

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: June 5, 2025)

**RHODE ISLAND COUNCIL 94,
AFSCME, AFL-CIO, LOCAL 2870**
Appellants,

v.

**RHODE ISLAND STATE LABOR
RELATIONS BOARD by and through
its Chairman, WALTER J. LANNI, and
its Members HARRY F. WINTHROP,
KENNETH B. CHIAVARINI,
SCOTT G. DUHAMEL, ARONDA R.
KIRBY, STAN ISRAEL, and DEREK M.
SILVA; and DEPARTMENT OF
HEALTH PROFESSIONAL STAFF
ASSOCIATION/NEARI; and STATE
OF RHODE ISLAND, DEPARTMENT
OF ADMINISTRATION**
Appellees.

C.A. No. PC-2023-06435

DECISION

CARNES, J. Before this Court is an administrative appeal from a Rhode Island State Labor Relations Board (Labor Board) decision involving a petition for unit clarification with the Rhode Island Department of Health between Rhode Island Council 94, AFSCME, AFL-CIO, Local 2870 (Council 94) and the Department of Health Professional Staff Association/NEARI (NEARI) for the position of Community Program Liaison Worker. Council 94 appeals the Labor Board's decision that the Community Program Liaison Worker position should remain within the NEARI bargaining unit. Jurisdiction is pursuant to G.L. 1956 §§ 28-7-29 and 42-35-15.

I

Facts and Travel

This dispute arose out of Council 94's petition for unit clarification for the Community Program Liaison Worker (CPLW) position. Council 94 and NEARI are labor organizations that collectively bargain and deal with employers in grievances or other mutual aid or protection. (Labor Board's Mem. Ex. A (Labor Board Decision) at 7.) Council 94 holds the certification in EE-3406A and serves as the exclusive bargaining representative for all employees of the Rhode Island Department of Health excluding nurses, professional employees, and supervisory employees. (Compl. ¶¶ 1, 8.) NEARI holds the certification in EE-3575 for Department of Health employees who are professional employees. *Id.* ¶ 9.

A. Council 94's Petition for Unit Clarification

In the spring of 2022, the Rhode Island Department of Health (Employer) posted a CPLW position designated as part of NEARI. (Labor Board Decision at 2.) Council 94 reviewed the job description and questioned whether the CPLW position was properly classified or whether it more closely aligned with positions within the Council 94 bargaining unit. *Id.*

On May 19, 2022, Council 94 filed a petition with the Labor Board for unit clarification with regard to the CPLW position. (Compl. ¶ 10.) The listed CPLW position's job paygrade was nineteen, had a starting annual salary of \$47,461, and the job description stated that it has "no supervisory duties," and "no clear and specific education and experience requirements[.]" *Id.* ¶¶ 11-12. The CPLW position resided within the NEARI bargaining unit. (Labor Board Decision at 1.)

The Labor Board assigned its investigator to investigate the petition. *Id.* The investigator interviewed affected employees in the contested position and the employees' supervisors

between July and September 2022. *Id.* On September 19, 2022, the investigator submitted a report to the Labor Board recommending that the CPLW position be transferred from NEARI to Council 94. (Compl. ¶¶ 15, 17; Labor Board Decision at 1.)

On October 18, 2022, Council 94 submitted a response to the investigator's report. NEARI filed an objection to the investigator's report on October 19, 2022, and Council 94 also submitted a response on the same date. (Labor Board Decision at 1.)

On November 15, 2022, the Labor Board preliminarily accepted the investigator's report. (Compl. ¶ 17; Labor Board Decision at 1.)

On December 15, 2022, NEARI requested a formal hearing on the petition. (Compl. ¶ 18.)

B. Labor Board Hearing and Decision

On March 30, 2023 and June 29, 2023, the Labor Board held two formal hearings. *Id.* ¶ 19.) Council 94 presented one witness, Stephanie Pontes, who was the Local 2870 Union president at the time. *See* Labor Board Decision at 3. Ms. Pontes described the work that members of her bargaining unit performed and testified that she believed the CPLW position performed work similar in nature to the work performed by members within her bargaining unit. *Id.* at 3-4. NEARI presented two witnesses: Barbara Melfi and Emma Reynoso. *Id.* at 5. Both witnesses currently hold the CPLW position and have been in the position for nine years (Ms. Melfi) and fifteen years (Ms. Reynoso). *Id.*; Hr'g Tr. 13:5-8, Mar. 30, 2023; Hr'g Tr. 23:18-24:1, Mar. 30, 2023.

Following the hearings, Council 94 and NEARI filed post-hearing briefs. (Labor Board Decision at 2.)

On November 14, 2023, the Labor Board issued its decision determining that the CPLW position would remain within the NEARI bargaining unit. *Id.* at 8. The Labor Board reasoned that Council 94 had not demonstrated by a fair preponderance of the evidence that the CPLW position was improperly classified as a professional position and should be removed from the NEARI unit and placed within the Council 94 unit. *Id.*

C. Present Action

On December 15, 2023, Council 94 brought this administrative appeal to Superior Court alleging that the Labor Board's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the record and a clearly unwarranted exercise of discretion. (Appellants' Br. at 5-9.) Council 94 seeks for the Labor Board's decision to be overruled and that this Court find that the CPLW classification properly belongs in the Council 94 bargaining unit. *Id.* at 9. Both the Labor Board and NEARI objected to the appeal. The State of Rhode Island, Department of Administration did not take a position on Council 94's job clarification petition and does not take a position in this appeal. (State's Br.)

II

Standard of Review

When reviewing the decisions of an administrative agency, the court "sits as an appellate court with a limited scope of review." *Mine Safety Appliances Co. v. Berry*, 620 A.2d 1255, 1259 (R.I. 1993). This Court's review of an appeal from a decision of an administrative agency is governed by the Rhode Island Administrative Procedures Act (APA), § 42-35-15. *See Rossi v. Employees' Retirement System of the State of Rhode Island*, 895 A.2d 106, 109 (R.I. 2006). Under the terms of the APA, appellate jurisdiction in the Superior Court is conferred by § 42-35-15 to review final orders and certain interlocutory orders of state administrative agencies not

exempted explicitly from the provisions of the APA. Section 42-35-15 provides, in pertinent part:

“(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

“(1) In violation of constitutional or statutory provisions;

“(2) In excess of the statutory authority of the agency;

“(3) Made upon unlawful procedure;

“(4) Affected by other error of law;

“(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

“(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

Section 42-35-15(g).

“In essence, if ‘competent evidence exists in the record, the Superior Court is required to uphold the agency’s conclusions.’” *Auto Body Association of Rhode Island v. State of Rhode Island Department of Business Regulation*, 996 A.2d 91, 95 (R.I. 2010) (quoting *Rhode Island Public Telecommunications Authority v. Rhode Island State Labor Relations Board*, 650 A.2d 479, 485 (R.I. 1994)). When reviewing a decision under the APA, the Court may not substitute its judgment for that of the agency on questions of fact. *See Johnston Ambulatory Surgical Associates, Ltd. v. Nolan*, 755 A.2d 799, 805 (R.I. 2000). The Court defers to the administrative agency’s factual determinations, provided that they are supported by legally competent evidence. *See Arnold v. Rhode Island Department of Labor and Training Board of Review*, 822 A.2d 164, 167 (R.I. 2003). The Court cannot “weigh the evidence [or] pass upon the credibility of witnesses [or] substitute its findings of fact for those made at the administrative level.” *E. Grossman & Sons, Inc. v. Rocha*, 118 R.I. 276, 285, 373 A.2d 496, 501 (1977).

Where there is legally competent evidence in the record to support the agency's decision, this Court must uphold that decision. *Id.*; see *Barrington School Committee v. Rhode Island State Labor Relations Board*, 608 A.2d 1126, 1138 (R.I. 1992). “Legally competent evidence (sometimes referred to as ‘substantial evidence’) has been defined as ‘relevant evidence that a reasonable mind might accept as adequate to support a conclusion[; it] means an amount more than a scintilla but less than a preponderance.’” *Town of Burrillville v. Rhode Island State Labor Relations Board*, 921 A.2d 113, 118 (R.I. 2007) (quoting *Center for Behavioral Health, Rhode Island, Inc. v. Barros*, 710 A.2d 680, 684 (R.I. 1998)). Thus, this Court may reverse factual conclusions of administrative agencies “only when they are totally devoid of competent evidentiary support in the record.” *Baker v. Department of Employment and Training Board of Review*, 637 A.2d 360, 363 (R.I. 1994) (quoting *Milardo v. Coastal Resources Management Council*, 434 A.2d 266, 272 (R.I. 1981)). Questions of law, however, are not binding upon a reviewing court and may be freely reviewed to determine what the law is and its applicability to the facts. *Carmody v. Rhode Island Conflict of Interest Commission*, 509 A.2d 453, 458 (R.I. 1986).

III

Analysis

Council 94 argues that the Labor Board's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the record and a clearly unwarranted exercise of discretion because the Labor Board's own investigator determined that the CPLW position belonged in Council 94's bargaining unit and the CPLW job classification does not meet the Labor Board's own definition of professional. (Appellants' Br. at 5-9.) The Labor Board argues that it did not commit error in determining that the CPLW position was appropriately included

within the NEARI bargaining unit because Council 94 was not able to sustain its burden of proof on several key items contained in the “community of interest” listing. (Labor Board’s Obj. Mem. at 7.) NEARI argues that the Labor Board did not err in denying Council 94’s petition because the CPLW position is a professional position, the CPLW position shares a community of interest with NEARI, the Labor Board has no obligation to follow the Labor Board’s investigative report, and Council 94’s disagreement with the Labor Board’s conclusion of law does not make it erroneous. (NEARI’s Obj. Mem. at 5-12.)

A. Whether the Labor Board Was Required to Follow the Investigator’s Report

Council 94 argues that the Labor Board’s investigator determined that the CPLW job classification belonged in the Council 94 bargaining unit, so the Labor Board’s decision to keep the position within NEARI’s bargaining unit was clearly erroneous and characterized by clearly unwarranted exercise of discretion where the Labor Board contradicted its own investigator’s report. (Appellants’ Br. at 6-8.) The Labor Board and NEARI argue that the Labor Board did not err when it did not follow the investigative report prepared by the Labor Board’s agent because the Labor Board was not obligated to abide by or follow the contents or recommendations in the investigator’s report. (Labor Board’s Obj. Mem. at 10; NEARI’s Obj. Mem. at 9.)

To determine whether the Labor Board’s decision to “contradict” the investigator’s report was clearly erroneous or characterized by a clearly unwarranted exercise of discretion, the Court must first review what procedure the Labor Board must follow for a unit clarification petition and what role the investigator’s report plays within that process.

When a petition for unit clarification is received, the Labor Board must schedule an informal hearing. 465 RICR 10-00-1.16(B)(1). If the parties cannot agree as to the accretion¹ of the position at this informal hearing, then a Labor Board agent will begin an investigation. *Id.* Upon completion of the investigation, the investigator will provide a written investigative report to the parties, and the parties have a chance to respond. Section 1.16(B)(2). Once this response period is closed, the Labor Board will consider the matter then either refer the matter for further investigation, order a formal hearing, or preliminarily grant or deny the requested action. *Id.*

Here, the Labor Board held an informal hearing, prompted an investigator to investigate the matter, reviewed a written report from the investigator, and preliminarily accepted the report. (Labor Board Decision at 1.) Then, NEARI requested a formal hearing, as allowed by the Labor Board's Rules and Regulations. *Id.*; see § 1.16(B)(4).

Once a formal hearing is requested and granted by the Labor Board, the Labor Board must hold the formal hearing, then issue a final written decision and order. Section 1.16(C)(1). When the Labor Board reviews the petition to accrete a position into an existing bargaining unit, the petitioner must provide the Labor Board with information concerning the community of interest shared by the position and the bargaining unit. Section 1.16(E)(1). The petitioner, in this case Council 94, has the "affirmative duty and burden to demonstrate, through either testimony or documentary evidence, or a combination thereof, that the petitioned for position(s) share a community of interest with the existing bargaining unit." Section 1.16(D)(1).

Here, the Labor Board took each step as required by § 1.16 after Council 94 filed its petition. See Labor Board Decision at 1. First, the Labor Board assigned an investigator to conduct an investigation and held an informal hearing. *Id.* The investigator submitted its report,

¹ Accretion "means the process by which positions are added to an existing bargaining unit." 465 RICR 10-00-1.2(A)(2).

and the Labor Board voted to preliminarily accept the investigator's report. *Id.* Then, NEARI requested a formal hearing, which the Labor Board granted. *Id.* After two formal hearings and after both parties filed post-hearing briefs, the Labor Board reviewed and considered testimony, exhibits, and the post-hearing briefs before arriving at its decision. *Id.* at 1-2.

Based on the procedure specified by the Labor Board's Rules and Regulations, it is clear to the Court that the investigator's report is only one component of a broad investigation into the position in question and which bargaining unit it best fits. The Labor Board's Rules and Regulations do not suggest that the Labor Board must give any deference to an investigator's report. *See* § 1.16. The petitioner still bears the burden to demonstrate that the petitioned for position shares a community of interest with the existing bargaining unit. Section 1.16(D)(1). Once a formal hearing is requested, as was the case here, the Labor Board should consider the full record, including the affirmative evidence presented by Council 94, and make a determination based on the community of interest factors. The Labor Board did just that, *see* Labor Board decision, and, therefore, this Court cannot substitute its judgment and must uphold the Labor Board's conclusions. *See Auto Body Association of Rhode Island*, 996 A.2d at 95.

Accordingly, the Court finds that the Labor Board decision was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record and was not characterized by clearly unwarranted exercise of discretion.

B. Whether the Labor Board Defied Its Own Definition of "Professional"

Council 94 argues that the CPLW position's education and experience requirements do not meet the Labor Board's own definition of professional. (Appellants' Br. at 5.)

To determine whether the Labor Board defied its own definition of professional, the Court must first review the factors that the Labor Board was required to review to determine

which bargaining unit the CPLW position should reside and how the definition of professional factors into the process.

When the Labor Board reviews a petition to accrete a position into an existing bargaining unit, the petitioner must provide the Labor Board with information concerning the community of interest shared by the position and the bargaining unit. Section 1.16(E)(1). Community of interest means “the critical consideration in determining the scope of bargaining units.” Section 1.2(A)(11). When “determining whether a proposed bargaining unit shares a community of interest,” the Labor Board considers twelve factors:

- “a. The similarity in scale and manner of determining earnings;
 - “b. Similarity of employment benefits, hours of work, and other terms and conditions of employment;
 - “c. Similarity in the kind of work performed;
 - “d. Similarity in the qualifications, skills, and training of the employees;
 - “e. Frequency of contact or interchange among employees;
 - “f. Geographic proximity;
 - “g. Continuity or integration of production processes;
 - “h. Common supervision and determination of labor relations policies;
 - “i. Relationship to the administrative organization of the Employer;
 - “j. The history of collective bargaining;
 - “k. The desires of the affected employees; and
 - “l. The extent of Union organization within the Employer’s ranks.”
- Section 1.2(A)(11).

Notably, the petitioner has the “affirmative duty and burden to demonstrate . . . that the petitioned for position(s) share a community of interest with the existing bargaining unit.” Section 1.16(D)(1).

Here, the Labor Board reviewed all twelve factors and found that “while the CPLW [position] is closely aligned with both Council 94 and NEARI in some of the identified items, [NEARI] has, in the [Labor] Board’s view, a slight advantage regarding the community of

interest factors.” (Labor Board Decision at 3.) In particular, the Labor Board found that there was some overlap between NEARI and Council 94, but the Labor Board reasoned that there were two determining factors in NEARI’s favor in assessing the community of interest factors: (1) the bargaining history where NEARI had represented the CPLW position for at least the last fifteen years and (2) the two current holders of the CPLW position who testified at the hearing testified that they wished to remain represented by NEARI. *See* Labor Board Decision at 5 (Labor Board stated that “the bargaining history and desires of the employees to remain with NEARI tips the scales in NEARI’s favor”).

Council 94 suggests that the two CPLWs who testified should not have been allowed to do so because the testimony did not constitute legally competent evidence because they were lay people, Appellants’ Reply Br. at 5, but the Court is not persuaded. The record shows that both witnesses were highly competent in their positions and had been in the position for nine years and fifteen years respectively. *See* Labor Board Decision at 5. Based on their experience within the role, it is the Court’s opinion that these two witnesses could speak to the position better than most. Additionally, one factor in determining whether a proposed bargaining unit shares a community of interest is the “desires of the affected employees,” *see* § 1.2(A)(11), of which the two witnesses were competent to testify.

The Labor Board’s Rules and Regulations are clear that it is Council 94’s burden as the petitioner to demonstrate that the position in question shares a community of interest with the existing bargaining unit. *See* § 1.16(D)(1). The Labor Board uses the information provided by Council 94 concerning the community of interest, and the Labor Board “may” consider the twelve factors among other factors. *See* § 1.2(A)(11). Based on the Labor Board Rules and Regulations’ language, the Court finds that the Labor Board had the discretion to consider each

factor, as well as other factors, and weigh the factors based on what it deemed most important.

Id. Because it found that the position aligned with both bargaining units and it appropriately placed more weight on certain factors, the Labor Board's decision was not clearly erroneous and was not characterized by clearly unwarranted exercise of discretion.

Further, the Labor Board directly addressed whether the CPLW position was professional in nature based on education, experience, and responsibilities of the position. *See* Labor Board Decision at 6-7.

Under § 1.2(A)(44) of the Labor Board's Rules and Regulations, a professional employee is defined as

“a. Any employee engaged in work:

“(1) Predominantly intellectual and varied in character; as opposed to routine mental, manual, mechanical or physical work;

“(2) Involving the consistent exercise of discretion and judgment in its performance;

“(3) Of such a character that the output produced, or the result accomplished, cannot be standardized in relation to a given period of time;

“(4) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education, or from an apprenticeship, or from training in the performance of routine, manual, or physical processes; or

“b. Any employee who:

“(1) Has completed the courses of specialized intellectual instruction and study described in § 1.2(A)(44)(a)(4) of this Part; and

“(2) Is performing related work under the supervision of a professional person to qualify himself or herself to become a professional employee as defined in § 1.2(A)(44)(a) of this Part.” Section 1.2(A)(44).

Council 94 argues that the Labor Board's conclusion that the CPLW position was a professional position was clearly erroneous and exhibited an unwarranted abuse of discretion

because the CPLW position's education and experience requirements do not meet the Labor Board's own definition of professional. (Appellants' Br. at 5-9.)

As to whether the position met the § 1.2(A)(44) educational guidelines, the Labor Board found that "the study necessary for a CPLW to understand and be familiar with" all the rules, regulations, and laws as required by the position was "sufficient evidence to establish compliance with the intent of the Rule." (Labor Board Decision at 7.) A professional, as defined by § 1.2(A)(44), is any employee who has a "knowledge of an advanced type[.]" and such knowledge can be acquired from (1) "study in an institution of higher learning or a hospital, as distinguished from a general academic education," (2) "an apprenticeship," or (3) "training in the performance of routine, manual, or physical processes[.]" Section 1.2(A)(44)(a)(4). The Labor Board found that the combination of knowledge and experience needed to understand and be familiar with the "various federal, state and local laws, rules and regulations" was "sufficient" to indicate that the position had specialized education and/or training. (Labor Board Decision at 7.) Although Council 94 argues that the CPLW job description had "unclear and nonspecific education and experience requirements" in contrast to the Labor Board's definition of a professional employee that requires "intensive and specialized instruction for an extended period of time," (Appellants' Br. at 5-6), this Court finds that a professional as defined by § 1.2(A)(44)(a)(4) is not so narrowly defined as to preclude an employee who has specialized knowledge from a combination of education and experience in the health care or social services fields, as the CPLW job description requires. *See* NEARI's Obj. Mem. Ex. C. The Labor Board made such a determination after reviewing all the evidence provided, and it is not this Court's role to weigh the evidence. *Costa v. Registrar of Motor Vehicles*, 543 A.2d 1307, 1309 (R.I. 1988).

Council 94 also argues that the CPLW position is not supervisory in nature, so it more appropriately belongs in the Council 94 bargaining unit. (Appellants' Br. at 6-9.)

The Labor Board found that the CPLW job description included numerous items that demonstrated that the position "exercises discretion and independent judgment" in its daily duties, and the Labor Board even gave specific examples of such activities. *See* Labor Board Decision at 6-7 ("monitoring and assisting local agencies with compliance," "conducting formal reviews of the programs and operations of local agencies," "providing technical assistance and training," and "taking complaints and interviewing complainants"). Additionally, the Labor Board reviewed the testimony from two current CPLWs, found them to be "clearly knowledgeable" about the CPLW position, and heavily weighed their testimony that they "had to exercise their judgment and discretion" in performing their daily duties and that they both found their duties to be "neither routine nor menial in nature." *See* Labor Board Decision at 7. Further, the Labor Board even acknowledged that, "while the comparison may not be perfect," the CPLW position "more clearly fits within the professional category in the NEARI [bargaining] unit than compared to the jobs within the Council 94 [bargaining] unit." (Labor Board Decision at 6.) Because (1) there was legally competent evidence on the record for the Labor Board to find the CPLW position properly belonged within NEARI's bargaining unit because it constituted a professional role, (2) the Labor Board had the discretion to make such a determination, and (3) Council 94 bears the burden to demonstrate that the CPLW position more closely aligned with Council 94's bargaining unit over NEARI's bargaining unit, *see supra*, the Labor Board did not err in its determination that the CPLW position more clearly fits within the professional classification and within NEARI's bargaining unit. This Court's review is limited, and this Court must uphold an agency's decision when there is legally competent evidence on the record.

Auto Body Association of Rhode Island, 996 A.2d at 95. Based on the Labor Board’s findings and proper weighing of factors, this Court finds that there was legally competent evidence on the record, and, therefore, it must uphold the Labor Board’s decision.

Finally, Council 94 argues that it does not dispute the Labor Board’s findings of fact, only its findings of law, and these legal findings are reviewable by this Court. (Appellants’ Br. at 8.) While Council 94 is correct that findings of law are reviewable by this Court, this Court cannot “substitute its judgment for that of the agency in regard to the credibility of the witnesses or the weight of the evidence concerning questions of fact.” *Costa*, 543 A.2d at 1309. Here, Council 94 is asking the Court to do just that because the Labor Board found that the CPLW position fits “more clearly” within the professional NEARI unit based on its own review and weighing of all the evidence. *See* Labor Board Decision at 8. The Labor Board weighed the evidence to determine that the position was considered professional. *See id.* at 7 (Labor Board determined the position was professional in nature “after reviewing all of the reliable and probative evidence submitted” by the parties). The Labor Board also found the testimony of the two current CPLWs credible and weighed their testimony when determining that the position was professional. *See id.* (“Both individuals are long term occupants of the CPLW position . . . and are clearly knowledgeable regarding the duties and responsibilities of the position.”).

It was Council 94’s burden to demonstrate that the petitioned for position shares a community of interest with the existing bargaining unit, § 1.16(D)(1), and, here, the Labor Board found that Council 94 did not meet this burden. Therefore, this Court cannot substitute its own judgment on either the witnesses’ credibility or the weight of evidence in determining that the position was professional. *Costa*, 543 A.2d at 1309.

Accordingly, the Court finds that the Labor Board decision was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record and was not characterized by clearly unwarranted exercise of discretion.

IV

Conclusion

For the foregoing reasons, Council 94's appeal is DENIED and Labor Board's decision is AFFIRMED. Counsel shall submit the appropriate order and judgment for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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Board, et al.

CASE NO: PC-2023-06435

COURT: Providence County Superior Court

DATE DECISION FILED: June 5, 2025

JUSTICE/MAGISTRATE: Carnes, J.

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