

In the Matter of GREATER LAWRENCE SANITARY DISTRICT
and
TRUCK DRIVERS & HELPERS UNION, LOCAL 170

Case No. MCR-06-5209

- 34.4 *efficiency of operation (fragmentation)*
34.2 *community of interest*
35.2 *confidential employees*
35.7 *supervisory and managerial employees*

March 4, 2008

Michael A. Byrnes, Chairman
John F. Jesensky, Commissioner
Paul T. O'Neill, Commissioner

Norman Holtz, Esq. *Representing the Greater Lawrence Sanitary District*

James Peters *Representing the Truck Drivers & Helpers Union, Local 170*

DECISION¹

Statement of the Case

On May 22, 2006, the Truck Drivers & Helpers Union, Local 170 (Union) filed a petition with the Labor Relations Commission (Commission) seeking to represent the following employees at the Greater Lawrence Sanitary District (Sanitary District or District): Finance Director, Maintenance Supervisor, Operations Manager, Maintenance Manager, Office Manager, and the Monitoring Manager.²

On July 24, 2006, July 25, 2006, August 11, 2006, and August 22, 2006, a duly-designated Commission hearing officer, Victor Forberger, Esq. (Hearing Officer), conducted a hearing at which all parties had the opportunity to be heard, to examine witnesses, and to introduce evidence.

The Union filed its post-hearing brief on November 14, 2006, and the Sanitary District filed its post-hearing brief on November 15, 2006.

Statement of Facts³

The following facts are derived from the parties' stipulations as well as testimonial and documentary evidence introduced during the hearing.

The Sanitary District is responsible for treating the wastewater and sludge from the Massachusetts communities of Lawrence, Methuen, Andover, and North Andover as well as from Salem, New Hampshire. The Sanitary District is also charged with monitoring the effluent from commercial operations on portions of the Merrimack River and for treating septage (the contents of septic tanks). The Sanitary District's main facility is located in North Andover, but it has metering and pump stations in all five communities that it serves.

Each community served by the Sanitary District appoints one or more Commissioners to a Board that oversees the operations of the Sanitary District. The Board of Commissioners meets at least monthly and more often when needed. There are several subcommittees charged with handling certain responsibilities between formal Board meetings and advising the full Board of Commissioners. The Board of Commissioners consists of eight individuals.

An Executive Director is charged with carrying out the directives of the Board of Commissioners. Since November of 2004, Richard Hogan (Hogan) has served as the Sanitary District's Executive Director. Hogan regularly works Monday through Friday, 8 AM to 4 PM.

As part of his job duties, Hogan heads up negotiations with the employee organizations at the Sanitary District. Hogan reports to the Board of Commissioners and works closely with a subcommittee for collective bargaining and personnel about bargaining positions and counteroffers. Hogan regularly advises the subcommittee and the full Board of Commissioners during negotiations about the issues being discussed. When negotiations are underway, Hogan obtains the permission of the Board of Commissioners about what monetary offers and proposals the Sanitary District can offer or accept.

The Sanitary District negotiates with two employee organizations: the Association and the Union. On May 9, 1980, the Commission certified the Association as the bargaining representative for a unit consisting of operations and maintenance employees (Case No. MCR-3043). On June 2, 1995, the Commission certified the Association as the bargaining representative for laboratory technicians (Case No. MCR-4340). The Association and the Sanitary District traditionally negotiate one collective bargaining agreement for both bargaining units. The most recent collective bargaining agreement between the Association and the Sanitary District is effective by its terms from July 1, 2004 to June 30, 2007.⁴

On February 3, 1997, the Commission certified Teamsters Local Union No. 437 as the bargaining representative for specs and records employees and the senior operators who supervise operators

1. Pursuant to the Notice of Hearing, the Commission has designated this case as one in which the Commission shall issue a decision in the first instance.

2. As described below, the Union already represents other Sanitary District employees. Because the Greater Lawrence Sanitary District Employees Association (Association) is also a bargaining representative at the Sanitary District, it was notified on May 31, 2006 of the Union's petition and the Commission's Notice of Hearing. The Association did not file a response.

3. The Commission's jurisdiction in this matter is uncontested.

4. The bargaining units represented by the Association include 12 operators as well as 16 maintenance and laboratory personnel.

(Case No. MCR-4505).⁵ In April of 2001, Teamsters Local Union No. 437 merged with the Union, and the Sanitary District subsequently recognized the Union as the bargaining representative for this unit. The most recent collective bargaining agreement between the Union and the Sanitary District is effective by its terms from July 1, 2004 to June 30, 2007.⁶

The only Sanitary District employees currently not represented for purposes of collective bargaining are the following: the Executive Director, the Operations Manager, the Wastewater Engineer, the Maintenance Manager and the Maintenance Supervisor, the Monitoring Manager, the Finance Director, the Staff Accountant, the Office Manager, and an Administrative Assistant.⁷ All these employees have access to e-mail communication, and Hogan will often correspond with these individuals through e-mail messages.

The Sanitary District's main facility contains treatment and monitoring equipment. Most of the Sanitary District's personnel work in an administration building or a process and maintenance building connected to the administration building. The first floor of the administration building houses a locker room and lunch room for Association and current Union personnel as well as a laboratory. The second floor of the administration building houses the Sanitary District's finance and administrative staff. Hogan's office is here along with a second, smaller lunch room, a set of restrooms, offices for almost all the personnel subject to this petition, and a large office shared by administrative support staffers.

To accomplish its sewage abatement and treatment work, the Sanitary District must plan for capital improvements and regular maintenance of its facilities. The Wastewater Engineer, Richard Weare (Weare), coordinates the operation of the Sanitary District's capital improvement projects that are handled by outside vendors.⁸ In light of his expertise in wastewater treatment and plant construction, Weare recommends changes to current projects, makes plans for future projects, and offers advice to the Board of Commissioners about projects that are being put out for bid. Weare also consults with a subcommittee of the Board of Commissioners about changes to ongoing projects that cost less than \$25,000. Weare has an advanced four-year engineering degree, a requirement for his position, and has been with the Sanitary District since 2000 or 2001. Weare's annual salary is between

\$70,000 to \$80,000, and he regularly works from 7:30 AM to 3:30 PM, Monday through Friday.

When an issue with Sanitary District operations or maintenance warrants it, Hogan will call a staff meeting. The Operations Manager, Maintenance Manager or Maintenance Supervisor or both, and the Finance Director almost always attend these staff meetings. The Office Manager, the Wastewater Engineer, and the Monitoring Manager also will occasionally attend these staff meetings when the issue being discussed merits their attendance.

Operations Manager

Stephen Harwood (Harwood) has served as the Operations Manager at the Sanitary District since 1996. He previously served as a senior operator and operator, and has been with the Sanitary District for eighteen years. Harwood's annual salary is approximately \$60,000. He regularly works Monday through Friday, 6:30 AM to 2:30 PM. While Harwood has been in the position for several years, Hogan first evaluated Harwood's job performance in January of 2006.

Harwood directly oversees four senior operators who belong to the Union's supervisory unit.⁹ Harwood issues oral or written warnings when disciplinary situations arise among the operators and senior operators, and he advises Hogan about situations that might require more severe discipline. When requested by the Sanitary District and its labor counsel, Harwood investigates the actions of employees. Additionally, Harwood is responsible for screening candidates for operator and senior operator vacancies or promotions and doing initial interviews. In consultation with Harwood, Hogan selects the candidate to recommend to the Board of Commissioners for hiring. Harwood conducts annual performance evaluations for the four senior operators, the microbiologist, and the senior craftsman/custodian. Those evaluations affect these employees' longevity pay.¹⁰

Harwood has an office on the second floor of the administration building and usually eats his lunch in the second-floor cafeteria. Harwood typically begins his work day with a review of lab data and a tour of the facility. In addition, he regularly communicates with state and federal regulatory authorities about Sanitary District operations and either meets with Hogan or communicates with him via e-mail messages two to three times a day. Throughout the

5. During the hearing, the parties agreed that the senior operators were supervisors. In its brief filed after the record was closed, the Sanitary District added that the job duties of the specs and records coordinator had changed since the Commission first certified this unit. The Sanitary District did not explain what that change entailed. A review of the file in Case No. MCR-4505 reveals that: (a) two specs and records coordinators reported to the Maintenance Manager, exercised no supervision over other employees, and were primarily responsible for maintaining contract records and for responding to informational inquiries; and (b) four senior operators were responsible, in part, for assigning work to operators and inspecting that work.

6. This bargaining unit consists of four senior operators and one specs and records coordinator.

7. The Executive Director, Wastewater Engineer, Staff Accountant, and Administrative Assistant positions are not subject to the Union's petition at issue here. Where relevant, brief descriptions of these three positions are provided.

8. A project budgeted at approximately \$19 million is currently underway at the Sanitary District.

9. The senior operators, paid hourly, direct the work of operators, conduct performance evaluations of operators, identify maintenance tasks that need to be scheduled, and consult with Harwood on operational emergencies that arise when Harwood is not working (the senior operators provide twenty-four hour coverage of Sanitary District operations). Harwood also oversees the work of a microbiologist and a senior craftsman/custodian represented by the Association.

10. The collective bargaining agreements that the Sanitary District has negotiated with the Association and the Union provide for step increases that are tied to satisfactory job performance. After employees have reached their highest eligible step increase, the collective bargaining agreements make longevity pay available to Association and Union members. The amount of longevity pay varies by years of service and by the employee's performance evaluation rating (employees receive between 50 and 150 percent of their base annual longevity pay benefit relative to their performance evaluation). Longevity pay and step increases are also available to non-unit personnel. As with unit employees, the specific amount varies by years of service and by the employee's performance evaluation rating.

day, Harwood meets with operators and senior operators to discuss plant operations. Harwood also meets often with the Maintenance Manager to discuss the impact of needed maintenance on plant operations. When emergencies require shutdowns of all or part of the Sanitary District's operations, Harwood immediately apprises Hogan of the problems and speaks with the Maintenance Manager about what repair work might be needed to get the Sanitary District fully operational again. As described below, Harwood also has shared responsibility with the Maintenance Manager for handling project bids on new equipment needed for Sanitary District operations, and Harwood works with the Office Manager on bid-related correspondence.

Harwood is responsible for preparing the operations budget of the Sanitary District in consultation with the Finance Director and Hogan. Because of Harwood's extensive experience and technical knowledge in wastewater treatment, he also prepares and maintains the general operations manual for the Sanitary District. Due to the changes that weather, water flow, and plant conditions have on water treatment operations, operators and senior operators must still utilize their expertise in applying the protocols set forth in the manual. Furthermore, Harwood does not make significant changes to the Sanitary District's operations without consulting with Hogan and discussing options. Hogan also will direct Harwood to take remedial action when Sanitary District operations are not in compliance with state and federal requirements.

Harwood regularly attends collective bargaining negotiations with the Association and the Union and critiques proposals during management caucuses. During the last round of negotiations, Harwood prepared and drafted proposals for handling overtime among the operators and the senior operators. After Hogan had reviewed those proposals, he recommended that the Board of Commissioners adopt the proposals. After the Board of Commissioners had approved the proposals, Hogan presented the proposals during contract negotiations, and Harwood answered questions from Union and Association representatives during the negotiations and informally outside of specific bargaining sessions. Harwood also occasionally attends meetings of the Board of Commissioners' subcommittee on collective bargaining and personnel.

Harwood also serves as the first-step decision-maker for grievances from operations employees. Additionally, Harwood chairs the Sanitary District's safety committee,¹¹ which proposes for Hogan's approval final safety policies for plant operations and prepares reports on workplace-related injuries. When accidents occur, the safety committee attempts to determine the cause of the accident and to correct the problem. The safety committee also reviews safety concerns that employees bring before it. There is nothing in the record regarding the safety committee's involve-

ment in any grievances over safety matters. Harwood is responsible for making sure operations personnel attend state-required operator training and works with the Office Manager and the Microbiologist in scheduling that training.¹²

When Hogan is on vacation, Harwood assumes Hogan's responsibilities for checking off several employees' timesheets, signing off on small purchases, and handling disciplinary matters. Harwood, however, will not make any decisions that will have a continuing impact on the operations of the Sanitary District or that Harwood believes Hogan should handle when he returns.¹³ For example, in a disciplinary matter involving two or more employees, Harwood will suspend all involved employees pending further investigation after Hogan has returned. When Harwood is out on vacation, Hogan temporarily assumes his duties. Because Hogan values Harwood's judgment and expertise, Hogan puts off any major decisions regarding plant operations while Harwood is away, so he can assess the issue himself.

Harwood possesses the required license to serve as an operator for the Sanitary District. A four-year college degree is unnecessary for the Operations Manager position. Harwood's job description specifies that he works under Hogan's direction and lists his job duties, including: directing and administering the operation of the Sanitary District's facilities; reviewing plant operations and determining changes that will improve plant performance; recommending and implementing operations procedures; inspecting plant operations and performance and directing personnel when adjustments are needed; directing the process and analysis of control sampling and coordinating these efforts with the monitoring lab; overseeing the training of operating personnel; resolving grievances and personnel problems; and maintaining plant safety.

Maintenance Manager

Donald Lanza (Lanza) has served as the Maintenance Manager at the Sanitary District since approximately 1992, has been with the Sanitary District since approximately 1987, and is a licensed electrician in Massachusetts and New Hampshire.¹⁴ He regularly works from 7:30 AM to 3:30 PM, Monday through Friday, and is paid a salary of approximately \$70,000. Lanza has an office on the second floor of the administration building and often eats lunch in the second-floor lunch room. He has a computer with access to e-mail. Lanza reports directly to Hogan, and Hogan conducts Lanza's annual performance evaluation.

Lanza works closely with the Maintenance Supervisor and conducts the Maintenance Supervisor's performance evaluation.¹⁵ Additionally, Lanza either assists in or conducts the performance evaluations for the Sanitary District's electricians. Lanza tracks the use of sick time by maintenance personnel. If there are any dis-

11. Personnel serving on the safety committee do so because of their position at the Sanitary District. Representatives from employee organizations do not have official positions on the safety committee.

12. Operations employees are required to complete twenty hours of training each calendar year.

13. In the fall of 2002, Hogan was absent for approximately six weeks on medical leave, and the Board of Commissioners appointed Harwood as the Acting Executive Director during Hogan's absence. The record is silent regarding any decisions Harwood made in that capacity.

14. Lanza also possesses an operator's license for the Sanitary District's facilities.

15. Witnesses could not recall any dispute or concern arising from Lanza evaluating the Maintenance Supervisor's performance.

ciplinary problems among maintenance personnel, Lanza addresses the issue directly. If Lanza feels the issue is sufficiently serious, he will discuss the matter with Hogan.

Because of his electrical expertise, Lanza usually works with maintenance employees who are making electrical repairs. When Lanza arrives at work, he meets with the Maintenance Supervisor about the assignments previously handed out that day. After discussing the day's work assignments, Lanza then assists the electricians with their work. Lanza is responsible for determining whether maintenance work will require overtime or not.

Lanza has overall responsibility for the Sanitary District's maintenance operations. As a result, Lanza develops maintenance schedules in consultation with Harwood for the equipment at the Sanitary District, and he prepares purchase orders for replacement equipment and parts. Lanza meets with Hogan to discuss planned purchases, because Hogan has to approve all purchase orders.¹⁶ For purchases under \$5,000, Lanza has the authority to select a vendor. For purchase orders or maintenance projects involving larger amounts, Lanza must solicit bids. After Lanza discusses the bids with Hogan, either Lanza or the Office Manager prepares a short memorandum to the Board of Commissioners to accompany the winning bid, because the Board of Commissioners has to approve acceptance of the bid. Only in rare exceptions will Lanza recommend that the Board of Commissioners reject the lowest bid, like where the bid lacks essential information.¹⁷

Lanza has occasionally suggested to Hogan that Hogan make changes to maintenance operations. Several years ago, Lanza recommended to Hogan that a Maintenance Supervisor position be created in place of the then-existing positions of Mechanical Supervisor and Buildings & Grounds Supervisor. Hogan brought the proposal to the Board of Commissioners, who subsequently adopted it. During contract negotiations with the Union and the Association, Hogan will at times ask Lanza for advice about management proposals. Lanza and the Maintenance Supervisor are responsible for answering grievances at the first step in both the Union's and the Association's collective bargaining agreements.¹⁸

Lanza also prepares an annual budget for the maintenance department. In preparing those annual budgets and in running current maintenance operations, Lanza relies on advice from the Finance Director about how current expenses have varied from prior projections. As a result, he might alter equipment purchases or the scheduling of overtime as a consequence of current or planned expenditures. Along with Harwood and the Maintenance Supervisor, Lanza serves on the Sanitary District's safety committee.

A four-year college degree is unnecessary for the Maintenance Manager position. Lanza's job description specifies that he reports

directly to Hogan and lists his job responsibilities, including: directing the Sanitary District's maintenance operations; planning and scheduling corrective and preventive maintenance work; participating in plant-wide operational and maintenance coordination activities; recommending and implementing maintenance procedures and equipment; resolving personnel problems and resulting grievances; investigating, diagnosing, and recommending correction of abnormalities in plant equipment; estimating staffing needs for maintenance work; preparing a budget; and participating in plant-wide projects aimed at improving plant operations, maintenance, and management.

Maintenance Supervisor

Jerry Gauvin (Gauvin) has served as the Maintenance Supervisor at the Sanitary District since 2001 and has been with the Sanitary District for approximately twenty years. He currently works hourly, from 7 AM to 3 PM, Monday through Friday, with occasional overtime. He and Lanza oversee the work of ten employees — mechanics, electricians, instrumentation, lubrication, and buildings and grounds — who also work from 7 AM to 3 PM, Monday through Friday. Gauvin conducts annual performance evaluations for maintenance employees with assistance from Lanza. If there are any disciplinary problems, Gauvin informs Lanza of the issue, and he handles the matter. When Lanza is out, Gauvin temporarily assumes Lanza's responsibilities as Maintenance Manager. Even though he has an office on the second floor of the administration building, Gauvin usually eats his lunch in the first-floor lunch room or in the Sanitary District's machine shop.

Gauvin's daily job duties involve distributing work orders and checking on how well the craftsmen who report to him complete their assigned tasks.¹⁹ Gauvin also provides some training when the situation warrants and will complete purchase orders for outfitting the employees with necessary equipment and for replacing worn-out or broken machinery. Gauvin will usually consult with Lanza about equipment purchases to: (a) determine if the planned repair is the correct course of action; or (b) consider whether an outside vendor should handle the repair. Gauvin also will consult with Lanza about how to handle difficult repair issues or what equipment should be ordered. Because Gauvin has extensive experience in mechanical repairs, he takes the lead in training employees in how to use the equipment in the Sanitary District's machine shop and in determining how mechanical repairs might be accomplished.

In the course of completing their repairs or checking equipment, maintenance employees take various measurements of how well the treatment machinery is performing. This information is passed on to Harwood and, along with Lanza and Gauvin, the three use

16. Once the Finance Director determines that the Sanitary District has sufficient funds for a purchase order, she signs off on it. It is Hogan's responsibility, in consultation with Lanza and Harwood, to verify why requested equipment, parts, and maintenance work are needed.

17. Lanza coordinates these efforts with Harwood, and Harwood, with assistance from the Office Manager, will handle the bid process for operations equipment himself.

18. Maintenance employees file their grievances with Lanza. Witnesses could not recall any grievances that senior operators or operators have filed with Lanza.

19. The senior operators issue the work orders. Lanza, Gauvin, or other maintenance personnel will occasionally discuss the scope of the work order with the senior operators or Harwood.

those measurements to assess the condition of the Sanitary District's equipment and to schedule maintenance work.

A four-year college degree is unnecessary for the Maintenance Supervisor position. Gauvin's job description specifies that he reports directly to Lanza and lists his job responsibilities, including: assigning mechanical, electrical, and instrumentation personnel to tasks; inspecting their work; maintaining orderly records, lubrication schedules, and group safety; investigating equipment failures; and procuring all maintenance materials and equipment.

Monitoring Manager

Colleen Spero (Spero) has served as the Monitoring Manager at the Sanitary District since approximately 1996. Prior to that, she was the director of the Sanitary District's laboratory for six years. She regularly works 6:30 AM to 1 PM, Monday through Friday, and is paid a salary of approximately \$55,000. While Spero has an office on the second floor of the administration building, she spends almost all her working time in the first-floor laboratory. Hogan is directly responsible for overseeing her work.

Spero administers the Sanitary District's lab tests and third-party industrial pretreatment tests.²⁰ The pretreatment tests are done pursuant to permits that approximately 40 to 50 third-party industrial sites must obtain and then renew every five years. When pretreatment tests indicate that the third-party industrial site has violated a condition of its permit, Spero prepares the notice of violation for Hogan to issue on behalf of the Sanitary District. Spero also recommends to Hogan what penalty might apply under federal and state regulations for the type of violation at issue. If the third-party industrial site refuses to comply, Spero assists the Sanitary District in preparing the technical information needed for a court order to shut down the violator. Spero is responsible for preparing portions of the Sanitary District's own permit applications to state and federal environmental regulators. Additionally, Spero works closely with Weare to develop procedures for monitoring how well new facilities perform.

While Spero's permit-related work is vital to the Sanitary District, approximately 70% of Spero's day is directly connected to analyzing pretreatment test data provided to the Sanitary District or acquired by the Sanitary District itself. Spero's examination and auditing of this test data must account for testing conditions and a variety of issues, including relevant regulatory requirements for appropriate testing procedures. She must determine that internal and external scientific validity exist for her analysis of the test data.²¹

Spero also oversees the work of laboratory personnel and logs the data they generate. Two Association members work in the laboratory on the first floor of the administration building. Previously, three people worked in the laboratory. After one individual left, Spero discussed staffing in the laboratory with Hogan, and he accepted her recommendation to reduce staffing to two employees but to expand their responsibilities.²² Spero conducts the annual performance evaluations of all laboratory personnel, handles leave requests, and enforces use of safe lab procedures. Spero also recommends purchasing new testing equipment and ordering laboratory supplies. She prepares the annual budget for the laboratory and the Sanitary District's testing needs.

A bachelor of science degree in an environmental science field, which Spero possesses, is required for the Monitoring Manager position. Spero is also a licensed operator for the Sanitary District. Spero's job description specifies that she reports directly to Hogan and lists her job responsibilities, including: supervising pretreatment personnel; advising industrial users in their development of appropriate monitoring programs; developing compliance schedules and preparing industrial discharge permits; directing tabulation, review, evaluation, and interpretation of laboratory field data; reviewing scientific literature to keep informed of new testing procedures and issues; and advising Hogan on all laboratory and pretreatment programs.

Office Manager

Ann-Louise Rader (Rader) has served as the Office Manager at the Sanitary District since 1998 and has been with the Sanitary District for approximately nineteen years. In her current position, she regularly works Monday through Friday, 8 AM to 4 PM, and is paid hourly.

Rader, the Administrative Assistant, and the Specs and Records Coordinator²³ share the large office on the second floor of the administration building, and they usually eat lunch in the second-floor cafeteria. While Rader has no direct bookkeeping responsibilities, she has some clerical responsibilities. All three administrative staffers cover for each other when on breaks, on leave, or preoccupied with time-consuming tasks. As the Office Manager, Rader oversees the work of the other administrative staffers. Rader occasionally assigns work to them, and she annually evaluates their job performance. When hiring clerical assistance, Rader and the Finance Director conduct initial interviews with candidates, and then Rader and Hogan together interview the final candidates. Additionally, Rader prepares general correspondence for Hogan and handles facsimile communications intended for Hogan.²⁴ On

20. The Sanitary District conducts pretreatment tests for these third parties because their effluent has the potential to damage the Sanitary District's facilities. Based on Spero's analysis of test data and her calculations, Spero will often advise third parties about test results that, while not violations *per se*, indicate problems in the third parties' pretreatment efforts.

21. See 40 CFR 401 *et seq.* for the relevant federal regulations.

22. The record is silent regarding any bargaining between the Sanitary District and the Association regarding this change.

23. The Specs and Records Coordinator has primary responsibility over receipt of septage tickets. Owners of septic tanks obtain septage tickets to unload the contents of those tanks after cleaning at the Sanitary District.

24. Prior to this petition's filing, collective bargaining proposals and responses intended for Hogan were often transmitted by facsimile. Attorneys for the Sanitary District and representatives of the employee organizations usually called Rader before those transmissions were sent to notify the office staff. Hogan directly handles his responses to grievances filed by the Association or the Union without assistance from Rader or the administrative support staff. When the petition at issue here was filed, Hogan started receiving facsimiles from the Sanitary District's labor council

Harwood's and Lanza's behalf, Rader often prepares internal and external correspondence related to bids for projects, parts, and equipment.²⁵ Rader also is responsible for filing the minutes of the Board of Commissioners.²⁶

Rader manages the computers and network in the Sanitary District's administrative offices. She contacts an outside vendor to resolve difficult problems with the computer systems, but conducts regular maintenance, like backups, of the computer network herself. Rader and Hogan are the only Sanitary District employees with full administrative access to the computer servers. There is nothing in the record, however, that indicates that Rader uses her access to examine the e-mail messages other Sanitary District employees have sent or received.

Rader is responsible for handling workers' compensation claims and auto insurance claims relating to Sanitary District vehicles driven by operators and other employees. Rader serves as a contact person for Sanitary District employees who have questions regarding their automobile or workers' compensation claims and assists them in trouble-shooting problems with their claims. Furthermore, she handles similar questions over employees' health insurance coverage claims, and she maintains employees' personnel files in a locked filing cabinet (located in the Finance Director's office) as well as the Sanitary District's human resource records. In the course of this work, she tracks employees' attendance, discipline, and service. She occasionally prepares weekly payroll in lieu of the Financial Director or the Staff Accountant. As a result, Rader has direct knowledge of employees' prior discipline, workplace injuries, drug and alcohol test results, and other personal issues. When needed, Rader also informs the Sanitary District's legal representatives about insurance matters that may require their attention. Rader initially determines whether doctors' notes or other documents regarding a leave request are satisfactory.

Because of her knowledge of the protocols for handling workers' compensation claims, Rader worked with Hogan and the Finance Director on drafting a workers' compensation policy for handling those claims for the Sanitary District. After an insurance consultant provided an initial plan for the Sanitary District, Rader revised that initial plan in light of her current office practices²⁷ and then presented the draft plan to Hogan and the Finance Director. At the

time of the hearing, Hogan and a subcommittee of the Board of Commissioners believed the draft plan was still not complete.²⁸

Rader also has done much of the work on updating the Sanitary District's personnel policies manual. Rader entered the prior manual (drafted in the early 1980s) into a word processor. She, the Finance Director, and Hogan began updating the Sanitary District's personnel policies manual to reflect the Sanitary District's current practices and provisions in the Union's and the Association's collective bargaining agreements with the Sanitary District.²⁹ The three also met with a subcommittee of the Board of Commissioners to update it on the changes being undertaken and the status of their work.³⁰ As with workers' compensation policies, Hogan has final approval over all changes before he recommends the policy for formal adoption by the Board of Commissioners.

The Office Manager position requires an Associate of Arts degree in business science, and Rader has this degree. Rader's job description specifies that she reports to Hogan directly and lists her office management, bookkeeping, and human resources responsibilities, including typing accurately, assisting department managers with assigned tasks, preparing weekly purchase orders, maintaining personnel records, tracking all training requested and received by Sanitary District personnel, coordinating workers' compensation claims, working with supervisors to prepare internal accident reports, and coordinating employee benefits programs.

Finance Director

Laurie Elliot (Elliot) has served as the Sanitary District's Finance Director since 2000. Hogan directly oversees her work. While Hogan is charged with conducting Elliot's annual performance evaluation, he only began that process in October of 2006.

Elliot regularly attends meetings of the Board of Commissioners and remains with the Commissioners when they go into executive session to discuss matters involving litigation, collective bargaining, and other issues.³¹ Elliot attends these meetings because her knowledge of the Sanitary District's finances is unsurpassed. Elliot also submits to the Board of Commissioners memoranda to describe the documentation and advice that financial consultants and outside legal counsel have prepared for the Sanitary District. Elliot also serves with Hogan, Weare, and an outside engineer on

directly. Hogan took this action because he did not want Rader to see correspondence between him and the Sanitary District's labor counsel regarding this petition.

25. The administrative assistant handles the bid-related correspondence for Weare's work for the Sanitary District.

26. Those minutes are prepared by the Board of Commissioners' secretary, a contract position. Rader has no responsibility for maintaining the minutes of the Board of Commissioners' executive sessions. When needed, an attorney for the Sanitary District prepares those minutes.

27. The record is silent regarding what those revisions entailed.

28. The parties did not make a draft of the proposed workers' compensation policy part of the record in this matter. Furthermore, witnesses could not recollect what contributions, in general or specifically, Rader or the Finance Director made in reviewing and preparing drafts of the new workers' compensation policy.

29. A copy of the draft personnel policy presented to the Board of Commissioners was entered into the record in this matter. Rader's May 22, 2006 cover letter accompanying this draft states that "[n]o major changes were made" and that the old personnel policy was brought up to date with "current practices and collective bargaining agreements." Rader explained that significant changes were being contemplated but that, presently, the goal was for "the manual [to] accurately reflect today's policies and procedures." The record is silent regarding what the significant changes being contemplated were, how those changes were being developed, and what bargaining obligations those proposed changes might entail.

30. Hogan also made sure that the proposed personnel policy was shared with the Union and the Association, so they could comment on it.

31. Weare, the Wastewater Engineer, also regularly attends meetings of the Board of Commissioners, including executive sessions. Neither Weare nor Elliot is formally required to do so. No witness could recall Elliot ever speaking or being asked for information during an executive session. Weare, on the other hand, has answered questions and offered advice to the Board of Commissioners during executive sessions.

the Sanitary District's pre-qualification committee for qualifying contractors for bidding on Sanitary District projects.³²

Elliot approves all the Sanitary District's purchase orders and all contracts for vendors with winning bids. Her approval indicates that the Sanitary District has sufficient funds available in the budgeted line item. When line item funds are insufficient to cover previously-planned expenses, Elliot informs Hogan. The Board of Commissioners has delegated to Hogan the authority to transfer funds from one line item to another within a department. Hogan, however, must get approval from the Board of Commissioners to transfer funds from one department to another. After Elliot notifies Hogan that a transfer of funds is needed and that departmental funds appear inadequate, he places the request on the Board of Commissioners' agenda. At the subsequent meeting, either Hogan or Elliot answer questions regarding the proposed transfer of funds prior to the Board of Commissioners' vote.³³

On a monthly basis, Elliot presents to Hogan a list of bills to be paid. Depending on the amount billed, Hogan either approves of the payment himself or makes a recommendation to the Board of Commissioners regarding payment of the bill. Elliot also prepares monthly and annual financial statements for Hogan and the Board of Commissioners. These documents describe assessments from the Sanitary District's member communities, income from the sale of septage tickets, Sanitary District expenses relative to budgeted amounts, and the related surpluses or deficits that exist for the budgeted amounts.³⁴

Elliot is responsible for preparing the Sanitary District's annual budget and quarterly budget reports. She begins the process of preparing annual budgets by advising department heads such as Lanza, Harwood, and Spero about budgetary information and worksheets relevant to their departments. After they have prepared their departmental budgets, Elliot then reviews those budgetary requests with Hogan. Hogan approves changes to the Sanitary District's overall proposed budget in light of those requests and his estimate of how much personnel costs will increase the following fiscal year.³⁵ These budget reports and the financial statements described previously are matters of public record.

Elliot coordinates the efforts of outside auditors who review the Sanitary District's finances on an annual basis. She prepares re-

ports regarding the Sanitary District's income and expenses and submits records that they request. She and the chair of the Board of Commissioners reviewed and ranked bids from accounting firms to perform the annual audit of the Sanitary District's finances.

Elliot is part of the Sanitary District's negotiating team that meets with the Association and the Union. Prior to the start of negotiations, Hogan asks her to identify issues to be included in upcoming talks.³⁶ Once negotiations are underway, Hogan will ask her for advice or information during caucuses about proposals and to estimate the cost of proposals that the employee organizations have presented. Elliot also offers similar advice and suggestions in reply to e-mail messages from Hogan in between negotiating sessions and will do more detailed analyses, as needed, outside of negotiation sessions.

Elliot oversees the work of a staff accountant, Sandra Grenier (Grenier), who works in an office next to Elliot's and is paid on an hourly basis. Hogan and the Finance Director prior to Elliot interviewed Grenier for the Staff Accountant position and agreed to recommend her to the Board of Commissioners for the position. Grenier is the Sanitary District's bookkeeper and regularly prepares the payroll.³⁷ Grenier also is responsible for a lock box that contains copies of all the keys used by the Sanitary District. As the staff accountant, Grenier has complete access to specialized accounting software on which the Sanitary District's finances are kept.³⁸ While Grenier's job description indicates she keeps a general ledger and maintains a balance sheet for the Sanitary District's finances, Elliot in fact handles those job duties.

Elliot reviews doctors' notes employees are asked to provide by their supervisor and informs the relevant supervisor of whether the note is approved or not. If Elliot is unsure of whether or not to accept the note, she consults with Hogan. Elliot keeps the notes in a binder sorted by employees' names.³⁹ During successor talks with the Union and the Association, Elliot prepared a proposal on behalf of the Sanitary District for the handling of sick notes that Hogan subsequently presented to the parties. The proposal was not accepted, however.

A Bachelor's degree in accounting or in business with a concentration in accounting is required for the Finance Director position, and Elliot possesses the latter.⁴⁰ The Staff Accountant position

32. The Board of Commissioners appointed Elliot as one of their representatives because of her financial acumen. However, the Sanitary District did not provide any information about what actions Elliot has undertaken or advice she has provided when serving on the pre-qualification committee.

33. The record is silent regarding what criteria Hogan uses in determining the source of funds and what advice, if any, Elliot offers Hogan about the source of those funds.

34. This information is gleaned solely from the minutes of Board of Commissioners' meetings and witness testimony. Actual financial statements prepared by Elliot were not made part of the record.

35. When successor negotiations are underway for a new collective bargaining agreement, the estimated increase represents the amount Hogan believes the employee organizations will eventually agree to in negotiations with the Sanitary District. At Hogan's direction, Elliot creates either a separate line item for the proposed salary increases or adds the amount to an existing line item.

36. The record indicates she has made one suggestion, described below.

37. Rader prepares the payroll in Grenier's absence.

38. Elliot also has complete access to the software. Once the Board of Commissioners approved the purchase of new accounting software based on the auditors' recommendation to do so, Elliot selected several vendors to consult. Both Elliot and Grenier reviewed possible software packages before they made their selection. At the time of the hearing, they were learning how to use this software package together. Rader is the only other employee who has access to the information contained in this software package, and Rader's access is limited to the cash receiving and purchase order modules.

39. Elliot does not have access to the personnel files kept in her office. The cabinet that contains the files is locked, and Rader has the key.

40. Elliot also possesses state certification in accounting and is a certified municipal accountant because of prior work experience as a town accountant.

only requires prior training or an associate degree in accounting. Elliot's job description specifies that she works under Hogan's direction and lists her job duties, including: keeping accurate financial records; advising department heads when preparing their budgets; overseeing all the Sanitary District's financial functions; submitting monthly financial reports; and preparing and then presenting the Sanitary District's budgets to Hogan and the Board of Commissioners.

Opinion

Section 3 of M.G.L. c.150E (the Law) authorizes the Commission to determine appropriate bargaining units that will provide for stable and continuing labor relations. In determining whether a bargaining unit is appropriate for the purposes of collective bargaining, the Commission examines the following statutory factors: (1) community of interest; (2) efficiency of operation and effective dealings; and (3) safeguarding the rights of employees to effective representation. *Town of Bolton*, 25 MLC 62, 65 (1998).

However, Section 1 of the Law explicitly excludes managerial and confidential employees from the definition of "employee." Further, Section 3 of the Law provides that no managerial or confidential employees "shall be included in an appropriate bargaining unit or entitled to coverage under this chapter." As a result, before the Commission determines an appropriate bargaining unit, it must first ascertain whether any of the titles included in a petition are managerial or confidential under the Law.

Managerial Employees

Section 1 of the Law contains the following three-part test to determine whether an individual 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 effect in the administration of a collective bargaining agreement or in personnel administration.

An employee must be excluded from an appropriate bargaining unit under Section 3 of the Law if the person's actual duties and responsibilities satisfy any one of the three statutory criteria. *Town of Manchester-by-the-Sea*, 24 MLC 76, 81 (1998).

To be considered a managerial employee under the first part of the statutory test, an employee must make policy decisions and determine the employer's objectives. See *Wellesley School Committee*, 1 MLC 1389, 1401 (1975), *aff'd sub nom.*, *School Committee of Wellesley v. Labor Relations Commission*, 376 Mass. 112 (1978). The policy decisions must be of major importance to the mission and objectives of the public employer. *Wellesley School Committee*, 1 MLC at 1403. This part of the analysis focuses on whether an employee possesses independent decision-making authority or whether the employee's decisions are screened by another layer of administration. See *Worcester School Committee*, 3 MLC 1653, 1672 (1977).

To be considered a managerial employee under the second part of the statutory definition, an employee must participate to a substantial degree in preparing for or conducting collective bargaining. Identifying problem areas to be discussed during bargaining or merely consulting about bargaining proposals is insufficient to satisfy this second criterion. Rather, 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 having a voice in the terms of settlement. *Town of Manchester-by-the-Sea*, 24 MLC at 81; *City of Boston*, 19 MLC 1050, 1063 (1992).

To be classified as a managerial employee under the third statutory test, an employee must exercise discretion without consultation or approval. *Town of Manchester-by-the-Sea*, 24 MLC at 81, *citing Wellesley School Committee*, 1 MLC at 1408. To be "substantial," the responsibility must not be perfunctory or routine; it must have some impact and significance. *Id.* Further, the appellate authority must be exercised beyond the first step in a grievance-arbitration procedure. *Town of Wareham*, 26 MLC 206, 207 (2000).

There is no dispute that Hogan is a managerial employee under the Law. Hogan works hand-in-hand with the Sanitary District's Board of Commissioners in determining operating policies and procedures for the Sanitary District, and he serves as the Sanitary District's spokesperson in collective bargaining with the Union and the Association.

The Sanitary District contends that all the petitioned-for employees are managerial under the Law because of their policy-making responsibilities or their role in collective bargaining matters. The Union disputes these claims. Our investigation leads us to conclude that Harwood and Elliot are managerial, but Lanza, Gauvin, Spero, and Rader are not managerial.

The record shows that Harwood regularly attends collective bargaining negotiations with the Association and the Union, critiques proposals during management caucuses, answers questions from Union and Association representatives during negotiations, offers informal explanations of management proposals outside of specific bargaining sessions, and occasionally attends meetings of the Board of Commissioners subcommittee on collective bargaining and personnel. Additionally, the record shows that Elliot is part of the Sanitary District's negotiating team, that Hogan asks her to identify issues to be included in upcoming talks, and that she advises Hogan during management caucuses at negotiation sessions. *Town of Manchester-by-the-Sea*, 24 MLC at 81 (employees who represent employer during collective bargaining negotiations, who prepare proposals, and who discuss the employer's bargaining strategy considered to be managerial). These actions satisfy the requirement that an individual participate in actual negotiations or be otherwise involved directly in the collective bargaining process to be considered managerial under the second statutory test.

The record, however, does not demonstrate that Lanza, Gauvin, Spero, and Rader are involved in collective bargaining matters on behalf of the Sanitary District. Hogan's occasional questions to Lanza about management proposals without any evidence about

what those questions were or Lanza's responses is insufficient to establish Lanza as a member of the Sanitary District's collective bargaining team. See *Worcester School Committee*, 3 MLC 1653, 1673-4 (1977) (detailing examples of consultation or limited participation in collective bargaining that are not substantial enough to exclude employees as managerial). The Sanitary District argues that Rader should be classified as managerial because of her work on behalf of the Sanitary District in drafting new personnel and workers' compensation manuals. However, there is nothing in the record linking this work to collective bargaining between the Sanitary District and the Union or the Association. Updating policies to reflect current practices is not collective bargaining, and the Sanitary District has failed to demonstrate how these updates affect the terms and conditions of employment of the Sanitary District's employees. *North Attleborough Electric Department*, 32 MLC 66, 73 (2005) (where evidence of personnel policies an individual allegedly prepared are absent, the Commission will not consider that individual to be a managerial employee). Accordingly, the second statutory test does not apply to any of these employees.

Furthermore, none of these employees participate in a grievance procedure beyond the first step, and the Sanitary District does not employ any other appellate mechanism outside of the grievance process. *Town of Agawam*, 12 MLC 1101, 1113-16 (1985) (employee's supervisory responsibilities to implement employer's directives and handle first-step grievances do not have the indicia of independence and significance to qualify as managerial under the first part of the statutory test), *aff'd* 13 MLC 1364, 1369-70 (1986). While the record is replete with instances of these employees supervising others, supervisory authority itself does not make an employee managerial under the Law. *Barnstable County*, 26 MLC 183, 188 (2000) (the "exercise of supervisory authority to insure compliance with the provisions of a collective bargaining agreement is insufficient, standing alone, to satisfy the third criterion" of the statutory test for managerial employees); *Masconomei Regional School District*, 3 MLC 1034, 1041 (1976), and *New Bedford School Committee*, 2 MLC 1215, 1223-4 (1975) (evaluation of subordinates that is subject to review and approval or responsibility for deciding the first step of a grievance is insufficient to demonstrate either substantial or appellate authority required under the third part of the statutory test). As a consequence, the third part of the statutory test does not apply to these employees. The only question, then, is whether these employees have policy-making responsibilities under the first part of the statutory test.

Lanza oversees the maintenance operations of the Sanitary District. He develops schedules for maintenance work and, with assistance from Rader, administers the bid process for maintenance work and equipment. Except for one instance discussed below, this record does not include any detail about what the Sanitary District's maintenance policies are, how those policies have changed over time, and Lanza's role in shaping those policies. As a result, it cannot be determined whether Lanza's oversight of maintenance work at the Sanitary District is anything more than the product of his expertise and supervisory responsibilities. *Town of Dartmouth*, 29 MLC 204, 207 (2003) (department heads who serve as supervisors do not exercise the level of policy-making responsibility and independent judgment that would qualify them as managerial);

Town of Bolton, 25 MLC at 66 (managerial employees make policy decisions and determine objectives, whereas supervisory employees transmit policy directives to others and, perhaps with some discretion, implement policies). Furthermore, the record reveals that Lanza does not exercise independent decision-making authority. Lanza's recommendations about maintenance work are subject to review from Hogan and must be approved by him and eventually the Board of Commissioners, including, for example, Lanza's recommendation that a maintenance supervisor position be created or Lanza's preparation of an annual budget. See *City of Quincy*, 13 MLC 1436, 1440 (1987) (Commission has routinely held that employees who act merely as consultants to a decision-maker are not managerial within the meaning of the Law); *Worcester School Committee*, 3 MLC 1653, 1672 (1977) (in determining managerial status, Commission examines whether decisions and opinions are screened by another layer before being implemented or presented to a final decision-maker). As a result, we find that Lanza does not qualify as a managerial employee under the first part of the statutory test.

The record shows that Gauvin works under Lanza, and that both Gauvin and Lanza supervise the Sanitary District's employees. Gauvin conducts performance evaluations, distributes work orders, and checks on the quality of work being done. He works with Lanza on determining how maintenance work should be conducted and whether certain projects should be considered for bids or perhaps done in-house. Because Gauvin consults with Lanza, and because Hogan has final approval over their recommendations, we find that Gauvin is not a managerial employee under the first part of the statutory test.

Spero's work largely consists of monitoring the Sanitary District's compliance with federal and state regulatory requirements as well as the pretreatment efforts of third-party industrial sites. Because compliance benchmarks are regulatory matters, Spero has only a limited role, at best, in setting the Sanitary District's objectives for wastewater treatment. Furthermore, her expert advice to Hogan about how well the Sanitary District and third-party industrial sites comply with these regulatory requirements reinforces the conclusion that Spero has no policy-making responsibilities for the Sanitary District and does not qualify as a managerial employee under the first part of the statutory test. *Town of Easton*, 31 MLC 132, 146 (2005) (treasurer-collector who acted in accordance with Internal Revenue Service regulations was not a managerial employee who exercised independent judgment); *Commonwealth of Massachusetts*, 30 MLC 67, 69-70 (2003) (discretion in how to perform work and manage department employees does not rise to the level of policymaking exercised by a manager); *Town of Wellfleet*, 11 MLC 1238, 1242 (1984) (employee's area of expertise and specialization on which supervisors rely is inadequate to make him a manager under the Law); *cf. Taunton Municipal Lighting Plant*, 30 MLC 16, 20 (2003) (employee who has the discretionary authority to approve and personally certify that the employer is in compliance with the Clean Air Act considered to be managerial).

As Office Manager, Rader oversees the work of other administrative staffers, administers the Sanitary District's computers and

network, handles various insurance claims that employees file, assesses the completeness of doctors' notes, and works with others in updating the Sanitary District's workers' compensation personnel policies to reflect current practices. Rader also assists Harwood and Lanza with handling bids for projects and equipment. There is no doubt that Rader is a key Sanitary District employee charged with carrying out numerous policies. Nevertheless, Rader has no responsibility for formulating or developing Sanitary District personnel policies, let alone implementing policies that are of major importance to the Sanitary District. *Boston School Committee*, 23 MLC 188, 192 (H.O. 1997) (employees' narrow and specialized area of responsibility demonstrates their important, advisory role in the employer's operations but is insufficient to show a policy-making obligation as a manager), *aff'd* 25 MLC 160 (1999); *Wellesley School Committee*, 1 MLC at 1401 (when ascertaining managerial status, Commission distinguishes between those employees who determine or formulate policy and those who carry out policy). As a result, Rader does not qualify as a managerial employee under the first part of the statutory test.

The Sanitary District argues that these personnel should be excluded as managerial because of their importance to the employer. This argument is akin to the conclusion the Commission reached in *Masconomet Regional School District*, 3 MLC at 1040, that a group of employees in a small school district participates in general policy making that is essential to carrying out the employer's mission. In that decision, the Commission explained that "[b]ecause of the uniquely intimate character of the Masconomet system, these employees function as a 'management team' submitting policy recommendations directly to the School Committee much like [the senior managers] in larger school systems" found to be managerial in *Wellesley School Committee*, 1 MLC at 1394. This argument is inapplicable to the Sanitary District, because the record discloses a very limited breadth and scope to Lanza's, Gauvin's, Spero's, and Rader's decision-making authority and demonstrates that none of these individuals can act without some kind of review from Hogan. See *Board of Trustees, University of Massachusetts*, 3 MLC 1179, 1201 (1976) (policy-making authority "rests with the Board of Trustees and the administrative officials to whom the Trustees delegate their authority"). For example, while Lanza and Spero prepare departmental budgets, their efforts are coordinated with financial advice from Elliot and subject to review by Hogan before he presents final budget recommendations to the Board of Commissioners. *Town of Millbury*, 33 MLC 47, 52 (2006) (assistant treasurer/collector who plays vital role in overseeing and carrying out important municipal operations not a manager because the employee does not act independently and does not substantially shape municipal policies). For all these reasons, Lanza, Gauvin, Spero, and Rader are not managerial employees under the Law.

Confidential Employees

However, the Commission must still consider whether Lanza, Gauvin, Spero, and Rader qualify as confidential employees. Section 1 of the Law defines confidential employees as those who "directly assist and act in a confidential capacity to a person or persons otherwise excluded from coverage" under the Law. To be regarded as confidential, an employee must have a substantial re-

lationship with a managerial employee "so that there is a legitimate expectation of confidentiality in their routine and recurrent dealings." *Framingham Public Schools*, 17 MLC 1233, 1236 (1990), *citing Littleton School Committee*, 4 MLC 1405, 1414 (1977). Employees who have "significant access or exposure to confidential information concerning labor relations matters, management's position on personnel matters, or advance knowledge of the employer's collective bargaining proposals are excluded as confidential." *City of Everett*, 27 MLC 147, 150 (2001); *Fall River School Committee*, 27 MLC 37, 39 (2001). The Commission has construed exceptions to the definition of confidential employee narrowly to preclude as few employees as possible from collective bargaining while not unduly hampering an employer's ability to manage the operation of the enterprise. *Framingham Public Schools*, 17 MLC at 1236, *citing Silver Lake Regional School District*, 1 MLC 1240, 1243 (1975). However, once a position meets the criteria for confidentiality pursuant to Section 1 of the Law, the position will be excluded regardless of an employer's prior agreement to include the position. *Fall River School Committee*, 27 MLC at 40.

The threshold inquiry for determining whether a position is confidential or not is whether the position reports to an employee who is otherwise excluded from coverage under the Law. Lanza, Spero, and Rader all report to Hogan, a managerial employee under the Law. However, Gauvin reports to Lanza, who is not a managerial employee. Therefore, Gauvin is not a confidential employee.

The record shows that Lanza and Spero have no role in assisting Hogan with collective bargaining or personnel matters outside of their supervisory responsibilities. *Town of Dartmouth*, 29 MLC at 208 (occasional request for input prior to and during negotiations does not qualify a person as confidential), *Board of Trustees, University of Massachusetts*, 3 MLC at 1203-4 (department chairs who advise deans and have access to sensitive information not considered confidential, because there is no indication that they have advance knowledge of the employer's position on labor relations matters); *cf. City of Lawrence*, 25 MLC 167, 168 (1999) (budget analyst excluded as confidential because he assists in costing out collective bargaining proposals, has access to confidential collective bargaining memoranda, and attends managerial meetings where collective bargaining issues are discussed). Accordingly, Lanza and Spero do not qualify as confidential employees under the Law.

The Sanitary District argues that Rader should be considered confidential because of her administration of personnel files, her work in drafting workers' compensation and personnel policies, her contact with the Sanitary District's employees when they have questions or concerns about their insurance coverage, her contact with the Sanitary District's legal counsel about insurance matters, and her role in assessing doctors' notes. This argument, however, largely turns on the personal information Sanitary District employees disclose to Rader in exercising their rights under their respective collective bargaining agreements. As a result, the Sanitary District misconstrues the kind of information that renders an employee confidential. An employer's claim to a confidential employee has always been based on the exposure an employee has to

the employer's own labor relations information. See *Fall River School Committee*, 27 MLC at 39-40 (employee access to students' personal educational and health records is not significant to a determination of whether the employee is confidential under the Law). As the Commission observed in 1977, "individuals who handle 'sensitive' material do not necessarily have a confidential relationship with managerial personnel." *Worcester School Committee*, 3 MLC at 1676.

Here, the record shows that, prior to the filing of this petition, Rader handled labor-relations facsimiles the Sanitary District's labor counsel sent to Hogan.⁴¹ *Board of Higher Education*, 31 MLC 149, 152 (2005) (administrative assistant excluded as confidential, in part, because she handles labor relations matters on behalf of manager and labor counsel); *Framingham School Committee*, 17 MLC at 1237-8 (part-time secretary was excluded as confidential employee on grounds that she opened the superintendent's mail, which included bargaining and strategy proposals from the school committee's outside labor negotiator). On this basis, Rader qualifies as a confidential employee under the Law.

Unit Appropriateness

After excluding the Operations Manager and the Finance Director as managerial and the Office Manager as confidential, we must determine whether a bargaining unit consisting of the Maintenance Manager, the Maintenance Supervisor, and the Monitoring Manager is appropriate under the Law.

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 Bolton*, 25 MLC at 65, citing *Boston School Committee*, 12 MLC 1175, 1196 (1985). No single factor is outcome determinative. *City of Worcester*, 5 MLC 1108, 1111 (1978). Minimal differences do not mandate separate bargaining units. Employees who perform similar job duties under similar working conditions and share common interests amenable to the collective bargaining process should be in the same bargaining unit. *Town of Bolton*, 25 MLC at 66, citing *Higher Education Coordinating Council*, 23 MLC 194, 197 (1997). The touchstone is a demonstration that the employees for whom representation is requested comprise a coherent group whose interests are sufficiently distinct to warrant separate representation. *Massachusetts Board of Regional Community Colleges*, 1 MLC 1426, 1435 (1975).

The Commission also considers the impact of the proposed bargaining unit structure upon the employer's ability to effectively

and efficiently deliver public services as well as how the proposed structure safeguards the rights of employees to effective representation. The Commission complies with these directives by placing employees with common interests in the same bargaining unit. Through this practice, the Commission avoids the proliferation of units that place an unnecessary burden on the employer while maximizing the collective strength of employees in the bargaining relationship. *City of Springfield*, 24 MLC 50, 54 (1998), citing *Massachusetts Board of Regional Community Colleges*, 1 MLC at 1440. Indeed, in light of these concerns for organizational efficiency and effective representation, the Commission declines to certify small, separate units when there are other employees who share a community of interest with the employees seeking the separate unit. *Lower Pioneer Valley Educational Collaborative*, 28 MLC 147, 156 (2001) (petition for bus drivers at two of several facilities operated by the employer dismissed because a "bargaining unit of all [the employer's] drivers is the smallest appropriate unit that is coextensive with [the employer's] structure and purpose"); *Springfield Water and Sewer Commission*, 24 MLC 55, 60 (1998) (Commission rejected a single facility unit of maintenance and clerical employees); *Boston Water and Sewer Commission*, 7 MLC 1439, 1445 (1980) (Commission rejected the preservation of a two-unit structure of maintenance employees of a water division and maintenance employees of a sewer division and found a system-wide unit of maintenance employees appropriate); *Pittsfield School Committee*, 3 MLC 1490, 1492-3 (1977) (petition for five employees dismissed because it would lead to unnecessary fragmentation, and because no evidence introduced showing that the five employees share a community of interest); *Massachusetts Board of Regional Community Colleges*, 1 MLC at 1440 (Commission rejected a single campus faculty unit and found a system-wide faculty bargaining unit appropriate). As the Commission explained in *Town of Cohasset*, 1 MLC 1184, 1187 (1974), it is:

incumbent upon us to gather into each [bargaining unit] the largest number practically possible of employees having such common interests, in order that discord may be minimized, and that the employer may not be continually hampered by the jealousies and conflicting or competing claims of a large number of small rival units which must work together for the employer, but which may choose to be represented by different and possibly antagonistic unions.

Here, the petitioned-for employees all serve as supervisors for the Sanitary District. Thus, they share a community of interest with the four senior operators currently represented by the Union.⁴² All the petitioned-for employees evaluate job performances, recommend discipline, resolve first-step grievances in some cases, and assign and direct the work of other Sanitary District employees.⁴³

41. Because of Rader's involvement in this petition, Hogan temporarily assumed the responsibility of receiving facsimiles from the Sanitary District's labor counsel directly. As a result, there is no indication in the record of an employer attempting to deprive an employee of collective bargaining rights through classification as a confidential employee. See *Framingham School Committee*, 17 MLC at 1237-8 n.6.

42. In determining whether an employee is a supervisory employee, the Commission considers whether the employee has: (1) the independent authority and judgment to assign and to direct the work of employees, *Worcester School Committee*, 22 MLC 1762, 1766 (1996); *City of Westfield*, 7 MLC at 1252; (2) the authority to initiate and to recommend discipline, *Id.*; (3) the authority to adjust grievances, *Eastham School Committee*, 22 MLC 1190, 1197 (1995); *Town of Newbury*, 14

MLC 1660, 1662 (1988); and (4) the independent authority to make, or the power to recommend effectively, personnel decisions about whether to hire, to transfer, to suspend, to promote, or to discharge employees. *Town of Sturbridge*, 18 MLC 1416, 1421 (1992); *Town of Hadley*, 11 MLC 1457, 1460 (1985). The presence of all these criteria is not required, and one criterion is sufficient for the Commission to find that an employee exercises supervisory authority. *Town of Holden*, 25 MLC 175, 176 (1999).

43. Even though Lanza conducts Gauvin's performance evaluation, the two work together closely in overseeing maintenance department operations, and no apparent conflict between the two exists. Segregating the two into separate bargaining units on this basis alone is unwarranted. See *City of Cambridge*, 2 MLC 1027, 1031

Likewise, the senior operators provide twenty-four-hour oversight of plant operations, directing and inspecting the operators' work based on the criteria Harwood has developed and the senior operators' own judgment. As a result, if the Commission approves a bargaining unit consisting of the three remaining, disputed positions, the Commission would be endorsing the creation of two supervisory bargaining units, an outcome the Commission has consistently rejected.⁴⁴ *City of Boston*, 18 MLC 1036, 1045 (1991) (separate unit of security supervisors is inappropriate where there are other security supervisors excluded from the petition); *Lowell School Committee*, 8 MLC 1010, 1014 (1981) (splitting supervisors into multiple bargaining units based on levels of supervision is untenable).

There are additional concerns about the appropriateness of the petitioned-for bargaining unit.⁴⁵ Generally, the Commission disfavors bargaining units that include both white-collar and blue-collar employees because of the differences in job duties, work-related interests, and conditions of employment. *Springfield Water and Sewer Commission*, 24 MLC at 60. However, the Commission will not separate blue-collar and white-collar employees unless the evidence shows a lack of community of interest. *Board of Regents*, 12 MLC 1643, 1651 (1986). Here, there is scant evidence in the record to indicate what tasks, qualifications, or responsibilities Spero shares with either Lanza or Gauvin. Lanza and Gauvin are trained craftsmen, while Spero's training involves advanced studies in biological and chemical sciences. Spero spends almost all of her time in a laboratory analyzing and researching test results as well as overseeing the work of laboratory technicians. Lanza and Gauvin, on the other hand, are for the most part either performing repair work or overseeing the repair work other maintenance employees are performing. These differences seemingly warrant placing Lanza and Gauvin in one unit and Spero in another. *Marblehead Municipal Light Department*, 9 MLC 1323, 1327-8 (1982) (Commission examined employee duties, working conditions, supervision, skills, functional integration, and interchange to determine that a petitioned-for unit of "blue collar" employees that excluded clerical employees was appropriate).

However, segregating these blue-collar and white-collar employees into their own bargaining units: (1) does not resolve the question of how the positions at issue in this petition relate to other Sanitary District positions;⁴⁶ and (2) leads to the creation of two bargaining units that consist of one and two employees each. Therefore, the Union has failed to show that the Maintenance Manager, the Maintenance Supervisor, and the Monitoring Manager have "a substantially distinct and separate community of interest from other employees to warrant their separate representa-

tion" in a single bargaining unit. *University of Massachusetts*, 4 MLC 1384, 1393 (1977).

In deciding representation petitions, the Commission resolves the question of whether the petitioned-for unit is appropriate. The Commission does not decide where the petitioned-for employees should ultimately be placed. *Massachusetts Bay Transportation Authority*, 14 MLC 1734, 1735 (1988), citing *Pittsfield School Committee*, 12 MLC 1487, 1494 n.8 (1985) (in absence of clarification or an add-on petition, ultimate unit placement of petitioned-for employees need not be decided); see also *Walpole School Committee*, 12 MLC 1015, 1018-19 (1985) (dismissing petition for employees who share a community of interest with two other bargaining units and reserving the question of which other bargaining unit the employees belong). Here, we find a unit comprising the Maintenance Manager, the Maintenance Supervisor, and the Monitoring Manager to be inappropriate in light of positions left out of the petition and positions included in another bargaining unit already represented by the Union. We decline to decide what is the appropriate unit for the Maintenance Manager, the Maintenance Supervisor, and the Monitoring Manager positions.

Conclusion

For the above reasons, the positions of Operations Manager and Finance Director qualify as managerial under the Law, the position of Office Manager qualifies as confidential under the Law, and the petition for a bargaining unit consisting of the Maintenance Manager, the Maintenance Supervisor, and the Monitoring Manager is dismissed.

SO ORDERED.

ATTACHMENT

James Peters
Teamsters Union Local 170
330 Southwest Cutoff, Suite 201
P.O. Box 70634
Worcester, MA 01607-0634

Norman Holtz, Esq.
Holtz & Reed
One Bowdoin Square, 9th Floor
Boston, MA 02114

RE: MCR-06-5209, *Greater Lawrence Sanitary District*

Dear Mr. Peters and Mr. Holtz:

(1975) (observing that the issue in creating separate units for supervisors is where to make the appropriate division and that, for small employers, any division may be impractical).

44. Because the record does not reflect the community of interest factors for the bargaining unit currently represented by the Union, the Commission has no basis to conclude why the senior operators/supervisors should be in a bargaining unit distinct from the Maintenance Manager and Maintenance Supervisor with whom they work on a daily basis.

45. We do not consider Weare to be improperly excluded from the petition, because he attends executive sessions of the Board of Commissioners and responds to inquiries. As a result, it appears that he may be confidential. Until the position is formally before us to consider, however, we decline to make any definitive ruling.

46. Besides the possible community of interest between Lanza, Gauvin, and the senior operators, there is also the question of whether there is a community of interest between Spero, the Staff Accountant, and the Administrative Assistant.

Please note that the decision in the above-referenced matter has issued under the auspices of the Labor Relations Commission as opposed to the Commonwealth Employment Relations Board, because the vote to issue the decision occurred before Chapter 145 of the Acts of 2007 took effect on November 15, 2007. *See, City of Everett v. Labor Relations Commission*, 416 Mass. 620, 623-4 (1993). Furthermore, although former Commissioner/Board Member John F. Jesensky left the Board’s employment on Friday, December 21, 2007, he voted to issue the attached decision prior to his departure. *Id.*

Very truly yours,

LABOR RELATIONS COMMISSION

[signed]
Edward B. Srednicki
Executive Secretary

* * * * *

In the Matter of TOWN OF LONGMEADOW
and
LONGMEADOW ASSOCIATION OF MUNICIPAL
EMPLOYEES
and
LONGMEADOW EDUCATION ASSOCIATION/MTA/NEA
Case No. CAS-06-3640

34.2 *community of interest*
34.92 *clarification*
35.45 *maintenance and custodial*

March 11, 2008
Michael A. Byrnes, Chairman
Paul T. O’Neill, Board Member

Melissa Shea, Esq. *Representing the Town of Longmeadow*
John Connor, Esq. *Representing the Longmeadow Association of Municipal Employees*
Brian Riley, Esq. *Representing the Longmeadow Education Association/MTA/NEA*

DECISION¹

Statement of the Case

On June 21, 2006, the Town of Longmeadow (Town) filed a unit clarification petition with the Commission seeking to determine the collective bargaining rights and appropriate bargaining unit placement of a position entitled Building Maintenance Technician. The Longmeadow Association of Municipal Employees (LAME) filed a Motion to Intervene in the case on July 21, 2006, and the Longmeadow Education Association (LEA) filed a Motion to Intervene on August 15, 2006. The Commission allowed both unions to intervene.

On January 11, 2007, the Town, the LEA and the LAME participated in an informal conference. On that date, all parties provided information on the facts and circumstances in effect at the time of the conference. Following the informal conference, the Commission asked the Longmeadow School Committee (School Committee) to supply certain information. The School Committee responded by letter dated January 25, 2007, but it did not seek to intervene in the proceedings.

On August 8, 2007, the Commission provided the parties with a summary of the information adduced during the investigation and asked the parties to show cause why it should not resolve the unit

1. Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) “shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the Labor Relations Commission.” References in this decision to the Commonwealth Employment Relations Board (Board) include the former Labor Relations Commission (Commission). Pursuant

to Section 13.02(1) of the Commission’s Rules in effect prior to November 15, 2007, the Commission designated this case as one in which it would issue a decision in the first instance.