

MASSACHUSETTS LABOR CASES

CITE AS 18 MLC 1001

TOWN OF PLAINVILLE AND SALARIED EMPLOYEES OF NORTH AMERICA, A DIVISION OF
UNITED STEELWORKERS OF AMERICA, AFL-CIO, CLC, MCR-4019 (6/12/91).

- 15. Supervisory and Managerial Employees
- 15.1 dual function managerial employees
- 17.1 confidential employee
- 35.2 confidential
- 35.7 supervisory and managerial employees

Commissioners Participating:¹

Maria C. Walsh, Chairperson
Haidee A. Morris, Commissioner
William G. Hayward, Jr., Commissioner

Appearances:

- John P. Lee, Esq. - Representing the Town of Plainville
- Shailah T. Stewart, Esq. - Representing the Salaried Employees
of North America, A Division of
United Steelworkers of America,
AFL-CIO, CLC

DECISION

Statement of the Case

On October 9, 1990, the Salaried Employees of North America, a Division of United Steelworkers of America, AFL-CIO, CLC (Union) filed a petition with the Labor Relations Commission seeking to represent a bargaining unit of certain supervisory employees of the Town of Plainville (Town). Specifically, the Union sought to represent employees in the following positions: Deputy Fire Chief, Highway Superintendent, Water/Sewer Superintendent, Administrative Assistant/Town Accountant, Library Director, Council on Aging Director, Highway Foreman, and Pump Station Operator. During the hearing in this matter, the Union deleted the position of Library Director from the proposed unit and agreed that the positions of Highway Foreman and Pump Station Operator should not be included in the petitioned-for unit if the Commission includes the positions of Highway Superintendent and Water/Sewer Superintendent.²

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Pursuant to 456 CMR 13.00, the Commission has redesignated this matter as a hearing in which the Commission shall issue a decision in the first instance.

²

Pursuant to a consent election agreement approved by the Commission in Case No. MCR-4050, the positions of Highway Foreman and Pump Station Operator have been
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The Town agreed that the positions of Deputy Fire Chief and the Council on Aging Director are properly included in the petitioned-for unit sought by the Union, but that the remaining positions should not be included. According to the Town, the Highway Superintendent and the Water/Sewer Superintendent are managerial employees within the meaning of Section 1 of the Law and the position of Administrative Assistant/Town Accountant is a managerial and confidential employee within the meaning of Section 1. Further, the Town asserts that the positions of Highway Foreman and Pump Station Operator are not supervisory positions and are supervised by other positions that the Union seeks to include in the unit.

Upon notice to the parties, a hearing took place before John B. Cochran on November 27 and January 30, 1991, at which both parties had an opportunity to present testimonial and documentary evidence. The Union filed a post-hearing brief on March 5, 1991, and the Town filed its brief on March 6, 1991.

Findings of Fact³

Pursuant to the Town's bylaws, a three member Board of Selectmen (Selectmen) is responsible for the general direction and management of the Town. The Selectmen meet every two weeks and, at least the Chairman of the Board spends approximately twenty to thirty hours per week working on Town business. The Selectmen also act as a Personnel Board in the absence of a separate Personnel Board;⁴ however, the Town currently has a separate Personnel Board.

Among the Departments that report directly to the Selectmen are the Highway Department and the Fire Department. The Town also has an elected, three-member Board of Water Commissioners and an elected, three-member Board of Sewer Commissioners. Those Boards meet at least every two weeks.

There are three bargaining units of Town employees: 1) a unit of all uniformed police officers, excluding special police officers and the chief of Police; 2) a unit of uniformed fire fighters, excluding call fire fighters, the Chief, and the Deputy Chief; and 3) a unit of non-elected clericals, excluding School Committee employees and confidential and managerial employees. A three-

2 (continued)

included in a separate nonsupervisory unit of employees of the Town's Water, Sewer, and Highway Departments. Therefore, we need not consider whether they should be included in the supervisory unit petitioned for here.

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Neither party contests the Commission's jurisdiction in this matter.

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The Town has extensive personnel by-laws that are administered by a Personnel Board. Those by-laws authorize the Personnel Board to maintain employee records and to establish wage rates for non-unionized employees.



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person team with representatives from the Selectmen, the Personnel Board, and the Town's Finance Committee bargains with the exclusive representative of each bargaining unit on behalf of the Town.

Administrative Assistant/Town Accountant

Historically the position of Administrative Assistant/Town Accountant has combined the duties and responsibilities of two separate positions. Robert Brothers (Brothers) has been the incumbent of that combined position since August 1976, and, during that time, he has split his time equally between the two sets of duties.

The Administrative Assistant's job description provides as follows:⁵

1. He shall hold a degree in Accounting or Business Administration, or its equivalent.
2. He shall hold no Elective town office.
3. He shall act as Administrative Officer for the Selectmen as follows:
 - a. Investigate problems brought to his attention and recommend action on each to the Board of Selectmen.
 - b. Prepare agenda for Selectmen's meetings.
 - c. Prepare documents for signature by Board of Selectmen, such as:
 1. Purchase Orders.
 2. Contracts for Labor or Materials.
 3. Payrolls.
 4. Approval of Payment of Invoices.
 5. Reply to correspondence addressed to the Board of Selectmen.
4. He shall administer central purchasing as follows:
 - a. Consolidate requests from departments under control of Board of Selectmen, for supplies and equipment.
 - b. Develop specifications for bid contracts.

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The most recent job description for the Administrative Assistant is contained in the Town's 1973 Annual Report.



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- c. Submit recommendations to Board of Selectmen for action.
5. He shall see that an accounting of expenditures for all departments under the Board of Selectmen is maintained.
6. He shall maintain a public relations posture with all interested agencies of the town through:
 - a. Annual Report editing.
 - b. News media releases.
 - c. Individual contact with town departments and committees.
7. Execute special studies as required by the Board of Selectmen as follows:
 - a. Special projects with one or more town agencies.
 - b. Projects developed by State or Federal agencies.
 - c. Recruitment of personnel.
8. He may be appointed Town Accountant by the Board of Selectmen to conform with the language used in General Laws, Chapter 41, Section 55.
9. He shall develop budgetary information as required by the Board of Selectmen for Preparation of town Budgets.
10. He shall be assigned additional duties and responsibilities by the Board of Selectmen when they deem necessary.

With the exception of the duties listed in paragraphs 4 and 7 of the Administrative Assistant's job description, that job description reflects Brothers's general duties as Administrative Assistant to the Selectmen.⁶

As Administrative Assistant, Brothers prepares the agenda for the Selectmen's meetings, pursuant to guidelines established by the Selectmen in 1985. Under those guidelines, every item brought to his attention goes on the agenda unless it involves a complaint about a party who must be notified before the complaint is

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Because the Town has no central purchasing system, Brothers has never performed the duties listed in paragraph 4. Moreover, Brothers does not recall conducting any of the special studies referenced in paragraph 7 of that job description.



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listed on the agenda. Brothers may investigate some complaints, like dog bites, before bringing them to the Selectmen's attention and, if asked by the Selectmen, he might make a recommendation concerning their disposition. As Administrative Assistant, Brothers also has attended open meetings of the Selectmen; however, he has never attended executive sessions. A Senior Clerk whom Brothers supervises takes the minutes of the Selectmen's meetings, which are televised via cable, and types them up the next day for the Selectmen's review. Brothers may review those minutes before they go to the Selectmen and confer with the preparer if he has a question about their accuracy. Brothers has no knowledge of who prepares or maintains the minutes of any executive sessions held by the Selectmen.

Brothers also plays a role in processing the Selectmen's correspondence. All correspondence to the Selectmen is opened by a clerk under Brothers's supervision, and the clerk gives it to Brothers to review to determine if additional information is needed before it goes to the Selectmen. The clerks who perform this function are in a separate bargaining unit of Town clerical employees. Brothers is not authorized to respond to correspondence without prior review by the Selectmen, and the responses he sends are based on the Selectmen's instructions. Brothers has received opinions on behalf of the Board of Selectmen from John Lee, who serves as Town Counsel. However, there is no evidence about the nature or frequency of those opinions.

Brothers supervises three clerical employees who are members of the bargaining unit of clerical employees in the Town. Although Brothers has interviewed applicants for those positions in the past, he did not interview any of the three clerical employees he currently supervises. The Selectmen make the final hiring decisions. Brothers has never evaluated any of the clerical employees in the Selectmen's office, nor does the evidence establish that Brothers has authority to approve their absences. Instead, the employees merely advise Brothers when they plan to be absent. Brothers has never been involved in collective bargaining about working conditions either for the employees he supervises or any other Town employees. Because there never has been a grievance by the clerical employees in the Selectmen's office, Brothers has not been involved in processing grievances for them. However, if a grievance were to be filed, he, as their immediate supervisor, would handle it at Step 1 of the contractual grievance procedure. Brothers has not been involved in grievances by any other Town employees.

Brothers's duties as Town Accountant are set forth generally in G.L., c.41, Sections 55-61. The Selectmen have ultimate responsibility for all of the Town's finances, including approving purchases, borrowing money and signing notes. The Bureau of Accounts of the Department of Revenue oversees the Town's financial operations and establishes the guidelines that the Selectmen and Brothers must follow. Brothers does not serve as the Town's Auditor. That function is performed by an independent auditor. An elected Town Treasurer has ultimate responsibility for receiving, maintaining, and disbursing funds on behalf of the Town pursuant to Sections 6.1 - 6.5 of the Town's by-laws.



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Brothers plays a role in preparing and administering the Town's budget. Pursuant to statute, he receives proposed budgets from the various departments and summarizes them for the Selectmen and their Budget Committee. He also may research previous expenditures for the Selectmen's budget, and recommend a proposed budget for the Town Accountant's office. The Selectmen determine what the final budgets should be for each department, and those budget figures are public information. Brothers does not meet with the Selectmen to discuss the operating budgets of departments other than his own. Although Brothers has attended Finance Committee meetings at which the Board of Selectmen presents its budget, a member of the Board of Selectmen presents the Selectmen's budget at that meeting.

Brothers maintains a list of the expenditures and receipts of each Town department under the control of the Selectmen pursuant to an accounting system prescribed by statute. Section 56 of G.L. c.41 specifies that the Town Accountant may refuse to process any fraudulent voucher for payment, and lacks authority to process any voucher that would require a payment in excess of the balance in a particular budget account. In practice, Brothers receives invoices for payment from department heads. When payment vouchers are submitted, he first determines the balance available in the appropriate budget account. He then prepares a warrant, a master list of invoices, that he submits to the Selectmen for their approval. Before preparing the warrants, Brothers meets with the Selectmen, who advise him what items to put on the warrants. Pursuant to G.L. c.41, Section 52, the Selectmen have ultimate responsibility to review and approve all expenditures. The record indicates that the Selectmen exercise this responsibility directly in Plainville.

Brothers prepares the weekly payroll. Specifically, he reviews the payroll to determine whether the persons to be paid are employed by the Town or otherwise entitled to payment and assigns account codes to ensure that the proper budget accounts are charged. Brothers then submits the payroll to the Town Treasurer's office for processing, and the Town Treasurer reviews the payroll for accuracy.⁷ The payroll warrant, however, must be further reviewed and approved by the Selectmen.

The Town's Annual Report includes a financial section that shows all receipts and disbursements by the Town in the past year. Brothers prepares the financial section of the Annual Report from information that he accumulates from the various Town departments. He does not edit the financial information provided by the departments, which is public information. Brothers never has been asked to prepare budgetary information for the purpose of collective bargaining.

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The Treasurer, not Brothers, approves the weekly payroll after reviewing all employee time records.



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Water/Sewer Superintendent

The Board of Water Commissioners and the Board of Sewer Commissioners, which are made up of three Commissioners, jointly employ a Water/Sewer Superintendent. The incumbent of that position for the past three years has been James Marshall (Marshall), who has a college degree and a Grade 3 water treatment license. In addition to Marshall, the Boards employ a Pump Station Operator who reports to Marshall.

Marshall is responsible for the day-to-day operations of the water and sewer facilities, which involves implementing the rules and regulations established by the Boards. If matters arise during the day-to-day operations, Marshall refers them to the Boards. Although the Board of Water Commissioners prepares the budget for the Water Department, Marshall makes budget recommendations to them. On occasion, Marshall contacts state officials concerning matters affecting the Water Department. Before doing so, however, he usually contacts the Commissioners and lets them know that he will be talking with the state officials.

The Town is currently constructing a new water treatment plant pursuant to a vote of the Town Meeting. Marshall is involved in inspecting the progress of the construction on the new plant. In addition, an outside engineering firm inspects the work on the new plant and advises Marshall of the work schedule. Marshall, in turn, reports back to the Water Commissioners with that information. When the new water plant is completed, Marshall will be responsible for the day-to-day operation of it. The Town's sewer system is tied into the sewage treatment plant operated by the adjacent community of North Attleboro.

Highway Superintendent (Superintendent of Streets)

The Highway Department is responsible for rubbish collection and for maintaining streets, roads, and sidewalks. The Board of Selectmen annually appoints a Highway Superintendent. There are seven other employees in the Highway Department, including a foreman, laborers, a truck driver, an equipment operator, and a truck driver/mechanic.

Ronald Frederickson (Frederickson) has been the Highway Superintendent for the past nine years and has been employed in the Town's Highway Department for a total of thirty-one years. Frederickson is responsible for the day-to-day operations of the department and often works alongside the employees on his crew, performing many of the same duties. The Board of Health establishes the criteria for collecting rubbish, including rubbish limits and collection schedules, and Frederickson operates under the rules and regulations of the Board of Health. Pursuant to those regulations, Frederickson must report any hazardous substances to the Board of Health. If Frederickson encounters a problem, he contacts the Town's Health Agent, who is the liaison with the Board of Health.



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As Highway Superintendent, Frederickson supervises the work of the department employees, but does not formally evaluate them. Further, Frederickson recommends that employees in the department be hired or fired, but it is the Board of Selectmen that hires and fires them. Since Frederickson has been the Highway Superintendent, the Board of Selectmen has adopted his hiring recommendations. The employees that Frederickson supervises are governed by personnel by-laws established by the Selectmen.

Frederickson submits a proposed one-page budget for the Highway Department to the Selectmen each year. The Board of Selectmen has authority to modify Frederickson's budget request. However, the Selectmen have routinely reviewed that proposed budget and have passed it along unchanged to the Town Finance Committee, as they have done with the proposed budgets of other departments. Frederickson's proposed budget has appeared on the Town warrant voted on the Town Meeting in the same form as initially proposed.

Pursuant to M.G.L. c.90, the state allocates money for the repair of certain roads. To apply for those funds, Frederickson prepares a project request, which includes the Town's percentage contribution toward the project, for the Board of Selectmen. The Board of Selectmen have routinely approved those project requests, which are then forwarded to the state agency that oversees Chapter 90 projects. Frederickson does not include Chapter 90 projects in his annual budget. The Selectmen include a \$10,000 article for Chapter 90 projects on the warrant submitted to the Town Meeting each year, and, if those funds are not used during the year, they accumulate for future Chapter 90 projects.

Frederickson plays some role in planning how the money budgeted for the Highway Department will be spent. However, the Selectmen have ultimate authority and there are times when the Selectmen have given Frederickson directives about what projects to perform. For example, the Selectmen have ordered Frederickson to raise a curbing to correct a problem with a low curb and have directed Frederickson to plow an unaccepted road. In addition, Frederickson must use budgeted funds for unforeseen expenses, like storm or flood damage.

Opinion

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."

In determining whether an employee is a managerial employee, the Commission must be guided by the criteria set out in Section 1 of the Law:

Employees shall be designated as managerial employees only if they (a) participate to a substantial degree in formulating or determining



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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 administration of a collective bargaining agreement or in personnel administration.

Managerial employees are distinguishable from supervisors because "managerial employees make the decisions and determine the objectives while supervisory employees transmit policy directives to lower levels, and within certain areas of discretion, implement the policies." Wellesley School Committee, 1 MLC 1389, 1403 (1975), *aff'd*, School Committee of Wellesley v. Labor Relations Commission, 376 Mass. 112 (1978). To be considered a managerial employee, the scope of the employee's discretion in formulating policy must be significant in relation to the mission of the public entity, *id.*, or the employee's decisions must impact a significant aspect of the public entity. Winchester School Committee, 3 MLC 1653 (1977). See also, Town of Agawam, 13 MLC 1364, 1368 (1986). The term "participate to a substantial degree in formulating policy" includes not only the authority to select and implement a policy alternative but also regular participation in the policy decision-making process. Town of Agawam at 1368. It does not include merely providing some input into the decision-making process. Town of Wellfleet, 11 MLC 1238, 1241 (1984).

"Attendance and participation and periodic discussions with higher administrators on major matters does not constitute policy formulation or determination." Worcester School Committee, 3 MLC 1653, 1672 (1977) quoting Town of Needham School Committee, 3 MLC 1251 at 1256 (1976).

To satisfy the second statutory definition of a managerial employee there must be some evidence that the employee is directly involved in the public employer's formulation of proposals or positions in collective bargaining. It is not enough that an employee merely consults with the employer about the implications or feasibility of proposals unless there is direct involvement in negotiations or in making collective bargaining decisions. Wellesley School Committee. Finally, the Commission has recognized that an employee satisfies the third test of managerial status only if the employee has significant discretion to affect an employer's practices. *Id.* "Perfunctory denials, and routine or automatic decisions are not considered 'substantial responsibility' in administering a collective bargaining agreement. Town of Agawam at 1369.

The standards for determining whether an employee is a "confidential" employee are equally well-settled. Section 1 of the Law defines a confidential employee as one who directly assists and acts in a confidential capacity to a person otherwise excluded from coverage under the Law. This exception has been narrowly construed to preclude as few employees as possible from collective bargaining while not unduly hampering the employer's ability to manage its operations. Silver Lake Regional School District, 1 MLC 1240, 1243 (1975). To be regarded as



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confidential, an employee must have a substantial relationship with a managerial employee that creates a legitimate expectation of confidentiality in their routine and recurrent dealings. Littleton School Committee, 4 MLC 1405, 1414 (1977).

Administrative Assistant/Town Accountant

Relying on Town of Agawam, 12 MLC 1101 (1985), *aff'd*, 13 MLC 1364 (1986) and Town of Norton, 15 MLC 1600 (H.O. 1989), the town argues that the incumbent of the position of Administrative Assistant/Town Accountant is both a managerial and a confidential employee within the meaning of Section 1 of the Law. The Town's position is that, because the Administrative Assistant acts for the Board of Selectmen in its absence and "speaks for the Board," he must and does participate to a substantial degree in formulating, determining, and implementing the Board's policies. Further, the Town asserts that the Administrative Assistant is a confidential employee because he directly assists and acts in a confidential capacity to the Selectmen, who are excluded from coverage under the Law. In support of that position, the Town argues that the Administrative Assistant has knowledge of the Selectmen's collective bargaining discussions and access to fiscal and other information used in the preparation of negotiations. Similarly, the Town asserts that, as Town Accountant, Brothers participates in formulating the Town's policies and making fiscal decisions because he has full knowledge of the status of each Town account. Finally, the Town argues, it would have to alter significantly the way it does business if the Administrative Assistant/Town Accountant is included in the proposed supervisory bargaining unit.

We have considered carefully the duties that the Selectmen currently have assigned to the Administrative Assistant/Town Accountant and conclude that he is neither a managerial nor a confidential employee within the meaning of Section 1 of the Law. Therefore, he will be included in the proposed bargaining unit.

As Administrative Assistant, Brothers functions strictly in an administrative capacity pursuant to guidelines and instructions from the Board of Selectmen. For example, he prepares the agenda for the Selectmen's meetings pursuant to guidelines established by the Selectmen in 1985. Similarly, he responds to correspondence to the Selectmen only after it is reviewed by the Selectmen, and based on their instructions. Brothers attends open meetings of the Selectmen; he does not attend executive sessions. Although he supervises three clerical employees, the record reflects that Brothers did not interview those employees, has never evaluated those employees, has never played a role in bargaining about the working conditions of those or any other Town employees, and does not have authority to handle a grievance beyond Step 1 of the relevant contractual grievance procedure. Therefore, Brothers's duties as Administrative Assistant do not involve the kind of discretion in formulating policy, the kind of collective bargaining responsibility, or the kind of independent judgment in an appellate-level personnel capacity that would make him a managerial employee.



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Similarly, Brothers's current duties as Town Accountant do not satisfy the criteria for a managerial employee. His responsibilities as Town Accountant, which are set out in M.G.L. c.41, Sections 56-61, include receiving proposed budgets from the various Town departments, maintaining an ongoing accounting of receipts and expenditures, preparing the weekly payroll, and preparing an annual report based on information submitted to him by the different departments. Significantly, he does not serve as Town Auditor, the Selectmen do not discuss the operating budgets of any departments other than his own with Brothers, his role in preparing the payroll is an administrative one, and he does not edit the financial information provided by the departments for the annual report.

Contrary to the Town's position, we find that Town of Agawam, 12 MLC 1101 (1985), *aff'd*, 13 MLC 1365 (1986) provides no support for the Town's contentions. The unappealed hearing officer decision in Town of Norton, 15 MLC 1600 (H.O. 1989) is not precedent; although, it too is distinguishable. In Town of Agawam, the Town Accountant regularly audited the books and records of all town agencies and was used as a resource for the Town's negotiator to prepare cost analyses of contract proposals.⁸ Similarly, the full-time Town Accountant in Town of Norton regularly audited the financial records of the town and was responsible for developing and installing the accounting and control procedures used in the Town. Unlike the Town Accountants in those cases, Brothers has not been given the level of discretion in the Town's fiscal matters that is required to classify him as a managerial employee. His discretion is limited to the authority to disallow fraudulent expenditures or expenditures in excess of appropriated amounts. But, even this discretion is circumscribed by the authority of the Selectmen to approve all expenditures and, in practice, Brothers submits all invoices to the Selectmen for their approval.

Finally, Brothers's duties as Administrative Assistant/Town Accountant do not satisfy the criteria for a confidential employee. Brothers does not attend

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The hearing officer found the fact that the Agawam Town Accountant had "independent authority to disallow claims against the municipality under M.G.L. c.41, Section 56" and reported directly to the Town Council constituted significant evidence of the Town Accountant's policy making authority. 12 MLC at 1112. No appeal of this findings was taken. In a decision that addressed appeals of other findings the Commission found no error in the hearing officer's ultimate conclusion that the Town Accountant was properly excluded from the proposed unit as managerial, 13 MLC at 1369. The Commission's decision to affirm the exclusion of the Town Accountant was based on its review of the entire record. The record included evidence that the Town Accountant audited the town's books and played an active role in preparations for collective bargaining. Therefore, the fact that Brothers has authority under M.G.L. c.41, Section 56 to disallow claims that do not satisfy the statutory requirements does not, without more, demonstrate the kind of policy discretion needed to make an employee managerial.



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executive sessions of the Board of Selectmen or have access to the minutes of those executive sessions. He testified that he has never been involved in collective bargaining for any Town employees, and the record does not demonstrate that he has routine and recurrent access to any fiscal information, other than public records, or that he has access to any confidential labor relations material, like contract proposals, grievance files, or proposed labor relations actions. Cf., Framingham School Committee, 17 MLC 1233 (1990); Pittsfield School Committee, 17 MLC 1369 (1990).⁹ It is significant, moreover, that at least the Chairman of the Board of Selectmen spends between twenty and thirty hours per week on Town business. This level of direct involvement by the Selectmen distinguishes Plainville from most other towns. In effect, the Selectmen are the chief executive officers of the Town as well as the ultimate policy-makers. The hands-on management of the Town by the Selectmen results in a diminished level of authority for Brothers's position. Therefore, we do not find that the Town's operation, which relies heavily on the direct and active participation of the Selectmen, would be harmed by including Brothers in the proposed unit.

Water/Sewer Superintendent

The Town asserts that the Water/Sewer Superintendent is a managerial employee. According to the Town, he is responsible for the day-to-day operations of the Water and Sewer Department, supervises its employees, and exercises independent judgment in planning, assigning, and inspecting the work of those employees.

Although James Marshall, the incumbent Water/Sewer Superintendent, is responsible for the day-to-day operations of the Town's water and sewer facilities, his discretion in performing that role is severely restricted. The Water and Sewer Boards have promulgated rules and regulations governing the day-to-day operations of the facilities that Marshall is expected to follow. If unexpected matters arise, Marshall refers them to the Boards. He also routinely contacts the Commissioners before contacting state officials about matters affecting the Water Department. Finally, the record shows that Marshall's role in the construction of the Town's new water treatment plant is minimal. Although he does check on the progress of the construction, an outside engineering firm is responsible for inspecting the work on the new plant and advising Marshall of the work schedule.

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Although Brothers testified that he has received opinions on behalf of the Board from John Lee, who serves as Town Counsel, the record does not indicate the nature of those opinions or how often Brothers has received them. Accordingly, we are unable to conclude that Brothers had routine access to the kind of information the Commission has considered to be confidential. Moreover, the record demonstrates that the clerical employees who open all the mail are in another collective bargaining unit.



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Therefore, we conclude that Marshall's duties as Water/Sewer Superintendent do not involve sufficient discretion and independent decision-making authority about policy alternatives to warrant his exclusion as a managerial employee. Accordingly, the position will be included in the petitioned-for unit.

Highway Superintendent (Superintendent of Streets)

It is the Town's position that the Highway Superintendent is a managerial employee because he has responsibility for the operation of the Highway Department with limited direction from the Board of Selectmen. According to the Town, the fact that he plans, directs and supervises all projects, determines the nature of the work to be performed, including Chapter 90 projects, and prepares a budget for the Highway Department are indicia of managerial status.

Although Ronald Frederickson (Frederickson), the Highway Superintendent, is responsible for the day-to-day operation of the Department, his decision-making authority is not as broad as the Town argues. For example, the rubbish collection responsibilities of the Department are performed pursuant to rules and regulations established by the Board of Health. His role in preparing the Department's budget is to make a recommendation to the Selectmen. Similarly, he recommends to the Selectmen particular project requests for Chapter 90 funds, but it is the Selectmen, not the Highway Superintendent, who ultimately decide whether to submit those project requests to the state agency that oversees Chapter 90 projects. Finally, there are restrictions on the Highway Superintendent's discretion to decide how Department funds are to be spent. Although the Highway Superintendent does have some input into making those decisions, his role is limited. He must perform the projects he is ordered to perform by the Selectmen, like raising curbs and plowing unaccepted roads, and he must use budgeted funds to handle unforeseen expenses, like storm or flood damage. Accordingly, while the record indicates that Frederickson transmits policy directives to the employees he supervises and implements the policies of the Board of Health and the Board of Selectmen, it does not contain sufficient evidence of significant policy-making discretion for us to conclude that he is a managerial employee. Therefore, the Highway Superintendent should be included in the proposed unit.

CONCLUSION AND DIRECTION OF ELECTION

Based on the record and for the reasons set forth above, we conclude that a question of representation has arisen concerning certain employees of the Town of Plainville and that the following unit is an appropriate unit for collective bargaining within the meaning of Section 3 of the Law:

All full-time and regular part-time administrators and supervisors employed by the Town of Plainville, including the Deputy Fire Chief, Council on Aging Director, Highway Superintendent (Superintendent of



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Streets), Water/Sewer Superintendent, and the Administrative Assistant/
Town Accountant; but excluding managerial, confidential, and all other
Town employees (including the Library Director).

IT IS HEREBY DIRECTED that an election shall be held for the purpose of
determining whether a majority of the employees in the above-described unit desire
to be represented by the Salaried Employees of North America, A Division of the
United Steelworkers of America, AFL-CIO CLC or by no employee organization.

The eligible voters shall include all those persons within the above-
described unit whose names appear on the Town's payroll for the payroll period
immediately preceding the date this decision issues, and who have not since quit or
been discharged for cause.

To ensure that all eligible voters shall have the opportunity to be informed
of the issues and the statutory right to vote, all parties to this election shall
have access to a list of voters and their addresses which may be used to
communicate with them.

Accordingly, IT IS HEREBY FURTHER DIRECTED that three (3) copies of an elec-
tion eligibility list containing the names and addresses of all eligible voters
must be filed by the Town with the Executive Secretary of the Commission, Leverett
Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, Massachusetts 02202,
not later than fourteen (14) days from the date of this decision.

The executive Secretary shall make the list available to all parties to the
election. Failure to submit this list in a timely manner may result in substantial
prejudice to the rights of the employees and the parties; therefore, no extension
of time for filing the list will be granted except under extraordinary circum-
stances. Failure to comply with this direction may be grounds for setting aside
the election should proper and timely objections be filed.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

MARIA C. WALSH, CHAIRPERSON
HAIDEE A. MORRIS, COMMISSIONER
WILLIAM G. HAYWARD, JR., COMMISSIONER

