



cross-examine witnesses. Upon conclusion of the hearing, the parties each filed briefs on May 3, 2013. In arriving at the decision herein, the Board considered the testimony and evidence submitted at the formal hearing and reviewed both briefs.

### **FACTUAL SUMMARY**

The position of Program Manager was created in 2002 and is currently a non-Union position within the City's Workforce Solutions Division. The incumbent employee, Ms. Anne Walsh, was hired into the position in November, 2005. The parties submitted a stipulated as to the following facts:

- 1) The City of Providence (hereinafter City) and the Rhode Island Laborers' District Council, on behalf of Local Union 1033, LIUNA (hereinafter Union) have been parties to a collective bargaining relationship since approximately 1972, when the Rhode Island State Labor Relations Board issued its Amended Certification designating the Union as the bargaining representative of the City's municipal employees who were statutorily eligible for collective bargaining. (See Attachment A)
- 2) Since the commencement of the collective bargaining relationship referred to above, the parties have negotiated many Collective Bargaining Agreements in accordance with Title 28, Chapter 9.4 RIGL, as amended.
- 3) The position of Program Manager for the Youth Programs was created in approximately April of 2002 and has been a non-union position in the City of Providence' Workforce Solutions Division since that time.
- 4) The incumbent of the position, Ms. Anne Walsh, was hired in November of 2005 and has held the position of Program Manager since that time.
- 5) As the Youth Program Manager, Ms. Walsh is tasked with the development and the administration of the Youth Program. A copy of her job description is attached hereto as (Attachment B).
- 6) Additionally, Ms. Walsh is directly supervised by Mr. Jim Glover, the Director of Operations and Mr. Robert Ricci, the Administrator of Workforce Solutions. A copy of the Department's organizational chart is attached hereto as (Attachment C).
- 7) Ms. Walsh does not have the ability to hire, fire or otherwise discipline employees.
- 8) While Ms. Walsh has the ability to direct work associated with the Youth Program to Youth Center Manager, Adriana Goode, she does not have the ability to approve any of Ms. Goode's leave requests or to certify the hours Ms. Goode worked.
- 9) Ms. Walsh is not privy to confidential information concerning collective bargaining or labor relations.

10) Ms. Walsh earns a salary which is based upon a thirty-five (35) hour non-standard work-week.

11) The position of Program Manager works along-side certain positions not included in the bargaining unit and bargaining unit positions including the positions of Monitoring Chief, Office Assistant and Assistant Accounting Officer.

12) Ms. Walsh works out of the Mayor Joseph A. Doorley Municipal Building located at 444 Westminster Street, where the Information Technology, Law, Planning and Development, and Building Departments are situated. Members of the bargaining unit as well as nonmembers work at said location.

According to Joint Exhibit 1-B, the Program Manager's job description, the salary range for this position is \$54,358.72 - \$66,737.84. The duties and responsibilities of the position, according to the job description are:

- 1) Oversees the development, issuance, and processing of Requests for Proposal (RFP) process in connection with the selection of service providers.
- 2) Serves as the principal staff support person for program committees of the Providence/Cranston Workforce Investment Board.
- 3) Oversees the development, negotiation process, and execution of contracts with sub-recipients.
- 4) Schedules technical assistance visits and manages programs conducted by sub-recipients; reviews and evaluates reports and performance of sub-recipients.
- 5) Maintains liaison with agencies such as the Federal and State Department of Labor, state and local education departments, community-based organizations, and other employment, education, and training organizations.
- 6) Performs other related duties as assigned.

The Employer has objected to inclusion of this position within the bargaining unit, claiming that the position is either supervisory or managerial. The Employer further argues that the position does not share a community of interest with the existing bargaining unit and therefore, should not be accreted. Since the question of whether the position is either supervisory or managerial has the potential to be dispositive of this matter, we shall address these issues first.

**Supervisory Employees:**

In the Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board, 694 A.2d 1185, 1189 (R.I. 1997), the Rhode Island Supreme Court adopted the following federal definition of "supervisor":

“any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” (29 U.S.C. § 152(11))

Under federal labor law, this list of supervisory function has been determined to be disjunctive; that is, a supervisor is an individual with the authority to undertake any one of these functions. Rest Haven Living Center, Inc. 322 NLRB, no. 33, 153 LRRM 1132 (1996). It also includes individuals who possess the authority to recommend any of the foregoing actions. However, as a practical matter, an individual who fails to exercise any of the indicia of statutory authority will rarely be found to be a supervisor. Capitol Transit Company, 114 NLRB 617, 37 LRRM 1005 (1955) enforced, 38 LRRM 2681 (D.C. 1956)

Determining whether an individual uses independent judgment in the exercise of functions indicative of supervisory status is extraordinarily fact intensive analysis. N.L.R.A. Law & Practice 2.03 (4) In analyzing the indicia of “assignment” and “responsibly directing” employees, it is clear that “not all assignments and directions given by an employee involve the exercise of supervisory authority. As stated by the Fifth Circuit:

“If any authority over someone else, no matter how insignificant or infrequent, made an employee a supervisor, our industrial composite would be predominantly supervisory. Every order giver is not a supervisor. Even the traffic director tells the president of a company where to park his car.” N.L.R.A. Law & Practice 2.03 (4) citing Providence Hospital, 320 NLRB 717 (1996).

Determining whether an employee has used independent judgment in making an assignment requires careful analysis of the facts. For example, work assignments made to equalize work on a rotational basis or assignment based on skills when the differences in skills are well known to the employee is routine. Further, assigning tasks that clearly fall within an employee’s job description does not require the use of “independent judgment”. Likewise, issuing discipline

according to a set schedule set forth in company handbooks is merely ministerial and does not require the use of independent judgment.

In the present case, the parties stipulated that Ms. Walsh does not have the authority to hire, fire, or otherwise discipline employees. There is no evidence in the record that Ms. Walsh has the authority, in the interest of her employer, to reward, layoff, recall, transfer, or promote employees. The parties did stipulate that Ms. Walsh has the ability to direct work associated with the Youth Program to Youth Center Manager, Adriana Goode, but she does not have the ability to approve any of Ms. Goode's leave requests (vacation, sick or personal) or to certify the hours Ms. Goode worked. Ms. Walsh testified that she did not set the work schedule for either Ms. Goode or for Mr. Paul Haroian, the Program Assistant. (TR. pg. 15) Ms. Walsh also testified that neither of these individuals are required to "report" to her. (TR. pg. 15) Ms. Walsh does not monitor their time. *Id.* Ms. Walsh testified that she and Ms. Goode work together "as a team." *Id.* As for whether she "assigns" work, the following is the sum total of evidence on this issue:

Q. Do you delegate any work to her?

A. I don't. I mean, I was asked for some ideas about work that she could do because she was—recently because she was going to be spending an extra day a week in our office, and I gave a list of things I thought would be appropriate, but I don't delegate to her. I occasionally ask her for something like I would ask anybody in our office. As for Ms. Almeida, the office assistant, Ms. Walsh testified that sometimes she does ask Ms. Almeida to "do things." As to Mr. Haroian, he has not worked in the same office environment with Ms. Walsh for approximately a year. Prior to his transfer to another location, Ms. Walsh would occasionally ask him to print out a report or pick up files from vendors within the state.

The question becomes then, whether the manner in which Ms. Walsh occasionally asks Ms. Goode or Ms. Almeida to do something for her rises to the level of "assign" as set forth in the definition of supervisor set forth in Champlin Library, supra or whether such actions are more ministerial in nature. In this Board's opinion, the type of "assignments" described by Ms. Walsh sounds more like the occasional co-worker favor, as opposed to a supervisor responsibly directing the work of subordinates, in the interest of their common Employer.

Furthermore, the Employer's witness, Mr. Robert Ricci, testified that Ms. Walsh does not oversee Ms. Goode's work "because Ms. Goode is non-union as well, and works independently." (TR. pg. 82) Mr. Ricci testified that Ms. Goode reports to Ms. Walsh as to what's happening in the youth centers because Ms. Walsh is responsible for the funding grants. (Id.)

The Employer also argued that Ms. Walsh is able to effectively recommend either discipline or transfer of Mr. Paul Haroian, and therefore has supervisory status. Ms. Walsh testified that she would complain to Mr. Ricci about Mr. Haroian's failure to do certain tasks and that she felt there should be consequences when people didn't do their jobs. (TR. pg. 30) When asked if she recalled recommending that Mr. Haroian be transferred to another location, Ms. Walsh said, "no." When asked if he recalled conversation with Ms. Walsh about Mr. Haroian, Mr. Ricci testified:

"I recall Anne constantly complaining about Paul Haroian, and when Anne was -- when the office did not file the proper reports or was playing catch up on reports regarding youth programs to the State, to the Federal Government, Anne would always say it was because Paul didn't do this and Paul didn't do that, and that's why we're behind. So it was constant friction and problems. Whether she came and said, you know, here's the Union contract, and you should do Step 1, Step 2, I don't believe she actually did that, but she did say I should handle it, I should do something about it, I should speak to him, I should, you know, straighten the situation out, and obviously, it's up to me what those next steps would be. However, the recommendation she did make numerous times that I did finally accept was she no longer wanted him reporting to her or working with her. And so based on that and the history with the two of them and her constantly complaining to me and asking me to not have him work with her any longer, and other needs in the office, I transferred him to our One Reservoir Avenue location."

The Board is surprised that the Employer would find that Mr. Ricci's testimony would support an argument that Ms. Walsh could effectively recommend either discipline or transfer. By Mr. Ricci's own testimony, Ms. Walsh was "constantly complaining", yet he was not responsive to her complaints, until he "finally" decided to transfer Mr. Haroian, due to Ms. Walsh's complaints and "other needs

in the office.” Thus, it seems clear that Ms. Walsh’s recommendation (even if she *had* made one) was certainly not effective. Mr. Ricci eventually found an operational reason to move Mr. Haroian, which also resolved the “constant complaints” lodged repeatedly by Ms. Walsh. If Ms. Walsh had truly been a supervisory employee, the Board would expect that her own supervisor would respect her opinion on the work performance of her so-called subordinate or that she would have had the authority to do something about his work performance. As such, the Board finds that the Employer’s burden to establish the supervisory status of the position of Program Manager has simply not been met and that the position of Program Manager is not supervisory.

**Managerial employees:**

“Managerial” employees are employees who “formulate and effectuate management policies by expressing and making operative the decisions of their employers.” Fraternal Order of Police, Westerly Lodge 10 v. Town of Westerly, 659 A.2d 1104,1107 (1995); State v. Local 2883 AFSCME, 463 A.2d 186, 190 (1983) citing and quoting in part NLRB v. Bell Aerospace Co., 416 U.S. 267, 278 (1974). Managerial employees must exercise discretion within or even independently of established employer policy and must be aligned with management. N.L.R.B. v Yeshiva University, 444 U.S. 672 (1980). An employee may be excluded as managerial only if he represents management interests by taking or recommending discretionary actions that control or implement employer policy. Id. “Employees whose decision-making is limited to the routine discharge of professional duties in projects to which they have been assigned, cannot be excluded from coverage even if Union membership arguably may involve some divided loyalty. Only if an employee’s activities fall outside the scope of the duties routinely performed by similarly situated professionals, will he be found aligned with management.” Id at 690.

In the present case, Ms. Walsh testified that in her position, she is told the amount of funds that are to be spent on the Youth Program and she then tailors the Requests for Proposals accordingly. Once the grant proposals are submitted for consideration, Ms. Walsh provides packets to the members of the Youth

Council, which is a committee of the Workforce Board, for them to read and rank. Ms. Walsh testified that the committee then meets a few times to determine what the committee's recommendation will be to the Work Force Board about which proposals should be funded. (TR. pg. 11) In this process, Ms. Walsh does not have a vote. Id. Ms. Walsh testified that once the proposals are to be awarded, she transforms them into a scope of work and then creates contracts, working the proposal language into existing boilerplate contracts. (TR. pg. 12) Once the contracts are issued, Ms. Walsh then follows up with the vendors to make sure they provide their "deliverables" which are the benchmarks set by the federal government and the state (TR. pgs. 13, 23) Ms. Walsh testified that when the deliverables are not met, she can give a vendor more technical assistance on the reporting paperwork. If the problem is that the vendor is not doing the program correctly, she brings that issue to Mr. Ricci. Ms. Walsh does not have the authority to stop a vendor's funding for its failure to perform. (TR. pg. 24) The most she's been able to do under these circumstances is to send an email to the "people in fiscal" asking that if there is a check in the pipeline for vendor, to put a hold on it. (TR. pg. 25) When asked if she develops policies as to how the program is to be administered, Ms. Walsh testified that most of the policies are prescribed by the funding sources and that there's not a lot of leeway. When asked if she can change program goals, Ms. Walsh testified that the program has set elements, but that she can ask vendors to be more precise about the work they were proposing. However, when she does, this is not something that she has done on her own; she works with a committee on the Youth Council on these matters. (TR. pgs. 32-33) She also works with the Youth Council to determine what content will be in the RFPs, but she has leeway to draft the precise language of the documents thereafter. (TR. pg. 33) Ms. Walsh agreed that she works independently and that Mr. Ricci does not weigh in on things, unless there are "policy changes, or things like that, then he has to decide those things." (TR. pgs. 42-43) She confirmed that she has very little input on the policies relative to the RFPs. For instance, she testified that in the past year there had been a lot of people who wanted to make the contracts for multiple years, instead

of just one year. She stated that she could not make that decision and that initially Mr. Ricci did not want to switch to a multiple-year format, but later did agree. This was not her decision. (TR. pg. 43)

Mr. Ricci testified that when Ms. Walsh's position was created, it was intended for the employee to work independently and manage youth contracts, without needing supervision every day. (TR. pg. 64) As for policy making, Mr. Ricci testified that for youth policy, Ms. Walsh works "with the Youth Council, and share ideas and make recommendations." She could "advocate for and design at her level and bring forward." (TR. pg. 66) Mr. Ricci further described Ms. Walsh's authority as having a "strong voice" advocating at the committee level. (TR. pg. 67)

The record here is clear that Ms. Walsh's ability to have "strong voice" to "advocate at the committee level" demonstrates that she cannot formulate and effectuate management policies by expressing and making operative the decisions of her Employer. She is a staff liaison to the Youth Council and can urge policy, but not make policy. Ms. Walsh is an employee whose decision-making is limited to the routine discharge of professional duties in projects to which she has been assigned. Therefore, she cannot be excluded from collective bargaining as she does not qualify as a managerial employee.

**Community-of-Interest:**

Having determined that the position of Program Manager is neither supervisory nor managerial, the Board now turns to the question of whether or not the position shares a "community-of-interest" with other positions within the bargaining unit.

Factors to determine whether a community-of-interest exists are:

- 1) Similarity in scale and manner of determining earnings;
- 2) Similarity of employment benefits, hours of work, and other terms and conditions of employment;
- 3) Similarity in the kind of work performed;
- 4) Similarity in the qualifications, skills and training of the employees;
- 5) Frequency of contact or interchange among employees;
- 6) Geographic proximity;
- 7) Continuity or integration of the production process;

- 8) Common supervision and determination of labor relations policies;
- 9) Relationship to the administrative organization of the employer;
- 10) History of collective bargaining;
- 11) Desires of the affected employees;
- 12) Extent of union organization within the Employer's ranks.

RISLRB Rules and Regulations, 8.04.3, N.L.R.B. v. Saint Francis College, 562 F.2d 246, 249 (3d Cir. 1977) (citing Robert A. Gorman, Basic Text on Labor Law, Unionization, and Collective Bargaining, 69 (1976)) Rhode Island Public Telecommunications Authority v Rhode Island State Labor Relations Board, 650 A2d 479 (R.I. 1994). The burden of establishing the "community of interest" is on the Petitioner.

The Employer, in this case, argues that the Program Manager position does not share a sufficient community-of-interest to be included within the proposed bargaining unit, citing the Rhode Island Supreme Court's decision in Rhode Island Public Telecommunications Authority v Rhode Island State Labor Relations Board, 650 A2d 479 (R.I. 1994) So, the Board must analyze the facts produced at hearing against the community-of-interest factors, to determine whether accretion is appropriate in this case. No one factor is controlling and there is no specified number of factors that must be met for a position to be eligible for accretion. The Board is not required to choose the most appropriate bargaining unit, but only an appropriate bargaining unit. Wil-Kil Pest Control Co. v NLRB, 440 F.2d 371, 375 (7<sup>th</sup> Cir. 1971).

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

The Employer, citing testimony by Mr. Robert Ricci (TR. pg. 63) argues that the Program Manager's salary is approximately \$70,000.00 to \$72,000.00 per year and that the salary range for the majority of the bargaining unit is well below this amount. However, Joint Exhibit 1-B, the Program Manager's job description, provides that the salary range for this position is \$54,358.72 - \$66,737.84. The only other information concerning salaries in the bargaining unit comes from Petitioner's Exhibit # 4, the job description for Purchasing Agent IV, which has a salary of \$1,031.42 per week or \$53,633.84 per year. Thus, the only known salary within the bargaining unit is 98% of that of the starting salary set

forth in Joint Exhibit # 1 for the Program Manager. The record appears devoid as to where Ms. Walsh's current salary may be in the range, but we do find that with the salary of the Purchasing Agent IV being at 98% of the starting salary of the subject position, that there exists a sufficient similarity of scale of earnings for this factor to satisfy the community-of-interest as to this factor.

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

The record here established that the hours of work for the Program Manager are a non-standard, thirty-five hour work-week. Ms. Walsh testified that at one point, she was eligible for "comp. time" when she worked over her thirty-five (35) hours, but that is no longer the case. She also testified that her hours of work are generally 8:30 - 4:30, but that she will stay until the work is done. (TR. pg. 36) She does not receive a car allowance, as do some members of the bargaining unit, but she does receive parking privileges, as do some, but not all, members of the bargaining unit. (TR. pgs. 36-37) There is no evidence in the record as to the hours of work for other members of the bargaining unit, so the Union has not established this element of this factor for community-of-interest. As far as benefits are concerned, Ms. Walsh testified that she receives health insurance and pays a co-share of the premium, but did not know the amount of the co-share. (TR. pg. 24) Mr. Robert Ricci, who testified later in the hearing, stated that non-Union employees have a 20% co-share, as opposed to a 15% co-share paid by union employees. (TR. pg. 72) The Employer argues in its brief that the "non-Union health insurance plan is different than the one provided to bargaining unit members, ie// different co-pays, co-shares and prescription coverage." Citing p. 72 in the TR. - Brief, p. 12. However, reference to page 72 of the transcript, reveals only that non-Union employees have a higher co-pay. There is no evidence in the record to support the remaining elements of the Employer's statement concerning co-shares and prescription coverage or that the Union plan is different. Similarly, the Employer argues in its brief that "all non-union employees are subject to furlough days, which results in a reduction of pay", citing to (TR. pgs. 37-38). However, a review of those transcript pages reveals that Ms. Walsh, the Program Manager, did have a

reduction in her pay when she first took the job and that it was not required of Union employees. There is no evidence to support that the furlough applies to “all” non-Union employees or that this is something that is still occurring.

The evidence further established that Ms. Walsh enjoys parking privileges at her office location on Westminster Street. Some of the Union positions also enjoy parking privileges, but not all. Ms. Walsh testified that it was her belief that parking privileges were dependent on the nature of the job and were afforded to those employees who had to go in and out of the office during the work-day for their job duties. (TR. pg. 37) The reason for the issuance of parking privileges was not confirmed with other evidence, but Ms. Walsh’s testimony that both Union and non-Union employees have parking privileges, was unrebutted by any other witness. Overall then, this factor for the community-of-interest has been met.

**Similarity in the kind of work performed / Similarity in the qualifications, skills and training of the employees:**

The position of Program Manager requires a bachelor’s level degree, with advanced writing and professional skills. The main duties and responsibilities include oversight of the development issuance and processing of Request for Proposals, in connection with the selection of service providers for Workforce programs. She serves as the principal staff support for program committees and oversees contractual compliance. The Program Manager maintains liaisons with the federal and state departments of labor.

Similarly, the bargaining unit position of Rehabilitation Program Manager (in the bargaining unit) requires a bachelor’s degree; and one (1) of the main duties and responsibilities includes oversight of contractual compliance. This position is responsible for monitoring all federal, state, and city regulations and monitoring the program activities.

The position of Planner (in the bargaining unit) requires the minimum of a bachelor’s degree, with three (3) years experience. Work duties include writing and public speaking, as well as organization and development of the planning and urban redevelopment program.

All three (3) of these positions are professional positions requiring at least a bachelor's degree. All are engaged in oversight of regulations of one type or another. As such, this factor of the community-of-interest standard has been met.

**Frequency of contact or interchange among employees; Similarity in the kind of work performed; Geographic proximity:**

The parties stipulated that the Program Manager position works along side both bargaining unit members and non bargaining unit members. The position is located in an office environment at the Mayor Joseph A. Doorley Municipal Building, with both members of the bargaining unit and non-members. Ms. Walsh testified that she works with Susan Almeida, who serves in the bargaining unit position of Administrative Assistant. This factor of the community-of-interest standard has therefore been met.

**Common supervision and determination of labor relations policy:**

Joint Exhibit #1 is an Organizational Chart for Workforce Solution of Providence/Cranston. The chart shows the position of Youth Program Manager (Ms. Walsh) as below the Director of Operations and above the Youth Center Manager (Ms. Goode). Ms. Walsh testified that when she first began her employment, she did report to the Director of Operations for approximately eighteen (18) months or so, until the incumbent in that position retired. Thereafter, she reported to Mr. Ricci, the Administrator of the Department, for a while. She now reports again to the Director of Operations, Mr. Jim Glover. Ms. Walsh testified that Mr. Glover's office is right next to hers, so she interacts with him frequently. Neither Mr. Glover nor Mr. Ricci monitors her projects or workload. (TR. pg. 41) Ms. Walsh testified that Mr. John Tantimonico, the Monitoring Chief, who is in the bargaining unit, provides monitoring paperwork to her concerning the Youth Programs. Ms. Walsh also testified that although the organizational chart shows the Youth Center Manager (Ms. Goode) as reporting to her, this is not the case. Ms. Goode works for two (2) Workforce Boards - the Providence Workforce Board and the Greater Rhode Island Work Force Board. Ms. Goode is not in the Union. Ms. Walsh also testified that Carlos Rivera, who does work similar to hers, works for the Workforce Partnership of Greater Rhode Island; which she believed was a non-Union Employer. (TR. pg. 44)

It is undisputed by the parties that neither the position of Program Manager, nor her supervisors have anything to do with the determination of labor relations policies. Therefore, this factor is not relevant to the issue of whether the position shares a community-of-interest with members of the bargaining unit.

**Relationship to the administrative organization of the employer:**

Based upon the record before the Board, it is clear that Ms. Walsh, as Program Manager, works independently as a professional employee, and reports to the Director of Operations, as does the Administrative Assistant and the Youth Center Manager (who also works for another agency). At present, it appears that only the Administrative Assistant (Haroian) is in the bargaining unit. There does not appear any impediment to including the position of Youth Program Manager in the bargaining unit.

**History of collective bargaining:**

The within bargaining unit was formed on April 15, 1974.<sup>1</sup> At the time of the formal hearing in this matter, Ms. Walsh had been employed as the Youth Program Manager for approximately seven (7) years. According to Mr. Ricci's testimony, the position was created in 2002 and was intended to be a non-Union management position to oversee the Workforce Investment Act programs. He testified that it was modeled on what was, historically, non-Union positions in the department, such as the Welfare-to-Work Manager and the Regional Employment Training Board Manager. Mr. Ricci stated that he believed there was need for the position to be a non bargaining-unit position because they saw it "as a management position in managing these programs." (TR. pg. 55) Mr. Ricci further testified that the organization has been around since 1970 and that there's a history in the department at this level of various programs being managed in a non-Union capacity and that they "wanted to keep it [this position] consistent with that history. There is no evidence in the record as to what the positions of "Welfare-to-Work Manager" or the "Regional Employment Training

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<sup>1</sup> The Board's records establish that over the years a number of positions have been accreted to the unit, including ones with the word "Manager" in the title. In February 1975, a Business and Property Manager for Planning and Urban Development was accreted; The Assistant MIS Manager was accreted on August 13, 2002; and on July 1, 2011, the Energy Manager was accreted.

Board Manager” did, so they cannot be compared to the job description of Program Manager. Since the position of Program Manager was not created until 2002 and was not in existence at the time of the creation of the bargaining unit (and excluded at that time), there is no reason to exclude it at the present time.

**Desires of the affected employees:**

Although accretion and unit determination are similar concepts, accretion has been used sparingly because it denies the accreted employees a vote on their choice of bargaining representative. NLRB v Security-Columbian Banknote Co., 541 F.2d 135, 140 (3<sup>rd</sup> Cir. 1976). The NLRB's hesitancy in using the accretion doctrine rests on the inherent competing policy considerations in the accretion doctrine: stability of labor relations versus the employees' freedom to choose their own bargaining agents. *International Association of Machinists and Aerospace Workers, Local 1414 v. N.L.R.B.*, 759 F.2d 1477, 1480 (9th Cir.1985). In this case, there is only one position being sought for accretion; and Ms. Walsh testified that it is her desire to become a member of the bargaining unit. When asked why, she stated:

“Because it’s right and it’s fair and because the City has contract with other people that I work with who do similar things, and it’s not a club. You know, I should be able to say yes, I would like to be a part of this bargaining unit and have people speak for me and speak on my behalf and bargain on my behalf. And there are, you know, other people who in my office I will say that when I got the job, the job was -- it wasn’t a union job when I got it, but after I got the job, I did realize that there are people like John who come and go and set his own schedule and all of those things isn’t---you know, some jobs are in the Union, so I feel like it’s a semantic thing. I feel like this job is called manager because – well, I won’t say why, but -- and then I’m told I can’t be in the Union because I’m a manager.”

This factor of the community-of-interest test has been met.

**Extent of union organization:**

Mr. Ricci testified that the Workforce Solutions Department, has a little more than twenty (20) or so employees and approximately seventy-five percent (75%) of the staff is unionized. Other professional positions with similar

educational requirements are included within the Union. Therefore, this factor of the community-of-interest standard has been met.

### **FINDINGS OF FACT**

1. The Respondent is an “Employer” within the meaning of the Rhode Island State Labor Relations Act.
2. The 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. The City of Providence (hereinafter City) and the Rhode Island Laborers’ District Council, on behalf of Local Union 1033, LIUNA (hereinafter Union) have been parties to a collective bargaining relationship since approximately 1972, when the Rhode Island State Labor Relations Board issued its Amended Certification designating the Union as the bargaining representative of the City’s municipal employees who were statutorily eligible for collective bargaining.
4. Since the commencement of the collective bargaining relationship referred to above, the parties have negotiated many Collective Bargaining Agreements in accordance with Title 28, Chapter 9.4 RIGL, as amended.
5. The position of Program Manager for Youth Programs was created in approximately April 2002 and has been a non-Union position in the City of Providence’ Workforce Solutions Division since that time.
6. The incumbent of the position, Ms. Anne Walsh, was hired in November 2005 and has held the position of Program Manager since that time.
7. As the Youth Program Manager, Ms. Walsh is tasked with the development and the administration of the Youth Program.
8. Ms. Walsh is directly supervised by Mr. Jim Glover, the Director of Operations, and Mr. Robert Ricci, the Administrator of Workforce Solutions.
9. Ms. Walsh does not have the ability to hire, fire or otherwise discipline employees.

10. While Ms. Walsh has the ability to direct work associated with the Youth Program to Youth Center Manager, Adriana Goode, she does not have the ability to approve any of Ms. Goode's leave requests or to certify the hours Ms. Goode worked.
11. Ms. Walsh is not privy to confidential information concerning collective bargaining or labor relations.
12. Ms. Walsh earns a salary, which is based upon a thirty-five (35) hour non-standard work-week.
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14. Ms. Walsh works out of the Mayor Joseph A. Doorley Municipal Building located at 444 Westminster Street, where the Information Technology, Law, Planning and Development, and Building Departments are situated. Members of the bargaining unit, as well as nonmembers, work at said location.
15. The salary range for the position of Program Manager is \$54,358.72 - \$66,737.84.
16. The duties and responsibilities of the position, according the job description include: (1) Oversees the development, issuance, and processing of Requests for Proposal (RFP) process in connection with the selection of service providers. (2) Serves as the principal staff support person for program committees of the Providence/Cranston Workforce Investment Board. (3) Oversees the development, negotiation process, and execution of contracts with sub-recipients. (4) Schedules technical assistance visits and manages programs conducted by sub-recipients; reviews and evaluates reports and performance of sub-recipients. (5) Maintains liaison with agencies such as the Federal and State Department of Labor, state and local education departments, community-based organizations, and other employment, education, and training organizations. (6) Performs other related duties as assigned.

17. There is no evidence in the record that Ms. Walsh has the authority, in the interest of her Employer, to reward, layoff, recall, transfer, or promote employees.
18. Ms. Walsh does not have the ability to approve any of Ms. Goode's leave requests (vacation, sick or personal) or to certify the hours Ms. Goode worked. Ms. Walsh does not set work schedules or monitor time sheets for any other employee.
19. The record established that Ms. Walsh does not oversee Ms. Goode's work, who works independently. Ms. Goode reports to Ms. Walsh, as to what is happening in the youth centers, because Ms. Walsh is responsible for the funding grants.
20. Ms. Walsh's efforts to convince her supervisor to do something about another employee's lack of performance were totally ineffective.
21. Ms. Walsh does not have the authority to establish employer policy.
22. The salary for the Union position of Purchasing Agent IV, is \$1,031.42 per week or \$53,633.84 per year. This bargaining unit salary is 98% of the starting salary of the position of Program Manager. There is similarity of scale of earnings between the position of Program Manager and at least one of the positions in the bargaining unit.
23. The hours of work for the Program Manager are a non-standard thirty-five (35) hour work-week. There is no evidence, in the record, as to the hours of work for other members of the bargaining unit.
24. The Program Manager has parking privileges, as do some members of the bargaining unit.
25. The Program Manager receives health insurance and pays a co-share of the premium, which was stated by Mr. Ricci to be twenty percent (20%). Union members receive health coverage and pay a premium co-share of fifteen percent (15%).
26. The Program Manager did have a reduction in her pay (furlough) when she first took the job and that it was not required of Union employees. There is no

- evidence in the record to indicate whether the furlough applies to “all” non-Union employees or that this is something that is still occurring.
27. The Program Manager enjoys parking privileges at the office location on Westminster Street. Some of the Union positions also enjoy parking privileges, but not all.
  28. The position of Program Manager requires a bachelor’s level degree, with advanced writing and professional skills. The main duties and responsibilities include oversight of the development issuance and processing of Request for Proposals, in connection with the selection of service providers for Workforce programs. The bargaining unit position of Rehabilitation Program Manager requires a bachelor’s degree and one of the main duties and responsibilities include oversight of contractual compliance.
  29. The Program Manager maintains liaisons with the federal and state departments of labor. The bargaining unit position of Rehabilitation Program Manager is responsible for monitoring all federal, state, and city regulations and monitoring the program activities.
  30. The bargaining unit position of Planner requires the minimum of a bachelor’s degree, with three (3) years experience.
  31. The Program Manager position works along-side both bargaining-unit members and non bargaining-unit members. The position is located in an office environment at the Mayor Joseph A. Doorley Municipal Building, with both members of the bargaining unit and non-members.
  32. The bargaining unit was formed on April 15, 1974. The position of Youth Program Manager was formed in 2002; and Ms. Walsh has been employed as Program Manager since 2005.
  33. There is no evidence in the record as to the nature of the former positions entitled “Welfare-to-Work Manager” or “Regional Employment Training Board Manager.”
  34. Ms. Walsh would like to be part of the bargaining unit and would like the petitioning union to represent her.

### **CONCLUSIONS OF LAW**

- 1) The position of Program Manager is not a supervisory position as defined by law.
- 2) The position of Program Manager is not a managerial position as defined by law.
- 3) The position of Program Manager shares a sufficient community of interest with the bargaining unit to warrant inclusion of the position.
- 4) Accretion of the position of Program Manager is consistent with the desire of the one incumbent in the position of Program Manager.

### **ORDER**

- 1) The petition to accrete the position of Program Manager into the bargaining unit certified by EE-3039/3040/ 3041/3042 is hereby granted.

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

IN THE MATTER OF	:	
CITY OF PROVIDENCE	:	
-AND-	:	CASE NO: EE-3039/3040/3041/3042
RI LABORERS' DISTRICT COUNCIL,	:	<b>Unit Clarification:</b>
LOCAL 1033	:	<b>Program Manager</b>

**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 Rhode Island State Labor Relations Board, in the matter of Case No. EE-3039/3040/3041/3042 dated February 27, 2014, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **February 27, 2014.**

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

Dated: FEBRUARY 27, 2014

By: Robyn H. Golden  
Robyn H. Golden, Administrator

RHODE ISLAND STATE LABOR RELATIONS BOARD

*Walter J. Lanni*

WALTER J. LANNI, CHAIRMAN

*Frank J. Montanaro*

FRANK MONTANARO, MEMBER

*Gerald S. Goldstein*

GERALD S. GOLDSTEIN, MEMBER

*Elizabeth S. Dolan*

ELIZABETH S. DOLAN, MEMBER

*Marcia B. Reback*

MARCIA B. REBACK, MEMBER

*Scott G. Duhamel*

SCOTT G. DUHAMEL, MEMBER

BOARD MEMBER BRUCE A. WOLPERT DID NOT PARTICIPATE IN THIS MATTER.

ELIZABETH S. DOLAN WAS NOT PRESENT ON JULY 31, 2013 TO VOTE ON THE PRELIMINARY DETERMINATION.

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

Dated: FEBRUARY 27, 2014

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