In the Matter of TOWN OF WINCHENDON

and

AFSCME, COUNCIL 93, AFL-CIO

Case No. CAS-3419

17.8	casual employee
34.2	community of interest
34.91	accretion
35.11	regular part-time employees
35.7	supervisory and managerial employees

June 4, 2001
Helen A. Moreschi, Chairwoman
Mark A. Preble, Commissioner

Marc Terry, Esq.	*Representing the Town of Winchendon*
Jennifer Springer, Esq.	*AFSCME, Council 93, AFL-CIO*

DECISION[1]

Statement of the Case

AFSCME, Council 93, AFL-CI0 (Union) filed a petition with the Labor Relations Commission (Commission) on September 15, 1999, seeking to accrete the position of planning coordinator into a bargaining unit of administrative and clerical employees employed by the Town of Winchendon (Town). The parties attended an informal conference at the Commission on February 25, 2000. The Town submitted a position statement on April 10, 2000. The Commission investigated the issues raised in the petition and, on October 23, 2000, provided the parties with a summary of the information adduced during the investigation. Further, because it did not appear that any material facts were in dispute, the Commission requested the parties to show cause why it should not resolve the unit placement issue based on the information summary. On November 21, 2000, the Town submitted a statement of material facts that it alleged were in dispute and a supporting affidavit. However, because the facts proffered by the Town were already provided to the Commission during its investigation and do not present a material dispute, the Commission will proceed to decide the appropriate unit placement of the planning coordinator position based on the information provided by the parties during the investigation.

Findings of Fact[2]

On September 22, 1993, the Commission certified the Union as the exclusive representative for administrative and clerical employees employed by the Town. The recognition clause of the current collective bargaining agreement describes the bargaining unit as: "all full time and regular part time administrative and clerical employees in the Town . . . as defined in . . . MCR-4233." That case described the bargaining unit as:

> All full time and regular part time administrative and clerical employees of the Town of Winchendon, including the town clerk, assistant town clerk, building inspector, wiring inspector, assessor's clerk, assistant collector/treasurer, police department secretary, library aides, town hall building superintendent, animal control officer, DPW clerk, veterans services director, plumbing/gas inspector, assessor, collector/treasurer clerk, payroll clerk, library director, library custodian and health agent, but excluding the administrative assistant, town accountant, collector/treasurer, DPW superintendent, police chief, fire chief and all managerial, confidential and casual employees and all other employees.

The Town created the planning coordinator position on or about July 1, 1999. The Town employed one individual in that position at $17.00 per hour for a total of nineteen hours per week from July 1, 1999 to June 30, 2000. The position was renewed for the 2000-2001 fiscal year. The planning coordinator performs the following job duties: 1) coordinates and assists the Planning Board in the development and maintenance of a master plan for the Town; 2) integrates the existing and future open space, economic development, and other relevant planning documents into the master plan; 3) assists the Town Manager and the Planning Board in the development and maintenance of a capital improvement program; 4) analyzes the existing zoning bylaws and subdivision regulations, including the development of an index for each regulatory document; 5) makes recommendations to the Planning Board to improve the effectiveness, clarity, and continuity of the bylaws and regulations; 6) coordinates the ongoing refinement of the land use regulation processes and procedures to provide a more effective and timely permitting process; 7) acts as liaison with the Town's mapping consultants to maintain the accuracy and timeliness of the Town's geographic information system; and 8) collects, organizes, and analyzes information regarding permits, licenses, orders, and other documents issued by the Town's agents for integration into future regulatory changes and permanent files.

Opinion

The Town contends that the planning coordinator position should not be accreted into the bargaining unit represented by the Union because the position: 1) is managerial; 2) does not share a community of interest with the existing bargaining unit; and 3) is casual. We will address each issue raised by the Town.

Managerial

Section 1 of M.G.L. c.150E, sets forth the criteria for determining whether an employee is a managerial employee:

> Employees shall be designated as managerial employees only if they (a) participate to a substantial degree in formulating or determining policy, or (b) assist to a substantial degree in the preparation for or the conduct of collective bargaining on behalf of a public employer, or (c) have a substantial responsibility involving the exercise of independent judgment of an appellate responsibility not initially in

1. Pursuant to 456 CMR 13.02 (1), the Commission has designated this case as one in which the Commission shall issue a decision in the first instance.

2. The parties have not contested the Commission's jurisdiction over this matter.

effect in the administration of a collective bargaining agreement or in personnel administration.

Under Section 3 of the Law, an employee must be excluded from an appropriate bargaining unit if the employee's actual duties and responsibilities satisfy any one of the three statutory criteria.

To satisfy the first statutory criterion, managerial employees must make policy decisions and determine mission objectives that are of major importance. *Wellesley School Committee*, 1 MLC 1389, 1400 (1975), *aff'd School Committee of Wellesley* v. *Labor Relations Commission*, 376 Mass. 112 (1978). Neither limited participation in the decision-making process nor attending and participating in policy-making discussions is sufficient to consider an employee managerial if the person's input is merely informational or advisory in nature. *Town of Medway*, 22 MLC 1261, 1268 (1995). Rather, this first criterion of a managerial employee "includes not only the authority to select and implement a policy alternative but also regular participation in the policy decision-making process." *Town of Plainville*, 18 MLC 1001, 1009 (1991).

Here, the Town argues that the planning coordinator is involved in numerous policy tasks directed toward developing a master plan and regulatory system for the Town. However, the information provided by the parties demonstrates that the planning coordinator coordinates and assists the Town Manager and the Planning Board in developing the master plan and regulatory system. These job duties do not show that the planning coordinator is involved in policy making to a substantial degree. Therefore, the planning coordinator is not a managerial employee according to the first statutory criterion.

To be considered a managerial employee under the second part of the statutory definition, a person must participate to a substantial degree in preparing for or conducting collective bargaining. *Commonwealth of Massachusetts*, 25 MLC 121, 124 (1999). The Commission has previously determined that the employee must either participate in actual negotiations or be otherwise involved directly in the collective bargaining process by preparing bargaining proposals, determining bargaining objectives or strategy, or have a voice in the terms of settlement. *Id.* Merely identifying problem areas to be discussed during bargaining or consulting about bargaining proposals is insufficient to warrant designating an employee as managerial. *Id.* Here, the planning coordinator does not participate in negotiations between labor and management and, therefore, is not a managerial employee under the second statutory criterion.

Under the third part of the statutory definition, the Commission has determined that the use of independent judgment requires that an employee exercise discretion without consultation or approval. *Id.* There must be more than a coincidence of recommendation and acceptance by a higher authority. *Wellesley School Committee*, 1 MLC at 1408. To be substantial, the responsibility must not be perfunctory or routine and must have some impact and significance. *Id.*; *Town of Plainville*, 18 MLC at 1009. Finally, the appellate authority must be exercised beyond the first step in a grievance-arbitration procedure. *Id.* The exercise of supervisory authority to insure compliance with the provisions of a collective bargaining agreement is insufficient, standing alone, to satisfy this third criterion. *Somerville Housing Authority*, MCR-4249, (slip op. March 2, 1994), *citing Town of Agawam*, 13 MLC 1364, 1369 (1986).

Here, there is no information indicating that the planning coordinator exercises independent judgment as required by the third statutory criterion. Accordingly, we conclude that the planning coordinator is not a managerial employee and decline to exempt the disputed position from coverage under the Law.

Accretion

In analyzing whether employees should be accreted into an existing bargaining unit, the Commission uses a three-step test. First, the Commission determines whether the position was included in the original certification or recognition of the bargaining unit. Second, if that examination is inconclusive, the Commission will examine the parties' subsequent conduct to determine whether the employee classifications were considered by the parties to be included in the unit. Finally, if that inquiry is also inconclusive, the Commission will examine whether the positions sought to be included in the unit share a community of interest with the existing positions. If the Commission determines that the requisite community of interest exists, it will accrete the petitioned-for employee into the existing bargaining unit. *Town of Dartmouth*, 22 MLC 1618, 1621 (1996).

Here, the Town created the program coordinator position on July 1, 1999, almost six years after the Commission certified the unit. Because the program coordinator position is newly created, there is no bargaining history. Thus, the first and second prongs of the accretion analysis are inconclusive, and we turn to examine the third prong.

To determine whether employees share a community of interest, the Commission considers factors like similarity of skills and functions, similarity of pay and working conditions, common supervision, work contact and similarity of training and experience. *Town of Somerset*, 25 MLC 98, 100 (1999). No single factor is outcome determinative. *Town of Ludlow*, 27 MLC 34 (2000). The Law requires that members of a bargaining unit share only a community of interest, not an identity of interest. *Id.*

Here, the Town argues that the planning coordinator does not share a community of interest with the existing unit because: 1) the position is a contract position, and the terms and conditions of employment of the existing unit are governed by the parties' collective bargaining agreement; and 2) the planning coordinator receives different compensation and benefits than the positions in the existing unit. However, the reasons proffered by the Town are insufficient to destroy community of interest with the existing unit. Moreover, the planning coordinator performs administrative duties similar to other positions in the existing unit. For example, one of the planning coordinator's functions is to develop and to maintain the Town's master plan and regulatory system. Similarly, the assessor assists in operating the Town's property appraisal system and the town clerk and assistant town clerk maintain the Town's official municipal records system. Further, the library director and the planning coordinator positions have similar educational qualifications because the incumbents in both positions must have

a bachelor's degree. Accordingly, we conclude that the planning coordinator position shares a community of interest with the existing bargaining unit.

Casual

The last issue raised by the Town is whether the planning coordinator position is casual and, therefore, inappropriate for inclusion into the bargaining unit. In determining whether a position is casual, the Commission examines continuity of employment, regularity of work, the relationship of the work performed to the needs of the employer, and the amount of work performed by the employees. *Town of Wenham*, 22 MLC 1237 (1995). Here, the planning coordinator regularly works nineteen hours per week. Further, the Town renewed the incumbent's contract for another fiscal year. *See, Worcester County*, 17 MLC 1352, 1359-1360 (1990). Thus, the planning coordinator position is not casual.

Conclusion

For the foregoing reasons, we conclude that the planning coordinator position is appropriately accreted into the bargaining unit represented by the Union. Accordingly, we amend the Commission's certification of representatives in Case No. MCR-4233 to include the planning coordinator position.

SO ORDERED.

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In the Matter of SUFFOLK COUNTY SHERIFF'S DEPARTMENT

and

AFSCME, COUNCIL 93, LOCAL 1134, AFL-CIO

Case No. MUP-1498

61.1	*standard of proof*
62.3	*discrimination*
62.6	*misconduct*
63.7	*discrimination - union activity*
65.2	*concerted activity*
82.12	*other affirmative action*
91.11	*statute of limitations*

June 4, 2001
Helen A. Moreschi, Chairwoman
Mark A. Preble, Commissioner

Melissa J. Garand, Esq.	*Representing the Suffolk County Sheriff's Department*
Gabriel O. Dumont, Esq.	*AFSCME, Council 93, Local 1134, AFL-CIO*

DECISION[1]

Statement of the Case

On April 18, 1996, AFSCME, Council 93, Local 1134, AFL-CIO (Union) filed a charge of prohibited practice with the Labor Relations Commission (Commission) alleging that the Suffolk County Sheriff's Department (Employer) had violated Sections 10(a)(5), (3) and (1) of Chapter 150E of Massachusetts General Laws (the Law). On October 22, 1996, following an investigation, the Commission issued a Complaint of Prohibited Practice alleging that the Employer had violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law by discriminating against Terry Zaferakis (Zaferakis) for engaging in protected, concerted activities.[2]

On January 17, 1997, July 17, 1997 and August 4, 1997, Mark A. Preble conducted a hearing at which both parties had a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Both parties filed post-hearing briefs. Commissioner Preble issued Recommend Findings of Fact on January 16, 2001. Neither party filed challenges to the Recommended Findings of Fact.

1. Pursuant to 456 CMR 13.02(1), the Commission has designated this case as one in which the Commission shall issue a decision in the first instance.

2. The Commission initially dismissed the charged. However, after the Union filed a request for reconsideration pursuant to 456 CMR 15.03(3), the Commission issued a complaint of prohibited practice alleging that the Employer violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law. The Commission affirmed its prior decision to dismiss those portions of the Union's charge alleging conduct that occurred outside of the Commission's six-month period of limitations and the Union did not seek judicial review. See, *Quincy City Hospital* v. *Labor Relations Commission*, 400 Mass. 745 (1987).