
AFSCME COUNCIL 93,)
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 Petitioner,)
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 and)
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 TOWN OF READFIELD,)
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 Respondent.)

UNIT DETERMINATION
REPORT

PROCEDURAL HISTORY

This unit determination proceeding was initiated on October 30, 2013, when Sylvia Hebert, a Staff Representative for the American Federation of State, County, and Municipal Employees ("AFSCME," or "Union"), filed a Petition for Unit Determination with the Maine Labor Relations Board ("Board" or "MLRB"). The Petition seeks to create a bargaining unit composed of the Transfer Station Assistant Manager, Transfer Station Attendant, Cemetery Sexton/Animal Control Officer/Administrative Assistant, Town Clerk/Registrar, Maintenance Man, Collections Clerk, and Finance Officer. Readfield ("the Town"), the respondent in this case, filed its timely response to the petition on November 15, 2014. The Town opposes the Union's petition on the grounds¹ that the Town Clerk is not a "public employee" within the meaning of 26 M.R.S. § 962(6)(B); even if the Town Clerk is a "public employee" within the meaning of § 962(6)(B), she nevertheless is a Department Head and must be excluded pursuant to 26 M.R.S. § 962(6)(D); the Board Secretary position should be excluded as a confidential position pursuant to 26 M.R.S. § 962(6)(C); two

¹ The Town also originally opposed the petition on the ground that the showing of interest was not sufficient. The MLRB determined that the showing was sufficient for the proposed unit, and that finding was not contested.

proposed classifications are improper and based on inaccurate descriptions; and there is not a sufficient community of interest among the positions to warrant a finding that the proposed unit is appropriate.

On April 4, 2014, a unit determination Notice of Hearing was issued and posted for the benefit of affected employees. The original hearing was postponed at the request of one of the parties, and a Revised Notice of Hearing dated May 5, 2014, setting the hearing date for June 18, 2014, was issued and posted for the benefit of affected employees. A unit determination hearing was held in front of the hearing examiner on June 18, 2014, at the Maine Labor Relations Board. The Union was represented by Sylvia Hebert, Staff Representative for AFSCME, and the Town was represented by Matthew Tarasevich, Esq. The parties were afforded the full opportunity to examine and cross-examine witnesses and to present evidence. Robin Lint, Deborah Nichols, Theresa Shaw, Karen Petersen, and Mark Birtwell testified on behalf of the Union. Stephan Pakulski testified on behalf of the Town. At the conclusion of the hearing, the parties were given the chance to give a closing statement, but chose to submit closing argument two weeks after they receive the transcript.

JURISDICTION

Jurisdiction of the hearing examiner over this matter, including the ability to make a unit determination, is pursuant to 26 M.R.S.A. §§ 966(1) and 966(2).

EXHIBITS

The following exhibits were offered and admitted into the record:

A-1: Petition for Unit Determination filed October 30, 2013

- A-2: Response to Unit Determination filed November 15, 2014
- A-3: Notice of Hearing dated April 4, 2014 setting the Hearing for Friday, May 9, 2014
- A-4: Revised Notice of Hearing dated May 5, 2014 setting the hearing for Wednesday, June 18, 2014
- J-1: Job Descriptions [Primary position title in bold]:
 - Town Clerk/Registrar/Deputy Tax Collector/Deputy Treasurer/FOAA Officer**
 - Board Secretary**
 - Finance Officer/Deputy Treasurer/Deputy Clerk/Deputy Tax Collector/Deputy Registrar**
 - Collection Clerk/Deputy Registrar/Deputy Treasurer/Deputy Clerk/Deputy Tax Collector**
 - Head of Maintenance (formerly Foreman)**
 - Transfer Station Attendant**
 - Readfield Cemetery Sexton**
 - Assistant Transfer Station Manager**
 - Animal Control Officer/Constable**
 - Lakes Region Mutual Aid Fire Departments' Administrative Assistant**
 - Readfield Groundskeeper (part-time, temporary, seasonal)**
- J-2: Calendar Year 2013 Payroll Record for Karen B. Peterson, with notation of total hours worked in particular job categories and percentage of total work time in each area.
- J-3: FY-2015 Budget Payroll Allotments by Position to be worked by employee Karen B. Peterson
- E-1: Select Board Minutes
- E-2: Pay Records
- E-3: Appointment Notices
- E-4: Town of Readfield Personnel Policy

STIPULATIONS OF THE PARTIES

- 1) The Town of Readfield is a public employer within the meaning of 26 M.R.S.A. § 962(7).
- 2) AFSCME is a public employee organization which is eligible to become a bargaining agent as defined in 26 M.R.S.A. § 962(2).

3) The public access officer, referred to as "FOAA Officer" in the petition, is not a separate job classification; rather, it is a job duty that can be assigned by the Town to an employee, including a union employee, and the Town has the right and the discretion in the future to assign that function to whomever it might need, depending upon a change in town manager status or other circumstances. No such change is anticipated at this time.

FINDINGS OF FACT AND DISCUSSION

An appropriate bargaining unit consists of positions whose incumbent employees share a clear and identifiable community of interest. Readfield is typical of many small Maine towns: the same individual may occupy more than one position, but some positions are eligible for inclusion in a bargaining unit and some are not. This situation gives rise to the question of whether an individual who occupies both an eligible and an exempt position may be included in any bargaining unit. The response provided by the statute is that "anyone [any person] excepted from the definition of public employee under section 962 may not be included in a bargaining unit." 26 M.R.S.A. § 966(1). Thus, the Hearing Examiner's job is to analyze each position with respect to the statutory exemptions; if the position is exempt, the employee must be excluded from a bargaining unit even if that employee holds another position that is not exempt.

The issues presented in this unit determination case are:

1) Is the Town Clerk in Readfield "appointed to office," within the meaning of 26 M.R.S.A. § 962(6)(B), and may not be included any bargaining unit for that reason?

2) Is the Town Clerk in Readfield a department head, within the meaning of 26 M.R.S.A. § 962(6)(D), and may not be included in any bargaining unit for that reason?

3) Is the Board Secretary a "confidential" employee, within the meaning of 26 M.R.S.A. § 962(6)(C), and may not be included in any bargaining unit for that reason?

4) Can the fact that the Finance Officer serves as the acting town manager when the Town Manager is away serve as the reason for excluding that position from any bargaining unit?

5) Do the positions proposed for inclusion in a single bargaining unit share a clear and identifiable community of interest, such that the resulting unit would be appropriate for purposes of collective bargaining?

The Municipal Public Employees Labor Relations Law, (the "Act"), 26 M.R.S.A. § 961, et seq., was enacted to improve the relationship between public employers and their employees by providing a uniform system through which public employees can decide whether to be represented by a labor organization in collective bargaining. The Act mandates that it covers all municipal employees except for those explicitly excluded from the statutory definition of "public employee." The Board has held that the language of each exclusion must be carefully and narrowly construed to avoid undermining the purpose of the Act. *State of Maine and Maine State Employees Association*, No. 82-A-02, at 6 (June 2, 1983).

1. Is the Town Clerk in Readfield "appointed to office" within the meaning of 26 M.R.S.A. § 962(6)(B)?

Section 962(6)(B) of the Act exempts from the definition of "public employee" and, hence from the coverage of the Act,

... any person ...[a]ppointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer.

Over the years, hearing examiners have wrestled with the meaning of the word "appointed" that is found in § 962(6)(B) as well as in the department-head exclusion in paragraph (D). See, *Town of Topsham and Local S/89 District Lodge #4, International Association of Machinists and Aerospace Workers*, No. 02-UC-01, at 16-17 (May 9, 2002). In the appeal of *Topsham*, the Board reversed the hearing examiner's conclusion that appointments in a town operating under a "Town Manager Plan" necessarily required confirmation by the board of selectmen. The Board instead held that in such a system, "the town manager is the executive head and the selectmen the executive body of the town." *Topsham*, No. 02-UCA-01, at 5 (Aug. 29, 2002), *aff'd*, No. AP-02-68 (Me. Super. Ct., Ken. Cty., Mar. 20, 2003).

Title 30-A M.R.S.A., chapter 123, sub-chapter 2 contains the statutory provisions under which municipalities may adopt and operate under the Town Manager Plan. Section 2631, sub-§ 2 contains a general description of town government under the Plan, as follows:

2. Government. The government of each town under this subchapter shall consist of a town meeting, an elected board of selectmen, an elected school committee, an appointed town manager and any other officials and employees that may be appointed under this subchapter, general law or ordinance. Other town officials may be elected by ballot, including, but not limited to, moderator, assessors, overseers of the poor, clerk and treasurer. The election of officials at the last annual town meeting shall require that those town offices continue to be filled by election until the town designates otherwise. (emphasis added).

Section 2636 of the Town Manager Plan Law provides that town managers:

6. Appoint town officials. Unless otherwise provided by town ordinance, shall appoint, supervise and control all

town officials whom the municipal officers are required by law to appoint, except members of boards, commissions, committees and single assessors; and appoint, supervise and control all other officials, subordinates and assistants, except that the town manager may delegate this authority to a department head and report all appointments to the board of selectmen;

Neither party sought introduction of the Readfield Town Charter into the record. What is in the record is the Town of Readfield Personnel Policy. (Amended & Adopted 06/13/2013). This document contains the recitation that it was adopted by the Readfield Select Board and I hold that it constitutes an "ordinance or resolution," within the meaning of § 962(6)(B) of the Act. The policy does not mention the appointment or hiring of a Town Clerk nor does it determine a term of office for the Clerk. In the present case, the record is clear that the Town Manager appointed the Town Clerk. In the absence of a controlling Town ordinance or resolution, I conclude that the Town Clerk was appointed to office by the Town Manager, pursuant to the provisions of 30-A M.R.S.A. § 2636 cited above.

As directed by the Board in *Topsham*, No. 02-UCA-01, at 7-9, I must now examine the "statute, ordinance or resolution," pursuant to which the appointment of the Town Clerk was made, to determine whether the remaining element required for a § 962(6)(B) exclusionary designation--a specified term of office--has been met. As there was no Town ordinance or resolution addressing the term of office for the Town Clerk, the general provision of 30-A M.R.S.A. § 2601 (2) applies.² That subsection states that "unless

² Title 30-A § 2601. **Appointment and term of officials; generally**

1. **Appointment of officials and employees.** Except where specifically provided by law, charter or ordinance, the municipal officers shall appoint all municipal officials and employees required by general law, charter or ordinance and may remove those officials and employees for cause, after notice and hearing.

2. **Term of officials.** Unless otherwise specified, the term of all municipal officials is one year.

otherwise specified, the term of all municipal officials is one year."

The uncontroverted evidence in the record is that, since initially re-hired 11 years ago, the incumbent Town Clerk has been re-appointed annually.³ The incumbent Clerk's annual appointments have been memorialized by written certificates of appointment, signed by the Town Manager, and including an oath of office. I conclude that the Town Clerk is appointed to office by the executive head of the Town for a specified term of office. Consequently, the Town Clerk is excluded from the statutory definition of public employee pursuant 26 M.R.S.A. § 962(6)(B) and cannot be included in any bargaining unit. 26 M.R.S.A. § 966(1).

- 2. Is the Town Clerk in Readfield a department or division head appointed to office within the meaning of 26 M.R.S.A. § 962 (6) (D)?**

Given that the Town Clerk is excluded under § 962(6)(B) as an appointed official, it is not necessary to make a determination on the status of the same position under the department head exclusion. I will, however, go ahead and make my determination as it will be a quick analysis. Unlike the statutory authority for a town manager to appoint town officials, the Town Manager Plan Law requires that a town manager's department-head appointments be confirmed by the select board. 30-A M.R.S.A. § 2636 (5). No evidence was presented that the Town Clerk's appointment was ever ratified by the Select Board in this case. Thus, the Town Clerk is not eligible for an exclusionary designation pursuant to 26 M.R.S.A. § 962 (6) (D).

- 3. Is the Board Secretary a "confidential" employee, within the meaning of 26 M.R.S.A. § 962(6) (C)?**

³ The Town Clerk also testified that her predecessor was appointed annually during that person's 25-year tenure as the Town Clerk.

Section 962(6)(C) of the Act excludes from the definition of covered public employees,

. . . any person [w]hose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head, body, department head or division head.

The Board bases exclusionary designations on the actual job duties of a position, not speculative duties or assignments that the employer has planned for the person in the future. *Maine State Employees Association and County of York*, No. 04-UD-04, at 19 (Mar. 30, 2004); *aff'd*, No. 04-UDA-01 (Oct. 8, 2004). Here, the Secretary attends all Select Board meetings and prepares the required minutes and records of Board votes. The Board Secretary testified, however, that she had been in the position for four years and had never been invited to attend an executive session.

The exception for confidential employees is not intended to exclude employees with access to information legitimately considered confidential for other purposes. For the purposes of Maine's collective bargaining statute, the confidential information must have a labor relations nexus above and beyond contract administration. The exclusion is warranted for those employees who, as an inherent part of their job responsibilities, have access to the employer's bargaining positions, before that information is disclosed at the bargaining table, and who assist and act in a confidential capacity with persons who formulate or determine the employer's bargaining positions or strategy. See, e.g., *MSEA and York County*, No. 04-UD-04, at 21.

In the instant case, the Board Secretary has not been asked to attend executive sessions of the Select Board during her four years in the position. There was no evidence in the record that

the secretary had access to the Town's bargaining positions or strategies. This is not surprising, as there was no evidence that any other employees in the Town are represented by a bargaining agent--something that typically precedes the creation of confidential labor relations information within the scope of the labor nexus test. I conclude that the Board Secretary is not a confidential employee within the meaning of § 962(6)(C), and is eligible for inclusion in a bargaining unit.

4. Can the fact that the Finance Officer serves as the acting town manager when the Town Manager is away serve as the reason for excluding that position from any bargaining unit?

The evidence in the record is that the Town Manager usually takes two-week vacations at least once and usually twice a year. In addition, the Town Manager was absent from the Town for approximately one month twice over a 6-year period. During each of these absences, the Town Manager has designated the Finance Officer to serve as the Acting Town Manager, the nomination was confirmed by the Select Board as required by 30-A M.R.S.A. § 2634, and the Finance Officer received additional pay while in the acting capacity. The evidence is clear that the primary functions of the position of the Finance Director are administrative functions and not managing and directing the affairs of the Town of Readfield. The question presented is whether the occasional status as "Acting Town Manager" justifies exempting the Finance Director from the protections of the Act.

Similar circumstances were considered by the hearing examiner in *MSEA and York County*, where the employer argued that, since the deputy registers of deeds and probate filled-in for absent registers, the deputies should be exempt from the coverage of the Act as department heads. *MSEA and York County*, 04-UD-04, at 17-20. In determining whether a position should be excluded from the

definition of public employee, the hearing examiner needs to focus on the duties of the position itself while understanding that, for instance, a deputy department head might reasonably be required to act in the place of the department head, including signing documents, attending meetings normally attended by the department head, and assuming a larger supervisory role in the department head's absence. Such temporary assignments do not alter the responsibility of the department head to manage and direct the affairs of the department, even if they are on vacation or are on leave for some other personal reason. Citing relevant Board precedent, the hearing examiner in *York County* stated:

The Board has found that assigning an employee on a temporary basis to an excludable position does not justify excluding that employee's normal or original position from a bargaining unit. *Maine Dept. of Public Safety and MSEA*, No. 83-UC-45 and 91-UC-45, slip op. at 28 (MLRB Feb. 4, 1994), aff'd, No. 94-UCA-01 (MLRB July 1, 1994); *Maine Dept. of Transportation and MSEA*, No. 83-UC-36, slip op. at 42 (MLRB Apr. 11, 1986) (applying this principle to temporary assignments lasting as much as one year).

MSEA and York County, No. 04-UD-04, at 20. Applying this precedent, the hearing examiner concluded that a deputy register of deeds, who acted in place of the register who had been completely absent from the workplace for 11 months, was not, by virtue of that fact, a department head within the meaning of § 962 (6) (D) of the Act. As noted above, the Board affirmed this decision. Applying the same reasoning here, the position of Finance Officer is not excluded from the coverage of the Act by virtue of serving as the Acting Town Manager and is therefore a public employee eligible for inclusion in a bargaining unit.

Community of interest analysis

In order to constitute a bargaining unit which is appropriate for purposes of collective bargaining, the several positions involved in the proposed unit must share a clear and identifiable community of interest. 26 M.R.S.A. § 966 (2). It is well established that the Hearing Examiner's duty is to determine whether the proposed bargaining unit is an appropriate unit, not the most appropriate unit. See *Town of Yarmouth and Teamsters Local Union No. 48*, No. 80-A-04, at 4 (June 16, 1980), and *Portland Superintending School Committee v. Portland Administrative Employee Assoc.*, No. 87-A-03 (May 29, 1987), affirming No. 86-UD-14.

There was some confusion when the petition was filed as to how to properly label the positions proposed to be included. These issues have been clarified and I hold that the positions in the proposed bargaining unit in this case are: Collections Clerk [Deborah Nichols, incumbent], Board Secretary [Deborah Nichols, incumbent], Finance Officer [Teresa Shaw, incumbent], Head of Maintenance [Mark Birtwell, incumbent], Assistant Transfer Station Manager [Glen Hawes, incumbent], Transfer Station Attendant [Michael Moranger, incumbent], Sexton [Karen Peterson, incumbent], Animal Control Officer [Karen Peterson, incumbent], Lakes Region Mutual Aid Fire Departments' Administrative Assistant [Karen Peterson, incumbent], and Reserve Office Administrative, Maintenance, and Transfer Station Employee [Karen Peterson, incumbent]. The factors used in evaluating the requisite community of interest are set forth in Chapter 11, § 22(3) of the Board's Rules and Procedures. The facts in the record relating to each factor are set forth below.

1. Similarity in the kind of work performed

There are two distinct types of work performed by the employees proposed to be included in the single bargaining unit. The work of the Head of Maintenance, Assistant Transfer Station Manager, Transfer Station Attendant, Sexton, Animal Control Officer, Fire Department Administrative Assistant, and Reserve Office Administrative, Maintenance and Transfer Station Employee is primarily physical or manual in nature, with varying amounts of record-keeping and other administrative tasks also required. The work of the Collections Clerk, Board Secretary, and Finance Officer is almost exclusively administrative in nature, with minimal physical requirements.

2. Common supervision and determination of labor relations policy.

All employees are supervised directly by the Town Manager, including supervision performed in the Town Manager's added responsibilities as Road Commissioner and Transfer Station Director. The labor relations policies for all of the employees is determined by the Select Board and are included in the Town of Readfield Personnel Policy.

3. Similarity in the scale and manner of determining earnings

All employees are compensated on an hourly basis. See, TYPES OF EMPLOYMENT, TIME KEEPING, and WORK WEEK/OVERTIME articles of the personnel policy. Individual employee compensation is set annually by the Select Board to coincide with the beginning of the town's fiscal year, after they receive "a lump sum recommendation on compensation from the Town Manager." See, COMPENSATION article of the personnel policy. This demonstrates a similarity in the manner of determining earnings. The hourly compensation rates for the ACO and for the Finance Officer are part of the record; however, those for the other employees are not. From the evidence

in the record it is not possible to determine the range from the lowest to the highest-paid employee.

4. Similarity in employment benefits, hours of work and other terms and conditions of employment

Only the ACO, Head of Maintenance, and Transfer Station employees receive a clothing allowance. All of the employees at issue are entitled to the following benefits as defined in the personnel policy: leave without pay, bereavement leave, course reimbursement, family medical leave, family military leave, income protection plan, jury duty leave, paid holidays, Legislative leave, library card, life insurance, medical & dental insurance, mileage reimbursement, military leave, professional dues, retirement plan, sick leave, vacation, witness leave, and paid storm days and delays.

The evidence regarding the hours of work for each classification was somewhat ambiguous. The Town Manager testified that the transfer station schedule is as follows. The facility is closed Sundays and Mondays. Tuesdays, Wednesdays, and Fridays it is open from 11:00 a.m. to 6:00 p.m.; Thursdays it is closed to the public, but open to commercial haulers from 8:00 a.m. to 3:00 p.m.; and on Saturdays it is open from 8:00 a.m. to 4:00 p.m. Only the transfer station employees work this schedule. The town office is open to the public at 8:30 a.m., four days per week and the Collections Clerk and Finance Officer work that schedule. On days when she performs janitorial work at the town office, the Sexton starts work at "7-ish," in order to complete the cleaning duties before the public arrives and so as not to interfere with the work of the three town office administrative employees. In addition to her regularly-scheduled work as Sexton, Fire Department Administrative Assistant and general reserve employee

(assisting virtually all of the employees in the other classifications), the ACO responds to citizen animal calls 24/7.

Overall, there is a similarity in employment benefits and hours of work, with all working day shifts (and an occasional citizen animal complaint). The only notable difference in terms and conditions of employment are those related to manual versus office work, such as the clothing allowance.

5. Similarity in the qualifications, skills and training of employees

The minimum educational requirement for all of the employee positions at issue is graduation from high school. The Finance Officer position is the only one for which a four-year degree (in accounting) is mentioned as a minimum educational qualification in the position description; however, a high school diploma and "significant practical experience in accounting practices, or any equivalent combination of experience and training" may be substituted for the degree requirement.

Most of the positions involve some kind of State certification or licensure. The Collections Clerk serves as a Deputy Town Clerk and received the training to qualify to become a certified town clerk through attendance at training sponsored by the Maine Municipal Association ("MMA"). The Finance Officer received training in budgeting through MMA. These training opportunities were conducted off-site. The Fire Department Administrative Assistant, along with the Finance Officer and the Collections Clerk, attended on-site computer training presented by MMA.

Others gained the training from various State agencies in order to obtain certification required or helpful to perform

their respective job duties. The Head of Maintenance received instruction as a local project administrator and "a lot" of other training from the Maine Department of Transportation. The Maintenance employee also received OSHA 10 training from the Maine Department of Labor, Bureau of Labor Standards ("BLS") while employed with the Town of Wayne and received individual training on using RSMS, computerized road maintenance scheduling software, from a Readfield resident. The transfer station employees, including Ms. Peterson when she was the Transfer Station Attendant, received training necessary for certification as a Transfer Station Operator from the Maine Department of Environmental Protection. The Animal Control Officer and Mr. Birtwell, as the Alternate Animal Control Officer, have completed the Basic Animal Control 24-hour course at the Maine Criminal Justice Academy. The Lakes Region Mutual Aid Fire Departments' Administrative Assistant has received training and instruction in OSHA record-keeping requirements from BLS.

While each position requires some sort of specialized training, in all instances it is the sort of instruction that can be gained through seminars and other short-duration programs, supplemented by on-the-job experience. Any difference in scope of training required is minimal and does not create a divergence of interests among the employees.

6. Frequency of contact or interchange among the employees.

The Collections Clerk and the Finance Officer work in the same area in the town office and work together with frequent contact and interchange. The Head of Maintenance and the ACO share an office in another part of the town office and have frequent contact with each other. The ACO fills in in the administrative area of the town office as required, constituting approximately 3 percent of her work time, and also spends about

5 percent of her work time filling in at the transfer station. The town maintenance building is located on the grounds of the transfer station; so, while not actually performing transfer station tasks, the Head of Maintenance has casual contact with the transfer station employees in addition to any interchange he may have with them when he performs maintenance and repair of transfer station equipment. The transfer station employees work at the same facility and are in constant interchange, working together. No evidence was presented regarding the contact or interchange, if any, between the town administrative staff and the transfer station employees.

7. Geographic proximity.

The employees involved in this case have three distinct work sites. The Collections Clerk and the Finance Officer work at the town office, as do the ACO and Head of Maintenance, albeit in a different part of the town office. The Head of Maintenance and the Sexton work in the field all over town, with the former working on town roads and plowing and sanding town parking lots and the latter working on town cemeteries and performing maintenance work in all town buildings. The transfer station employees work exclusively at that location and the ACO/Sexton and the Head of Maintenance also perform some work there. There was no evidence suggesting that these different work locations created any divergent or conflicting interests with respect to terms and conditions of employment.

8. History of collective bargaining

There is no evidence in the record regarding any collective bargaining history.

9. Desires of the affected employees

The employees who testified at the unit determination proceeding, the Collections Clerk, the Finance Officer, the ACO/Sexton/Fire Department Administrative Assistant, and the Head of Maintenance, all expressed a desire to vote on whether to be represented for purposes of collective bargaining.

10. Extent of union organization

The Union seeks to represent a group of full-time public employees employed by the Town. There was no evidence presented regarding whether the Town has any other employees, and, if so, whether they are organized.

11. Employer's organizational structure

The record established that the Town Manager is the executive head of the Town, who is the direct supervisor for all of the persons in the positions at issue in the Union's petition, either in his capacity as Town Manager, as the Transfer Station Manager, or as the Road Commissioner. The Town's administrative functions, including maintaining voter registrations, creating and maintaining vital records, issuing various licenses, collecting taxes, and maintaining the accounting system, are performed by the appointed Town Clerk and two employees, the Finance Officer and the Collections Clerk, who work together performing these tasks and are assisted by the ACO on an as-needed basis. The Head of Maintenance and the ACO/Sexton maintain the Town's buildings and properties directly or by supervising the work of part-time seasonal employees or contractors. The transfer station is a separate self-contained facility. The Town once had a public works department for which the Head of Maintenance worked as foreman, but now contracts for that work under the general direction of the Town Manager, as Road Commissioner, and close monitoring by the Head of Maintenance.

SUMMARY: Community of interest evaluation and conclusion

After reviewing the evidence in the record concerning the eleven community-of-interest factors, I conclude that the petitioned-for bargaining unit is an appropriate bargaining unit. The evidence supports my finding of strong similarities with respect to the majority of community of interest factors, including factors number 2 (common supervision and determination of labor relations policy), number 3 (manner of determining earnings), number 4 (employment benefits, hours), number 5 (qualifications, skills, and training), and number 11 (organizational structure). There are some unknowns within these factors, such as the scale of earnings, and whether there are terms and conditions of employment related to the manual work beyond a clothing allowance. Two of the factors, number 8 (history of collective bargaining), and number 11 (extent of unionization) have a neutral effect on the analysis. The three remaining factors, number 1 (similarity in the type of work), number 6 (frequency of contact and interchange), and number 7 (geographic proximity) are all related to the office work/manual labor distinction. While these factors militate somewhat against finding an overall community of interest among the positions in the petitioned-for bargaining unit, I conclude that any potential divergence in interests is speculative and not demonstrated by the evidence. The petitioned-for bargaining unit is what the employees believe will best achieve their objective in exercising their representational and bargaining rights. I conclude that the bargaining unit as proposed is an appropriate bargaining unit.⁴

⁴ The showing of interest submitted by the Union with the petition has been examined based on the positions included in this unit determination and is sufficient to warrant a secret ballot election.

ORDER

On the basis of the foregoing facts and discussion and pursuant to the provisions of 26 M.R.S.A. § 966, the following described unit is held to be appropriate for purposes of collective bargaining:

INCLUDED: Collections Clerk, Board Secretary, Finance Officer, Head of Maintenance, Assistant Transfer Station Manager, Transfer Station Attendant, Readfield Cemetery Sexton, Animal Control Officer, Lakes Region Mutual Aid Fire Departments' Administrative Assistant, and Reserve Office Administrative, Maintenance, & Transfer Station Employee.

EXCLUDED: Town Clerk and all other employees of the Town of Readfield.

A bargaining agent election for this unit will be conducted forthwith.

Dated at Augusta, Maine, this 19th day of September, 2014.

MAINE LABOR RELATIONS BOARD



Marc P. Ayotte
Hearing Examiner

The parties are hereby advised of their right, pursuant to 26 M.R.S.A. § 968(4), to appeal this report 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 Chapter 10 and Chap. 11 § 30 of the Board Rules.