

<hr/>		)	
SANFORD SCHOOL COMMITTEE,		)	
	Appellant,	)	
and		)	DECISION AND ORDER ON
		)	APPEAL OF
		)	UNIT DETERMINATION
CENTRAL OFFICE STAFF EA/MEA/NEA,		)	AND UNIT CLARIFICATION
		)	
	Appellee.	)	
<hr/>		)	

The Sanford School Committee (the "Employer") filed this unit appeal on February 21, 2012, pursuant to 26 M.R.S.A. §968(4) of the Municipal Public Employees Labor Relations Law (the "Act") and Chapter 11, §30 of the Rules and Procedures of the Maine Labor Relations Board (the "Board"). The unit determination and unit clarification report which is the subject of this appeal was issued on February 6, 2012, following an evidentiary hearing held on October 5, 2011. The hearing addressed the unit determination petition filed by the Central Office Staff EA/MEA/NEA (the "Association"), seeking to create a new unit of central office staff, as well as the unit clarification petition filed by the Employer seeking to add some of the positions in the proposed unit to an existing bargaining unit represented by the Sanford Federation of Teachers/AFT #3711.

In her report, the Hearing Examiner rejected the Employer's contention that four of the ten positions in the proposed unit are "confidential" employees and therefore are not entitled to be in any bargaining unit. The Hearing Examiner concluded that the positions in the proposed unit shared the requisite community of interest and constituted an appropriate bargaining unit and was unpersuaded by the Employer's arguments to the contrary. The

Hearing Examiner also rejected the Employer's argument that some of the support staff positions should be accreted into the existing AFT secretarial unit through a unit clarification.

On appeal, the Employer argues that three of the employees in the proposed unit are confidential and therefore should have been excluded, that the remaining positions do not share a community of interest and therefore do not constitute an appropriate bargaining unit. The Employer also argues on appeal that some of the remaining "non-confidential" employees should have been placed in the existing secretarial unit.

#### SUMMARY OF PROCEDURAL HISTORY

On March 9, 2011, Gregory C. Hannaford, UniServ Director for the Maine Education Association, filed a petition for Unit Determination and Bargaining Agent Election for a group of ten employees, most of whom work at the Sanford School Department's Central Office. The Employer filed a timely response to the petition on March 23, 2011. In a letter to the Board dated April 14, 2011, the Sanford Federation of Teachers/AFT responded to the petition and to the Employer's response by asserting that a number of positions in the proposed unit had been improperly removed from their secretarial unit in 2005 through a side agreement arising from a grievance. The Sanford Federation of Teachers/AFT argued that because a community of interest still existed between the central office staff and the secretarial unit, the petition should be denied and the previously certified unit should be restored. On April 21, 2011, the Hearing Examiner informed the Employer, the Association, and the Sanford Federation of Teachers/AFT that the latter bargaining agent would be considered a party-in-interest.

The evidentiary hearing was scheduled for June 29, 2011. In

the days leading up to the hearing, various procedural questions arose leading the Employer to file a Unit Clarification petition on June 24, 2011. At a request of the Association (and receiving no objection from the Employer or the AFT), the hearing was postponed until October 5, 2011, so that both the unit determination and the unit clarification matter could be considered. About two weeks prior to the hearing, the president of the Sanford Federation of Teachers/AFT wrote a letter to the Board withdrawing its effort to intervene in the unit determination matter because they did "not want to be a spoiler."

The evidentiary hearing was held on October 5, 2011. Campbell Badger, Esq., appeared on behalf of the Sanford School Committee and MEA UniServ Director Gregory Hannaford appeared on behalf of the Central Office Staff EA/MEA/NEA. The parties were afforded full opportunity to examine and cross-examine witnesses, and to present evidence. Mr. Jerry Ashlock, appearing on behalf of the Sanford Federation of Teachers/AFT, was offered the opportunity to participate in the hearing by examining witnesses, which it did to some extent, although it offered no witnesses of its own. All three parties were offered the opportunity to submit post-hearing briefs. Both the Sanford School Committee and the Association submitted written briefs, but Mr. Ashlock chose not to submit a brief. The Hearing Examiner's decision was issued on February 6, 2012, and the Employer filed a timely appeal to this Board.

The Sanford School Committee and the Association both submitted written argument on the appeal. The Board offered the parties the chance to present oral argument on March 27, 2012, but only Mr. Badger availed himself of that opportunity. After Mr. Badger concluded his argument on behalf of the School Committee, the Board deliberated this matter.

On March 21, 2012, the Board offices received an additional document that appeared to be rebuttal testimony from Ms. Crystal King, an individual who had testified at the hearing. The Board was informed of the nature of the document, but refused to consider it, as an appeal to the Board must be based on the record before the Hearing Examiner. See MLRB Rule Ch. 11, section 30(2) and Topsham Local s/89 District Lodge #4 IAMAW, No. 02- UCA-01, aff'd, Topsham v. Local S/89 District Lodge #4 IAMAW and MLRB, AP-02-68 (Ken. Cty. Sup. Ct., March 20, 2003).

#### JURISDICTION

The Sanford School Committee is an aggrieved party within the meaning of 26 M.R.S.A. §968(4). The jurisdiction of the Maine Labor Relations Board to hear this appeal and to render a decision lies in 26 M.R.S.A. §968(4).

#### DISCUSSION

The Hearing Examiner reviewed the evidence presented and concluded that none of the four employees in the proposed bargaining unit were confidential employees, as the Employer argued. In addition, the Hearing Examiner considered the various factors contributing to a group's community of interest and concluded that the bargaining unit as proposed was an appropriate bargaining unit. The Hearing Examiner rejected the Employer's suggestion that the Board establish a new standard for determining the appropriateness of a bargaining unit.

The standard of review for bargaining unit decisions issued 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, [78-A-10] at 6 (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., No. 84-A-05, at 3 (May 30, 1984), affirming No. 84-UC-05. See also Topsham and Local S/89 District Lodge #4 IAMAW, No. 02-UCA-01 (Aug. 29, 2002), affirming No. 02-UC-01; aff'd No. AP-02-68, (Ken. Cty. Sup. Ct., March 20, 2003). We will start with each of the specific rulings on confidential exclusions that are under appeal and then turn to the arguments on the appropriateness of the unit presented by the Employer.

#### CONFIDENTIAL EXCLUSIONS

The Employer appeals the Hearing Examiner's conclusion that the Special Education File Clerk, Suzanne Delafontaine, is not a confidential employee excluded from the Act's coverage. The Employer argues that this file clerk has been assigned to be the Superintendent's back-up secretary when the Superintendent's secretary is absent. There is no dispute that the Superintendent's secretary is a confidential employee, but a claim that as a back-up person, Ms. Delafontaine "will work at [that secretary's] work station and have access to her computer files" (Tr. at 69) is insufficient to transform the back-up person into a confidential employee.

The standard for excluding an employee from the coverage under the Act based on the confidential exclusion includes

those employees who have, as part of their work responsibilities, access to the employer's negotiations positions, in advance of said positions being disclosed at the bargaining table, and who, as an integral part of their job duties, assist and act in a confidential

capacity with respect to persons who formulate or determine the employer's bargaining positions or bargaining strategy. . .

State of Maine and Maine State Employees Ass'n, No. 82-A-02, Interim Order, at 10 (June 2, 1983),

We affirm the Hearing Examiner's conclusion that Suzanne Delafontaine is not a confidential employee within the meaning of §962(6)(C). The Hearing Examiner's conclusions were based on the evidence and were not unlawful or unreasonable. She made no legal error in rejecting as too speculative the Employer's arguments that Ms. Delafontaine, the Special Education File Clerk, will be exposed to confidential information in the future when she actually fills in for the Superintendent's Secretary. The Hearing Examiner's reliance on Waterville Police Department and Teamsters Local Union No. 48, No. 78-A-06, at 4 (Oct. 4, 1978) was appropriate, as that case has continued to be the standard in rejecting exclusions based on future job responsibilities. See, e.g., Teamsters Union Local 340 and Town of Wells, No. 90-UC-01 at 10 (Nov. 22, 1989) (Testimony on future confidential duties should be disregarded); Lincoln Sanitary District and Teamsters Local #40, No. 92-UC-02 at 11-12 (Nov. 17, 1992) (Not appropriate to raise confidential status until duties actually performed); and District Lodge #4 IAMAW and Town of Wiscasset, No. 04-UD-01 at 14-15 (Nov. 24, 2003) (Current duties, not duties projected for the future, must be the basis for a finding of confidentiality).

We note that we have on several occasions suggested to employers that if they are concerned that an employee will divulge confidential bargaining information, the employer can caution the employee that such a disclosure will subject them to discipline. See, MSAD No. 14 and East Grand Teachers Assoc., No. 83-A-09 at 10 (Aug. 24, 1983) (When assigning confidential collective bargaining duties, employer may caution employee that disclosure of the

confidential information to the union may result in discipline), Lewiston Food Service Managers Assoc./MEA and Lewiston School Committee, No. 99-UD-10 at 26-27 (May 27, 1999) (Employer may admonish employee that keeping information confidential is a condition of continued employment); Granite City Employees Assoc. and City of Hallowell, No. 01-UD-04 at 27 (May 23, 2001) (same). Thus, the Employer has the means to address any perceived problem in this regard.

The Employer also appeals the Hearing Examiner's conclusion that neither the Benefits Specialist, Bethany McGuire, nor the Payroll Specialist, Pauline Butler, are confidential employees. In the analysis of these two positions, we conclude that the Hearing Examiner made an error by not considering the importance of a particular piece of evidence that is critical to the confidentiality status of these two employees. That piece of evidence had to do with whether Ms. McGuire had knowledge of the "bargaining authority" of the school's bargaining team. The Hearing Examiner's footnote on page 18 essentially discounted the significance of the Business Manager's testimony on his subordinate's knowledge of their bargaining authority.

Bargaining authority refers to the authority granted to the negotiating team to negotiate a tentative agreement to be presented to both sides for ratification. The bargaining authority may be expressed as a general cap, such as the overall impact of cost items may not exceed a specific percent increase, or it may be stated specifically with respect to wage increases, health insurance costs, or non-financial matters to be bargained. Bargaining authority is an important concept under the law because a bargaining team that does not have sufficient knowledge, guidelines and authority to make tentative agreements risks a charge of failing to bargain in good faith. See Teamsters Local No. 48 v. Town of Bar Harbor, No. 82-35 at 8 (Nov. 2, 1982) (" . . .

we have repeatedly held that the bargaining team must be given authority, by its principal party, which is sufficient for said team to reach an agreement"), citing City of Westbrook v. Westbrook Police Unit, No. 81-50, at 6 (Sept. 24, 1981). Similarly, if a bargaining team exceeds the bargaining authority granted, and the employer rejects the tentative agreements that were made, the employer's action is a failure to bargain in good faith. Fox Island Teachers Assoc. v. MSAD #8 Board of Directors, No. 81-28 at 6 (April 22, 1981).

Knowledge of bargaining authority is knowledge of how far the bargaining team has been authorized to go.<sup>1</sup> Preparing spreadsheets to calculate the impact of a specific percent increase in wages or changes in premium contributions does not, without more, demonstrate a knowledge of the party's bargaining authority. Here, however, the Employer's Business Manager testified that Ms. McGuire had knowledge of the Employer's bargaining authority. That testimony was not refuted and must not be ignored. There was also testimony that the Business Manager, who served on six bargaining teams, was quite dependent upon the expertise and extensive experience of both Ms. McGuire, the benefits specialist, and Ms. Butler, the payroll specialist, in understanding the history and impact of various bargaining proposals. We conclude that the Business Manager's reliance on Ms. McGuire's expertise and the undisputed testimony that she knew the Employer's bargaining authority compel a conclusion that Ms. McGuire is a confidential employee within the meaning of §962(6)(C) and must be excluded from the bargaining unit.

---

<sup>1</sup>Knowledge of bargaining authority should not be confused with knowing the projected salary increases that department managers use to develop budgets when the budgets must be submitted before negotiations are completed. See MSEA and County of York, No. 04-UD-04 at 25 (March 30, 2004).



The situation of Ms. Butler, the payroll specialist, must follow a similar analysis. Although there was no direct testimony on Ms. Butler's knowledge of the Employer's bargaining authority, other evidence in the record indicates clearly that she "assist[s] and act[s] in a confidential capacity with respect to persons who formulate or determine the employer's bargaining positions." The evidence indicates that Ms. Butler shares an office with Ms. McGuire and that conversations involving confidential collective bargaining issues that the Business Manager has often occur in that shared space. The office adjoins the Business Manager's office. The Business Manager testified,

There is no divider there, so a lot of times conversations that you have with one of them, the other basically can overhear it, and a lot of times if one doesn't have the answer, the other one will pipe up with the correct answer.

Transcript at 77. The Business Manager relies on Ms. Butler's experience and expertise as he does with Ms. McGuire and considers both of them to be part of his support team. We conclude that the Business Manager's reliance on Ms. Butler combined with her close physical proximity to Ms. McGuire combine to provide sufficient evidence to support our conclusion that Ms. Butler is a confidential employee within the meaning of §962(6)(C) and must be excluded from the unit.

#### THE COMMUNITY OF INTEREST ANALYSIS

As a result of our determination that two individuals in the proposed unit must be excluded, we must apply the community-of-interest analysis to the remaining positions. The eight remaining positions are the Receptionist, IC Coordinator, File Clerk, Accounts Receivable, Accounts Payable, Title I Assistant, Administrative Assistant to SPED/SAC Director, and Administrative Assistant to SPED Director K-6. In order to determine whether a

clear and identifiable community of interest exists, we must consider the following eleven factors:

(1) similarity in the kind of work performed; (2) common supervision and determination of labor relations policy; (3) similarity in the scale and manner of determining earnings; (4) similarity in employment benefits, hours of work and other terms and conditions of employment; (5) similarity in the qualifications, skills and training of employees; (6) frequency of contact or interchange among the employees; (7) geographic proximity; (8) history of collective bargaining; (9) desires of the affected employees; (10) extent of union organization; and (11) the employer's organizational structure.

MLRB Rules and Procedures, CH. 11, §22(3).

The Employer's general position is that the employees in the Central Office who perform business and finance related work do not share a community of interest with the remaining administrative positions because the nature of their work is different, and because they are expected to have some experience or training in accounting or finance. The Employer argues that because the other positions are administrative and secretarial positions requiring only general computer skills and the ability to learn individual programs, the two groups do not share a community of interest.

The purpose of considering the various community-of-interest factors is to ensure that the positions in the resulting bargaining unit have common interests in the mandatory subjects of bargaining to be discussed in negotiations. See Lewiston Firefighters Assoc. v. City of Lewiston, 354 A.2d 154, 161 (Me. 1976).<sup>2</sup> We think the Employer is missing this general principle

---

<sup>2</sup>"In resolving the appropriateness of bargaining units the Board's primary goal . . . is to organize employees who have a substantial mutual interest in wages and other terms and conditions of employment. Lewiston Firefighters Association, 354 A.2d at 161. This 'community of interest' insures compatibility among unit members which, in turn, strengthens the bargaining position of the employees

by suggesting that the business and finance centered positions have different interests than the others. The community-of-interest factor "similarity in the kind of work performed" is satisfied by all of the positions being office jobs; the factor of "similarity in qualifications, skills and training" is satisfied in that a basic education with some added experience or training in office skills are needed, but nothing further such as special licensing or certification or any level of college education.

The Board has never required that the positions in a bargaining unit be as similar as the Employer suggests. Similar does not mean identical. As the executive director noted in a previous decision,

In comparing the nature of the work being performed by the various classifications under consideration, the essence or basic type of the functions being performed is far more important than the details of each position's work responsibilities. Inherent in the existence of separate job classifications is a difference in the specific work assignment of each classification; however, such differences do not preclude the inclusion of various classifications in the same bargaining unit.

Auburn Education Ass'n/MTA/NEA and Auburn School Committee, No. 91-UD-03 at 11, aff'd, No. 91-UDA-01 (May 8, 1991). Here, we hold that the differences in job duties do not preclude the inclusion of positions primarily performing business-related tasks with the other administrative positions.

There are other community-of-interest factors that support the conclusion that the remaining positions would constitute an appropriate bargaining unit. Even though individual employees may have different immediate supervisors, they do have managers in

---

as a group. Id." MSAD #48 Teachers Assoc./MEA and MSAD #48 Board of Directors, 97-UD-03 at 15 (Dec. 23, 1996).

common in the central office building. There is an even greater similarity in the earnings as the two individuals excluded as confidential employees were by far the highest paid in the unit as proposed. Likewise, there is a similarity in employment benefits and hours of work, even though they are not identical.

The Employer attempts to analyze the "frequency of contact or interchange among the employees" without any reference to the next community of interest factor, "geographic proximity." Nine of the ten employees in the proposed unit, or seven out of the eight left for consideration, work in the Central Office building, and all their offices are on the same floor. They have monthly staff meetings to address issues of common concern. Ms. King does not attend monthly meetings of central office employees, as she works at the high school. While clearly the employees whose job duties are most closely related have greater frequency of contact, we consider the evidence of interchange and the geographic proximity to produce enough interaction for this criteria to be satisfied. With respect to the seven employees working at the central office and excepting Ms. King, the two community of interest criteria of frequency of interaction and geographic proximity support the creation of the bargaining unit.

In looking at the community-of-interest factors as they relate to the position held by Crystal King, we find that many of them indicate that her position does not share a community of interest with the central office employees. A number of the factors reflect very little difference between the central office employees and those in the secretaries unit, such as similarity in work performed, similarity in training, similarity in scale and manner of determining earnings, and similarity in benefits. These factors could support placement in either unit. As noted above, the frequency of interaction and her geographic proximity to the others are factors that militate against inclusion of her position

in the central office unit.

Ms. King's position is a poor fit with the central office employees because we consider the "terms and conditions of employment" to be a factor of particular significance in this case.<sup>3</sup> We conclude that the significance of Ms. King's position being located in the high school goes well beyond its effect on geographic proximity and interaction with others in the proposed unit. Ms. King testified that she and her supervisor, the Special Education Director for grades 7-12, were located in the high school so that the director could be "smack in the middle" of the population they serve. Working in a school is fundamentally different than working in an office building and presents working conditions that are simply non-issues in an office building. With a building full of children, not only is the working atmosphere different, the expectations and need for appropriate interactions with students are of paramount importance. All adults in the building share the responsibility for protecting the welfare of the children in their charge, whether it be related to safety and security or creating an environment conducive to learning. These issues are not present in an office building. This difference in conditions of employment also supports our conclusion that the special education support position for K-6 should be in the central office bargaining unit as proposed, even though it includes job duties similar to those of Ms. King.

The history of collective bargaining in this case is rather unusual in one respect, although it has an insignificant impact on the community-of-interest determination. Three of the positions in the proposed bargaining unit had been part of the AFT

---

<sup>3</sup>This aspect of the community-of-interest factor "similarity in employment benefits, hours of work and other terms and conditions of employment" was not argued to any extent by either party, as it did not support either of their respective positions.

secretarial unit for over 15 years but were removed from the unit in 2005. Those three positions were the administrative assistant to the Title I administrator (currently Deborah Sanborn), the assistant to the SPED/SAC director (currently Crystal King), and the assistant to the SPED director K-6 (currently Donna Hanson).

The evidence shows that in 2004, Ms. King filed a grievance seeking an increase in pay and proposing to remove her position from the AFT unit and classifying her position in a higher pay grade. The grievance was denied. The following year, Ms. King's position and two others were removed from the AFT unit because they were considered "confidential" employees, which the Employer now claims was in error. There is no evidence of a cause-and-effect relationship between the two events. What is important to note is that the three positions had been in the AFT unit for a long time and there is nothing in the record to suggest that a lack of community of interest was a motivating factor for their removal from that unit. Thus, we can not say that the removal of these three positions has any particular significance either way.

A review of this Board's case law indicates that while the community-of-interest factor "desires of the affected employees" is particularly important in severance cases, it usually receives little weight in other cases unless all of the other factors fail to produce a clear determination one way or the other. See Ryan Adams and Teamsters Local Union No. 340 and City of Waterville, No. 03-UD-02 at 31 (Oct. 28, 2002) (severance case), and MSAD 29 Educ. Assoc. and MSAD 29 Board of Directors, No. 05-UC-01 at 23 (Dec. 23, 2005) (desire of employee not given more weight than other factors supporting community of interest). Usually, the hearing examiner takes note of testimony presented by witnesses, if any is offered. Only rarely does the hearing examiner review affidavits submitted by the parties, but even affidavits are not always reliable. In one case, the hearing examiner discounted the

reliability of the affidavits because three employees had signed affidavits both in support of and in opposition to the severance petition and the testimony suggested that misinformation and hyperbole were employed by those seeking signatures. Corporals and Sergeants, Cumberland County Sheriff's Office and AFSCME and Cumberland County Commissioners, No. 02-UD-03 (May 31, 2002). On occasion, the hearing examiner has stepped back from viewing the evidence of desires of employees in isolation and assessed the evidence in terms of whether it reflects the presence or absence of a community of interest. See, e.g. Eric Bell and Richmond Employees Assoc. and Town of Richmond, No. 03-UD-10 at 27 (Sept. 26, 2003) (desires uniform but seemed to be based on unrealistic expectation of collective bargaining process, not on whether there is a community of interest in current unit). See also Adams and Teamsters 340 and Waterville, No. 03-UD-02 at 31 (desires of employees influenced by possibility of layoff and unfavorable position in current seniority list).

In the present case, the only employee whose position was in the proposed unit who testified was Ms. King, the Union's only witness. The Employer also introduced evidence of the desires of employees in the form of statements written by four different employees indicating either their desire to be in the AFT unit, their lack of interest in having a unit created for central office employees, or their lack of interest in joining any sort of union. Two of the employees who signed documents in June indicating a desire to be a part of the AFT unit submitted memos to the Employer three months later indicating that they did not wish to belong to any union. These documents simply demonstrate that some people change their mind and some people do not understand the difference between a bargaining unit and a union. Without the opportunity to question the employee, it is difficult to determine

each employee's understanding and true desire.<sup>4</sup> Although the Hearing Examiner simply referred to the showing of interest as sufficient to support a finding of a community of interest, we conclude that it is more accurate to say that to the extent that the factor "desires of employees" has any bearing in this case, the evidence is unpersuasive either way.<sup>5</sup>

In summary, we have reviewed the eleven community of interest factors with respect to the eight positions remaining in the proposed bargaining unit after excluding the two employees who are confidential employees under §962(6)(C). We conclude that the seven positions located in the School Committee's central office do share a community of interest with each other and that it is an appropriate bargaining unit. We conclude that the position held by Ms. King located at the high school does not share a sufficient community of interest with the central office employees and is more appropriately placed back into the existing Sanford Federation of Teachers/AFT secretarial unit from which her position was removed in 2005. See Portland Administrative Employee Ass'n and Portland Superintending School Committee, No. 86-UD-14

---

<sup>4</sup>Given the low probative value of this information and the very high need for protecting the confidentiality of an individual employee's support for any unionization effort, we agree with the Executive Director's decision to deny the Employer access to a document dated June 16, 2011, that had been submitted to the Board. That document stated that the employees signing it wanted to be part of the AFT unit. (A copy of this same memo signed individually by two employees on June 20, 2011, constitutes exhibit C-11). We also agree with the Executive Director's refusal to tell the Employer how many employees signed that document, as that would be inconsistent with the dictates of 26 M.R.S.A. §967(2) which requires the Board to employ procedures to protect the confidentiality of voters.

<sup>5</sup>Furthermore, even if we were inclined to give the documents submitted as exhibits C-11, C-12, C-15 and C-16 any weight without supporting testimony from the employee, there are only two employees providing statements indicating a desire not to be part of the proposed unit. The documents submitted by Ms. McGuire and Ms. Butler are irrelevant as confidential employees are excluded from the unit as a matter of law.



(October 27, 1986), aff'd, No. 87-A-03 (May 29, 1987) (placement of some employees in existing bargaining units considered only after the examiner found that a community of interest did not exist among all of the employees in the unit proposed by the union).

The Employer also argues that the creation of an additional bargaining unit is contrary to a Board policy that the Employer mistakenly thinks is a policy against excessive fragmentation of job classifications. The Employer contends that the creation of a central office unit would create "two groups of clerical employees, all of whom share a community of interest with each other" and that there is "no rational reason" for the division. It is critical to note that any concern about fragmentation refers to fragmentation of bargaining units, not to fragmentation of types of jobs, and refers to an arbitrary split in a group of positions that does not correspond to a separate identifiable community of interest. For example, in Town of Yarmouth and Teamsters Local 48, the Board rejected the employer's call to create two bargaining units along divisional lines in the Public Works Department (one for the 9 highway workers and the other for the 2 Sewer workers) because two units would "unduly fragment the Department" and would be contrary to the Board's policy "of discouraging the proliferation of small bargaining units in a single department" and would also "violate the employees' guaranteed right to full freedom in the exercise of their representational and bargaining rights." 80-A-04 at 4 (June 16, 1980), citing 26 M.R.S.A. §§ 963 and 966(2) and Lewiston Firefighters Association v. City of Lewiston, 354 A.2d 154, 160-161 (Me. 1976). Furthermore, contrary to the Employer's assertion, in this case there is a rational basis for creating a bargaining unit of central office employees. As we have explained above, the employees in the central office have a community of interest with each other that is based on issues that distinguish them from

clerical employees in the schools.

While we understand the Employer's concerns about the impact of another bargaining unit on the workload of the School Committee, we can find no basis for concluding that the Hearing Examiner should have or even could have rejected the proposed unit on that basis. As the Hearing Examiner correctly noted,

[i]t is well established that the hearing examiner's duty is to 'determine whether the unit *proposed by the petitioner* is an appropriate one, not whether the proposed unit is the most appropriate unit.'" SAD #49 Educational Technician I Ass'n/MEA/NEA and MSAD #49 Board of Directors, slip op. 09-UD-09 at 5 (May 6, 2009) (quoting Town of Yarmouth and Teamsters Local Union No 48, No. 84-A-04, slip op. at 4 (MLRB June 1980) (emphasis added). "The employees' right to self-organization is best protected when their judgment on the appropriate unit is respected, as long as the positions share the community of interest required by § 962(2)." Id., citing Portland Administrative Employee Ass'n and Portland Superintending School Committee, No. 86-UD-14 (October 27, 1986), aff'd, No. 87-A-03 (MLRB May 29, 1987) (placement of some employees in existing bargaining units considered only after the examiner found that a community of interest did not exist among all of the employees in the unit proposed by the union).

This Board has expressly stated that the savings and convenience resulting from larger units should not be "exalted" over the statutory right of employees to join together in a bargaining unit with other employees with whom they share a clear and identifiable community of interest. Portland Superintending School Committee v. Portland Administrative Employee Assoc., No. 87-A-03 at 5, affirming No. 86-UD-14 (May 29, 1987). The Employer has failed to convince us that the employees' statutory right should be disregarded in this case.

To summarize, we have reviewed the evidence presented to the Hearing Examiner and the arguments presented by the parties and modify the Hearing Examiner's Order by excluding Ms. Bethany

McGuire, the Benefits Specialist, and Ms. Pauline Butler, the Payroll Specialist, as they are both confidential employees. We also conclude that Ms. Crystal King does not share a community of interest with the remaining employees in the proposed unit, but does share a community of interest with the existing Sanford School Secretaries unit, and belongs in that unit. For the reasons explained above, we conclude that the employees in the remaining seven positions in the proposed bargaining unit share a community of interest and are an appropriate bargaining unit.

Finally, without ruling on whether the Employer's unit clarification petition was procedurally sufficient, we reject the Employer's assertion that the proper resolution of the pending matter would be to accrete several of the central office employees into the existing Sanford Federation of Teachers secretarial bargaining unit. An accretion is not appropriate because, other than Ms. King, the central office employees do not have a community of interest with the secretarial unit and do have their own separate identity. See Cumberland County v. Teamsters Union Local 340, 07-UDA-01 (January 16, 2007) at 7-8.

#### ORDER

On the basis of the foregoing discussion and pursuant to authority granted to the Maine Labor Relations Board by the provisions of 26 M.R.S.A. § 988(4), it is ORDERED:

1. That the appeal of the Sanford School Committee filed on February 21, 2012, is granted in part and is denied in part. The Unit Determination Report No. 11-UD-10 is modified as provided below.
2. That the employees in the Benefits Specialist and the Payroll Specialist classifications of the Sanford School Department are confidential employees, within the meaning of 26 M.R.S.A. § 962(6)(C), and may not be included in any bargaining unit.

3. That the Assistant to the SPED/SAC Director classification does not share a community of interest with the employees in the bargaining unit described in the next paragraph of this Order, but does share a clear and identifiable community of interest with the employees in the Sanford School Secretaries bargaining unit and is hereby assigned to the latter bargaining unit.
4. That following central office employee classifications at the Sanford School Department share a clear and identifiable community of interest and as a group constitute an appropriate bargaining unit and that unit is established by virtue of this Order:

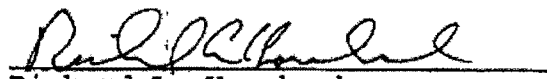
Receptionist, IC Coordinator, File Clerk, Accounts Receivable, Accounts Payable, Title I Assistant, and Administrative Assistant to SPED Director K-6.
5. That the executive director shall conduct a bargaining agent election in the bargaining unit described in the preceding paragraph of this Order as soon as is practicable.

Dated at Augusta, Maine, this 24th day of May 2012

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.

  
Peter T. Dawson  
Chair

  
Richard L. Hornbeck  
Employer Representative

Employee Representative Carol B. Gilmore participated in the oral argument and deliberation in this matter, but died before the decision was finalized.