COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

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In the Matter of   *   Case Nos. CAS-16-5027, CAS-16-5211
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BOARD OF HIGHER EDUCATION   *   Date Issued: March 29, 2018
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    and   *
                                          *
AFSCME, COUNCIL 93, AFL-CIO   *
                                          *
    and   *
                                          *
MASSACHUSETTS COMMUNITY   *
COLLEGE COUNCIL   *
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CERB Members Participating:

    Marjorie F. Wittner, Chair
    Katherine G. Lev, CERB Member
    Joan Ackerstein, CERB Member

Appearances:

    Carol W. Fallon, Esq.   Representing the Board of Higher Education

    Diane Byrnes, Esq.   Representing AFSCME, Council 93

    Ryan Dunn, Esq.   Representing Massachusetts Community College
                                 Council

CERB DECISION

                              Summary

1

2   The issue in this unit clarification (CAS) proceeding is whether the position of

3   Help Desk Technician/User Services Technician (HDT) at Roxbury Community College

1   (RCC or College) should be accreted into a bargaining unit represented by AFSCME,

2   Council 93, AFL-CIO (AFSCME) or remain in the bargaining represented by the

3   Massachusetts Community College Council (MCCC). For the reasons set forth below,

4   the Commonwealth Employment Relations Board (CERB) concludes that a CAS petition

5   is not the appropriate vehicle for redressing AFSCME's concerns and that the HDT

6   should remain in the MCCC's unit.

7   Statement of the Case

8   On January 5, 2016, AFSCME filed this petition with the Department of Labor

9   Relations (DLR) seeking to include the HDT position at RCC to its bargaining unit of

10 employees employed by the Board of Higher Education (BHE or Employer). The MCCC

11 currently represents the HDT for purposes of collective bargaining. On April 22, 2016,

12 the MCCC filed a motion to intervene. The DLR granted the motion on April 25, 2016.

13 On April 27, 2016, the MCCC also filed a separate petition in Case No. CAS-16-5211,

14 seeking to retain the title in its unit. The DLR consolidated CAS-16-5027 and CAS-16-

15 5211 for investigation purposes. On April 29, 2016, the Union, the Employer and the

16 MCCC participated in an informal conference to discuss the issues raised by the

17 petition. The parties submitted information, affidavits and position statements before

18 and after the conference, including position statements on whether the HDT is a

19 professional employee within the meaning of Section 1 of M.G.L. c. 150E (the Law).

20   On January 8, 2018, DLR sent the parties a letter asking them to show cause

21 why the unit placement dispute should not be resolved based on the information

22 summarized therein.   The show cause letter also requested some additional

23 information. Both parties responded to the Show Cause Notice in a timely fashion.

2

1   After reviewing the responses and supplementing or modifying certain facts, the CERB

2   has determined that there are no materially disputed facts and decides this matter

3   based on the following information.

4   **Background**

5   RCC

6   RCC is one of fifteen two-year community colleges that are part of the

7   Massachusetts public higher education system.   As of the date of the informal

8   conference, RCC employed approximately 160 employees, including faculty.

9   AFSCME, Local 1067 - Generally

10   Since 1976, AFSCME, Local 1067 has been the exclusive bargaining

11 representative for two bargaining units of non-professional employees employed by the

12 BHE.   Unit I consists of clerical and technical employees. Unit II consists of

13 maintenance and security employees.   Appendix A to the collective bargaining

14 agreement (CBA) between AFSCME and the BHE reflects that Unit I includes the EDP

15 Systems Analyst titles at issue here, as well as a number of other technical/computer

16 titles, including EDP Computer Operations Supervisor, EDP Control Clerk II, EDP Entry

17 Operator I-IV, EDP Programmer I-IV, EDP Scheduler, EDP Systems Analyst IV,

18 Electronics Technician, Electronic Computer Operator I-II, Technical Assistant I-III, and

19 Technical Specialist I-II.[1]

20 AFSCME, Local 1067 – RCC Unit

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[1] According to the Board of Higher Education, no community colleges appear to have any EDP Computer Operations Supervisor, EDP Control Clerk, EDP Schedule, or EDP Tape Librarian positions.

1   At the time of the conference, AFSCME's bargaining unit at RCC consisted of

2   employees holding the title of Accountant II, Accountant III, Administrative Assistant I,

3   Administrative Assistant II, Carpenter I, Clerk IV, Clerk V, Graphic Arts Technician II,

4   Library Assistant I, Library Assistant II, Mail Clerk II, Maintainer I and II, Maintenance

5   Foreman, and Reproduction Service Supervisor. Pursuant to the Commonwealth of

6   Massachusetts Human Resources Division Classification Specification, none of these

7   titles requires a college degree at hire, although the classifications indicated that an

8   associate or bachelor's degree could be substituted for some or all of the requisite

9   experience for the Accountant, Administrative Assistant and Clerk series.

10   MCCC Unit, Generally

11   Since 1976, the MCCC has represented a bargaining unit of professional

12   academic, and both professional and non-professional academic support titles

13   employed by the BHE in the community colleges. The HDT classification has been

14   included in MCCC's bargaining unit since 1999 and is listed as a bargaining unit title in

15   Appendix A to the collective bargaining agreement between MCCC and the BHE.

16   MCCC – RCC Unit

17   As of the spring of 2016, the MCCC represented individuals holding the following

18   positions at RCC: Academic Counselor (Grade 5), Admissions Counselor (Grade 3),

19   Assistant Professor, Clinical Instructor, Biology Laboratory Technician (Grade 2),

20   Career Placement Counselor (Grade 3), Coordinator Cooperative Education (Grade 4),

21   Coordinator Library Services (Grade 6), Coordinator Health Services (Grade 6),

22   Coordinator Instructional Technology (Grade 7), Coordinator Learning Resources

23   (Grade 5), Coordinator Financial Aid (Grade 6), Coordinator Student Activities (Grade

1 5), Coordinator Student Assessment (Grade 6), Coordinator Transfer Affairs (Grade 6),

2 Financial Aid Assistant (Grade 2), Librarian (Grade 5), Professor, Science Laboratory

3 Technician (Grade 2), Senior Laboratory Technician, Senior Admissions Counselor

4 (Grade 4), Senior Community Outreach Counselor (Grade 4), and the Help Desk

5 Technician (Grade 2) position that is at issue here.

6   The Employer provided Classifications Specifications for most of these titles.[2] Of

7 those provided, all titles, except the HDT, required a bachelor's degree or higher - five

8 required a minimum of a bachelor's degree and twelve required a master's degree.

9   There are six MCCC pay grades (Grades 2-7). The minimum pay grades as of

10 July 2016 ranged from $39,562 (Grade 2) to $65,161 (Grade 7), with additional points

11 awarded for academic credentials, MCC experience, external experience, seniority,

12 performance evaluation and in-field licensure. The point values ranged from $20.91

13 (Grade 2) to $34.43 (Grade 7). An associate degree was worth 0 points, a masters 30

14 points and a doctorate 75 points.

15 EDP Systems Analyst Classification

16   The parties provided a copy of the 1987 Massachusetts Classification

17 Specification for the EDP Systems Analyst series. It states in pertinent part:

18   *Summary of Series*

19 *Incumbents . . .in this series analyze procedures and problems to refine*
20 *data and convert it to programmable form for electronic data processing;*
21 *confer with users to ascertain specific output requirements, such as types*
22 *of breakouts, degree of data summarization, and format for management*
23 *reports; and perform related work as follows.*
24

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[2] No classification specifications were provided for the Professor, Assistant Professor, Associate Professor, Clinical Instructor or Science Laboratory Technician positions.

1   *The basic purpose of this work is to develop computer applications by*
2   *which subject-matter processes can be organized.*
3
4   The Classification Specification lists the "Duties Common to All Levels in

5   the Series" as well as additional duties for each level in the series. A sampling of

6   help desk/user support-type[3] duties include:

7   *Duties Common to All Levels in the Series*

8   • *Participates in the activities required for the operation and*
9   *maintenance of systems by recommending changes and corrections to*
10   *provide for new needs of users.*
11   • *[C]onsults with users, technical personnel and vendors to identify and*
12   *resolve problems or to notify of existing or potential problems.*
13   • *Performs related duties such as operating remote terminals.*

14   *EDP Systems Analyst II*

15   • *Make changes to systems or programs to improve performance.*

16   *EDP Systems Analyst III*

17   • *Train agency personnel or students on-the-job.*

18   *EDP Systems Analyst IV*

19   • *Act as consultant to users on such matters as computer-augmented or*
20   *business oriented instructions, validity of programs, assessing user*
21   *needs, etc.*
22   • *Conducts workshops and/or classroom training sessions for users and*
23   *agency personnel and students.*
24   • *Act as liaison between users, operations management, computer*
25   *center and agency personnel to establish or adjust production*
26   *priorities.*

27   Minimum Level of Education and Experience Required at Hire

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[3] The other duties elaborate on those listed in the 1987 "Summary of Series," i.e., designing, testing, documenting and converting data into a form acceptable for electronic data processing.

1   Depending on the level into which an employee is hired, the Classification

2   Specification requires between two (2) to five (5) years of full-time or equivalent part

3   time professional experience in electronic data processing work, the major duties of

4   which included computer programming and/or computer systems analysis. No college

5   degree is required, but post-high school education or certification may be substituted for

6   some or all of the requisite experience, e.g., an associate degree, a bachelor's or higher

7   degree with a major in the field of data processing or computer, 650 hours of instruction,

8   or a diploma for completion of a two-year equivalent or part-time program from a

9   recognized business or vocational/technical school may be substituted for a maximum

10 of one year of the required experience. A bachelor's degree or higher degree with data

11 processing or computer and/or information science major may be substituted for all of

12 the required experience.

13 <u>MCCC Help Desk Technician--Massachusetts Board of Higher Education/</u>
14 <u>Massachusetts Community College Classification Specification</u>

15   The 1999 BHE HDT Classification Specification states in pertinent part:

16   *General Description of Duties*
17
18   *Under general supervision, the purpose of the classification is to answer*
19   *telephone calls to Help Desk and provide technical assistance/support to*
20   *users. Employees in this classification perform technical work.*
21   *Classification is responsible for assisting callers/users with computer or*
22   *network problems, trouble shooting/configuring computers/printers and*
23   *assisting with setup, maintenance and administration of network file*
24   *services.*

25   *Minimum Training and Experience*

26   *Associate's degree with training emphasis in Computer Science,*
27   *Information Technology, Network Administration or closely related field;*
28   *with two (2) years' experience and/or training involving computer*
29   *operations, hardware/software troubleshooting, and network system*

7

1   *administration; or an equivalent combination of education, training, and*
2   *experience.*

3   **RCC IT Department – Pre-Reorganization**

4   Prior to January 2016, RCC's IT Department was headed by a Chief Information

5   Officer (CIO). Four directors reported to the CIO: Director of Computer Lab, Director of

6   Enterprise Applications, Director of Networks and Security and Director, Help Desk. Six

7   EDP Systems Analysts, each of whom specialized in a particular area, reported to the

8   director that corresponded to their specialty. Specifically, two EDP Systems Analysts

9   who supported the computer labs reported to the Director, Computer Labs. One EDP

10   Analyst III, who provided training and support for Jenzabar, RCC's main software

11   system, reported to the Director, Enterprise Application, a non-unit professional who

12   specialized in and was responsible for Jenzabar updates.[4] Two EDP System Analyst

13   III's who helped users with email, network, wireless and domain controller issues,

14   reported to the Director, Networks and Security. Finally, there was one EDP System

15   Analyst II, who reported to the Director, Help Desk.

16   There was also an actual "Help Desk" at RCC that was staffed by a temporary,

17   non-bargaining unit worker (Help Desk temp), who reported to the Help Desk Director.

18   However, all six EDP Systems Analysts provided back up to the Help Desk temp, who

19   routed calls to EDP Systems analysts when she received calls that she could not

20   handle.

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[4] One Senor Applications Analyst, who was not a member of any bargaining unit (a "Non-Unit Professional or "NUP") also reported to the Director, Enterprise Applications.

1   <u>Help Desk Manager/Director</u>

2   Maryam Mirza was originally hired as the Help Desk Manager in 2011 and

3   reappointed to the position of Help Desk Director in 2011.   Both positions were

4   considered NUP positions. The Help Desk Manager job description indicates that the

5   position was responsible for providing technical support of all campus-wide desktop PC

6   hardware and software. Its purpose was to "develop, lead and motivate the Help Desk

7   professionals to deliver excellent technical and non-technical support."   The

8   qualifications were the "equivalent to completion of a Master's Degree of college-level

9   coursework in information technology or a related field and three years' experience or

10   an equivalent." The annual salary was $59,000 to $67,000.

11   <u>RCC EDP Systems Analysts – Actual Duties, Qualifications and Compensation</u>
12
13   <u>Duties</u>
14
15   The parties agreed that a 2010 RCC posting for an EDP Systems Analyst II–

16   Technical Support Analyst, which was the job description of the employee who reported

17   to the Help Desk Director, accurately described the duties performed by bargaining unit

18   members in this series before the Employer restructured the IT Department in 2016, as

19   described below.[5] The posting stated in pertinent part:

20   *General Statement of Duties: This full-time position is a member of the*
21   *RCC Information Technology team, responsible for providing technical*
22   *support to the RCC user community (both local and remote offices) in the*
23   *daily use of all department supported hardware and software. Support will*
24   *encompass troubleshooting hardware problems, and assistance with basic*
25   *software applications. Also responsible for the completion of projects*

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[5] AFSCME states that the EDP Analysts who supported Jenzabar, email, network, and computer lab issues performed duties in addition to those listed in this posting. Although the MCCC disputes this, it does not dispute that the EDP Analyst who supported Jenzabar had certain training duties that are not listed on this job description.

1   *assigned by the Manager, purchasing and installing hardware and*
2   *software, systems testing and software evaluation.*
3
4   *Reports To: IT Specialist Helpdesk Manager*
5
6   *Supervision Exercised: Work Study Students*
7
8   *Specific Duties (include but are not limited to):*
9
10 *1. Works directly with users one-on-one in the resolution of basic technical*
11 *problems to achieve a high degree of customer satisfaction.*
12 *2. Responsible for the resolution of technical problems received via Work*
13 *Requests or upgraded from Help Desk calls.*
14 *3. Works with vendors regarding service contract issues to ensure the*
15 *appropriate levels of maintenance coverage and timely repair of*
16 *equipment.*
17 *4. Assists in the implementation of new installations, moves (up to 50 lbs.)*
18 *and upgrades.*
19 *5. Acts as a project leader for assigned projects.   Complies with*
20 *department procedures for managing projects.*
21 *Works closely with Help Desk staff to provide daily input to the*
22 *departments call tracking system to document call status and solutions for*
23 *use as a knowledgebase resource.*
24 *7. Keeps users informed as to the status of open requests/projects.*
25 *8. Escalates problems as appropriate to the next level of support (Network*
26 *Engineer, Webmaster, DBA, Jenzabar Support, etc.)*
27 *9. Contributes to the development and implementation of department*
28 *policies and procedures*
29 *10. Provides backup · coverage for the HelpDesk and Technical*
30 *Administrator as needed.*
31 *11. Assists in testing new software or software updates in the test*
32 *environment.*
33 *12. Provides input, suggestions and ideas for the on-going process of*
34 *equipment refresh and changeover.*
35 *13. Maintains User and Equipment inventory databases accurately and*
36 *consistently.*

37 Qualifications

38   The minimum educational requirements for EDP System Analyst postings at

39 RCC have varied over the years, with some of the postings requiring an associate

1   degree or higher and some requiring no college degree at all.[6] The qualifications set

2   out on the 2010 posting referenced above were as follows:

3   *Qualifications and Expectations*
4
5   *1. Excellent customer services skills.*
6   *2. Knowledge of Microsoft products, particularly experience with the*
7   *XP/2000/Vista/Windows 7 operating systems.*
8   *3. General networking knowledge.*
9   *4. Ability to troubleshoot desktop hardware and software problems.*
10   *5. The ability to drive issues to closure.*
11   *6. Willingness to learn in a constantly changing environment.*
12   *7. Good organizational skills with an emphasis on detail and follow-*
13   *through.*
14   *8. The ability to work in a team-oriented environment.*
15   *9. Graduate from an accredited college with a degree in a related field or*
16   *equivalent experience.*

17   2014 Grievance over Qualifications

18   `   In 2014, AFSCME filed a grievance protesting the bachelor's degree requirement

19   on a posting for an EDP Systems Analyst II position that was posted at Massasoit

20   Community College. The duties described in the posting were similar to those contained

21   in the 2010 RCC EDP Systems Analyst II posting and include being "primarily tasked

22   with the daily management and integrity of the electronic administrative systems in the

23   Registrar's Office." It further indicated that the position would also provide "secondary

24   customer service on behalf of the Registrar's Office." The grievance was resolved by

25   eliminating the degree requirement and substituting the minimum entrance

26   requirements contained in the applicable Classification Specification.

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[6] For example, the record includes three EDP Systems Analyst postings from November 2000, two of which required an associate degree but one of which did not. A 2012 posting for an EDP System Analyst II – Technical Support Analyst similarly contained no minimum academic requirements.

1   As of 2015, all six EDP Systems Analysts at RCC possessed either an associate

2   or bachelor's degree, and five out of the six had worked in the IT department for at least

3   ten years.

4   Pay Grades and Compensation

5   Under the terms of the most recent collective bargaining agreement between

6   BHE and AFSCME, the weekly salary for an EDP Systems Analyst II (Grade 21) in

7   2015 ranged from $1,044.84 - $1,483.00; EDP Systems Analyst III (Grade 23) ranged

8   from $1,152.87 - $1,630.17 and EDP Systems Analyst IV (Grade 25) was $1,257.11 -

9    $1,781.67.[7] The annual salary of the laid off employees was $61,286 for one of the

10   EDP Analyst II's to $92,647 for the EDP Analyst IV.

11   **IT Department Reorganization – 2014-2016**
12
13   At the end of 2014, RCC entered into a contract with InSource Services, Inc.,

14   (InSource), an outside contractor, to assess the effectiveness and structure of its IT

15   department.   In February 2015, InSource submitted a draft report containing its

16   preliminary findings to RCC at the end of the first month.[8] Those findings included that

17   the CIO had not provided effective leadership; Jenzabar needed improvement and was

18   underutilized; there was no master IT plan; and the disconnect between the way that the

19   faculty and the president's cabinet viewed the IT Department, i.e., that the faculty

20   viewed it favorably, but the president's cabinet did not.

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[7] AFSCME contractual pay grades range from 1 – 26.

[8] RCC contracted with InSource for a three-four month complete assessment of their Information Technology systems.

1   RCC subsequently engaged the services of a different outside consultant,

2   CampusWorks, to continue the evaluation. In June 2015, Massachusetts Community

3   College Labor Counsel Carol Wolff Fallon (Fallon) sent AFSCME a letter stating that

4   RCC was contemplating contracting out the management of its IT department. The

5   letter further notified AFSCME that RCC was establishing a Special Labor Management

6   Committee to review the matter and advise the CEO on the issue.

7   In July 2015, CampusWorks prepared a report that included a series of

8   proposed organization charts for the IT Department over the next three years, in six to

9   twelve month increments. None of the proposed configurations included any EDP

10   Systems Analysts or other AFSCME titles. Instead, all the charts depicted the IT

11   Department as consisting of some number of NUP managers and administrators,

12   CampusWorks contractors and three (3) "Help Desk, Classroom, Lab and PC

13   Technicians " (the title at issue here).

14   RCC and AFSCME met on two occasions in August to discuss the restructuring.

15   In August 2015, the BHE laid off all of the NUPs in the IT Department. In September

16   2015, one EDP Systems Analyst resigned and was not replaced.

17   On December 1, 2015, Fallon wrote a second letter to AFSCME offering to meet

18   prior to finalizing the IT Department restructuring. The parties met twice in December.

19   The Employer states that, after those meetings, it determined that it would not seek to

20   contract out all services. Instead, it decided to layoff all EDP Systems Analyst positions

21   and, consistent with the CampusWorks recommendations, create three new HDT

1   positions that would report to a new NUP position, Manager of Technical and User

2   Services.[9]

3   On December 11, 2015, RCC posted a vacancy for three "Help Desk

4   Technician/User Services Technician" positions. The posting indicated that this was a

5   "Full-time MCCC Unit Professional Position," and stated in pertinent part:

6   ***POSITION SUMMARY***
7
8   *Under the direction of the College's Technical and User Services Manager*
9   *supports the use of personal computer hardware, software and related*
10   *peripherals at the College and plans for their enhanced use. Works as*
11   *part of a Help Desk support team that deploys and maintains desktop and*
12   *laptop computer hardware and software systems and provides technical*
13   *assistance to all institutional constituents.*
14
15   ***Essential Functions:***
16
17   *1. Provides telephone, face-to-face and online support to personal*
18   *   computer users.*
19   *2. Image PC's for deployment using Acronis or similar imaging software.*
20   *3. Smart Classroom & Projector Support & Troubleshooting.*
21   *4. Software Site Licensing Maintenance and Compliance.*
22   *5. Server Software upgrades.*
23   *6. Identifies, evaluates and recommends the hardware and software*
24   *   needed to provide solutions to the college's needs.*
25   *7. Helpdesk Support.*
26   *8. Ability to troubleshoot, and configure wireless access point and mobile*
27   *   devices.*
28   *9. Troubleshoot printer and copier interfaces/connectivity.*
29   *10. Assist with rotation of daily back up tapes.*
30   *11. Installs/configures/supports appropriate software and hardware.*
31   *12. Connects personal computers and peripherals to the campus network*
32   *   and provides first level network troubleshooting.*
33   *13. Provides training to personal computer users as appropriate.*
34   *14. Interfaces with vendors, other technical staff and customers.*
35   *15. Undertakes record keeping and reporting functions for the area of*
36   *   responsibility.*
37   *16. Special Projects as assigned.*

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[9] This position was filled on October 23, 2016.

17. *Familiar with Office 365 environment and the ability to support students and employees on its use.*
18. *Other responsibilities/duties as assigned.*

Qualifications

1. *All candidates must have legal authorization to work in the United States.*
2. *Associates Degree with training emphasis in Computer Science, Information Technology, Network Administration or closely related field.*
3. *2 years' experience and/or training involving computer operations, hardware/software troubleshooting and network system administration.*
4. *An equivalent combination of education, training and experience.*
5. *[Sic]*
6. *The ideal candidate will have excellent customer services skills, verbal and written communication skills, oriented in business processes & best practices, ability to explain and train in non-technical terms, and proven success working in a collaborative setting.*
7. *Must also have experience with Intel processor based personal computer use and support*
8. *Microsoft Windows and Office; and a wide range of applications software.*

Compensation
***
Annualized salary range is $37,840-$45,000.

Three positions available. Starting date: February 1, 2016

In January 2016, RCC laid off the five remaining EDP Systems Analysts.

On March 28, 2016, RCC hired its first HDT, Ian Higginbottom (Higginbottom), at an annual salary of $41,000. Higginbottom holds a Bachelor's Degree in Information Technology. On April 22, 2016, Higginbottom signed a Staff Position Description (E7) that contained substantially the same duties as those listed in the December 2015 posting. In June 2016, Higginbottom signed an affidavit indicating that he performed all the duties listed in the E7 but that some duties, such as training, would not occur every day.

1   On May 31, 2016, RCC hired the second HDT, Mario Bycinte (Bycinte) at an

2 annual salary of $41,000. Bycinte holds an Associate's Degree in Science in Network

3 Technology.

4   The third HDT, Sabine Prospere (Prospere) was hired on January 5, 2017 at an

5 annual salary of $41,000. Prospere holds an Associate of Applied Science Information

6 Technology - Computer Network Systems degree from ITT Technical Institute. She

7 also attended the "Year Up" program, which consisted of one year of college-level

8 courses, professional training and a six-month internship.

9 Other AFSCME or MCC Positions Performing Help Desk/User-Support Duties

10   RCC

11   Based on the position descriptions and classification specifications provided, no

12 AFSCME bargaining unit members presently perform help desk/user-support duties.

13 Other than the HDTs, the MCCC Coordinator of Instructional Technology, who works

14 outside of the IT Department, performs multi-media equipment troubleshooting and

15 maintenance duties, among other duties.

16   Other Community Colleges

17   The Employer provided organization charts for the IT departments of the fourteen

18 remaining community colleges, along with job postings and job descriptions for the

19 employees within those departments who provide help desk/user support services.

20 These charts reflect that, overall, the configuration of each IT Department is unique,

21 with a different combination of AFSCME, MCCC and/or NUP personnel performing

22 such services. They also reflect that AFSCME bargaining unit members work in the IT

23 departments of all fifteen community colleges except RCC and Middlesex, and that

1   thirteen of those colleges employ individuals in the EDP Systems Analyst series. Six

2   community colleges use MCCC personnel to provide help desk/user support services.

3   In addition to RCC, two community colleges, Mt. Wachusett and Springfield Technical,

4   have HDTs performing such services.

5   Opinion[10]

6   A unit clarification is the appropriate procedural vehicle to determine whether

7   newly-created positions should be included in or excluded from a given bargaining unit

8   or to determine whether substantial changes in the job duties of an existing position

9   warrant inclusion or exclusion from a bargaining unit. Town of Athol, 32 MLC 50, 52,

10   CAS-04-3567 (June 29, 2005). The CERB conducts a three-part analysis to determine

11   whether accretion is the appropriate procedural vehicle to add employees to a unit

12   without having an election. City of Boston, 35 MLC 137, 140, CAS-07-3669 (December

13   31, 2008). The first part of the test considers whether the position at issue was covered

14   by the original certification or recognition. If the same position existed when the unit first

15   formed and was not included in the unit, the CERB will not accrete that title into the unit.

16   Holyoke School Committee, 21 MLC 1765, CAS-3055 (April 27, 1995).

17   If that inquiry is inconclusive, the CERB next examines whether the parties'

18   subsequent conduct, including bargaining history, discloses that the parties considered

19   the position to be included in or excluded from the existing bargaining unit. City of

20   Boston, 35 MLC at 140. Under this part of the test, the CERB examines the parties'

21   subsequent conduct, including bargaining history, to determine whether they considered

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[10] The CERB's jurisdiction is not contested.

1   the position to be included or excluded from the unit. Town of Granby, 28 MLC 139,

2   141, CAS-3477 (October 10, 2001).

3   If the second part of the analysis is inconclusive, the CERB finally examines

4   whether the position shares a community of interest with other positions in the existing

5   bargaining unit. If the CERB determines that a community of interest exists, it will

6   accrete the petitioned-for employee into the existing bargaining unit. City of Boston, 35

7   MLC at 140.

8   In this case, the first prong of the CAS analysis is inconclusive because the HDT

9   title did not exist when AFSCME's unit was first certified in 1976. The second prong is

10   inconclusive as between AFSCME and the BHE because the record reflects no

11   bargaining history between AFSCME and the BHE over the unit placement of the HDT.

12   Critically, however, the second prong is conclusive as between the MCCC and

13   the RCC, because the MCCC and the BHE have agreed to include the HDT in the

14   MCCC's bargaining unit in 1999, and there is no evidence and no party argues that the

15   HDT positions at RCC have changed since the classification was first included in

16   MCCC's unit. Rather, the duties performed by the RCC HDTs comport in all material

17   respects with the 1999 Classification Specification for this title. Compare Town of

18   Saugus, 28 MLC 13, 18, MUP-2343/CAS-3388 (June 15,2001) (material changes to job

19   duties rendered first two prongs of CAS analysis inconclusive) to Worcester Housing

20   Authority, 33 MLC 179, CAS-06-3629 (May 16, 2007) (declining to accrete position to

21   AFSCME's unit where position was neither newly-created nor changed and was

22   included in the recognition clause of a different union's bargaining unit).

1   Unless there is evidence that an existing bargaining unit is inappropriate as a

2   matter of law, the CERB will not remove an existing, unchanged title from a bargaining

3   unit merely because it may not be the most appropriate unit or because an alternative

4   unit exists that may be more appropriate. City of Malden, 32 MLC 97, 100, CAS-04-

5   3599 (November 2, 2005) (citing City of Somerville, 24 MLC 69, 71, MCR-4517/CAS-

6   3217 (February 18,1998) (additional citations omitted)). Here, the evidence shows that

7   the HDT shares a community of interest with both units, insofar as they have similar

8   skills, functions, working conditions and work contact. There is no evidence and no

9   party claims that the HDT is a managerial or confidential employee within the meaning

10   of Section 1 of the Law, or that HDT's presence creates intra-unit conflicts that render

11   its continued placement in the MCCC inappropriate. Further, although the HDT is

12   required to possess only an associate degree while all other titles in the MCCC unit at

13   RCC are required to possess a bachelor degree or higher, this does not render its

14   presence in the MCCC unit inappropriate as a matter of Law, particularly where

15   AFSCME's unit is comprised of titles that do not require any college degree at all.

16   Thus, where the HDT title is neither newly-created nor changed, and has been

17   appropriately included in the MCCC's bargaining unit for nearly twenty years, a CAS

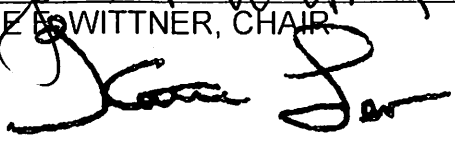18   petition is not the appropriate vehicle to accrete this title to AFSCME's unit.[11]

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[11] In so holding, we distinguish cases where a union has filed an accretion petition seeking to represent a *newly created* or *materially-changed* position that has been placed in a bargaining unit represented by a different union. In cases where the second union has intervened in the petition, the CERB will place the disputed position in the unit with which it shares the greater community of interest. See, e.g., Board of Higher Education, 41 MLC 81, CAS-13-2905 (September 23, 2014); Board of Higher Education, 36 MLC 139, CAS-06-3659 (March 5, 2010).

1 <u>Conclusion</u>

2   Based on the foregoing, we dismiss AFSCME's petition to accrete the HDT title

3 into its unit in Case No. CAS-16-5027 and grant the MCCC's petition in CAS-16-5211 to

4 retain the title in its unit.

5 SO ORDERED.

                        COMMONWEALTH OF MASSACHUSETTS
                        COMMONWEALTH EMPLOYMENT RELATIONS BOARD

                        _____
                        MARJORIE F. WITTNER, CHAIR

                        _____
                        KATHERINE G. LEV

                        _____
                        JOAN ACKERSTEIN, CERB MEMBER