

STATE OF MAINE

MAINE LABOR RELATIONS BOARD
Case No. 04-UDA-01
Issued: October 8, 2004

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YORK COUNTY,)	
)	
	Appellant,)	
)	
	and)	DECISION AND ORDER ON
)	UNIT DETERMINATION
MAINE STATE EMPLOYEES ASSOCIATION,)	APPEAL
SEIU Local 1989,)	
)	
	Appellee.)	
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This unit determination appeal was filed by York County on April 12, 2004, pursuant to 26 M.R.S.A. §968(4) and Chapter 11, §30 of the Rules and Procedures of the Maine Labor Relations Board (Board). The unit determination report which is the subject of this appeal was issued on March 30, 2004. York County objects to the hearing examiner's conclusion that the bargaining unit petitioned for by the Maine State Employees Association, consisting of the deputy register of probate and the deputy register of deeds, was an appropriate bargaining unit within the meaning of 26 M.R.S.A. §966. On appeal, the County raises essentially the same arguments that were made to the hearing examiner, that is, that both positions are excluded from coverage of the Act because they are confidential employees or department heads within the meaning of 26 M.R.S.A. §962(6)(C) and (D). The County also disputes the Hearing Examiner's conclusion that the two positions share a community of interest.

Throughout this proceeding, Timothy O'Brien, Esq., has represented York County and Timothy Belcher, Esq., has represented the Maine State Employees Association. Both parties waived their right to present oral argument to the Board. The County filed a written brief to the Board on May 4, 2004, while the

Union elected not to do so. The Board reviewed the unit determination report, the evidentiary record, the briefs submitted to the hearing examiner and the County's appeal brief. The Board met on June 8, 2004, to deliberate this matter. As explained below, we affirm the hearing examiner's conclusion that the petitioned-for unit is an appropriate bargaining unit and that neither of the positions are excluded from coverage of the Act.

JURISDICTION

York County is an aggrieved party within the meaning of 26 M.R.S.A. §968(4), and is a public employer within the meaning of 26 M.R.S.A. §962(7). The Maine State Employees Association is a bargaining agent within the meaning of 26 M.R.S.A. §962(2). The jurisdiction of the Maine Labor Relations Board to hear this appeal and to render a decision herein lies in 26 M.R.S.A. §968(4).

DISCUSSION

The standard of review for bargaining unit determinations by a hearing examiner is well established:

We will overturn a hearing examiner's rulings and determinations if they are 'unlawful, unreasonable, or lacking in any rational factual basis.'" Council 74, AFSCME and Teamsters Local 48, MLRB No. 84-A-04 at 10 (Apr. 25, 1984), quoting Teamsters Local 48 and City of Portland, MLRB Report of Appellate Review at 6 [78-A-10] (Feb. 20, 1979). It thus is not proper for us to substitute our judgment for the hearing examiner's; our function is to review the facts to determine whether the hearing examiner's decisions are logical and are rationally supported by the evidence.

MSAD #43 and SAD #43 Teachers Assoc., 84-A-05, at 3 (May 30, 1984), affirming No. 84-UC-05.

The bulk of the County's brief to this Board presents the same arguments that it presented to the Hearing Examiner below. The only new legal argument on appeal is the County's claim that the Hearing Examiner created a new threshold regarding access to confidential information that is not found in the statutory exclusion for confidential employee. The County also claims that the Hearing Examiner applied a higher standard on the appointment process for department heads than the statute requires and erred in her factual finding that the involvement of the County Commissioners in the appointment of the deputy registers was not sufficient to meet the requirements of the statutory exclusion for department heads.

We have reviewed the record and the hearing examiner's decision and conclude that her legal analysis was sound in all respects. The hearing examiner properly applied the existing case law for both the statutory exclusion for confidential employees and the exclusion for department heads. Furthermore, the hearing examiner's factual conclusions are logical and are rationally supported by the evidence. Accordingly, we conclude that the hearing examiner's determinations were not unlawful, unreasonable, or lacking in any rational factual basis. Pursuant to 26 M.R.S.A. § 968(4), we hereby deny the appeal and affirm the unit determination report in its entirety.

ORDER

On the basis of the foregoing discussion and by virtue of and pursuant to the powers granted to the Maine Labor Relations Board by the provisions of 26 M.R.S.A. § 968(4), it is ORDERED:

1. That the appeal of York County filed on April 12, 2004, is denied and that the hearing examiner's

March 30, 2004, unit determination report is affirmed in its entirety.

2. That the Executive Director shall, as soon as is possible, schedule and conduct a secret ballot bargaining agent election in the new bargaining unit.

Dated at Augusta, Maine, this day of October, 2004.

MAINE LABOR RELATIONS BOARD

The parties are advised of their right to seek review of this decision and order by the Superior Court by filing a complaint pursuant to 26 M.R.S.A. §968(4) and in accordance with Rule 80C of the Rules of Civil Procedure within 15 days of the date of this decision.

Jared S. des Rosiers
Alternate Chair

Edwin S. Hamm
Alternate Employer
Representative

Wayne W. Whitney
Alternate Employee
Representative