

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

In the Matter of

WELLESLEY SCHOOL COMMITTEE

and

WELLESLEY EDUCATIONAL
PROFESSIONAL SUPPORT
ASSOCIATION

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Case No. MCR-13-3091

Date Issued:
March 28, 2014

Board Members Participating:

Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member
Harris Freeman, Board Member

Appearances:

James M. Pender, Esq. - Representing the Wellesley School Committee

Amy L. Davidson, Esq. - Representing the Wellesley Educational Professional Support Association

DECISION AND DIRECTION OF ELECTION

Summary

1 The issue presented in this case is whether any of the four disputed positions
2 should be excluded from the petitioned-for bargaining unit ,because they are
3 managerial, confidential or supervisory employees within the meaning of Section 1 of
4 the Law, because they lack a community of interest with the rest of the petitioned-for
5 positions and/or because they are excluded by a prior agreement. We conclude that
6 the disputed titles share a community of interest with each other and the undisputed

1 titles in the proposed unit, and are not otherwise excluded from exercising collective
2 bargaining rights.

Statement of the Case

3 On August 29, 2013, the Wellesley Educational Professional Support Association
4 (Union or WEPSA) filed a Representation Petition with the Department of Labor
5 Relations (DLR) seeking to represent employees employed by the Wellesley School
6 Committee (School Committee). That petition covered the following nine (9) positions:
7 Accounting Coordinator; Accounting Coordinator for Revenues and Cash Management;
8 Accounting Coordinator for Grants, Revolving and Special Revenue Funds; Accounting
9 Coordinator for Purchasing; Accounting Coordinator for Payroll; Administrative Assistant
10 to the Director of Curriculum and Instruction; Administrative Assistant to Director of
11 Student Services; Transportation Coordinator; and Scheduling, Operations and Data
12 Coordinator.

13 The School Committee challenged the inclusion of the following four (4)
14 petitioned-for positions: Administrative Assistant to the Director of Curriculum and
15 Instruction; Administrative Assistant to Director of Student Services; Transportation
16 Coordinator; and Scheduling, Operations and Data Coordinator.

17 On November 21, 2013, a duly-designated DLR Hearing Officer conducted a
18 hearing at which all parties had the opportunity to be heard, to examine witnesses and
19 to introduce evidence. Both parties filed post-hearing briefs on January 13, 2014. The
20 Commonwealth Employment Relations Board (Board) issues this decision based on the
21 hearing record, pursuant to, and as described in, DLR Rule 14.09, 456 CMR 14.09.

1 9. The School Committee claims that the Scheduling, Operations, and Data
2 Coordinator position should be excluded on the grounds that it does not share a
3 community of interest with other positions in the petitioned-for bargaining unit.
4

5 10. The School Committee claims that the Transportation Coordinator position
6 should be excluded on the grounds that the position is managerial, was excluded
7 from a bargaining unit by prior agreement by the parties at collective bargaining,
8 and does not share a community of interest with other positions in the petitioned-
9 for bargaining unit.

10 Findings of Fact

11 The School Committee and Union are parties to a collective bargaining
12 agreement for a bargaining unit (Unit A), which includes clerical and secretarial
13 employees. The School Committee approved a November 2012 proposal by the
14 Wellesley Public School Business Administrator, Judith Belliveau (Belliveau), to
15 reorganize the school district's business office pending bargaining with the Union on the
16 proposed changes. The Union and the School Committee bargained from January
17 through July 2013 regarding the proposed business office reorganization and a
18 separate bargaining unit (Unit B) that would include the five Accounting Coordinator
19 positions listed above in Stipulation number five. The parties agreed to a Unit B
20 composed of the five Accounting Coordinator positions. On July 31, 2013, the Union
21 proposed that Unit B also include the four disputed positions: Administrative Assistant to
22 the Director of Curriculum and Instruction; Administrative Assistant to the Director of
23 Student Services; Transportation Coordinator; and Scheduling, Operations, and Data
24 Coordinator. The School Committee rejected the inclusion of these proposed four
25 positions to Unit B and the Union filed the instant petition shortly thereafter.

26 Disputed Titles

1 **Transportation Coordinator**¹

2 The Transportation Coordinator is responsible for coordinating transportation for
3 students of the Wellesley Public Schools, including seven elementary schools, the
4 middle school and the high school.² The Coordinator organizes and oversees all
5 operations of the school district's transportation department. The Coordinator prepares
6 and monitors both the regular and special transportation annual budgets, generates
7 requisitions and approves invoices for expenditures regarding the transportation
8 department. The School Committee has the ultimate authority to approve a budget. In
9 the year prior to the hearing, however, the Transportation Coordinator was invited to
10 attend a School Committee meeting to discuss the transportation program. The
11 Transportation Coordinator attended the meeting and advocated for his budget, which
12 the School Committee ultimately approved. There is no other evidence in the record
13 that the Transportation Coordinator regularly attends School Committee meetings or
14 otherwise communicates or is required to communicate on a regular basis with the
15 School Committee regarding transportation matters. The Coordinator does, however,
16 communicate on a regular basis with school district administrators, faculty, staff and
17 parents.

¹ These findings are based on the job descriptions submitted into evidence as joint exhibits, which the Hearing Officer found to be accurate reflections of many of the duties, responsibilities, and functions performed by the positions discussed in this section. The Hearing Officer also credited the testimony of: Judith Belliveau (Belliveau), Director of Finance & Business Operations; Dean Blasé (Blasé), Director of Curriculum & Instruction; Linda Waters (Waters), Director of Student Services; Salvatore Petralia (Petralia), Assistant Superintendent; and Karen Bognanni (Bognanni), Union President, regarding duties, responsibilities, and functions performed by these positions.

² The Director of Finance and Business Operations estimated that about seven hundred of the approximately five thousand students in the Wellesley School District use school transportation, excluding special education students.

1 Wellesley Public Schools use a private bus vendor to provide most of its school
2 student transportation. Wellesley Public Schools has its own fleet of sixteen school
3 vans for the transportation of special education students. The Transportation
4 Coordinator procures contracted service for regular transportation as well as special
5 education transportation through the competitive bid process as defined by M.G.L. c.
6 30B. The Coordinator maintains and updates bid specifications for all special
7 transportation vans and regular transportation buses to ensure that they meet all state
8 and federal safety and emission regulations. The Coordinator further administers all
9 transportation contracts to ensure compliance on an ongoing basis. The Director of
10 Finance and Business Operations has final approval to sign and issue the contract with
11 the private bus vendor.

12 The Transportation Coordinator designs all bus routes and schedules, including
13 the special transportation van routes and schedules. The Coordinator also coordinates
14 the scheduling of all school field trip transportation, as well as the courier delivery to all
15 town buildings. The Coordinator serves as liaison to the police and fire departments
16 regarding school transportation safety training and emergency transportation
17 preparedness and response. The Transportation Coordinator coordinates with the
18 Department of Public Works, police, fire, Town Selectman's office, and others on all
19 issues (such as street work, snow removal, road closures and signage) that may affect
20 the safety of school arrival and departure for all students, including those attending non-
21 public schools located within Wellesley.

22 The Transportation Coordinator hires, supervises, and evaluates all special
23 education (SPED) transportation van drivers and attendants. With respect to hiring, the

1 Transportation Coordinator determines the hiring criteria, interviews and selects
2 applicants for the drivers and attendants of the sixteen special education transportation
3 drivers and effectively recommends their hire to the Assistant Superintendent, who
4 ultimately approves the hire. When a discipline issue arises with a SPED van driver, it
5 is first handled by the Transportation Coordinator, who advises Belliveau regarding
6 discipline, and makes discipline recommendations to both Petralia and Belliveau. The
7 Transportation Coordinator also writes any initial discipline memorandum to the drivers.
8 The Transportation Coordinator can recommend the discharge of a driver employed by
9 the School Committee, but any final discharge determination must be approved by the
10 Assistant Superintendent.

11 The Coordinator also co-supervises all regular transportation bus drivers in
12 conjunction with the private bus vendor. The Coordinator has informed the private bus
13 vendor that a driver is no longer authorized to work at the Wellesley Public Schools, but
14 the private bus vendor, as employer, hires its own drivers and has the authority to
15 transfer, discipline, or terminates its drivers.

16 The Transportation Coordinator communicates daily updates to all regular and
17 special transportation drivers as necessary. The Coordinator maintains current drivers'
18 files, including all necessary training, licenses, drug screening and health records. The
19 Coordinator provides in-vehicle, on-road training for new drivers. The Coordinator
20 designs, updates, and teaches a driver in-service training program as required by
21 special education regulations. The Transportation Coordinator also coordinates with the
22 private bus vendor and teaches a driver in-service training program for regular

1 transportation drivers. The Transportation Coordinator establishes protocol for drivers
2 and expectations for student behavior on the buses.

3 The Transportation Coordinator maintains and oversees the preventative
4 maintenance schedule for all transportation equipment and coordinates emergency
5 vehicle maintenance in a manner that is the least disruptive to student schedules. The
6 Coordinator monitors the schedule of all required inspections for district owned
7 transportation vehicles. The Coordinator also completes routine mechanical
8 maintenance on transportation vehicles as well as the weekly and quarterly inspections
9 of all transportation vans and buses, ensuring that the safety (including working order of
10 all seat belts) and cleanliness of all vehicles is maintained. The Coordinator maintains a
11 vehicle replacement program and establishes funding for the procurement of new
12 vehicles through the budget process. The Coordinator purchases vehicle supplies and
13 equipment in accordance with the district's purchase order process. The Director of
14 Finance approves all purchase orders.

15 The Transportation Coordinator maintains appropriate documentation of
16 schedule routes, student files, van maintenance records and other information
17 necessary for the transportation operations. The Coordinator administers all aspects of
18 the fee-based transportation program including parent outreach and notification,
19 establishing the fee, processing waiver requests, collection of payments and refunds
20 using the automated online payments. The Coordinator also serves as a back-up driver
21 in emergency situations.

22 The Transportation Coordinator works in the Wellesley Public School District
23 business office on Kingsbury Street with the five unchallenged petitioned-for Accounting

1 Coordinator positions. When the Transportation Coordinator is unavailable, the
2 Accounting Coordinator for Accounts Payable covers transportation phone calls. The
3 Transportation Coordinator and Accounting Coordinator positions all report to the
4 Director of Finance and Business Operations. The Transportation Coordinator received
5 a salary of \$69,351 in 2013, and subsequently negotiated an increase to \$75,000 after
6 he indicated that he had a competing employment offer.

7 **Scheduling, Operations and Data Coordinator**

8 The Scheduling, Operations and Data Coordinator (SODC) is responsible for
9 scheduling approximately fourteen hundred Wellesley Public School students using a
10 computer software program. The SODC compiles and publishes an annual program of
11 studies and works with the high school principal, assistant principal, and department
12 heads to make changes to the schedule. The SODC creates special sections for
13 independent studies and special education.

14 The SODC also coordinates the scheduling, grading, tracking, and provision of
15 materials to students in the Virtual High School (VHS). The SODC works with parents
16 and students informing them of students' VHS course status and advocates for enrolled
17 students with VHS registration and teachers. The SODC works closely with the
18 Wellesley Facilities Department, in-house custodians, and local officials to ensure the
19 maintenance of the school. The SODC compiles maintenance requests, and researches
20 activity on the security cameras as needed. The SODC distributes identification badges
21 and keys, assigns and distributes parking tags to faculty and students. The SODC
22 manages the notification of students regarding outstanding dues and parking tickets.

1 The SODC programs the bells and door release schedules, and creates and distributes
2 emergency exit plans.

3 The SODC provides the superintendent, principal, assistant principals, and
4 department heads with data reports, including budgeting reports, achievement gap
5 analysis, trends on course sign ups, percentages of building use, and Massachusetts
6 Comprehensive Assessment System (MCAS) score analysis. The SODC enters
7 necessary data into a computer software program, including editing dates for report
8 cards, counselor information, annual calendars, years and terms.

9 The SODC is also responsible for the coordination of all financial aspects of
10 student activities and tracks finances in spreadsheets. The SODC trains student
11 advisors, parent volunteers and teacher advisors, and works with the business office to
12 ensure all finances are properly processed according to Massachusetts laws. The
13 SODC is also responsible for the collection of annual student activity fees.

14 The SODC is responsible for all activities involved with MCAS administration,
15 including ordering materials, training personnel, arranging spaces, and returning
16 materials. The SODC also assists in the ordering and distribution of alternative
17 assessment and ACCESS exams, and distributes MCAS results to department heads
18 and assists them in finding and analyzing items to improve teaching and learning.

19 The SODC works directly with the principal and department heads to prepare the
20 annual high school capital and operating budget. The SODC analyzes average class
21 size growth to determine estimated teacher and student needs. The SODC exports
22 class size and staff data from computer databases to aid the budgetary decision
23 process. The SODC tracks purchase orders throughout the year and the monies spent

1 from the high school principal's budget, and provides the administration and department
2 heads with monthly budget reports. The SODC additionally relieves teachers during
3 lunch duty each day. The SODC contacts the Transportation Coordinator, as well as the
4 business office during the performance of his or her duties, and works ten months of the
5 year.

6 The SODC office is located in the Wellesley High School, and the position is
7 supervised by the high school principal. Karen Archambault (Archambault) has filled the
8 position since its creation in approximately 2008. Archambault has earned a Master's
9 degree in Education specializing in educational research, measurement and evaluation.
10 Archambault earns approximately \$70,000 as the SODC.

11 **Administrative Assistant, Director of Curriculum and Instruction**

12 The Administrative Assistant to the Director of Curriculum and Instruction
13 (AADCI) performs a variety of administrative and secretarial duties and carries out
14 various assignments that are an extension of the Director of Curriculum and
15 Instruction's responsibilities. The AADCI's work involves knowledge of departmental
16 practices and procedures and the incumbent is: expected to: alert the Director of
17 Curriculum and Instruction to matters requiring attention; anticipate, undertake and
18 accomplish office tasks without supervision; and use tact and diplomacy in
19 communication at all times. The incumbent works with department heads, teachers,
20 administrative officials, citizens and some outside agencies as well as supervising and
21 managing the work flow for one administrator, five faculty and three support staff.

22 The AADCI's tasks include: assisting the Director of Curriculum and Instruction in
23 general administration operations; serving as liaison and information coordinator among

1 curriculum leaders, staff, grade level leaders, and committees; managing expenses and
2 personal services budgets and various grants including purchase orders, staff time
3 sheets, and monthly status summaries; preparing announcements for the
4 Superintendent's Bulletin and responding to inquiries regarding announcements;
5 reading grant proposals and recommending timeline of tasks for implementation. The
6 AADCI responds to inquiries when the Director of Curriculum and Instruction is absent.
7 The AADCI also manages calendar, notifications, and records for committees such as
8 the curriculum steering committee.

9 The AADCI assists the Director of Curriculum and Instruction in preparation of
10 reports and presentations such as the annual report to School Committee on MCAS
11 results, annual report on professional development, and curriculum review reports. The
12 AADCI also assists in collecting and organizing school/district data as well as
13 maintaining the professional development online system soliciting course proposals,
14 creating new user accounts, entering course offerings, tracking attendance and issuing
15 development credits. The AADCI acts as a liaison between the school district and
16 outside professional development vendors and organizations.

17 The AADCI serves as a district-wide resource for development of SurveyMonkey
18 surveys, and assists in the preparation of Massachusetts Department of Elementary
19 and Secondary Education grant proposals. The AADCI administers the following
20 budgets and regularly advises the Director of Curriculum and Instruction regarding their
21 status: C&I, New Classroom, District-Wide Professional Development, Production
22 Center, C7I Workshops, ELL, and state and federal grant budgets. The AADCI assists
23 elementary coordinators with ordering, working with consultants and scheduling

1 candidate interviews as necessary. The AADCI processes all regular education
2 translations/interpreter requests, acts as liaison between Wellesley Public Schools and
3 the outside translation organization, analyzes and enforces translation protocol district-
4 wide to help minimize costs. The AADCI also secures facilities for various functions that
5 occur within the Curriculum and Instruction Department.

6 The AADCI maintains the Director of Curriculum and Instruction's appointment
7 book, schedules and arranges appointments and meetings, and reminds the Director of
8 appointments. The AADCI reads incoming mail, assembles and drafts appropriate
9 replies to parents and staff independently as well as with brief notes from the Director of
10 Curriculum and Instruction. The AADCI maintains publications, curriculum, and
11 assessment reports, records, and files, as well as safeguards information. The AADCI
12 receives, places and screens telephones calls for the Director of Curriculum and
13 Instruction.

14 The AADCI supervises and evaluates personnel in the production center, which
15 includes three employees in the existing WEPSA clerical and secretarial Unit A. The
16 AADCI estimates personnel needs, recruits, interviews and recommends hiring or
17 dismissal of employees under her supervision. The AADCI observes and appraises
18 employees under her supervision and confers with the Director as to their capability and
19 performance. As necessary, the AADCI problem solves and balances the work flow
20 between production demands and secretarial support in the production center. The
21 AADCI works twelve months a year.

22 Anne Allieri (Allieri) currently holds the AADCI position. Allieri is privy to the
23 money allocated to professional development as well as information regarding teacher

1 evaluations. Allieri takes notes while the Director of Curriculum and Instruction has
2 meetings with teachers, and also takes notes while speaking with parents regarding
3 student issues. The Director of Curriculum and Instruction discusses teacher
4 disciplinary matters and student matters with Allieri. The Director of Curriculum and
5 Instruction does not play a role in collective bargaining.

6 **Administrative Assistant to the Director of Student Services**

7 The Administrative Assistant to the Director of Student Services (AADSS) works
8 under the direction of the Director of Student Services and performs a variety of
9 administrative and secretarial duties and carries out various assignments that are an
10 extension of the Director's responsibilities. The AADSS work involves knowledge of
11 departmental practices and procedures and the incumbent is required to develop and
12 refine her own work procedures and carry out assignments through completion
13 independently. The AADSS is expected to: alert the Director of matters that require
14 his/her attention, use tact and discretion in communication at all times, undertake and
15 accomplish most areas of accountability with a minimum of supervision, and to respect
16 and maintain the confidential nature of information and communication pertinent to the
17 work of the Student Services Department. The AADSS manages the work flow for an
18 office, which includes the Director, the Department Head for Preschool and Elementary
19 Special Education, the Department Head of School Nursing, and the Preschool TEAM
20 Leader as well as the other staff and supervises the secretary supporting these staff
21 people.

22 The AADSS assists the Director of Student Services in general administration
23 operations. The AADSS serves as liaison and information coordinator among Student

1 Services staff, staff in other systems, parents, and the general public. The AADSS
2 responds to inquiries from all levels and exchanges information when the Director of
3 Student Services is absent. The AADSS serves as information coordinator for the
4 Student Services staff and disseminates information to two hundred plus staff and
5 provides timely responses. The AADSS maintains the Student Services operating
6 budget, including processing bills from vendors, maintaining expense budgets, and
7 generating purchase orders for services and materials for all administrators in the office.
8 The AADSS maintains budgets for all grant monies under the responsibility of the
9 Director of Student Services, and maintains the work flow for the Director and the other
10 administrators in the office, prioritizing and distributing work to the Department
11 Secretary as needed. The AADSS also maintains all system-wide student records
12 according to the Massachusetts Record Regulations, including the dissemination and
13 destruction of records maintained by the Guidance and Special Education Departments.
14 The AADSS oversees system-wide technology needs and requests for technical
15 support related to the use of software for special education. The AADSS prepares
16 reports required by the Department of Education related to special education. The
17 AADSS oversees responses and record keeping related to various responsibilities of
18 the Director, including open enrollment requests and home schooling requests.
19 Additionally, the AADSS supports the planning and implementation of staff and parent
20 informational events including regularly scheduled Parent Advisory Council meetings.

21 The AADSS uses a variety of computer applications to prepare correspondence,
22 produce mass mailings, and maintain office records and prepares the special education
23 budgets. The AADSS maintains the Director of Students Services schedule, including

1 arranging appointments and meetings. The AADSS screens incoming mail, routes to
2 appropriate staff, and assembles and attaches appropriate correspondence for replies.
3 The AADSS also receives, places, and screens telephone calls for the Director of
4 Student Services. The AADSS safeguards information related to special education and
5 student records pertaining to medical, family, and criminal information. The AADSS
6 maintains and updates computer records, and prepares documents for the Special
7 Education Appeals process. The AADSS is privy to potential discipline regarding
8 teachers with students who are disabled or on Individual Education Plans.

9 The AADSS supervises and evaluates a department secretary. In conjunction
10 with the Kindergarten-5th grade Special Education Department Head, the AADSS
11 estimates personnel needs, recruits, interviews and recommends the hiring or dismissal
12 of employees under her supervision. Also in conjunction with the Kindergarten-5th grade
13 Special Education Department Head, the AADSS observes and appraises employees
14 under her supervision and confers with the Director of Student Services as to their
15 capability and performance. The AADSS additionally problem solves and balances the
16 work flow in the Student Services Office, and performs various assignments which are
17 extensions of the Director's responsibilities, as needed.

18 The Administrative Assistant for the Director of Student Services has some work
19 contact with the Transportation Coordinator in connection with transportation issues for
20 special education students. The AADSS works in or near the Wellesley Public School
21 District central office on Kingsbury Street in Wellesley, twelve months a year.

1 petitioned-for positions. We begin with the well-established standards for excluding
2 employees based on these criteria.

3 **Managerial Exclusion.**

4 Massachusetts General Law Chapter 150E (the Law) Section 1 contains the
5 following three part test to determine whether an individual is a “managerial” employee:

6 Employees shall be designated as managerial employees only if they (a)
7 participate to a substantial degree in formulating or determining policy, or
8 (b) assist to a substantial degree in the preparation for or the conduct of
9 collective bargaining on behalf of a public employer, or (c) have a
10 substantial responsibility involving the exercise of independent judgment
11 of an appellate responsibility not initially in effect in the administration of a
12 collective bargaining agreement or in personnel administration.

13 An employee must be excluded from an appropriate bargaining unit under Section 3 of
14 the Law if the person’s actual duties and responsibilities satisfy any one of the three
15 statutory criteria referenced above. Town of Manchester-by-the-Sea, 24 MLC 76, 81,
16 MCR-4511 (March 6, 1998).

17 **Confidential Exclusion.**

18 Section 1 of the Law defines the “confidential” exclusion as follows:

19 Employees shall be designated as confidential employees only if they
20 directly assist and act in a confidential capacity to a person or persons
21 otherwise excluded from coverage under this chapter.
22

23 The Board has construed this statutory language to exclude those individuals who have
24 a direct and substantial relationship with a managerial employee, so there is a legitimate
25 expectation of confidentiality in their routine and recurrent dealings. Town of Medway,
26 22 MLC 1261, 1269, MCR-4350 and 4352 (October 23, 1995). Regular exposure to
27 confidential material directly related to labor relations policy or equally sensitive policy
28 information while directly assisting an excluded employee is grounds for finding an

1 employee confidential. North Attleborough Electric Department, 32 MLC 66, MCR-04-
2 5091 (June 29, 2005). Access to sensitive financial and personnel records alone is
3 insufficient to designate an employee confidential. Town of Medway, 22 MLC at 1270.
4 This exclusion has been narrowly interpreted to exclude as few employees as possible,
5 while not unduly hindering the employer's operations. Silver Lake Regional School
6 Committee, 1 MLC 1240, 1243, CAS-163 (January 13, 1975). It is helpful to recognize
7 that employees may directly assist excluded employees without assisting them in a
8 'confidential' capacity. University of Massachusetts, 3 MLC 1179, 1204, SCR-2079,
9 2082 (October 15, 1976).

10 **Community of Interest.**

11 Section 3 of the Law requires the Board to determine appropriate bargaining
12 units that are consistent with the purpose of providing for stable and continuing labor
13 relations while giving due regard to the following considerations: 1) community of
14 interest; 2) efficiency of operations and effective dealings; and 3) safeguarding the
15 rights of employees to effective representation. City of Everett, 27 MLC 147, 150-151,
16 MCR-4824 (May 23, 2001); Town of Bolton, 25 MLC 62, 65, MCR-4562 (September 10,
17 1998). To determine whether employees share a community of interest, the Board
18 considers factors like similarity of skills and functions, similarity of pay and working
19 conditions, common supervision, work contact, and similarity of training and experience.
20 Princeton Light Department, 28 MLC 46, 48, MCR-4803 (June 29, 2001); Town of
21 Bolton, 25 MLC at 65; Boston School Committee, 12 MLC 1175, 1196, CAS-2598
22 (August 30, 1985). No single factor is outcome determinative. City of Springfield, 24

1 MLC 50, 54, MCR-4602 (January 15, 1998); City of Worcester, 5 MLC 1108, 1111,
2 MCR-2632, 2633, 2685-88 (June 30, 1978).

3 The Board places employees with common interests in the same bargaining unit
4 to avoid a proliferation of units that would place an unnecessary burden on the
5 employer and to maximize the collective strength of employees in the bargaining
6 relationship. Plymouth County Sheriff's Department, 29 MLC 39, 42, CAS-3434, 3461
7 (August 1, 2002). The Board's preference for broad comprehensive units is balanced by
8 the Board's concern that a unit should not include employees so diverse as to produce
9 inevitable conflicts in the collective bargaining process. Id. Only significant differences
10 that would result in inevitable conflicts constitute a basis for excluding employees from a
11 bargaining unit on the grounds that the employees lack a community of interest with
12 other bargaining unit members. West Boylston Water District, 25 MLC 150, 151, MCR-
13 4706 (April 1, 1999)(including in a bargaining unit a part-time secretary position, that
14 performs general clerical duties indoors, as well as full time superintendent, laborer, and
15 foreman positions, that work alongside each other outdoors, because there were no
16 significant differences among the positions that would result in inevitable conflict and
17 because the Board traditionally rejects the creation of smaller units). Community of
18 interest does not require an identity of interest – the employees need only be similarly
19 situated not identically situated. University of Massachusetts, 4 MLC 1384, 1392, SCR-
20 2070 (October 18, 1977).

21 **Supervisory Employees.**

22 The Law does not exclude supervisory employees from participation in collective
23 bargaining. University of Massachusetts, 3 MLC at 1204. The Board does consider the

1 supervisory status of employees to be relevant to a determination of whether such
2 employees are appropriately placed in the same bargaining unit with other employees.
3 Id. The Board generally establishes separate bargaining units for supervisory
4 employees and the employees that they supervise. City of Chicopee, 1 MLC 1195,
5 1196, MCR-1228 (November 18, 1974); Town of Easton, 31 MLC 132, 146, MCR-03-
6 5064 (March 10, 2005). This well-established policy is rooted in the belief that
7 individuals who possess significant supervisory authority owe their allegiance to their
8 employer, particularly in areas of discipline and productivity. City of Westfield, 7 MLC
9 1245, 1250, MCR-2912 (August 28, 1980). Therefore, rather than place supervisors in
10 the untenable position of having to discipline employees on who they rely to secure
11 improved economic benefits and working conditions through the collective bargaining
12 process, the Board places supervisors in separate bargaining units. Town of Easton, 31
13 MLC at 147.

14 Transportation Coordinator

15
16 The School Committee argues that the Transportation Coordinator should be
17 excluded from the unit because he: 1) satisfies the criteria for a managerial employee
18 under the first and third prongs of the managerial test,⁴ and 2) does not share a
19 community of interest with the other bargaining unit members.

20 *Managerial Exclusion – First prong:* To be considered a managerial employee
21 under the first prong of the managerial test, the employee must make policy decisions
22 and determine mission objectives. City of Boston, (Boston Public Library), 37 MLC 1, 9

⁴ The School Committee does not argue that the Transportation Coordinator assists in collective bargaining. We therefore do not address the second prong of the managerial test.

1 (2010 (citing Wellesley School Committee, 1 MLC 1299, 1401 (1975) *aff'd sub. nom.*
2 School Committee of Wellesley v. Labor Relations Commission, 376 Mass. 112 (1978)).
3 The policy decisions must be of major importance to the mission and objective of the
4 public employer, Wellesley School Committee, 1 MLC at 1403, and the employee must
5 participate in the policy decision-making process on a regular basis. Town of Plainville,
6 18 MLC 1001, 1009 (1991). Further, to be considered as policy, the decision must
7 impact a significant part of the public enterprise. Worcester School Committee, 3 MLC
8 1653, 1672, MUP-2044 (April 29, 1977). Neither limited participation in the decision-
9 making process, nor attending and participating in policy-making discussions is
10 sufficient to render an employee managerial, if the employee's input is merely
11 informational or advisory in nature. Town of Medway, 22 MLC 1261, 1268 (1996); Town
12 of Wellfleet, 11 MLC 1238, 1241 (1984). To meet the standards established in the first
13 part of this test, it must also be shown that the employee functions at levels of
14 administration where decisions and opinions will not be screened by another layer of
15 administration before being implemented. Holyoke School Committee, 4 MLC 1607,
16 1610 (1977).

17 The School Committee defines its mission as safeguarding the well-being and
18 education of students and claims that the Transportation Coordinator's discretion to
19 ensure the safe and effective transportation of students to and from school, and effect
20 policies and procedures in support of that purpose is a significant aspect of its mission.
21 Although Mr. McGoldrick's duties may be critical to the transportation services the
22 School Committee provides, we disagree that they render him a managerial employee
23 under the principles set forth above.

1 As a threshold matter, we note that the School Committee provided no copies of,
2 or details about, any policies that the Transportation Coordinator has drafted. Further,
3 the majority of the Transportation Coordinator's responsibilities, such as bus routing and
4 scheduling, department budgeting, ensuring compliance with state and federal safety
5 and emission regulations, overseeing transportation maintenance, purchasing supplies,
6 maintaining drivers' files, and administering the fee-based transportation program, while
7 important, are administrative and operational in nature and do not constitute policy-
8 making.

9 As to the Coordinator's other duties, there is evidence showing that the
10 Transportation Coordinator established two policy-related initiatives, driver protocols
11 and expectations for student behavior on buses. However, as noted above, the School
12 Committee provided no copies of these policies or explained what they entail beyond
13 what their names would seem to suggest. As such, the School Committee has failed to
14 establish that the scope of the School Coordinator's discretion with respect to these two
15 initiatives is significant in relation to the objective of the Wellesley Public Schools. Nor
16 has it otherwise shown that his discretionary role with respect to other aspects of his
17 job, such as driver training, creating bus routes, monitoring vendor contracts and
18 maintenance of vehicles and supplies, has any impact on education policy or otherwise
19 impacts a significant part of the public enterprise even if it undoubtedly has some impact
20 on student well-being. See Wellesley School Committee, 1 MLC at 1403 (finding policy
21 determinations with respect to final examinations, schedules, bicycle use and safety
22 patrols not substantial determinations within the meaning of the Law).

1 The School Committee has further failed to show that the Transportation
2 coordinator functions at level of administration where his decisions and opinions will not
3 be screened by another layer of administration before being implemented. Thus,
4 although he oversees the regular transportation program, that program is run by a
5 private vendor. And, although he has control over the special education transport
6 program, his role is largely one of compliance with the transportation contracts that the
7 Director of Finance and Business has otherwise signed and issued. Similarly, the
8 decisions he makes with respect to purchasing are ultimately reviewed by Director of
9 Finance and Business Operations. Further, while he has input on his own budget, the
10 School Committee ultimately approves the budget and the record reflects just one
11 occasion in which the Transportation Director met directly with the School Committee to
12 discuss transportation matters. In this regard, the Transportation Coordinator's role is
13 easily distinguishable from the Library Director in Town of Manchester-by-the-Sea,
14 whom the Board found to be managerial based in part on her regular monthly meetings
15 with the Board of Library Trustees on "major policy issues." Town of Manchester-by the
16 Sea, 24 MLC at 81.

17 For all of these reasons, we conclude that the Transportation Coordinator is not a
18 manager under the first prong of the managerial test.

19 *Managerial Exclusion – Third Prong* - The School Committee next argues that
20 the Transportation Coordinator meets the standards established by the third part of the
21 test. To satisfy this prong, an employee must have the authority to exercise discretion
22 regarding personnel or collective bargaining issues without consultation or approval.
23 Town of Holden, 25 MLC 175, 177, MCR-4655 (May 18, 1999). A coincidence of

1 recommending and accepting by a higher authority is insufficient. Town of Manchester-
2 by-the-Sea, 24 MLC at 81 (citing Wellesley School Committee, 1 MLC at 1408)). To be
3 “substantial,” the responsibility must not be perfunctory or routine, it must have some
4 impact and significance. Id. The appellate authority must be exercised beyond the first
5 step in a grievance-arbitration procedure. Id. The exercise of supervisory authority to
6 insure compliance with the provisions of a collective bargaining agreement is
7 insufficient, standing alone, to satisfy this third part of the test. Town of Agawam, 13
8 MLC 1364, 1369, MCR-3511 (December 24, 1986).

9 The School Committee argues that the Transportation Coordinator has
10 independent decision-making authority in the operation of the transportation department
11 including the hiring of van drivers and training and discipline of transportation personnel
12 employed by the School Committee, however, all of his decisions regarding these
13 matters require approval by a higher authority. Independent judgment requires that an
14 employee exercise discretion without consultation or approval. Wellesley School
15 Committee, 1 MLC at 1408. Thus, although the fact that his hiring, disciplinary and
16 termination recommendations may be accepted by higher authorities may establish that
17 he is a supervisor, they do not render him managerial under the precedent cited above.
18 Town of Manchester-by-the Sea, 24 MLC at 81. Nor did the School Committee provide
19 any information showing that the Transportation Coordinator has substantial
20 responsibility involving the exercise of independent judgment of an appellate
21 responsibility not initially in effect with respect the grievance procedure or any personnel
22 actions. To the contrary, with respect to disciplinary and discharge matters, the
23 Coordinator acts as the decision-maker in the first, but not the final, instance.

1 We therefore conclude that the Transportation Coordinator is not a managerial
2 employee under the third prong of the test. and turn to the School Committee's claim
3 that the Coordinator lacks a community of interest with the other petitioned-for
4 bargaining unit members.

5 *Community of Interest* - The School Committee argues that the Transportation
6 Coordinator does not share a sufficient community of interest with other bargaining unit
7 positions, in terms of skills and functions and should be excluded on that basis. We
8 disagree. The School Committee does not dispute that a community of interest exists
9 among the five Accounting Coordinator positions it has agreed should be included in the
10 Unit B. Like these positions, the Transportation Coordinator is a twelve-month position,
11 reports to the Director of Finance and Business Operations, and works in the Wellesley
12 Public School District business office on Kingsbury Street. There is also some overlap
13 in duties in that an Accounting Coordinator position covers the Transportation
14 Coordinator's calls as the designated backup when the Transportation Coordinator is
15 unavailable. Further, although the School Committee argues that the Accounting
16 Coordinators have different skills and functions than the Transportation Coordinator,
17 there is some overlap in terms of responsibilities for budgets. In any event, the Law
18 requires a community, not an identity of interest. City of Quincy, 10 MLC 1027, 1033,
19 CAS-2508 (June 29, 1983).

20 The Transportation Coordinator also shares a community of interest with the
21 three other disputed titles in this proceeding, who, as discussed below, we find are also
22 appropriately included in the proposed unit. The Transportation Coordinator has some
23 work contact with the AADSS in connection with transportation issues for special

1 education students. The Transportation Coordinator and the petitioned for
2 Administrative Assistant titles have supervisory responsibilities over employees outside
3 the petitioned-for unit. Further, the Transportation Coordinator's \$75,000 annual salary
4 is comparable to the Scheduling, Operations, and Data Coordinator's \$70,000 salary.
5 While the Transportation Coordinator does not work standard business hours as
6 compared to the other Accounting Coordinators, we find the other similarities among the
7 petitioned-for bargaining unit positions sufficient to establish a community of interest.

8 Scheduling, Operations and Data Coordinator

9 The only argument the School Committee makes with respect to this title is that it
10 lacks a community of interest with the three other disputed positions and with the
11 agreed-upon Accounting Coordinator titles. We disagree.

12 The School Committee argues that this position is unique because it is in a
13 different location, works solely on high school operations, reports to the high school
14 principal, works approximately ten months a year on its own wage scale, and has
15 different training and skills. However, the evidence shows that the SODC position, like
16 the Accounting Coordinators and Transportation Coordinator, works out of a business
17 office. Its duties are similar to the Transportation Coordinator's duties and
18 responsibilities to the extent it ensures that all finances are properly processed; helps
19 prepare budgets and performs duties related to selecting vendors and procurement and
20 oversees maintenance and operations. The SODC's duties are also similar to the other
21 disputed titles' functions insofar as she performs general administrative operations
22 including data processing and financial coordination similar to the other positions'
23 functions. Additionally, the SODC works with parents as do the AADCI and AADSS

1 positions. The position has work contact with Transportation Coordinator and the
2 District business office personnel and similarly has more responsibilities than positions
3 in the existing bargaining unit, Unit A.

4 While the SODC position does work at the high school on a different schedule
5 and reports to a different supervisor than the petitioned-for other titles, the School
6 Committee did not show that the differences among the positions were significant so as
7 to result in inevitable conflicts. West Boylston Water District, 25 MLC at 151.
8 Furthermore, disallowing this title from the petitioned-for unit could result in a smaller
9 fragmented unit and place an unnecessary burden on the employer. Framingham
10 School Committee, 4 MLC 1298, 1305, CAS-2099, 2127 (September 15, 1977). For the
11 above reasons, we find that the Scheduling, Operations, and Data Coordinator is
12 appropriately included in the petitioned-for bargaining unit.

13 Administrative Assistant, Director of Curriculum and Instruction

14 The School Committee argues that the AADCI position is ineligible to be in this
15 bargaining unit because it is a confidential position, the position lacks a community of
16 interest with other petitioned-for positions, and the AADCI supervises three employees
17 in an existing WEPSA bargaining unit. After carefully reviewing the job duties,
18 responsibilities, and working conditions of the AADCI position, we find that the position
19 is eligible to be in this bargaining unit.

20 *Confidentiality.* The AADCI is not a confidential employee under the Law. As
21 stated above, to be excluded from a bargaining unit as a confidential employee, an
22 employee must have a direct and substantial relationship with a managerial employee,
23 so there is a legitimate expectation of confidentiality in their routine and recurrent

1 dealings. Town of Medway, 22 MLC at 1269. Employees who have significant access or
2 regular exposure to confidential information concerning labor relations matters,
3 management's position on personnel matters, or advance knowledge of the employer's
4 collective bargaining proposals are excluded as confidential. Town of Brookline, 30
5 MLC 71, 72, CAS-03-3550 (October 24, 2003).

6 Here, while there is evidence showing that the AACDI has a direct and
7 substantial relationship with the Director of Curriculum and Instruction, whom the parties
8 do not dispute is a managerial employee, the Director does not engage in collective
9 bargaining and the School Committee does not dispute that the AACDI is not regularly
10 exposed to labor relations policy or documents.

11 The School Committee nevertheless argues that the AACDI should be excluded
12 from the petitioned-for bargaining unit because she is exposed to other equally sensitive
13 policy information, such as the professional development budget, teacher evaluations
14 and discipline, and parents' concerns about teachers. We disagree. By itself access to
15 sensitive financial data, personnel records, or similar 'non-labor relations' material does
16 not constitute one a confidential employee. Silver Lake, 1 MLC at 1243 (finding
17 employees who have no exposure to confidential labor relations matters or policy
18 determinations shall not be excluded as confidential). While the AACDI assists the
19 Director of Curriculum and Instruction on these matters, there is no evidence that, as a
20 result of this working relationship the AACDI gains advance knowledge of the School
21 Committee's collective bargaining proposals or other sensitive labor relations or policy
22 information. Moreover, the School Committee has provided no case law and we have
23 found none demonstrating that exposure to this type of non-labor relations information,

1 while assisting a managerial employee, renders one confidential within the meaning of
2 the Law. In any event, even assuming that the type of teacher personnel information
3 the AACDI is exposed to may be described as “sensitive policy information,” the School
4 Committee did not show that the Director of Curriculum and Instruction has the sole
5 authority to conduct a teacher evaluation or discipline teachers such that the AACDI is
6 actually aware of any confidential or sensitive policy determination. Furthermore, there
7 is no evidence documenting the frequency of this type of exposure or that the AACDI
8 interacts with the Director in this capacity regularly or routinely. Similarly, although the
9 AACDI may be aware of finances relating to curriculum and instruction, this knowledge
10 does not provide her with access to management’s position on personnel matters or
11 advance knowledge of the employer’s collective bargaining proposals. See Board of
12 Higher Education, 33 MLC 12, 14, CAS-05-3613 (June 23, 2006)(excluding president’s
13 administrative assistant as confidential because, in addition to opening letters from the
14 vice president of administration and finance regarding financial matters, she received
15 faxes regarding proposed settlement agreements with bargaining units and from the
16 vice president of academic affairs regarding personnel matters including pending civil
17 rights complaints).

18 In sum, because the AACDI is not exposed to any confidential labor relations
19 information, has financial exposure to only curriculum and instruction related matters,
20 and, because there is no evidence that she has exposure to other types of “sensitive
21 policy information” on a routine or recurrent basis, we find the AACDI position should
22 not be excluded from the bargaining unit as a confidential employee.

1 *Community of interest.* The School Committee also argues that the AADCI
2 position lacks a community of interest with other petitioned-for bargaining unit members.
3 However, like the AADSS and Transportation Coordinator, the AADCI position works in
4 the Wellesley Public School District's central office on Kingsbury Street near other
5 petitioned-for positions, supervises other employees and communicates with parents.
6 She works with vendors, as does the Transportation Coordinator, and has similar skills
7 and job functions as the AADSS. Although there are some differences between the
8 AACDI and the other-petitioned for titles, School Committee has failed to show that
9 these differences would result in inevitable conflicts. West Boylston Water District, 25
10 MLC at 151.

11 *Supervisory.* The School Committee also argues that the AADCI should be
12 excluded from Unit B because the position supervises three employees in an existing
13 WEPSA bargaining unit. However, the Law does not exclude supervisory employees
14 from participation in collective bargaining. University of Massachusetts, 3 MLC at 1204.
15 Rather, supervisory status of employees is relevant to a determination of whether such
16 employees are appropriately placed in the same bargaining unit with other employees.
17 Id. The Board generally establishes separate bargaining units for supervisory
18 employees and the employees that they supervise. In this case, there is no evidence
19 that the AADCI supervises employees in the petitioned-for unit. Her supervisory duties
20 therefore provide no basis for exclusion.

21 Administrative Assistant to the Director of Student Services

22 Lastly, the School Committee argues that the AADSS position is ineligible for the
23 bargaining unit as a confidential employee. Our threshold inquiry is whether the AADSS

1 reports to an employee who is otherwise excluded from coverage under the Law. The
2 AADSS reports to the Director of Student Services, and there is no dispute that the
3 Director is a managerial employee within the meaning of Section 1 of the Law.

4 We next examine whether the AADSS has significant access or exposure to
5 confidential information within the meaning of Section 1 of the Law. We conclude that
6 she does not. There is no dispute that the AADSS does not have access to confidential
7 information concerning labor relations or advance knowledge of the employer's
8 collective bargaining proposals. The School Committee's argument is based on the fact
9 that the AADSS maintains sensitive student records pertaining to special education,
10 medical, family, and criminal information; communicates on behalf of the office
11 regarding special education matters; helps prepare the special education budget; and
12 she is privy to potential discipline regarding teachers with students who are disabled or
13 on Individual Education Plans. As stated above, however, access to sensitive financial
14 data, personnel records, or similar 'non-labor relations' material by itself does not
15 constitute one a confidential employee. Silver Lake, 1 MLC at 1243. Furthermore,
16 similar to the AADCI, the School Committee has not shown that the AADSS has routine
17 or regular access to confidential information concerning management's position on
18 personnel matters, including teacher discipline. The only evidence the School
19 Committee provided in this regard is that the AADSS may be privy to teacher
20 disciplinary matters – it provided no concrete evidence that she ever has been, or if she
21 has, whether these duties are of a routine and recurrent nature. Town of Medway, 22
22 MLC at 1269.

1 IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted to
2 determine whether a majority of employees in the above-described bargaining unit
3 desire to be represented by the Wellesley Educational Professional Support
4 Association.

5 The eligible voters shall include all those persons within the above-described
6 bargaining unit whose names appear on the School Committee's payroll for the payroll
7 period for the week ending the Saturday preceding the date of this decision and who
8 have not since quit or been discharged for cause.

9 To ensure that all eligible voters shall have the opportunity to be informed of the
10 issues and their statutory right to vote, all parties to this election shall have access to a
11 list of voters in each unit and their addresses which may be used to communicate with
12 them. The list of eligible voters must be provided either electronically (e.g. Microsoft
13 Access or Excel) or in the form of mailing labels.

14 Accordingly, IT IS HEREBY FURTHER DIRECTED that the election eligibility list
15 containing the names and addresses of all eligible voters must be electronically filed by
16 the School Committee with the Executive Secretary of the Department of Labor
17 Relations at: efile.dlr@state.ma.us, no later than fourteen (14) days from the date of this
18 decision.

19 The Executive Secretary shall make the lists available to all parties to the
20 election. Failure to submit the lists in a timely manner may result in substantial
21 prejudice to the rights of employees and the parties; therefore, no extension of time for
22 filing the lists will be granted except under extraordinary circumstances. Failure to

- 1 comply with this direction may be grounds for setting aside the election, should proper
- 2 and timely objections be filed.
- 3 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

MARJORIE F. WITTNER, CHAIR

ELIZABETH NEUMEIER, BOARD MEMBER

HARRIS FREEMAN, BOARD MEMBER