

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF LONGMEADOW

and

LONGMEADOW ASSOCIATION OF
CLERICAL EMPLOYEES

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Case No. CAS-13-2758
CAS-13-2759

Date issued: August 22, 2014

Board Members Participating:

Marjorie F. Wittner, Chair
Harris Freeman, Board Member

Appearances:

Gordon D. Quinn, Esq. - Representing the Town of Longmeadow

John O'Connor, Esq. - Representing Longmeadow Association of Clerical
Employees

DECISION

1 Summary

2 The Longmeadow Association of Clerical Employees (Union) seeks to accrete
3 three titles into its bargaining unit of clerical employees employed by the Town of
4 Longmeadow (Town): Benefits Coordinator; Human Resources Specialist/Fire
5 Department Administrative Assistant; and Human Resources Assistant/Assessor's
6 Clerk. The Town opposes accretion on grounds that all three positions are confidential
7 employees within the meaning of Section 1 of M.G.L. c. 150E (the Law) and therefore
8 may not lawfully be included in an appropriate bargaining unit. The Commonwealth

1 Employment Relations Board (Board) grants the Union's petition as to the Benefits
2 Coordinator. The Board finds, however, that the incumbents in the remaining two
3 positions are confidential employees and therefore dismisses the Union's petition as to
4 these titles.

5 Statement of Case

6 The Union's petition was filed on April 10, 2013.¹ The DLR docketed this petition
7 as Case No. CAS-13-2758. On April 12, 2013, the Town filed a separate petition as to
8 the "Human Resources Specialist and the Fire Department Administrative Assistant
9 (currently occupied by Ray Miller)." The DLR docketed this petition as Case No. CAS-
10 13-2759.

11 The DLR consolidated the petitions for investigation. On July 10, 2013, an
12 informal conference was held with both parties to discuss the issues raised by the
13 petitions. At the Informal Conference, the parties clarified that the petitions concerned
14 the following titles:

- 15 1) Human Resources Specialist and Fire Department Administrative Assistant—
16 two part-time positions currently occupied by Ray Miller (Miller);
- 17 2) Human Resources Assistant and Assessor's Clerk – two part-time positions
18 that were occupied by Audra Staples (Staples) at the time of the
19 investigation;²
20

¹ On the petition, the Union listed the disputed titles as follows: "Benefits Coordinator," "Human Resources/Assessors Clerk," and "Payroll Processor (Ray Miller)."

² As described below, this position became vacant in August 2013 when Staples replaced Kristin Chmielewski (Chmielewski) as Benefits Coordinator after Chmielewski accepted a position elsewhere.

1 Department of Public Works, and the Parks and Recreation Department,
 2 all part-time employees scheduled to work twenty or more hours per week
 3 in the Accounting, Fire Department, Town Clerk, and Building
 4 departments, excluding employees in the office of the Town Manager and
 5 all other employees of the Town.
 6

7 As of July 2013, the bargaining unit consisted of the following ten titles:⁷

8 DPW Clerk; Accounting Clerk; Senior Clerk; Accounting Clerk/Secretary
 9 (Vacant); Treasurer Collector Specialist Senior; Administrative Assistant
 10 Police Department; Assistant Assessor; Planning and Community
 11 Development; Administrative Assistant; Administrative Assistant DPW;
 12 Administrative Assistant, Parks and Rec.⁸

13 Human Resources Department

14
 15 The Human Resources Department (HRD) consists of the following titles: Human
 16 Resources Manager; Assistant Human Resources Manager; Human Resources
 17 Specialist; Benefits Administrator; and Human Resources Assistant. This petition
 18 concerns three of those titles.

19 Erica Gelinias (Gelinias) is the Human Resources Manager. She reports directly
 20 to the Town's Finance Director, Paul Pasterczyk (Pasterczyk). Gelinias is the only HRD
 21 employee who participates in collective bargaining negotiations with the Town's unions.⁹
 22 The parties do not dispute that Gelinias is a person excluded from the Law's coverage.

23 The Disputed Titles

⁷ This list does not include the disputed Human Resources Specialist/Fire Department Administrative Assistant title, discussed in greater detail below.

⁸ The Town also listed the Treasurer Collector Specialist as a bargaining unit title but indicated that it was not currently in the unit because the incumbent worked fewer than 20 hours a week.

⁹ The Town Manager, the Town Finance Director and a representative from the Board of Selectmen also participate in bargaining on the Town's behalf.

1 **Human Resources Specialist/Fire Department Administrative Assistant**¹⁰

2
3 Miller is the incumbent in both titles. Miller has worked for the Town since
4 January 2000 when the Town hired him as a part-time Administrative Assistant in the
5 Fire Department. Around 2003, he took on additional duties as an Accounting Clerk (a
6 bargaining unit title) to cover for a co-worker's maternity leave. He continued in that
7 position after the co-worker resigned. Around 2005 or 2006, he was moved from the
8 Accounting Clerk position to a 16-hour position in the newly formed HRD. At that point,
9 he ceased performing his Accounting Clerk duties and the Town hired a part-time
10 employee to fill the Accounting Clerk position. Sometime in 2011, the Town began to
11 refer to Miller as the "Human Resources Specialist."

12 . Schedule

13 As of the investigation, Miller worked 32 hours a week, Monday through
14 Thursday. For the past several years, Miller has worked 16 hours per week in each
15 title. He works Monday at the Fire Department and Wednesday at HRD. Miller evenly
16 divides his time between the two departments on Tuesdays and Thursdays.

17 Duties - Fire Department Administrative Assistant

18 This position is responsible for providing administrative support to the Fire
19 Department. Miller reports directly to the Fire Chief.¹¹ Miller's duties include processing
20 and monitoring department payroll, processing invoices for the Fire Department and
21 other clerical tasks assigned by the Fire Chief.

¹⁰ These facts were derived from the information provided at the informal conference and from the parties' submissions, which included two affidavits from Miller (one from the Town and one from the Union), two from Gelinias; two from Staples (one from the Town and one from the Union); and one from Chmielewski.

¹¹ The parties stipulated that the Fire Chief is excluded from coverage under the Law.

1 Since 2000, Miller has regularly costed out Town and Union economic proposals
2 and counterproposals, both potential and actual, in connection with Fire Department
3 collective bargaining negotiations. In this capacity, the Town notifies him of its upper
4 limits on wage offers and he, in turn, notifies the Town when the Union's proposals
5 exceeded those limits.

6 Duties – Human Resources Specialist

7 As the Human Resources Specialist, Miller reports to Gelinias and performs a
8 variety of administrative duties related to payroll processing and reports, and leave
9 accrual and tracking. He also prepares salary budget spreadsheets. In addition to the
10 costing out duties he performs for the Fire Department, Miller costs out potential and
11 actual collective bargaining proposals, and alternative bargaining packages and
12 economic scenarios for the Town's other bargaining units, including the Union's clerical
13 unit. These duties provide him with advance notice of the Town's bargaining
14 parameters and proposals.

15 Also, since around 2005-2006, Miller has prepared cost forecasting reports for a
16 variety of potential personnel actions, such as reductions in employee work hours and
17 job eliminations. For example, last year Pasterczyk notified Miller that the Town
18 planned to eliminate a clerical position and asked him to develop a budget reflecting the
19 implications of eliminating that position.

20 Bargaining Unit Status/Collective Bargaining

21 When Miller worked exclusively as the Fire Department Administrative Assistant
22 he was not included in the bargaining unit and the Union never asked him to join.
23 Around 2009, however, the Town started treating him as a member of the Union's

1 clerical unit.¹² He has never been a Union officer. From February 2012 to March 2013,
2 however, he served as the Union's representative on the "Public Employee Committee,"
3 (PEC) which was established under the municipal health care reform legislation enacted
4 in 2011. He attended several meetings during this period but ceased service after the
5 discussions ended.

6 Miller has never engaged in collective bargaining on behalf of the Town, nor has
7 he ever settled any grievances with the Union on the Town's behalf.

8 **Human Resources Assistant/Assessor's Clerk**¹³

9 The combined position was first created and filled around February 2010 as a
10 part-time, 18-hour a week, position. Donna Morin (Morin) held the title from February
11 2010 until October 2010. Staples held this title from November 2010 until late August
12 2013, when she replaced Chmielewski as the Benefits Coordinator.

13 **Schedule**

14 From November 2010 until July 2012, Staples worked from Tuesday to
15 Thursday. On each of those days, she worked four hours as the Human Resources
16 Assistant and two hours as the Assessor's Clerk.¹⁴

17 In July 2012, Staples' hours as the Human Resources Assistant increased from
18 12 to 19 (four hours on Monday and five hours on Tuesday – Thursday), but she

¹² Neither party is sure exactly why or when this happened.

¹³ The Union requested that the DLR continue to process the petition as to this title even though it was vacant. The Town did not object to this request and notified the DLR that, once filled, its duties will remain the same as they were when Staples held the position. Based on these representations, the Board has continued to process the petition with respect to this title.

¹⁴ The Assessors' Office and HRD are in separate buildings.

1 continued to work a total of six hours a week as the Assessor's Clerk.

2 Assessor's Clerk

3 This title was created as a full-time position around 2004.¹⁵ It was filled until
4 October 2008 and then was vacant from October 2008 until February 2010 when Morin
5 became the first incumbent in the combined title.

6 When Staples worked as the Assessor's Clerk, she reported directly to the Town
7 Principal Assessor.¹⁶ Her duties included filing field cards, deeds and abatement
8 applications, and monthly reports related to Motor Vehicle Excise Abatements. She
9 also processed motor vehicle excise abatements and commitments. Her duties as the
10 Assessor's Clerk did not overlap with her duties as the Human Resources Assistant, as
11 described below.

12 Human Resources Assistant

13 In this capacity, Staples reported directly to Gelinias. Her job duties included
14 filing Town employee personnel-related documents, including medical and payroll
15 information, and discipline letters. She maintained personnel files throughout the Town
16 and in the public schools. She answered general questions regarding health insurance
17 and accepted applications for posted positions.

18 Staples' duties also included conducting comparative wage and benefit research
19 for the Town's use in collective bargaining, including obtaining data about the Quinn Bill
20 and health insurance benefits provided to employees in other municipalities. She did
21 not, however, see collective bargaining proposals in advance of the Union. In January

¹⁵ The bargaining unit also includes a full-time "Assistant Assessor."

¹⁶ The Town does not contend that the Assessor's Clerk title is a confidential position.

1 2013, the acting Town Manager directed Staples to gather comparative data regarding
2 Councils on Aging (COA) in other communities, including hours of operation and other
3 COA directors' terms and conditions of employment. Staples was told that the
4 information she provided would be used as the basis for future decisions the Town
5 planned to make regarding its COA, including reorganization or layoffs. There is no
6 evidence, however, that the Town notified Staples about any of these decisions before it
7 told the affected employees.

8 Staples' duties also included drafting correspondence for her supervisors
9 including disciplinary letters and layoff notices. For example, in January 2012, she
10 typed a disciplinary letter notifying a bargaining unit member that Pasterczyk intended to
11 suspend her for several days. Also in January 2012, Pasterczyk directed Staples to
12 type a layoff notice to a temporary employee who worked in the Accounting and School
13 Business offices. In both cases, Staples became aware of the personnel action before
14 the employees or their unions.

15 Bargaining Unit Status/Collective Bargaining

16 Staples has never been a member of the Union's bargaining unit. She has never
17 engaged in collective bargaining on behalf of the Town nor has she settled grievances
18 with the Union on the Town's behalf.

19 Benefits Coordinator¹⁷

20 This position was created around 2012. This is a full-time, 37.5-hour position.
21 The incumbent reports to Gelinas and is responsible for administering and maintaining

¹⁷ The information in this section is based on the duties Chmielewski performed when she was the Benefits Coordinator. Although she resigned from this position in August 2013 and was replaced by Staples, no party contends, and there is no evidence showing, that the duties have changed since Staples assumed this title.

1 records for all Town and school employee and retiree benefit programs, including
2 multiple health, life and dental insurance programs, and retirement plans. The duties
3 also include scheduling and attending Insurance Advisory Council (IAC) and PEC
4 meetings. The incumbent has access to employee health, personnel and disciplinary
5 records in connection with performing these duties.

6 Chmielewski's Duties

7 Chmielewski worked as the Benefits Administrator for the Town from April 2012
8 through August 2013. During this period, in addition to those set forth above,
9 Chmielewski's duties included working with the Town's unemployment insurance
10 consultants to provide information to support the Town's responses to unemployment
11 claims and appeals.

12 The Town held no IAC meetings during Chmielewski's tenure. She did, however,
13 schedule one PEC meeting to discuss concerns the Union raised regarding cost-sharing
14 for the flexible spending program's administrative fees. Chmielewski provided
15 information to the Town to assist it in responding to the Union's concerns, and, as part
16 of the Town's PEC team, was privy to settlement recommendations from the Town's
17 Finance Director and Town Manager before the Town's final position was presented to
18 PEC members. The matter was resolved through a memorandum of agreement before
19 the Union filed a grievance.

20 Bargaining Unit Status

21 The Benefits Administrator has never been included in the Union's bargaining
22 unit. Neither the Town nor the Union treated Chmielewski as part of the bargaining unit.

Opinion¹⁸

1
2 A unit clarification petition is the appropriate vehicle to determine whether newly
3 created positions should be included or excluded from a bargaining unit or to determine
4 whether substantial changes in the job duties of an existing position warrant either its
5 inclusion or exclusion from the bargaining unit. Town of Athol, 32 MLC 50, 52, CAS-04-
6 3567 (June 29, 2005) (citing Sheriff of Worcester County, 30 MLC 132, 136, CAS-03-
7 3543 (April 7, 2004)). The Board will also entertain a unit clarification petition seeking to
8 remove a position from an established bargaining unit, even where the duties of the
9 position have not changed when including the title in the unit would render the unit
10 inappropriate as a matter of Law, e.g., when the disputed position is deemed to be
11 managerial or confidential within the meaning of Section 1 of the Law. Town of Athol,
12 32 MLC at 52 (citing Fall River School Committee, 27 MLC 37, 40, CAS-3363 (October
13 32, 2000)).

14 The main issue in this case is whether the three disputed titles are confidential.
15 Pursuant to Section 1 of M.G.L. c. 150E, employees shall be designated as confidential
16 employees “only if they directly assist and act in a confidential capacity to a person or
17 persons otherwise excluded from coverage under this chapter.” The Board has
18 construed this statutory language to exclude those persons who have a continuing and
19 substantial relationship with an excluded employee that creates a legitimate expectation
20 of confidentiality in their routine and recurrent dealings. Town of Medway, 22 MLC
21 1261, 1269, MCR-4350, 4352 (October 23, 1995). The Board construes this exception
22 narrowly, to preclude as few employees as possible from collective bargaining rights,

¹⁸ The Board’s jurisdiction is not contested.

1 while not unduly hampering the employer's ability to manage its operations. Id. (citing
2 Silver Lake School Committee, 1 MLC 1240, 1243, CAS-163 (January 13, 1975)).
3 Regular exposure to confidential material directly related to labor relations policy or
4 other equally sensitive policy information while directly assisting a person excluded from
5 the Law's coverage is grounds for finding an employee confidential. Town of Medway,
6 22 MLC at 1269 (citing Framingham School Committee, 17 MLC 1233, CAS-2838
7 (September 4, 1990)). In particular, the Board has excluded employees who have
8 significant access or exposure to confidential information concerning labor relations
9 matters, management's position on personnel matters or advance knowledge of the
10 employer's collective bargaining proposals. Fall River School Committee, 27 MLC 37 at
11 39. It is possible, however, for an employee to directly assist an excluded employee
12 without doing so in a confidential capacity. University of Massachusetts, 3 MLC 1179,
13 1204, SCR-2079, 2092 (October 15, 1976).

14 **Human Resources Specialist/Fire Department Administrative Assistant**

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16 The evidence shows that Miller reports to Gelinis and the Fire Chief, both
17 excluded employees. His duties in both titles include regularly assisting the Town
18 during collective bargaining by costing out the Town's bargaining proposals and
19 counterproposals. In this capacity, Miller has advance notice of the Town's actual
20 bargaining proposals, as well as its bargaining parameters.

21 In addition to these duties, Miller prepares cost-forecasting reports for Pasterczyk
22 for a variety of contemplated personnel actions, including job eliminations and
23 reductions in hours. Based on Miller's advance knowledge of the Town's bargaining
24 proposals and personnel actions, both actual and contemplated, and the Town's

1 continued reliance on him to calculate what these actions will cost, we conclude that he
2 is a confidential employee within the meaning of Section 1 of the Law. See Town of
3 Greenfield, 32 MLC 133, 151-2, MUP-04-4178, CAS-04-3588 (February 8, 2006)
4 (excluding Town accountant as confidential employee because he costed out collective
5 bargaining proposals and was privy to other confidential labor relations information);
6 City of Lawrence, 25 MLC 167, CAS-3213 (April 21,1999) (budget analyst who costed
7 out collective bargaining proposals, attended meetings where those proposals were
8 discussed, and had access to other confidential labor relations information deemed
9 confidential); City of Quincy, 13 MLC 1436, 1442, MUP-5786 (February 3, 1987)
10 (assistant comptroller who costed out bargaining proposals deemed confidential and
11 excluded from unit); Town of Falmouth, 39 MLC 376, CAS-12-1936 (June 24, 2013) (fire
12 and police chiefs' principal office assistants who costed out bargaining proposals
13 deemed confidential employees).

14 **Human Resources Assistant/Assessor's Clerk**

15
16 The evidence shows that the Human Resources Assistant's duties include
17 drafting correspondence, including disciplinary letters and layoff notices, for Gelinias and
18 Pasterczyk, both excluded titles. When Staples performed such duties, she became
19 aware of the personnel actions before the employees or their unions were notified.
20 Staples' duties also include conducting comparative wage and benefits research for the
21 Town's use in collective bargaining. Similar comparative research that she conducted
22 on the acting Town Manager's behalf alerted Staples to the fact that the Town was
23 considering reorganizing its COA. These duties establish that the Human Resources
24 Assistant has an expectation of confidentiality with Gelinias and Pasterczyk, and that the

1 duties of the position regularly expose the incumbent to sensitive policy information and
2 advance knowledge of personnel actions, such as disciplinary letters and layoffs, before
3 the union or affected employees. We therefore find that the Human Resources
4 Assistant position is confidential.¹⁹ See Board of Higher Education, 33 MLC 12, 14,
5 CAS-05-3613 (June 23, 2006)(administrative assistant deemed confidential in part
6 because she typed up tenure recommendations and had access to materials in
7 personnel files); Board of Higher Education 33 MLC 159, CAS-06-3631(February 22,
8 2007) (excluding administrative assistant to Vice President of Student Affairs because
9 she had access to management's position on personnel matters, including warning
10 letters and requests for resignations).

11 Assessor's Clerk

12 The Town does not contend that the Assessor's Clerk is a confidential position
13 and we find nothing in the record that would warrant excluding this clerical title from the
14 bargaining unit based on its duties. The Board has recognized, however, that including
15 a combined position in the unit for purposes of one title but excluding it for another
16 would create an "unworkable situation." See Town of Greenfield, 32 MLC at 155. To
17 avoid this situation, we exclude the combined Human Resources Assistant/ Assessors
18 Clerk title from the unit.²⁰

19 Benefits Coordinator

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¹⁹ We therefore do not address the Town's other arguments that the Human Resources Assistant should be excluded from the unit based its part-time schedule.

²⁰ Nothing in this decision precludes the Union from filing a CAS petition with respect to this title should it revert to a stand-alone position.

1 This title, like the previous two, reports to Gelinas. Unlike those titles, however,
2 its duties do not involve regular, advance access to management's position on
3 confidential labor relations or personnel matters. Rather, the Benefits Administrator is
4 primarily responsible for performing the non-confidential duty of administering and
5 maintaining school and Town benefits records.

6 When Chmielewski held this title, she did not have access to the Town's health
7 insurance proposals in advance, nor was she routinely privy to the Town's bargaining
8 strategy over health insurance matters. The single occasion that Chmielewski provided
9 information to the Town regarding flexible spending account administrative fees and
10 was privy to the Town's settlement recommendations regarding this matter does not
11 persuade us otherwise. If an employee is to be excluded from a unit based on any
12 single activity, that activity should be a regular and significant part of the employee's
13 job. There is no evidence here that this is the case.

14 Finally, although Chmielewski may have had access to employee personnel and
15 health records when she held this position, the Board has repeatedly held that mere
16 access to sensitive financial data, personnel records or other similar non-labor relations
17 material does not make an individual a confidential employee. Town of Athol, 36 MLC
18 188, 190, CAS-10-3752 (May 7, 2010) (citing Wellesley School Committee, 1 MLC
19 1389, 1410 (MUP-2009, CAS-2005 (April 25, 1975)).

20 Based on all of these considerations, we do not find the Benefits Coordinator to
21 be a confidential position. See Town of Easton, 31 MLC 132, MCR-03-5064 (declining
22 to exclude Treasurer Collector who was Town's representative to a health insurance
23 consortium where the duties the employee performed in this capacity did not give the

1 employee advance notice of the Town's health insurance collective bargaining proposal
2 or strategy).

3 We therefore consider whether to accrete this title into the unit. In analyzing
4 whether employees should be accreted into an existing bargaining unit, the Board uses
5 a three-step test. First, the Board determines whether the position was included in the
6 original certification or recognition of the bargaining unit. If that examination is
7 inconclusive, the Board will examine the parties' subsequent conduct, including
8 bargaining history, to determine whether the employee classifications were considered
9 by the parties to be included in the unit. If that inquiry is also inconclusive, the Board will
10 examine whether the positions sought to be included in the unit share a community of
11 interest with the existing positions. If the Board determines that the requisite community
12 of interest exists, it will accrete the petitioned-for employee into the existing bargaining
13 unit. Town of Granby, 28 MLC 139, 141, CAS-3477 (October 10, 2001).

14 The first and second prongs of the test are inconclusive. The Benefits
15 Coordinator position was created in 2012, well after the Town first recognized the unit
16 and there is no material bargaining history with respect to the title. We must therefore
17 determine whether the title shares a community of interest with the rest of the unit.

18 To determine whether employees share a community of interest, the Board
19 considers factors such as similarity of skills and functions, similarity of pay and working
20 conditions, common supervision, work contact, and similarity of training and experience.
21 Princeton Light Department, 28 MLC 46, 48, MCR-4805 (June 29, 2001); Town of
22 Bolton, 25 MLC 62, 65, MCR-4562 (September 10, 1998). No single factor is outcome
23

1 determinative. City of Springfield, 24 MLC 50, 54, MCR-4602 (1998)(citing City of
2 Worcester, 5 MLC 1108, 1111 (1978)).

3 Beyond its claim that this title is confidential, the Town does not argue that this
4 position does not otherwise share a community of interest with the rest of the unit's
5 clerical titles. Given the evidence showing that the Benefits Coordinator performs non-
6 confidential and, non-supervisory clerical and administrative duties necessary to
7 administer the Town's and the school department's employee benefits programs, we
8 find nothing in the record that would lead us to conclude otherwise. We therefore grant
9 the Union's petition and accrete the Benefits Coordinator position to the unit.

10 Conclusion

11 For the reasons set forth above, we dismiss the Union's petition as to the Human
12 Resources Specialist/Fire Department Administrative Assistant and Human Resources
13 Assistant/Assessor's Clerk. We grant the petition as to the Benefits Coordinator and
14 accrete this title into the Union's bargaining unit.

SO ORDERED.

DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH EMPLOYMENT
RELATIONS BOARD

MARJORIE F. WITTNER, CHAIR

HARRIS FREEMAN, BOARD MEMBER