – 18; pages 34 – 36). In short, it is this Board's view, after reviewing all of the reliable and probative evidence submitted to it in this case, that the CPLW position is professional in nature and is legitimately positioned within the NEARI unit.

FINDINGS OF FACT

1. Council 94 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.

2. NEARI 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. The Rhode Island Department of Health is an "employer" within the meaning of the Rhode Island State Labor Relations Act.

4. Council 94 is the certified representative for all positions at the RI Department of Health (hereinafter "Employer") excluding nurses, professionals and supervisory employees.

5. NEARI is the certified representative for all professional employees at the Employer.

6. Council 94 filed a clarification petition challenging the professional status designation of the CPLW position and its inclusion in the NEARI bargaining unit.

CONCLUSIONS OF LAW

1. Council 94 has not demonstrated by a fair preponderance of the evidence that the CPLW position is improperly classified as a professional position and should be removed from the NEARI unit and placed in the Council 94 unit. Therefore, the CPLW position will remain within the NEARI bargaining unit.

RHODE ISLAND STATE LABOR RELATIONS BOARD



WALTER J. LANNI, CHAIRMAN



SCOTT G. DUHAMEL, MEMBER



ARONDA R. KIRBY, MEMBER



KENNETH B. CHIAVARINI, MEMBER



HARRY F. WINTHROP, MEMBER

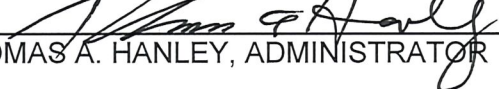


STAN ISRAEL, MEMBER

****BOARD MEMBER LAWRENCE E. PURTILL ABSTAINED FROM VOTING ON THIS MATTER.**

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

Dated: NOVEMBER 14, 2023

By: 
THOMAS A. HANLEY, ADMINISTRATOR

EE-3406A

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

IN THE MATTER OF
RHODE ISLAND STATE LABOR
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-AND-
DEPARTMENT OF HEALTH
PROFESSIONAL STAFF
ASSOCIATION/NEARI
-AND-
RHODE ISLAND COUNCIL 94, AFSCME,
AFL-CIO, LOCAL 2870

CASE NO. EE- 3406A

**NOTICE OF RIGHT TO APPEAL AGENCY DECISION
PURSUANT TO R.I.G.L. 42-35-12**

Please take note that parties aggrieved by the within decision of the RI State Labor Relations Board, in the matter of Case No. EE- 3406A, dated November 14, 2023, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **November 20, 2023**.

Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-29.

Dated: November 20, 2023

By: */s/ Thomas A. Hanley*
Thomas A. Hanley
Administrator