

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

IN THE MATTER OF	:	
	:	
	:	
STATE OF RHODE ISLAND	:	
DEPARTMENT OF HEALTH	:	
	:	
-AND-	:	CASE NOS: EE 3406 & EE 3575
	:	Unit Clarification:
	:	Senior Human Services Policy and
RI COUNCIL 94, AFSCME, AFL-CIO	:	Systems Specialist
(EE-3406)	:	
	:	
-AND-	:	
	:	
RHODE ISLAND DEPARTMENT OF	:	
HEALTH PROFESSIONAL STAFF	:	
ASSOCIATION / NEA (EE-3575)	:	

DECISION & ORDER

TRAVEL OF CASE

The above-entitled matter came on to be heard before the Rhode Island State Labor Relations Board (hereinafter "Board") on two separate Requests for Accretion (hereinafter "Petitions") for the position of Senior Human Services Policy and Systems Specialist held by Barry Levin. The first Petition was filed with the Board by R.I. Council 94, AFSCME, AFL-CIO on October 19, 2001. The second petition, filed by the RI Dept of Health Professional Staff Association/NEA was filed on November 23, 2001. An informal hearing was held by the Board's Agent on December 3, 2001 with representatives of both the Unions and the Employer. However, prior to the investigation being completed, the Board's Agent retired. Consequently, once the Board was provided with a new Investigative Agent, the investigation was recommenced. On April 20, 2003, Council 94 filed a request to include additional positions within the same classification. Upon completion of her investigation, the Board's Agent filed an investigative report with the Board; and on July 2, 2003, provided a copy of the same to the parties.

The matter was then set down for formal hearing on October 16, 2003. The formal hearing was continued on several occasions either at the request of the parties or their failure to appear. The formal hearing finally commenced on November 30,

2004. Upon conclusion of the hearing, the Board directed the parties to take witness testimony by deposition. The final formal hearing was held on February 10, 2005.

Originally, the Employer did not interpose an objection to the position(s) being accreted to an appropriate bargaining unit and was leaving the determination of an appropriate bargaining unit to the Board. However, at the conclusion of the February 10th hearing, the Employer indicated that it objected to three of the positions being included within the bargaining unit: the employees holding those positions are identified as Andrea Bagnall-Degos, Zulmira Roseman and Cynthia McKay. In arriving at the decision herein, the Board has considered the testimony and evidence submitted at the formal hearings and the testimony set forth in the transcripts.

DISCUSSION

On June 4, 1987, Rhode Island Council 94, AFSCME, AFL-CIO was certified to represent "all employees in the Department of Health excluding nurses, professional and supervisory employees." (Case No. EE-3406) On May 6, 1998, the RI Department of Health Professional Staff Association/NEARI/NEA was certified to represent "all professional employees in the Department of Health." (Case No. EE-3575)

Normally, when the Board is faced with competing petitions, and no opposition from the Employer, the Board focuses its inquiry in this matter on the community of interest factors, as defined by Section 8.04.5. of the Board's Rule and Regulations. In this case however, one of the bargaining units is for "professional employees" only; and the Employer challenges only three (3) of the positions (again unusual because they all hold the same title). Therefore, the Board will first analyze whether the positions are "professional" in nature. If professional, then the uncontested positions will be accreted to EE 3575. Then, the Board will analyze whether any of the three contested positions are "supervisory" and thus exempt from collective bargaining, as argued by the Employer.

The parties have stipulated that all the positions in question work thirty five (35) hours per week and enjoy either identical or nearly identical employment benefits such as sick leave, vacation leave, holidays, health care and pension benefits. (McKay Depo. p. 3)

The parties also presented the testimony of Edward D'Arezzo, the Assistant Director of Health for the State of Rhode Island, with primary responsibility for Human Resources and Support Services. Mr. D'Arezzo provided the parties with various tables of

organization for the various divisions within the Department of Health, which were submitted as Joint Exhibits in this matter.

FACTUAL SUMMARY OF POSITIONS

THE SENIOR HUMAN SERVICES POLICY AND SYSTEMS SPECIALISTS

I) UNCONTESTED BY EMPLOYER

RILWAN FEYISITAN:

Rilwan Feyisitan holds the position of Senior Human Services Policy and Systems Specialist and is employed in the Office of Minority Health/Office of HIV and AIDS within the Department of Health. (Depo. p. 3) Ms. Feyisitan's duties include managing three (3) contracts specifically funded through the Federal Office of Minority Health. (Depo. p. 4) In addition, Ms. Feyisitan also conducts public health education. Ms. Feyisitan holds a degree in Business Management. (Depo. p. 8) Ms. Feyisitan also conducts site visits to community-based organizations to insure compliance with grant requirements. (Depo. p. 9) Ms. Feyisitan's work is performed essentially independently with some limited general supervision. (Depo. p 15, 19) Ms. Feyisitan creates, develops, implements and evaluates training programs. (Depo. p. 19) She is required to exercise independent judgment and discretion in the course of her duties. (Depo. p. 20)

ANNE PRIMEAU-FAUBERT

Anne Primeau-Faubert has been employed for four (4) years as the Data Manager for the childhood lead poisoning prevention program, but holds the formal title of Senior Human Services Policy and Systems Specialist. (Depo. p. 3) Ms. Primeau-Faubert's duties include developing and administering the quality assurance plan for the lead program. She is responsible for the input and output of information in the lead database, she develops reports, and she assigns work to the data entry operator and the case manager. (Depo. p. 3) Ms. Primeau-Faubert's immediate supervisor is Magaly Angelone. Ms. Primeau-Faubert holds a Bachelor's Degree in Health Care Administration. (Depo. p. 5) She claims to "supervise" two(2) employees, one in Council 94 and one in NEA. (Depo. p. 6) In her position, she uses computers and web based technology on a routine and regular basis. (Depo. p. 6) Ms. Primeau-Faubert testified that she developed a number of quality assurance policies, which required her to exercise independent judgment and discretion. (Depo. p. 10)

PATRICIA RAJOTTE

Ms. Patricia Rajotte has been employed as the Program Manager for the Arthritis Action Program and Disease Prevention and Control under the formal job title of Senior Human Services Policy and Systems Specialist for approximately three (3) months (as of Dec. 2004). Her immediate supervisor is Ann Thatcher, Chief of the Office of Health Promotion. Prior to this position, she worked for some time as the "Safe Kid Coordinator" and approximately five (5) years as a "contract" employee with Data Logic within the Department. (Depo. p. 3, 13) Ms. Rajotte does not hold a college degree.

Her duties include the use of computers and web-based technology on a daily basis. Her primary responsibilities are to meet the goals and objectives set forth in the grant, which is funded by the Centers for Disease Control ("CDC") and to coordinate activities that reduce the burden of arthritis by working with the Arthritis Foundation. (Depo. p. 9) Ms. Rajotte indicated that her "supervisor," Ms. Thatcher, exercises general supervision, not a direct or daily level of supervision. (Depo. p. 10) She testified that within the scope of the grant, she exercises independent judgment and discretion in determining how she will meet the grant's objectives. (Depo. p. 11) She agreed that her work can be characterized as intellectual and varied.

MICHAEL SPOERRI

Michael Spoerri has been employed as a Senior Human Services Policy and Systems Specialist in the Division of Family Health within the Department of Health since March 2003. (Depo. p. 3) He holds a Bachelor's Degree in Physical Therapy and master's degree in Public Health. (Depo. p. 6-7) Mr. Spoerri's duties include grant writing. (Depo. p. 4) He also oversees the "Pediatric Practice Enhancement Program".

DAVID BURNETT

David Burnett holds the formal job title of Senior Human Services Policy and Systems Specialist in the Division of Environmental Health and functions as the manager of the beach program, wherein water is tested for safe swimming. Other employees collect the samples and submit them to testing. Once the results are in, Mr. Burnett makes the decision as to whether a beach will be closed. He is responsible for updating the website and hotline and issuing press releases to media outlets. (Depo. p. 4) Mr. Burnett is

responsible for writing and then managing the federal grant that funds the program. He also issues year-end reports to the EPA. (Depo. p 4-5)

Mr. Burnett holds a B.S. degree in Coastal Policy and Management and is currently working on his master's degree in Business Administration. (Depo. p. 6-7) He reports to Ronald Lee, the Chief Environmental Health Food Specialist.

RICHARD LUPINO

Richard Lupino holds the formal job title of Senior Human Services Policy and Systems Specialist and functions as the computer systems manager for the entire health department laboratory. He maintains and administers databases, networks and desktop operating systems for the lab. (TR. p. 4) He holds an associates degree in Chemistry and an associates degree in Computer Networking. Mr. Lupino reports to Joseph Catalano, the Chief of Laboratory Services.

Mr. Lupino described Mr. Catalano's supervision as general rather than direct and stated that his work requires the use of his independent judgment and discretion. He also agreed that his work can be described as intellectual and varied. (Depo. p. 12)

EMILY LEFEBVRE

Emily Lefebvre holds the formal title of Senior Human Services Policy and Systems Specialist and functions as a grants and contracts manager for the various grants within the Department of Health. She is responsible for contacting, negotiating, and executing contracts with vendors to deliver services specified in various grants. (Depo. p. 10) She testified that she exercises a fair amount of independent judgment and discretion within her work

ANTHONY DENNIS

Anthony Dennis holds the title of Senior Human Services Policy and Systems Specialist within the Office of Management Services within the Department of Health. At the time of his testimony, Mr. Dennis had only been in the position for approximately seven (7) weeks. He holds a BS degree in Business Administration with a concentration in Accounting, and a Master's degree in Business Administration. As Mr. Dennis understands his position, he is responsible for contract implementation with vendors chosen through RFPs (request for proposals) for federal grants awarded to various divisions within the

Department of Health. Mr. Dennis also testified that it was his belief that both he and Emily Lefebvre would be performing the same type of work.

BARRY LEVIN

Barry Levin holds the title of Senior Human Services Policy and Systems Specialist and functions as the Administrator for the Department of Health's website. (TR 11/30/04 p. 9) He holds a Bachelor's Degree in English. In his position, he is responsible for developing all the web pages, posting all material on the website and developing computer code so that the web pages can be viewed. Mr. Levin described his work as intellectual and varied, requiring the use of independent judgment and discretion. (TR. 11/30/04 p. 19)

MARISSA SILVA

Marissa Silva holds the formal title of Senior Human Services Policy and Systems Specialist and functions as an Assistant to the key Administrator of Environmental Health. (TR 11/30/04 p. 22) At the time of her testimony, Ms. Silva was only three (3) months on the job and testified that the duties of the job seemed to still be evolving. She did testify that she assists in managing bio-terrorism grants by gathering data to combine into reports to issue to the CDC. She holds a BS degree in Environmental Science and Management and is working towards her Masters in Business Administration. (TR 11/30/04 p. 23) She also testified that she believes her work to be predominantly intellectual and varied and requires the exercise of independent judgment, discretion and initiative. (TR 11/30/04 p. 33)

COLLEEN POSELLI

Colleen Poselli holds the formal title of Senior Human Services Policy and Systems Specialist and functions as the Coordinator of Pediatric Services in the Office of Families Raising Children with Special Health Care Needs. (TR 2/10/05 p. 44) Her duties include providing leadership to develop policies and programs for children with special health care needs and ensuring that children and their families have access to specialty evaluations, care coordination and specialty resources. She performs these functions primarily by monitoring the vendor contract of the Child Development Center located at Rhode Island Hospital. (TR 2/10/05 p. 45) She works with others to develop specialty resources such as portable portfolios to chart child care, a hearing guide for children, and an autism guide. She also works on the Pediatric Practice Enhancement project located in pediatricians' offices throughout the state. (TR 2/10/05 p. 46) She holds a BA in Education and a BS in

Industrial Technology and Business. She makes both oral and written reports in the course of her duties, which require the use of judgment, discretion and initiative to develop. (TR 2/10/05 p. 55) She describes her work as intellectual in nature. (TR 2/10/05 p. 56)

THE SENIOR HUMAN SERVICES POLICY AND SYSTEMS SPECIALISTS

II) CONTESTED BY EMPLOYER

ZULMIRA ROSEMAN

Zulmira Roseman holds the position of Senior Human Services Policy and Systems Specialist within the Division of Laboratories within the Department of Health. She's been doing the same type of work for approximately ten (10) years, but the previous title was Associate Executive Assistant, a pay-grade 28. (Depo. p. 3) Ms. Roseman has a Bachelor's Degree in Accounting and has performed some additional coursework. (Depo. p. 4) Upon direct examination, Ms. Roseman described her duties as "supervising" a unit of three (3) data entry operators, one (1) fiscal clerk and one (1) principal stenographer. (Depo. p. 4) She also works on the budget, performs daily tracking of expenditures, and works on grants by submitting budgetary projections. (Depo. p. 4) She reports to Joseph Catalano, Administrator of the Division of Laboratories, but also takes assignments from the Associate Director, Gregory Hayes. (Depo. p. 6).

In the course of her duties, Ms. Roseman gathers data from different departments in a standardized manner and does not describe her position as having the ability to engage in technical planning or research and analysis. (Depo. p. 7) She testified that she has no authority to hire, fire, suspend, or to "decide anything." (Depo. p. 8) The three (3) employees that she says she supervises are all in Council 94, and their vacation and time off is all controlled by the seniority provisions of the contract. (Depo. p. 8) She testified that she doesn't monitor the hours of these employees, but she does know when they are at work because she has to go in and out of their office, as the office copy machine and printer are located in their office. (Depo. p. 9) She testified that all the employees, the fiscal clerk, the switchboard operator, and the data entry operator all have a general knowledge of their duties; and that she does not need to exercise independent judgment over their work. (Depo. p. 10)

CYNTHIA MCKAY

Cynthia McKay is a Senior Human Services Policy and Systems Specialist within the Department of Health's Vital Records Office. (Depo. p. 4) Ms. McKay testified that her day consists of supervising seven (7) or eight (8) employees, including genealogy clerks and cashiers and records analysts. (Depo. p. 5) She stated that she's "self directed" and that after the retirement of the Deputy Registrar, she will be reporting to the Chief of the Department, Leonard Green. (Depo. p. 5) As part of her duties, Ms. McKay works the "counter" assisting customers on an as-needed basis; audits paternities, legitimizations and adoptions; she handles telephone inquiries from Town Clerks in the various municipalities; and closes out the cashiers at the end of the work day. (Depo. p. 6) On further examination, Ms. McKay conceded that the work done within the office of Vital Records is governed strictly by both state regulations and policies and procedures within the office. (Depo. p. 9-10) She has no authority to either ignore or change the regulations, which are very important for preserving confidentiality. (Depo. p. 10)

Although Ms. McKay testified that she has both hired and promoted employees, upon further examination, it became clear that Ms. McKay's involvement in hiring was limited to interviewing on a committee with her superior, Joseph Alderizzio. (Depo. p. 7, 12) Once their involvement was concluded, they submitted a list of names for hiring to their supervisor, Mr. Leonard Green, who in turn submitted the list to Mr. Edward D'Arrezzo, the Associate Director of Health. (Depo. p. 13) Ms. McKay readily acknowledged that she is not an "appointing authority." In addition, although Ms. McKay initially claimed responsibility for promoting Kelly McDonald, a member of Council 94, the record was clear that Ms. McDonald's promotion was governed by the bidding processes of the Council 94 collective bargaining agreement. (Depo. p. 9) In addition, Ms. McKay acknowledged that the appointing authority was free to either accept or reject the interview committee's recommendation. Ms. McKay's position is under the general supervision of Leonard Green. In addition to Ms. McKay, there were three (3) other employees, all records analysts, that reported directly to the assistant registrar. (Depo. p. 18)

ANDREA BAGNALL DEGOS

Andrea Bagnall-Degos has been employed as a Senior Human Services Policy and Systems Specialist in the Department of Health's Division of Family Health, Unit of Health

Policy Information and Education since February 2002. (Depo p. 3, 4,11) Prior to 2002, she was performing the same services, but was a “contract” employee. (Depo. p. 4) Ms. Bagnall-Degos’ duties include working with programs within the division to strategize communications, health education and social marketing. (Depo. p. 5) The programs include basic education concerning family health matters such as lead poisoning or the WIC (Women, Infants and Children) program. (Depo. P. 11) She takes assignments from the Medical Director, Dr. Hollingsworth or the Chief of Staff, Laurie Petrone, but neither of these individuals review Ms. Bagnall-Degos’ work on a daily basis. She testified that she has “a staff of five people”; two (2) community liaison workers, two (2) “contract” employees from Data Logic and one (1) temporary employee. (Depo. p. 6)

Ms. Bagnall-Degos’ work requires her to interact with other program managers as she coordinates a system of public health information. (Depo. p. 7) In her duties, she utilizes computer databases and web-based technology. (Depo. p. 7) She regularly prepares reports, both oral and written and meets weekly with “chiefs” within the division. (Depo. pgs. 7-8) Ms. Bagnall-Degos agreed that her work is predominantly intellectual and varied and requires her to exercise a great deal of judgment. (Depo. p. 14) Ms. Bagnall-Degos holds a B.A. degree in Economics and International Affairs and a Master of Public Health.

DISCUSSION

Professional employees are defined by the Board’s rules and regulations at Section 1.01.23 as:

- (a) “Any employee engaged in work (i) predominantly intellectual and varied in character, as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) 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 (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself or herself to become a professional employee as defined in paragraph (a).”

The general duties of a Senior Human Services Policy and Systems Specialist include: performing complex technical, analytical and evaluative analyses in connection with federal

and state program policies, methods, procedures; conducting organizational and operational studies of a complex nature in human service planning and system development on a statewide basis; studying, organizing and maintaining human service policies and procedures in an electronic file environment and performing related work as required. (Joint Exhibit #1 Job description)

Examples of work required for this position include:

- 1) To perform responsible, technical research work and analyses in connection with administrative policy, methods, systems of a complex nature and to make appropriate recommendations.
- 2) To make independent studies and to perform independent research of the feasibility of proposed new programs, policies, procedures and systems.
- 3) To develop detailed procedural or operational manuals in an electronic environment.
- 4) To review, develop, and refine organizational charts and forms as required with the aid of electronic tools.
- 5) To review and refine policies and procedures for electronic file maintenance of human service requirements.

The educational requirements for this position include graduation from a college of recognized standing. (Joint Exhibit #1 Job description) The basic salary range for this position is \$42,397.00 to \$47,868.00.

In this case, all of the witnesses employed as Senior Human Services Policy and Systems Specialists perform work which is best described as primarily intellectual and varied and involving the consistent exercise of discretion and judgment in its performance. There was not one witness whose work could be characterized as having a result, which could be standardized in relation to a given period of time. Although there were one or two employees who either do not hold any advanced college degree or no testimony was elicited, the bulk of the employees hold very specialized degrees such as Accounting, Business Management, Chemistry, Coastal Policy, Health Care Administration. Several have also earned a Masters in Public Health. The Board does not believe that the use of technology such as computers and web based programs for data management permits characterization of the work of these employees as routine or manual. The work performed is clearly that of a *professional* employee and this Board so holds. Accordingly, the Board

hereby dismisses the petition of Council 94, as it is not certified to represent professional employees. Thus, for all of the uncontested positions, they shall be accreted into the bargaining unit established by Case No. EE-3575.

The Three Contested Positions and The Employer's Claim of Supervisory Status

Under Rhode Island law, certain employees are permitted to engage in collective bargaining (See Title 28, Chapter 7, et seq., the Rhode Island State Labor Relations Act.) Supervisory and managerial employees are excluded from collective bargaining for various public policy and labor stability concerns.

In 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))

Thus, in order for supervisory status to exist, three criteria must be met: (1) the individual must have the authority to engage in one of the twelve functions set forth in the aforementioned definition; (2) the exercise of such authority must require the use of independent judgment; and (3) the individual must hold the authority in the interest of the employer. NLRB v Health Care & Retirement Corp., 511 US 571, (1994)

Under federal labor law, this list of twelve (12) supervisory functions 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 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 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 an assignment based on skills when the differences

in skills are well known to the employer, is routine. Further, assigning tasks that clearly fall within an employee's job description does not require the use of "independent judgment".

In this case, the Employer claimed supervisory status for three (3) of the positions: those held by Zulmira Roseman, Cynthia McKay and Andrea Bagnall-Degos. We shall address each of these positions individually, as required.

Mr. D'Arezzo testified, in reference to the organizational chart for the Division of Administration-Laboratory Support Systems, that Ms. Roseman supervised all the Council 94 employees listed below her title. (TR 2/10/05 p. 87) On further examination however, Mr. D'Arezzo conceded that although Ms. Roseman might sit on screening and interviewing committees, that the ultimate decision to hire would be made by the Associate Director of Health Laboratories, whose authority on that issue has been delegated to Mr. D'Arezzo himself. (TR 2/10/05 p. 93) Ms. D'Arezzo candidly acknowledged that while Ms. Roseman can counsel people in their work, she is not an "appointing authority" and has no authority to suspend, or terminate employees. (TR 2/10/05 p. 94) Likewise, she would have no authority to promote, demote, or transfer any employee. (TR 2/10/05 p. 94) This testimony was corroborated by Ms. Roseman's own testimony wherein she stated she had no authority to "decide anything." (Roseman Depo. at p. 8) As for performance evaluations, Mr. D'Arezzo thinks that Ms. Roseman would work with her boss Mr. Catalano and then the "paperwork would go up the chain of command." (TR 2/10/05 p. 95)

Mr. D'Arezzo offered no testimony regarding Ms. Roseman's ability to assign or responsibly direct any employees. The only testimony on this subject came from Ms. Roseman who stated that she doesn't monitor the hours of these employees, and that she does not need to exercise independent judgment over their work. (Roseman Depo. p. 9) In light of this uncontroverted testimony and Mr. D'Arezzo's candid testimony, that Ms. Roseman has no authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, the Board finds that the Employer has not met its burden in establishing supervisory status for Ms. Roseman.

As for Ms. McKay, Mr. D'Arezzo testified that she has no authority to hire, fire, suspend, promote, demote or transfer employees. (TR 2/10/05 p. 96) Mr. D'Arezzo also acknowledged that Ms. McKay's role in employee evaluations was similar to Ms. Roseman; it would be done by someone above her, possibly with her input. (TR 2/10/05 p. 97) Ms.

McKay's testimony, as previously outlined, demonstrates that she also has no authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees. Similarly, the record is devoid of any evidence that Ms. McKay responsibly directs any employees in the performance of their duties. Therefore, the Board finds that the Employer failed to meet its burden in establishing the requisite indicia of supervisory status for Ms. McKay.

Finally, as to Ms. Bagnall-Degos, Mr. D'Arezzo testified that she too lacked the appointing authority status and had the same level of authority as Ms. McKay and Ms. Roseman. Ms. Bagnall-Degos' testimony is devoid of any indication that she is vested with any indicia of supervisory status; her sole comment regarding people in her office was that she had "a staff of five." Accordingly, the Board finds that the Employer failed to meet its burden of establishing supervisory status for Ms. Bagnall-Degos.

FINDINGS OF FACT

- 1) The Respondent is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
- 2) Both Unions are labor organizations which exist and are 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 are "Labor Organizations" within the meaning of the Rhode Island State Labor Relations Act.
- 3) On June 4, 1987, Rhode Island Council 94, AFSCME, AFL-CIO was certified to represent "all employees in the Department of Health excluding nurses, professional and supervisory employees."
- 4) On May 6, 1998, the Rhode Island Department of Health Professional Staff Association, NEARI/ NEA were certified to represent "all professional employees in the Department of Health."
- 5) The Senior Human Services Policy and Systems positions in question work thirty five (35) hours per week and enjoy either identical or nearly identical employment benefits such as sick leave, vacation leave, holidays, health care and pension benefits.
- 6) The general duties of a Senior Human Services Policy and Systems Specialist include: performing complex technical, analytical and evaluative analyses in

connection with federal and state program policies, methods, procedures; conducting organizational and operational studies of a complex nature in human service planning and system development on a statewide basis; studying, organizing and maintaining human service policies and procedures in an electronic file environment and performing related work as required.

- 7) The educational requirements for this position include graduation from a college of recognized standing. The basic salary range for this position is \$42,397.00 to \$47,868.00.
- 8) Senior Human Services Policy and Systems Specialists perform work which is best described as primarily intellectual and varied and involving the consistent exercise of discretion and judgment in its performance.
- 9) The mere use of technology, such as computers and web based programs for data management, does not permit characterization of the work of these employees as routine or manual.
- 10) None of the work performed by the Senior Human Services Policy and Systems Specialists who testified in this case could be characterized as having a result which could be standardized in relation to a given period of time.
- 11) Most of the employees, in this case, hold very specialized degrees such as Accounting, Business Management, Chemistry, Coastal Policy, Health Care Administration. Several have also earned a Masters in Public Health.

CONCLUSIONS OF LAW

- 1) The position of Senior Human Services Policy and Systems Specialist is a "professional" position.
- 2) None of the Senior Human Services Policy and Systems Specialist positions are supervisory.

ORDER

- 1) The petition to accrete the positions of Senior Human Services Policy and Systems Specialist to the bargaining unit certified by Case No. EE-3575 is hereby granted.
- 2) The petition to accrete the position of Senior Human Services Policy and Systems Specialist to the bargaining unit certified by Case No. EE-3406 is hereby denied and dismissed.

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

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DEPARTMENT OF HEALTH	:	
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RHODE ISLAND DEPARTMENT OF	:	
HEALTH PROFESSIONAL STAFF	:	
ASSOCIATION / NEA (EE-3575)	:	

**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 EE-3406 and EE-3575 dated 8-17-05, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after 8-17-05

Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-31.

Dated: August 17, 2005
By: Robyn H. Golden
Robyn H. Golden, Acting Administrator

RHODE ISLAND STATE LABOR RELATIONS BOARD



Walter J. Lanni, Chairman



Frank J. Montanaro, Member



Joseph V. Mulvey, Member



Gerald S. Goldstein, Member (Dissent) ***



Ellen L. Jordan, Member (Dissent) ***



John R. Capobianco, Member



Elizabeth S. Dolan, Member (Dissent) ***

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

Dated: August 17, 2005

By: 
Robyn H. Golden, Acting Administrator

EE-3406/3575

Note: The dissenting Board members herein limit their dissent to the inclusion of the three positions contested by the Employer. The dissenting members concur with the majority on its conclusion of law that the position of Senior Human Services Policy and Systems Specialist is "professional" in nature, as that term is defined by the Board's Rules and Regulations.