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CENTRAL LINCOLN COUNTY))	
EDUCATIONAL SPECIALISTS))	
ASSOCIATION/MEA/NEA,))	
))	
Petitioner,))	
))	UNIT DETERMINATION REPORT
and))	
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AOS #93,))	
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Respondent))	
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PROCEDURAL HISTORY

This unit determination proceeding was initiated on July 17, 2013, when Joan M. Morin, a UniServ Director for the Maine Education Association/NEA, filed a Petition for Unit Determination and Bargaining Agent Election with the Maine Labor Relations Board ("MLRB," or "Board") pursuant to 20-A M.R.S. § 1464-A regarding creation of a unit for specialists, including the speech therapists, social workers, and occupational therapists who serve the schools of Bristol, South Bristol, Jefferson, Nobleboro, and Great Salt Bay, and named Alternative Organizational Structure #93 ("AOS #93," or "the AOS") as the public employer. On July 24, 2013, the AOS #93 Board of Directors objected to the unit determination request and asked that the petition be dismissed, asserting that AOS #93 was not the specialists' employer. Rather, it asserted, the individual school committees of Great Salt Bay, Jefferson, Nobleboro, Bristol, and South Bristol employ the specialists and are, therefore, the public employers. Additionally, AOS #93 asserted that five of the positions the petitioner sought to include were

already included in collective bargaining agreements ("CBA") between one of the member schools and another bargaining agent. AOS #93 argued that the petitioner was precluded by the contract bar rule, Board Rule Chapter 11(6)(1), from filing a petition in the window period more than 90 days and less than 60 days prior to the expiration date of the contracts.

Hearing notices were issued on September 10, 2013, and posted for the information of the affected employees. Revised notices were issued on September 30, 2013, and November 4, 2013, due to hearing postponements. A prehearing conference took place on October 16, 2013, where both parties presented their proposed witness lists, exhibits, and stipulations.

The hearing was scheduled for November 12, 2013. The MEA/NEA was represented by Joan M. Morin, UniServ Director. AOS #93 was represented by S. Campbell Badger, Esq. After the parties made their opening statements on the record, the hearing officer, taking into account the exhibits and stipulations in the record, all pertinent statutes and Board Rules, as well as the parties' written and oral arguments, granted AOS #93's request to dismiss the petition based on the contract bar rule and the petitioner's admission that 20-A M.R.S. § 1464-A(2) was not applicable because the specialists' positions had not been transferred from the school administrative units to AOS #93. AOS #93 had first submitted its request to dismiss the petition in response to the petition being filed, and renewed its request in an amended form on November 4, 2013.

JURISDICTION

Jurisdiction of the executive director or his designee to hear this matter and make determinations lies in 26 M.R.S. § 966(1).

STIPULATIONS

The following were agreed to by the parties and are adopted herein:

1. The Employer asserts that the employees holding the title of Social Workers, Occupational Therapists and one Speech Therapist are employed by the Great Salt Bay School Committee.

2. The Petitioner asserts that the Educational Specialists are public employees.

3. No employees of AOS #93 are currently represented by a bargaining agent.

4. AOS #93 includes the school administrative units of Nobleboro, Jefferson, Great Salt Bay, Bristol and South Bristol.

5. There are a total of nine bargaining units of teachers and educational support employees who are represented by bargaining agents in the school administrative units of Nobleboro, Jefferson, Great Salt Bay, Bristol and South Bristol.

6. The Superintendent of AOS #93 participates in collective bargaining on behalf of the public employers in all bargaining units in the school administrative units of Nobleboro, Jefferson, Great Salt Bay, Bristol and South Bristol.

7. The AOS #93 Superintendent refused to enter into a Memorandum of Agreement with the five teachers' Association Bargaining units which outlined the inclusion of the Educational Specialist[s] into the Damariscotta Teachers' contract, which included an agreement to negotiate a reduction-in-force provision.

8. Speech Therapist Patricia Pratt provides speech therapy to students at Bristol School and South Bristol School and receives all compensation and benefits through the Bristol collective bargaining agreement.

EXHIBITS

A-1. Bristol collective bargaining agreement 2013-2014

A-2. South Bristol collective bargaining agreement 2011-2014

- A-4. Nobleboro collective bargaining agreement 2012-2014
- A-5. Jefferson collective bargaining agreement 2011-2014
- A-7. 2011-2012 teacher seniority list from Great Salt Bay, Jefferson, Nobleboro, Bristol and South Bristol
- A-8. 2012-2013 teacher seniority list for Great Salt Bay, Jefferson, Nobleboro, Bristol and South Bristol
- A-9. April 14, 2010, Jennifer Ribeiro letter to Patty Pratt, reduction in position
- A-10. April 16, 2010, e-mail from Patty Pratt to Joan Morin re: employment history
- A-11. April 24, 2011, letter of intent from Patty Pratt to Peter Gallace
- A-12. May 19, 2011, letter of position refusal from Peter Gallace to Patty Pratt
- A-14. September 2, 2011, Patty Pratt notification of reduced annual salary rate
- A-15. September 11, 2011, letter of expectation from Patty Pratt to Steve Bailey [Objection by Respondent; ruling deferred.]
- A-16. April 10, 2013, e-mail reply Steve Bailey to Joan Morin re: specialists within the AOS [Objection by Respondent; ruling deferred.]
- A-18. Ann Griffin 2009-2013 salary rate notification, pay stubs, employment contracts
- A-19. Bethany Hancock 2009-2013 salary rate notification, pay stubs, employment contracts
- A-20. Marie Paschke 2009-2013 salary rate notification, pay stubs, employment contracts
- A-21. Rebecca Cannon 2009-2013 salary rate information, pay stubs, employment contracts
- A-22. Kristen Travers-Whitmore 2009-2013 salary rate notification, pay stubs, employment contracts

A-23. Elaine Tibbetts 2009-2013 salary rate notification, pay stubs, employment contracts

A-24. Susan Buckland 2009-2013 salary rate notification, pay stubs, employment contracts

A-25. Patricia Pratt 2009-2013 salary rate notification, pay stubs, employment contract

A-26. January 13, 2013, Association(s) draft specialist memorandum of agreement [Objection by Respondent; ruling deferred.]

A-27. Maine Statute Title 20-A, § 1464-A

E-1. Alternative organizational structure statute 20-A M.R.S. §1461-B; Plan to Reorganize as an Alternative Organizational Structure (AOS); Certificate of Organization of Alternative Organizational Structure No. 93; Interlocal Agreement for Alternative Organizational Structure

E-2. Great Salt Bay Teacher Contract 2010-2013 and 2013-2014 contract extension

E-12. Board minutes, including: Bristol School Board, Wednesday, October 2, 2013; Jefferson Village School Board, Tuesday, September 11, 2011; Jefferson Village School Board, May 7, 2012; Jefferson Village School Board, July 19, 2011; Great Salt Bay Community School Board, August 8, 2012; Great Salt Bay Community School Board, June 13, 2012

E-13. Central Lincoln County School System, AOS #93 2013-2014 Central Office Budget

E-14. Excerpts from the Agreement between the Damariscotta Area Teachers' Association and the Great Salt Bay Community School District Board of Trustees, 2004-2007

E-15. Excerpts from the Agreement between the Damariscotta Area Teachers' Association and the Great Salt Bay Community School District Board of Trustees, 2007-2010

E-16. Summary of Board Exhibits.

FINDINGS OF FACT

1. Administrative Organizational Structure ("AOS") #93 was adopted and approved pursuant to 20-A M.R.S. § 1461-B. Its stated purpose is to share among member school units a number of functions, including system administration, special education administration, administration of transportation, administration of business functions, core curriculum and procedures for standardized testing and assessment, school policies and calendar, and adoption of a plan for consistent collective bargaining agreements.
2. These functions are carried out by a group of AOS employees, including the Superintendent, Special Services Director, Curriculum Coordinator, Business Manager, the Transportation Director, and their support staff, all of whom are under the direction and control of the AOS #93 School Committee and who serve all of the member school units, including Bristol, Great Salt Bay, Nobleboro, South Bristol, and Jefferson.
3. The AOS #93 budget is supported by revenue from its member school units, including the school committees of Bristol, Great Salt Bay, Nobleboro, South Bristol, and Jefferson. For the 2013-14 school year, this revenue includes \$118,232.00 from Bristol, \$167,948.00 from Great Salt Bay, \$76,230.00 from Nobleboro, \$37,295.00 from South Bristol, and \$120,145.00 from Jefferson.
4. Section 5 of the Interlocal Agreement for Alternative Organizational Structure adopted by AOS #93 sets forth the responsibilities of the Member School Units to operate their schools, in relevant part, as follows:

Member School Unit	Grades
Bremen	Tuition Grades 9-12 (Choice)
Bristol	Operates Grades K-8; tuitions Grades 9-12 (Choice)
Damariscotta	Tuitions Grades 9-12
Jefferson	Operates Grades K-8; tuitions Grades 9-12 (Choice)
Newcastle	Tuitions Grades 9-12 (Choice)
Nobleboro	Operates Grades K-8; tuitions Grades 9-12 (Choice)
South Bristol	Operates Grades K-8; tuitions Grades 9-12 (Choice)
Great Salt Bay CSD	Operates Grades K-8 for Bremen, Damariscotta, and Newcastle; may accept other tuition payments

Section 10 of the Interlocal Agreement provides:

- (i) To the extent that the AOS receives an allocation for debt service, that allocation shall be reassigned to the Member School Units responsible for those debt service costs;
- (ii) To the extent that the AOS receives an allocation for gifted and talented expenditures, that allocation shall be reassigned to the Member School Units in proportion to their respective gifted and talented expenditures in the year two years prior to the year of allocation (hereinafter the "base year");
- (iii) To the extent that the AOS receives an allocation for career and technical education expenditures, that allocation shall be reassigned to the Member School Units in proportion to their respective career and technical education expenditures in the base year;
- (iv) To the extent that the AOS receives an allocation for bus purchases, that allocation shall be reassigned to the Member School Units responsible for those bus purchase costs;
- (v) To the extent that the AOS receives an allocation for special education, that allocation shall be reassigned to the Member School Units in proportion to their respective special education expenditures in the base year;
- (vi) To the extent that the AOS receives an allocation for transportation, that allocation shall be reassigned to the Member School Units in proportion to their respective transportation expenditures in the base year;
- (vii) To the extent that the AOS receives an allocation for an EK-8 small school adjustment or 9-12 small school adjustment, that allocation shall be reassigned to the Member School Units on the basis of the number of small schools eligible for that adjustment

- located in each Member School Unit in the base year;
- (viii) To the extent that the AOS receives an allocation for EK-8 disadvantaged students, that allocation shall be reassigned to the Member School Units in proportion to their respective number of students eligible for that allocation in the base year;
 - (ix) To the extent that the AOS receives an allocation for 9-12 disadvantaged students, that allocation shall be reassigned to the Member School Units in proportion to their respective number of students eligible for that allocation in the base year;
 - (x) To the extent that the AOS receives an allocation for K-8 limited English proficiency students, that allocation shall be reassigned to the Member School Units in proportion to their respective number of students eligible for that allocation in the base year;
 - (xi) To the extent that the AOS receives an allocation for 9-12 limited English proficiency students, that allocation shall be reassigned to the Member School Units in proportion to their respective number of students eligible for that allocation in the base year;
 - (xii) The remaining balance of the AOS' total allocation, after subtracting the amounts reassigned to Member School Units under subparagraph (i) through (xi), shall be reassigned to the Member School Units in proportion to their respective average number of pupils on April 1 and October 1 of the preceding calendar year;
 - (xiii) Any State subsidy received by the AOS which is attributable to a special education adjustment under 20-A M.R.S.A. § 15689(1-A) shall be distributed to the Member School Unit eligible for that adjustment or to the Member School Unit of which the municipality eligible for the adjustment is a member;

- (xiv) Any State subsidy received by the AOS which is attributable to a debt service adjustment under 20-A M.R.S.A. § 15689(2) shall be distributed to the Member School Unit eligible for that adjustment or to the Member School Unit of which the municipality eligible for the adjustment is a member;
 - (xv) The remaining State subsidy received by the AOS, after any distributions required by subparagraphs (xiii) and (xiv), shall be distributed to the Member School Units in proportion to the amount, if any, by which the total allocation of each Member School Unit as reassigned in accordance with subparagraphs (i) through (xii) exceeds the property fiscal capacity of that Member School Unit multiplied by the full value education mill rate for the year of allocation.
5. There is a line item for a Special Services Director in the AOS #93 2013-14 school year budget (Exhibit E-13). However, there is no money allocated for speech therapists, social workers, or occupational therapists in the AOS #93 2013-14 budget.
 6. As of the date the petition was filed (July 17, 2013), seven of the eight positions the petitioner sought to be included in the proposed bargaining unit were already covered by one or more collective bargaining agreements with the member school units.¹
 7. Susan Buckland, a speech therapist, is covered under the Great Salt Bay CBA, which will expire on 8/31/14. She received a salary rate notification pursuant to that CBA for the 2013-2014 school year. She is listed on the 2012-2013 Great Salt Bay specialty subject seniority list.
 8. Rebecca Cannon, a social worker, is covered under Great Salt Bay CBA that will expire on 8/31/2014. She received a salary rate notification pursuant to that CBA for the 2013-2014 school year. She is listed on the 2012-2013 Great Salt Bay specialty subject seniority list.

¹ The petitioner does not dispute this fact, and stated in her petition that "[s]ome of the employees are currently represented and/or covered under an existing bargaining unit and contract from one of the AOS towns."

9. Marie Paschke, a social worker, is covered by a CBA with the School Committee of Great Salt Bay that will expire on 8/31/14. She is listed on the 2012-2013 Great Salt Bay specialty subject seniority list.
10. Elaine Tibbets, a speech pathologist, is covered by CBAs with the School Committees of Jefferson Village School and Nobleboro Central School that will expire on 8/31/15. She is listed on the Jefferson 2011-2012 and 2012-2013 and seniority lists and the Nobleboro 2012-2013 specialty subject seniority list.
11. Kristen Travers-Whitmore, a social worker, is covered by CBAs with the School Committees of the Jefferson Village School and the Bristol Consolidated School that will expire on 8/31/15. She is listed on the 2011-2012 and 2012-2013 Jefferson seniority lists.
12. Patricia Pratt-Schaible, a speech therapist, is covered by a CBA with the School Committee of the Bristol Consolidated School that will expire on August 31, 2014. She is listed on the 2011-2012 Bristol seniority list.
13. Ann Griffin-Carey, an occupational therapist, is covered by a CBA with the School Committee of Great Salt Bay that will expire on August 31, 2014.
14. Bethany Hancock, an occupational therapist, is covered by a CBA with the School Committee of Great Salt Bay that will expire on August 31, 2014.

DISCUSSION

There are two issues that need to be resolved in this case. The first is whether AOS #93 is the employer of the specialists the petitioner seeks to include in the proposed bargaining unit; and the second is whether the specialists were precluded from filing a bargaining unit petition pursuant to the contract bar provisions of 26 M.R.S. § 967(2) and MLRB Rule 11(6)(1) because they were already included in collective bargaining agreements between themselves and one or more of the member school units. If AOS #93 is found not to be the employer of the specialists,

or if the specialists were precluded from filing a unit determination/bargaining agent election petition because of the contract bar rule, the result would be dismissal of the petition for lack of jurisdiction.

1. Employment of the specialists pursuant to 20-A M.R.S. § 1464-A.

The petitioner bases its contention that AOS #93 is the employer of the specialists on a portion of the language of 20-A M.R.S. § 1464-A(2), which states, in relevant part:

Teachers and other school employees who are employed by the alternative organizational structure to provide consolidated services must be removed from the existing bargaining units of teachers and other employees who are employed by each member school unit and merged into units of alternative organizational structure employees. Merger into alternative organizational structure-wide bargaining units is not subject to approval or disapproval of employees.

However, relying solely on this language ignores the preceding paragraph of the law, § 1464-A(1), which states:

On and after the operational date of an alternative organizational structure, *teachers and other employees whose positions are transferred from a school administrative unit or school union to the alternative organizational structure* and were included in a bargaining unit represented by a bargaining agent continue to be included in the same bargaining unit and represented by the same bargaining agent pending completion of the bargaining agent and bargaining unit merger procedures and bargaining for initial alternative structure collective bargaining agreements covering alternative organizational structure employees, as described in this section. After employees become employees of the alternative organizational structure, the alternative organizational structure has the obligations, duties, liabilities and rights and rights of a public employer pursuant to Title 26, chapter 9-A with respect to those employees.

(Emphasis added.) By overlooking § 1464-A(1), the petitioner has ignored the prerequisite of the law it is asking the MLRB to enforce--that the employees' positions must have been transferred from a school administrative unit or school union to the alternative organizational structure. There is no evidence on the record that such a transfer took place here. At oral argument, the petitioner admitted as much in response to AOS #93's argument that no transfer took place:

[AOS #93] raised the question about the transferred employees under 1464, and that the district didn't transfer the employees. And [AOS #93] is correct about that, and [its] comment was that had they transferred the employees then 1464(2) would apply. Well, the only point [MEA] wanted to make on that was they didn't transfer the employees doesn't mean they shouldn't have transferred the employees, that they were AOS employees and they should have been transferred, and the interlocal agreement actually says that they can amend their agreement should they find such things have happened. Many RSU's--many AOS's have amended their agreements because they've realized they didn't do it correctly the first time, so the AOS does have the ability to amend their agreement should it be necessary to do so. And [AOS #93] is correct that those transferred--it does say transferred employees; however, they didn't transfer the employees doesn't mean they shouldn't have transferred the employees, and the point is they should have.

An assertion that the positions *should* have been transferred does not meet the requirement of § 1464-A(1) that they were, in fact, transferred.² What did occur is that the seven specialists entered into CBAs with the individual school administrative units rather than becoming employees of the AOS. The Petitioner does not dispute this fact. Moreover, that is precisely in keeping with the AOS #93 Interlocal Agreement, which assigns the

²Relying on what should have been done rather than what actually occurred is similar to considering the speculative nature of an employee's future duties rather than the employee's actual duties, which was found to be unacceptable in *Lincoln Sanitary District and Teamsters Local 340*, MLRB No. 92-UC-02 (Nov. 17, 1992) and a host of other cases.

responsibility of educating students to the member school units, "within each of their respective jurisdictions." The AOS #93 Interlocal Agreement also sets out the method by which State subsidies and other monies received by the AOS are to be distributed to the member school units. The petitioner's argument that AOS #93 is the employer of these specialists pursuant to § 1464-A, therefore, is not supported by the facts of the case. It is apparent from the evidence in the record and the admission made in the opening argument on behalf of the petitioner, and I so find, that the individual school administrative units are the employers of the specialists. The petition is dismissed because it incorrectly names AOS #93 as the employer.

2. The contract bar rule and the specialists' contracts.

The contract bar rule of the Municipal Public Employees Labor Relations Law, 26 M.R.S. § 967(2), states, in relevant part:

Where there is a valid collective bargaining Agreement in effect, no question concerning unit or representation may be raised except during the period not more than 90 nor less than 60 days prior to the expiration date of the agreement.

As explained in *MSAD #16 Support Staff Assoc/MEA/NEA and MSAD #16 Board of Directors*, MLRB No. 00-UD-04 at 2 (April 26, 2000), the contract bar rule

is based on a balancing of competing objectives at the heart of both the National Labor Relations Act and Maine's collective bargaining laws: protecting the employees' right to select their own representatives and protecting the industrial stability maintained through a collective bargaining agreement.

Citing Appalachian Shale Products Co., 121 NLRB 1160, 1161 (1958). The first MLRB case interpreting Maine's contract bar provision was the election appeal case *Town of Jay and Teamsters Local Union No. 48*, No. 78-A-11, 1 NPER 20-10015 (MLRB May 1979).

In that case, the Board adopted many of the principles of the NLRB regarding the NLRB's contract bar doctrine. The Board explained the purpose of Maine's contract bar provision as follows:

The rationale underlying the "contract bar" rule found in Section 967(2) is that the rule fosters stability by preserving as much time as possible during the life of an agreement free from the disruption caused by organizational activities, while providing a definite guide to employees and outside unions as to the appropriate time to organize for and seek changes in representatives. See *Deluxe Metal Furniture Co.*, 121 NLRB 995, 999-1000 (1958).

Town of Jay at 3.

In the present case, seven of the specialists are covered by contracts that won't expire until August 31, 2014, or August 31, 2015. Therefore, it is too early for the petitioner to file a unit determination and bargaining agent election petition because it is outside the time limits allowed by the contract bar rule. For that reason, the petition is untimely and it is dismissed for lack of jurisdiction.

ORDER

On the basis of the foregoing findings of fact and discussion, and pursuant to the powers granted by 26 M.R.S. § 966, it is ORDERED:

The Petition for Unit Determination and Bargaining Agent Election is dismissed because the specialists named in the petition are not employees of AOS #93, and, if they were, they would be barred from filing the petition by the contract bar rule, 26 M.R.S. § 967(2).

Dated at Augusta, Maine, this 20th day of March, 2014.

MAINE LABOR RELATIONS BOARD

Gwendolyn D. Thomas
Hearing Examiner

The parties are hereby advised of their right, pursuant to 26 M.R.S.A. § 968(4), to appeal this decision to the Maine Labor Relations Board. To initiate such an appeal, the party seeking appellate review must file a notice of appeal with the Board within fifteen (15) days of the date of issuance of this report. See Chapters 10 and 11(30) of the Board Rules.