

In the Matter of TOWN OF MANCHESTER-BY-THE-SEA
and

AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, COUNCIL 93, AFL-CIO

Case No. MCR-4511

15. *Supervisory and Managerial Employees*
34.1 *appropriate unit*
35.7 *supervisory and managerial employees*
92.35 *stipulations*
93.3 *petition for certification*

March 6, 1998

Robert C. Dumont, Chairman
Claudia T. Centomini, Commissioner
Helen A. Moreschi, Commissioner

Philip Collins, Esq.

*Representing the Town of
Manchester-by-the-Sea*

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*Representing the American Federation
of State, County and Municipal
Employees, Council 93,
AFL-CIO*

DECISION AND DIRECTION OF ELECTION¹

Statement of the Case

On October 9, 1996, the American Federation of State, County and Municipal Employees, Council 93, AFL-CIO (Union) filed a petition with the Labor Relations Commission seeking to represent a bargaining unit of administrators, department heads, and the deputy director of public works employed by the Town of Manchester-by-the-Sea (Town). During the hearing, the Town and the Union stipulated that: 1) the positions of town clerk, principal assessor, director of senior services, conservation/planning administrator, and deputy director of public works are appropriately included in the petitioned-for bargaining unit; and 2) the positions of executive secretary, police chief, and fire chief are appropriately excluded from the bargaining unit. Further, the parties stipulated that the positions of deputy director of public works, director of public works, library director, and conservation/planning administrator are professional employees within the meaning of Section 1 of M.G.L. c. 150E (the Law). The Town does not agree that the town accountant, treasurer/collector, library director, and director of public works are properly included in the petitioned-for

bargaining unit because it believes they are managerial employees within the meaning of Section 1 of the Law.

On December 11, 1996, Administrative Law Judge Ann T. Moriarty conducted a hearing at which both parties had an opportunity to present testimonial and documentary evidence. The Union filed a post-hearing brief on January 16, 1997, and the Town filed its brief on January 17, 1997. Pursuant to 456 CMR 13.02(2), the administrative law judge (ALJ) issued recommended findings of fact on June 30, 1997. On July 31, 1997, the Town submitted challenges to the recommended findings of fact. The Union did not file challenges or a response to the Town's challenges.

Findings of Fact²

We have considered the Town's request for additional findings of fact and, upon review of the record, we adopt the ALJ's findings and make further findings as noted below.

The Town is governed by a five member, elected board of selectmen who meet monthly, if not weekly at certain times during the year. A full-time executive secretary, Paul Bockelman, possesses general responsibility for all town functions and operations. In or about 1992, the board of selectmen delegated the appointment and hiring process for certain positions to the executive secretary.³ The executive secretary does not supervise any of the positions at issue here.⁴

*Town Accountant/Computer Systems Administrator/Chief
Procurement Officer*

The town accountant is appointed by the board of selectmen for a three year period. The current town accountant, Charles F. Lane, has served in this capacity for about ten years. The Town has no separate finance department, nor finance director. The town accountant is the principal financial advisor to the selectmen, who rely on his advice and expertise in financial matters.⁵ The town accountant also serves as the principal financial advisor to the finance committee, the board of assessors, and the personnel board.⁶ The town accountant supervises an assistant town accountant who is in the Union's bargaining unit of clerical employees.

In the performance of his duties as town accountant, Mr. Lane: reviews and approves all bills and the town payroll before payment, with the authority to disallow and refuse payment if the claim is fraudulent or excessive;

controls and maintains a complete set of books under the Uniform Municipal Accounting System (UMAS), including the recording of appropriations, the amount and purpose of each expenditure,

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

2. The Commission's jurisdiction is uncontested.

3. In 1995, the Board of Selectmen directly renewed the three year appointment of Charles F. Lane as town accountant.

4. Executive Secretary Bockelman described his interaction with the town accountant, treasurer/collector, and director of public works as collegial, not supervisory.

5. The evidence supports this finding and, therefore, we modify the ALJ's findings as requested by the Town.

6. The town accountant attends about ten board of selectmen meetings each year and attends all Town finance committee meetings. The finance committee meets once or twice a month, but during budget time, January, February and March, the committee meets once or twice a week.

receipts of income, the amount of assessments levied, and the abatements made;

calculates and timely prepares year-end financial statements;

calculates and certifies March 31 "free cash" which can be used to fund appropriations at Town meeting;

calculates and prepares in-depth revenue and expense projections, with conclusions as to the effects and limits of Proposition 2-1/2;

determines the effects of employee benefit packages;

coordinates and prepares the tax recapitulation sheet and serves as an advisor to the treasurer/collector, assessors and town clerk in setting the tax rate;

and coordinates all activities related to the yearly outside audit; and, implements all audit recommendations.

To coordinate the Town's budgetary process, the town accountant prepares about twelve written budget projections for the board of selectmen and finance committee starting in or about November of each year. To prepare these projections, the town accountant reviews all board, committee and department budgets for accuracy,⁷ examines and projects town revenue, estimates total operating budget costs, including employee wage increases,⁸ recommends capital budget outlays, and if necessary, recommends budget cuts. During this budget process, which intensifies during January, February and March of each year, the town accountant meets about once or twice each week with the Town finance committee to update and revise these budget figures to ensure that Town spending does not exceed its total revenue. Nothing in the budget process is fixed, it is a constantly evolving process with the town accountant exercising a level of educated discretion in making and revising each budget projection.⁹

The town accountant also serves as the Town's computer systems administrator. In that capacity, the town accountant is responsible for the daily operation and maintenance of all aspects of the Town's computer system, ranging from the issuance of passwords to new users, to the purchase and installation of hardware and software. Further, as the Town's chief procurement officer, the town accountant is charged with overseeing all aspects of Town procurements of supplies and services in compliance with applicable statutes and regulations. Finally, as the Town's insurance coordinator, the town accountant advises the board of selectmen on alternative fire/theft/liability and workers' compensation coverages and deductibles. The town accountant verifies workers' compensation claims and resolves questions arising from claims with the employee, agent, and

doctor/hospital.¹⁰ Further, he receives all lawsuits and gathers information from the department or individuals involved, and refers it to the appropriate insurance carrier.

The town accountant has attended board of selectmen meetings and executive sessions during which collective bargaining strategy is discussed. For example, in early June 1996, the town accountant and the executive secretary attended a board of selectmen executive session during which collective bargaining proposals, including sick leave buy-back, were discussed, and the bargaining parameters for four outstanding contracts were set.¹¹ Two of these four contracts cover the Town's clerical and department of public works employees who are represented by the Union in separate bargaining units.¹² Although the town accountant does not attend or participate directly in negotiations for collective bargaining agreements for a term of years, he does, at the request of the executive secretary, provide cost projections on Union proposals, and reviews Town cost proposals for accuracy.

In or about 1990, after receiving a letter from Blue Cross/Blue Shield threatening cancellation of the indemnity program for minimal participation, the Town initiated health insurance coalition bargaining with unions that represent both Town and school committee employees.¹³ The management team for these health insurance negotiations consisted of counsel, who served as the chief spokesperson, a member of the board of selectmen, a finance committee member, the superintendent of schools, the Town's executive secretary, the town accountant, and the treasurer/collector. As a member of this negotiating team, the town accountant calculated the cost of bargaining proposals, attended and participated in management team caucuses during which management discussed bargaining strategy, and formulated and modified its proposals.

The Town entered into health insurance coalition bargaining again in the fall of 1992 to address the increased costs of the Master Health Plus plan, and in 1993 to address the town meeting's rejection of a substantial increase in insurance funding. During coalition bargaining in 1993, the parties resolved the issues by entering into a multi-year agreement that included a change in contribution rates and the elimination of Master Health Plus. In 1995, the parties again reached a two-year agreement on percentage contribution rates.¹⁴ During these negotiations, both the town accountant and the treasurer/collector served on the management team, participated in developing the Town's proposal, attended management strategy sessions and caucuses during which the management team discussed, assessed and evaluated various bargaining proposals,

7. All boards, committees and department heads furnish the town accountant with their respective department budgets for the next fiscal year at least ninety days prior to the annual town meeting.

8. Town employee compensation constitutes approximately fifty percent of the Town budget.

9. The evidence supports this finding and, therefore, we modify the ALJ's findings as requested by the Town.

10. The evidence supports this finding and, therefore, we modify the ALJ's findings as requested by the Town.

11. Although the record reflects that the Town's fiscal constraints were considered in developing collective bargaining parameters, the record does not support a specific finding that the bargaining parameters included wages. Therefore, we decline to supplement the facts as requested by the Town.

12. The evidence supports this finding and, therefore, we modify the ALJ's findings as requested by the Town.

13. Where the evidence supports additional findings of fact about the substance of health insurance coalition bargaining, we modify the ALJ's findings as requested by the Town.

14. The Town expects to enter into similar health insurance coalition bargaining in 1997.

and reached consensus on the proposal acceptable to all team members. Negotiation sessions for all four agreements lasted about forty hours in total, with some years requiring more time to reach agreement.

The Town is a member of the North Shore Vocational School District and is assessed by the district for costs. Within the past few years, the Town received a higher assessment than projected by the Town, and the executive secretary, town accountant, board of selectmen, and school committee met with district representatives to question the assessment. The town accountant advised the Town in questioning the assessment and in an approach to reduce the assessment.

Treasurer/Collector

The board of selectmen appointed the current treasurer/collector, Caroline Johnson, about ten years ago. As treasurer/collector, Ms. Johnson is responsible for investing Town funds, managing cash flow, processing both the Town and School Committee payroll, overseeing the billing and collection of all monies due the Town including real estate taxes, personal property taxes, tax liens, all excise and permit fees, school tuition, and federal and state aid and grants. The treasurer/collector maintains control sheets for each receivable including abatements, receipts and refunds, reconciles receivables monthly with the town accountant, and retains and directs an outside deputy collector in the collection of delinquent taxes. Also, the treasurer/collector retains and directs the Town's land court attorney in the disposition of tax lien cases, and responds to inquiries from banks and attorneys regarding tax lien payments, and from taxpayers about Town bills.

Further, the treasurer/collector is responsible for the health and life insurance for new, existing, and retired employees. In this capacity, the treasurer/collector informs employees of policy changes and premium increases, serves as a liaison between employees and the health insurance provider to resolve problems, and notifies employee dependents who are no longer eligible for coverage of their options for continued insurance coverage. As stated above, the treasurer-collector was a member of the Town's bargaining team during health insurance coalition bargaining in 1990, 1992, 1993, and 1995. At the Town executive secretary's request, the treasurer/collector compiled information about employee enrollment in Town health insurance plans from public data collected and maintained in her office for use during health insurance coalition bargaining. Further, the treasurer/collector projected employee migration from one plan to another that the Town's bargaining team relied on in developing and modifying its proposals.¹⁵ The treasurer/collector attended negotiating sessions

and management team caucuses and was privy to all management proposals.¹⁶

Director of Public Works

The director of public works administers and supervises the investigation, design, development, construction, and maintenance of public works projects as directed by the Town's board of public works. The director of public works is also responsible for the Town's water and sewer department and oversees building renovations for all Town departments. The director of public works prepares his department's operating budget for appropriate approval, oversees all department expenditures, and handles all Town capital outlay expenditures.

The current director of public works, Robert W. Moroney, was appointed in November 1977, just after the public works employees unionized.¹⁷ Under the terms of the collective bargaining agreement, the director of public works is the first step of the grievance-arbitration procedure. The director of public works posts and advertises all position openings, interviews candidates, and transmits his recommendation for appointment to the Town's executive secretary. The director imposes discipline pursuant to the collective bargaining agreement, but otherwise recommends any disciplinary action for higher approval. Further, the director of public works implements personnel policies, approves vacation schedules, schedules overtime and standby time and, working with supervisors, determines employees' daily working assignments. Also, the director of public works maintains contact with federal, state, and county agencies to keep abreast of continuing or new programs that may be of Town interest, and applies for federal and state grants.

Negotiations for a successor collective bargaining agreement between the Town and the exclusive collective bargaining representative of public works department employees began in the spring of 1996. At the request of the Town's executive secretary, the director of public works joined the Town's bargaining team that included the executive secretary and the chairman of the finance committee. Mr. Moroney attended all bargaining sessions, with one exception. Of the Town's seven proposals, four came directly from Mr. Moroney's input.¹⁸ Mr. Moroney was privy to the Town's wage parameters and compensation package, and participated in all bargaining team caucuses that discussed strategy and modified proposals. Throughout the course of bargaining for this contract, the Town's executive secretary relied on Mr. Moroney's knowledge of the department's operations and the stated concerns of its employees to formulate, and to respond to bargaining proposals. Prior to the most recent contract

15. This information was not a public document. The treasurer collector concurred with the Town's executive secretary's statement that a migration of two or three employees from one plan to another could have a substantial impact on the Town's health insurance budget.

16. Although the Town argues that the testimony of the treasurer-collector supports its requested finding that the involvement of the town accountant and treasurer-collector as members of the Town's negotiations team facilitated the timely settlement of the health insurance issues, the ALJ declined to draw this inference. We conclude that her findings on these negotiations are supported by the record. Therefore, we decline to modify the findings as requested by the Town.

17. Public works employees are represented for the purposes of collective bargaining by the Union. At the time of his hire Mr. Moroney reported to an elected board of public works that has since changed to a non-elected advisory board to the board of selectmen.

18. The evidence supports this finding and, therefore, we modify the ALJ's findings as requested by the Town.

negotiations, Mr. Moroney was not asked, nor did he participate directly in negotiations for a term of years. During contract negotiations in 1992, the Town's executive secretary consulted with Mr. Moroney about proposals and relied on Mr. Moroney's responsive written comments in evaluating proposals. In 1991 and 1990, Mr. Moroney provided the Town with written comments on the Union's proposals submitted during negotiations.

In 1995, Mr. Moroney and the executive secretary negotiated with the Union over the drug testing policy for certain bargaining unit employees as required by federal statutes and regulations. During 1994, Mr. Moroney and the executive secretary met with Union representatives to discuss the staffing of a new water plant and an upgraded waste water plant. At that time the construction was just beginning, and the union expressed its desire to bargain if the changes had an impact on their unit.¹⁹

In March 1991, the executive secretary requested Mr. Moroney's input and followed his recommendation on whether an employee should receive a retroactive wage payment. In January 1991, Mr. Moroney participated in a telephone conference call with Union representatives about accreting positions to the existing bargaining unit, and the creation of a separate supervisory bargaining unit. During a departmental reorganization in November 1989, Mr. Moroney provided the Town with recommendations on position reclassifications, including bargaining unit positions.

Library Director

The Town library is a separate town department governed by an elected three member board of library trustees who meet monthly. The library director is appointed by, and reports directly to, the library trustees. Jolene Larson, library director for about 8.5 years, attends all trustee meetings and prepares the meeting agenda by soliciting issues from the trustees, and by placing issues on the agenda that the trustees need to address. The library is a member of the Merrimack Valley Library Consortium, and the library director attends all consortium meetings and assists in establishing consortium goals and policy that, in turn, impact the operation of the Town library.

Unlike other Town departments whose annual budget requests are processed through the board of selectmen, the library trustees deal directly with the finance committee and town meeting to secure annual appropriations. At a fall meeting, the trustees, working with the library director, determine budget priorities after reviewing past budgets and expenditures, as well as the library's five year plan of service that contains the library's mission statement, goals, and objectives. The library director then prepares the written budget requests consistent with the established budget priorities, and presents the draft for formal trustee approval during the next meeting. If the budget priorities established by the trustees exceed

the town's percentage increase guidelines, the library director prepares both a minimum draft that includes as many priority budget items as possible, and a maximum draft incorporating all established priorities. At the next meeting, the trustees review the prepared budget requests and determine what budget items will be submitted and actively supported for funding.

Library facilities and operations are also funded through grants from the state board of library commissioners. As part of her duties, the library director acts as the library's facilities manager. In that capacity, the director supervises the maintenance of the building, including building renovations like the recently installed lighting and carpeting, and establishes plans for the structural use, changes, and construction of the library physical plant. Following an inconclusive library space study, the trustees, together with the library director, decided to pursue a feasibility or design study funded through a grant from the state board that provides and supervises state library construction grants. To write the grant, the library director obtained the requisite grant application forms from the state board, gathered the requisite information like a history of the town, user statistics, and other similar data, and completed the grant application for approval by the library trustees.

The library is staffed by an assistant library director, a children's librarian, three part-time clerks, and a part-time custodian. The library director prepared written job descriptions for all library titles,²⁰ and all employees report directly to the library director who directs their work, and trains and supervises them in the performance of their duties. The assistant library director and the children's librarian are represented for the purposes of collective bargaining by the Union. The library director does not participate in collective bargaining negotiations, nor does she play a role in the contractual grievance-arbitration procedure. To fill a vacant, funded position, the library director advertises and interviews candidates. The library director then discusses her recommendation with the trustees, who meet with the candidate and decide whether to appoint him/her to the position.²¹ If, in the library director's judgment, an employee's performance may warrant termination, the director discusses her concerns with the trustees.

Library policies are subject to the elected trustees' formal approval. Existing library policies are reviewed periodically by the trustees. With the advice, research and professional expertise of the library director, the library trustees affirm or modify an existing policy, or adopt a new policy, following a discussion during the board's regular monthly meeting. The library director actively participates in this decision-making process.

Library policies address a wide-range of activities, from the use of the fax machine and the creation of a CD collection, to a five-year

19. During the spring of 1996, Mr. Moroney developed a request for proposal to assist the Town in evaluating the benefits, if any, of retaining an outside contractor to staff and operate the new water plant. Mr. Moroney participated in the review process, and joined in the committee's recommendation to privatize this function. The Town approved this recommendation. There was no further bargaining with the Union on this issue.

20. The library director proposed that she review and rewrite position descriptions for all library positions as part of her fiscal year 1997 goals.

21. This is the hiring process followed most recently in 1996, with the library trustees appointing the director's recommended candidate for the assistant library director position.

plan of service. This five-year plan, approved in February 1993, serves as a blueprint to guide the Town's library service.²² The plan delineates the library's mission statement, goals and objectives, and provides for a yearly performance and evaluation review. The six goals, complemented with stated objectives, include a clarification of the legal responsibilities of the trustees, the expansion of popular materials, the effective use of the physical plant, effective library staffing, access to the collection, and service to the community by serving as the hub for community information.

In the early 1990's, the hours of public library service were reduced. The library director recommended to the trustees where the hours should be cut, and her recommendation was probably followed.²³ To plan for continued public library service while the library building would be closed temporarily for renovations in late 1996 and early 1997, the trustees and the library director sat down collectively to determine the hours and level of services the library would offer the community during this relocation period. As part of this process, the library director solicited information from other communities that had faced this problem, informed the trustees of the outcome of her informal survey, and identified her own concerns on the physical transfer of the library's collection during the winter season, and the trustees' aggressive approach to continued service. The interim policy adopted by the trustees on this issue was not fully in concert with the library director's stated concerns. However, the library director proposed a change in the library hours during the temporary relocation consistent with the trustee's objective of providing as much continued library service as possible, and the trustees adopted the director's recommendation.

Further, with the advent of new technology, the library trustees considered an internet policy in or about August 1995. Although the trustees discussed limiting children's access to the internet, the library director gathered and provided information supporting her recommendation of a censorship-free policy consistent with the Library Bill of Rights and the Children's Library Bill of Rights. The trustees adopted the library director's recommendation. In or about July 1996, the library trustees reviewed the library's inclement weather closing procedure. Although the library director opposed including a requirement that the director ascertain whether town hall was closed before closing the library, the trustees added this requirement to the existing policy.²⁴ During a March 1996 meeting, the library trustees agreed that scheduling staff time-off to pursue further education was at the discretion of the library director.²⁵

The library director also acts as the library's computer coordinator. In this capacity, she is currently working with the Town's technology committee and web site management committee. Further, in her capacity as the Town's representative at the Merrimack Valley Library Consortium, which, among other things, provides computer access to a wide-area of services including inter-library loan, the library director informs the trustees of the consortium's activities and the requisite hardware and software upgrades required for the Town to maintain full access to the consortium's network. Based on changes implemented in the consortium's policies, in 1994, the library director recommended that the trustees adopt a policy forgiving certain outstanding fines to offset potential administrative problems, and to ensure consistent application of the library policy of forgiving small fines, before the consortium policy was implemented system-wide. The trustees adopted the library director's proposal.

Discussion

When the issues raised by a representation petition are resolved by the parties' stipulation, the Commission will adopt the stipulation, if it does not conflict with either the Law or established Commission policy. *Town of Hopedale*, 20 MLC 1059, 1067, citing, *Board of Trustees, State Colleges*, 4 MLC 1427, 1428 (1977). Because the parties' stipulations do not appear to conflict with the Law or with established Commission policy or precedent, we adopt the parties' stipulation that the town clerk, principal assessor, director of senior services, conservation/planning administrator, and deputy director of public works are appropriately included in a bargaining unit of administrators and department heads employed by the Town, and that the executive secretary, police chief, and fire chief are appropriately excluded from the bargaining unit.

Further, we adopt the parties' stipulation that the deputy director of public works and the conservation/planning administrator are professional employees within the meaning of Section 1 of the Law. In addition, after reviewing the record, we determine that a Town-wide unit of all full time and regular part-time administrators and department heads constitutes an appropriate bargaining unit for the purposes of collective bargaining.

We turn next to whether the town accountant, treasurer/collector, director of public works, and library director should be excluded from the bargaining unit because they are managerial employees within the meaning of Section 1 of the Law. The Town asserts that the town accountant, the treasurer/collector, and the director of public works are managerial employees because they assist to a

22. The five-year plan contains the following text in the section "Introduction to the Planning Process":

This plan was developed by the director and trustees of the Manchester-by-the-Sea Public Library with assistance from the Eastern Massachusetts Regional Library System (EMRLS). The director served as a primary resource person, gathering and analyzing data, identifying library needs, preparing drafts for trustee consideration, making recommendations to the trustees, and working closely with the a [sic] EMRLS staff member in development of the planning draft. The trustees served as the planning committee, reviewing information and drafts presented to them, acting upon the director's recommendations, and approving elements of the plan as they were developed.

23. The evidence supports this finding and, therefore, we modify the ALJ's findings as requested by the Town.

24. The library director's opposition to this change was based on the different hours for the library vis a vis town hall. For example, the library is open four nights a week and Saturday, and town hall is open one night a week and closed Saturday.

25. The evidence supports this finding and, therefore, we modify the ALJ's findings as requested by the Town.

substantial degree in preparing for or conducting collective bargaining and that the town accountant is an appointed official who has the right to negotiate an individual contract. Further, the Town contends that the library director is a managerial employee because she participates to a substantial degree in formulating or determining library policy. The Union contends that all four positions are appropriately included in the petitioned-for bargaining unit.

Section 1 of the Law contains the following three part test to determine whether a person 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. Unlike supervisory personnel who “transmit policy directives to lower level staff and, within certain areas of discretion, implement the policies,” managerial employees “make the [policy] decisions and determine the objectives.” *Wellesley School Committee*, 1 MLC 1299, 1400 (1975), *aff’d. School Committee of Wellesley v. Labor Relations Commission*, 376 Mass. 112 (1978). The policy decision must be of major importance to the mission and objectives of the public employer. *Wellesley School Committee*, 1 MLC at 1403. Neither limited participation in the decision-making process, nor attending and participating in policy-making discussions is sufficient to consider an employee managerial, if the person’s input is merely informational or advisory in nature. *City of Northampton*, CAS-3149, slip op. at 9, (LRC, June 26, 1997); *Town of Medway*, 22 MLC 1261, 1268 (1995); *Town of Wellfleet*, 11 MLC 1238, 1241 (1984); *Wellesley School Committee*, 1 MLC at 1403. Rather, this first criterion of a managerial employee “includes not only the authority to select and implement a policy alternative, but also regular participation in the policy decision-making process.” *Town of Plainville*, 18 MLC 1001, 1009 (1991), *citing Town of Agawam*, 13 MLC 1364, 1368 (1986).

To be considered a managerial employee under the second part of the statutory definition, a person must participate to a substantial degree in preparing for or conducting collective bargaining. 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 have a voice in the terms of settlement. *Town of Medway*, 22 MLC at 1269; *City of Boston*, 19 MLC 1050, 1063 (1992); *Wellesley School Committee*, 1 MLC at 1407.

Construing the third statutory test of a managerial employee, the Commission has determined that the words “independent

judgment” require that an employee exercise discretion without consultation or approval, *Wellesley School Committee*, 1 MLC at 1408. A coincidence of recommending and acceptance by a higher authority is insufficient. *Id.* To be “substantial,” the responsibility must not be perfunctory or routine, it must have some impact and significance. *Id.* Finally, the appellate authority must be exercised beyond the first step in a grievance-arbitration procedure. *Id.* The exercise of supervisory authority to insure compliance with the provisions of a collective bargaining agreement is insufficient, standing alone, to satisfy this third criterion. *Somerville Housing Authority*, MCR-4249, slip op. at 10, (LRC, March 2, 1994), *citing, Town of Agawam*, 13 MLC 1364, 1369 (1986).

A. Town Accountant/Computer Systems Administrator/Chief Procurement Officer

After carefully examining the actual job duties and responsibilities of the town accountant, we conclude that he assists to a substantial degree in preparing for or conducting collective bargaining on behalf of the Town, and, therefore, is a managerial employee within the meaning of the Law. The facts establish that the town accountant has attended board of selectmen meetings and executive sessions during which collective bargaining strategy is discussed and, on occasion, bargaining parameters for compensation established.

Further, the facts establish that, during health insurance coalition bargaining in 1990, 1992, 1993, and 1995, the town accountant, as a member of the Town’s negotiating team, calculated the cost of bargaining proposals, attended and participated in management team caucuses during which management discussed bargaining strategy, and formulated and modified its proposals. He did not merely participate in these negotiations in a consulting role, but rather was directly involved in the negotiations process. *Town of Medway*, 22 MLC 1261, 1269 (1995) (citations omitted); *Town of Agawam*, 13 MLC at 1368-1369.

B. Treasurer/Collector

After carefully examining the actual job duties and responsibilities of the treasurer/collector, we conclude that she assists to a substantial degree in preparing for or conducting collective bargaining on behalf of the Town, and, therefore, is a managerial employee within the meaning of the Law. As the Town’s health insurance coordinator, she compiled information for the health insurance coalition bargaining in 1990, 1992, 1993, and 1995, and attended the negotiating sessions and management team caucuses, during which management discussed bargaining strategy, and formulated and modified its proposals. Because the treasurer/collector was involved directly in the negotiations as a full member of the management team and privy to the Town’s proposals before they were offered at the bargaining table, we must conclude that she is a managerial employee. See, *City of Boston*, 19 MLC 1050, 1065-1066 (1992).

We recognize that the participation of the town accountant and the treasurer/collector in health insurance coalition bargaining is a small part of these employees’ job duties. However, we will not disrupt the composition of management’s bargaining teams, particularly here, where the Town has a well-established working model for resolving health insurance issues on a town-wide coalition basis. The treasurer/collector is the Town’s expert in

substantive health insurance enrollment migration data, and her participation in the negotiations lies in this area of expertise. The town accountant's expertise lies in accounting and Town finances. We will not require the Town to alter the composition of its bargaining team to insulate these employees from a finding that their participation in town-wide health insurance coalition bargaining over a seven year period satisfies the second prong of the statutory criterion of a managerial employee. See, e.g., *Town of Framingham*, 17 MLC 1233, 1237-1238 (1990).

C. Department of Public Works Director

We conclude that the department of public works director assists to a substantial degree in preparing for or conducting collective bargaining on behalf of the Town, and, therefore, is a managerial employee within the meaning of the Law. The facts establish that, as a member of the Town's negotiating team in the Spring of 1996, the director participated in the development of the Town's proposals, was privy to the Town's wage parameters and compensation package, attended and participated in the negotiations, and participated in all team caucuses that discussed strategy and modified proposals. Further, in 1995, the director and the executive secretary negotiated with the Union over a drug testing policy. Although the Union argues that the director's full participation in collective bargaining occurred recently, there is no evidence that the Town purposely increased the director's role to the integral level it is today to effectively preclude his inclusion in an appropriate bargaining unit. See, *Town of Framingham*, 17 MLC 1233, 1237-1238 (1990).

D. Library Director

Finally, we conclude that the library director participates to a substantial degree in formulating or determining library policy, and, therefore, is a managerial employee within the meaning of the Law. The facts disclose that the library director is appointed by, and reports directly to, the three member elected board of trustees. The library director prepares position descriptions for all library staff, directs their work, and trains and supervises them in the performance of their duties. The library director prepares the agenda and attends all trustee meetings, attends all Merrimack Valley Library Consortium meetings, assists in establishing this consortium's goals and policy that, in turn, significantly impact the Town's library operations and budget.

Although the record reflects that the trustees retain ultimate approval authority on all library issues, including hiring and firing employees, the trustees exercise their decision-making authority with the advice, research, professional expertise, and full participation of the library director. During regular monthly meetings, the trustees formally adopt policies that range from a five-year plan that contains the library's mission statement, goals and objectives, to the use of a fax machine. Based on our careful review of the facts, we find that the library director's input on all major policy issues, including fiscal, personnel, building maintenance, and library services is more than merely advisory or informational in nature. Cf. *City of Quincy*, 13 MLC 1436, 1440 (1987); *Town of Wellfleet*, 11 MLC 1238, 1241 (1984); *Wellesley School Committee*, 1 MLC at 1403. The library director has direct access to the trustees' decision-making process, and her proposals

or recommendations are not screened through a higher level before she presents them to the trustees. *Wellesley School Committee*, 1 MLC at 1404. Indeed, there is no intervening level of authority between the library director and the library trustees.

Although the trustees do not always adopt the director's recommendations without comment or discussion, we determine that the evidence is sufficient to find that the library director's regular attendance and participation in elected trustee meetings constitutes significant policy formulation and determination. *Town of Plainville*, 18 MLC 1001, 1009 (1991), citing, *Worcester School Committee*, 3 MLC 1653, 1672 (1977), quoting *Town of Needham School Committee*, 3 MLC 1251, 1266 (1976). For example, in 1996, the trustees and the library director collectively determined the hours and level of library services during the facility's temporary relocation; in 1995, the trustees adopted the director's recommended censorship-free internet policy; in 1994, the trustees adopted the director's small fine policy developed to offset administrative problems; and, in the early 1990's, the library director effectively recommended the manner in which library services would be reduced.

CONCLUSION AND DIRECTION OF ELECTION

Based on the record and for the reasons stated above, we conclude that the town accountant, treasurer/collector, director of public works and library director are managerial employees within the meaning of Section 1 of the Law. Further, we conclude that a question of representation has arisen concerning certain employees of the Town of Manchester-by-the-Sea and that the following constitutes an appropriate unit for collective bargaining within the meaning of Section 3 of the Law:

All full-time and regular part-time administrators and department heads employed by the Town of Manchester-by-the-Sea including the town clerk, principal assessor, director of senior services, conservation/planning administrator and deputy director of public works, but excluding the executive secretary, police chief, fire chief, town accountant, treasurer/collector, director of public works and library director, and further excluding all managerial and confidential employees, and all other employees of the Town of Manchester-by-the-Sea.

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 bargaining unit desire to be represented by the American Federation of State, County and Municipal Employees, Council 93, AFL-CIO or by no employee organization.

Because the above-described unit includes the positions of conservation/planning administrator, and deputy director of public works, which are professional employees within the meaning of Section 1 of the Law, employees who hold these positions shall be given an opportunity to vote whether they wish to be included in the above-described collective bargaining unit consisting of both professional and non-professional employees. If a majority of the professionals vote for inclusion in the overall unit, they shall be given the opportunity to vote whether they desire to be represented by the American Federation of State, County and Municipal Employees, Council 93, AFL-CIO, or by no employee organization. Alternatively, if a majority of professionals vote not

to be included in the overall unit, they shall be in a separate professional unit consisting of the conservation/planning administrator and deputy director of public works, excluding all other employees of the Town of Manchester-by-the-Sea, and they shall have an opportunity to vote whether the professional unit shall be represented by the American Federation of State, County and Municipal Employees, Council 93, AFL-CIO, 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 ending Saturday, February 28, 1998, and who have not since quit or been discharged for cause.

To insure 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 election 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, MA 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 the 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 circumstances. Failure to comply with this direction may be grounds for setting aside the election, should proper and timely objections be filed.

SO ORDERED.

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