

be filed by the District 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 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 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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In the Matter of COUNTY OF DUKES COUNTY/
MARTHA’S VINEYARD AIRPORT COMMISSION
AND
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND
HELPERS OF AMERICA, LOCAL 59

Case No. MCR-4700

- 15. *Supervisory and Managerial Employees*
- 34.1 *appropriate unit*
- 34.2 *community of interest*
- 34.8 *similarity of work*
- 35.1 *casual and temporary employees*
- 35.4 *other non-professionals*
- 35.7 *supervisory and managerial employees*
- 36. *One Person Units*
- 93.3 *petition for certification*

April 16, 1999

Robert C. Dumont, Chairman
Helen A. Moreschi, Commissioner

Michael C. Gilman, Esq. *Representing the County of Dukes
County/Martha’s Vineyard
Airport Commission*

David Cabral *Representing Teamsters,*
Richard Fernandes *Chauffeurs, Warehousemen,
and Helpers of America, Local
59*

DECISION AND DIRECTION OF ELECTION¹

STATEMENT OF THE CASE

On August 7, 1998, the Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 59 (Union) filed a petition with the Labor Relations Commission (Commission) to represent certain non-professional employees employed by the County of Dukes County/Martha’s Vineyard Airport Commission (Airport). On October 28, 1998, Hearing Officer Ann T. Moriarty, Esq. conducted a hearing at which both parties had an opportunity to present testimonial and documentary evidence. The Airport and the Union filed post-hearing briefs that were received by the Commission on or before November 23, 1998. In accordance with 456 CMR 13.02(2), the Hearing Officer issued recommended findings of fact on January 29, 1999. The Commission has reviewed the record evidence and adopts the hearing officer’s findings of fact and credibility determinations in their entirety.

The Union seeks to represent all full-time and regular part-time non-professional employees of the Airport including the operations supervisor, fueling supervisor, laborer, lineman/night watchman, janitor/gardener, clerk and all seasonal employees. The Airport opposes the creation of a single bargaining unit. Rather, the Airport

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.

asserts that the operations supervisor and fueling supervisor perform supervisory job duties, and, accordingly, a separate supervisory unit consisting of these two positions is appropriate. Further, the Airport seeks to exclude all seasonal employees from any bargaining unit the Commission finds appropriate. If the Commission determines that two bargaining units are appropriate, the Union seeks to represent employees in both units.

During the hearing, the parties stipulated that the positions of airport manager and administrative secretary are appropriately excluded from any bargaining unit the Commission finds appropriate. Further, the parties stipulated that all full-time and regular part-time employees in the positions of laborer, lineman/night watchman, janitor/gardener and clerk are appropriate for inclusion in a single bargaining unit.

FINDINGS OF FACT²

The Airport employs about twelve (12) full-time and regular part-time employees including an airport manager and administrative secretary. The airport manager directs, controls, and oversees the operations and maintenance of the county airport. The airport manager reports directly to the airport commission. Among other things, the airport manager interviews, effectively recommends for hire, and supervises all full-time and regular part-time airport employees. The administrative secretary provides secretarial assistance to the airport manager, and attends, records, and prepares minutes of airport commission meetings, including executive sessions that encompass personnel and fiscal issues. The remaining positions at the airport, held by eight (8) or nine (9) employees, include the operations supervisor, fueling supervisor, laborer, lineman/night watchman, janitor/gardener, and clerk.

The county's personnel by-laws delineate the terms and conditions of employment for all Airport employees. The county manager is responsible for administering the personnel by-laws. According to the county's employee classification plan and employee compensation plan, airport positions and entry level pay effective July 1, 1998 are as follows:³

Classification	Step 1	annual pay
Grade 4	Airport Laborer	\$23, 304.95
Grade 5	Airport Lineman/Night Watchman	24, 936.29
Grade 6	Airport Fueling Supervisor	26, 681.83
Grade 7	Administrative Secretary	28, 549.56
Grade 8	Airport Operations Supervisor	30, 548.03
Grade 14	Airport Manager	45, 844.36

The airport is open and staffed twenty-four hours a day, each day of the year. The operations supervisor and the fueling supervisor generally work the day shift, Monday through Friday. The operations supervisor oversees the general maintenance of all airport facilities, monitors and maintains the security at the airport,

and, assists the airport manager with routine scheduling of shifts, job assignments, and other personnel issues. The operations supervisor interviews, and recommends for hire temporary seasonal employees, subject to the airport manager's approval.⁴ The appointment forms for seasonal employees are signed by the airport manager and forwarded to the county manager for review as to compliance with the county's fiscal policy and personnel by-laws. The operations supervisor provides input to the airport manager about increases in the hourly rate of individual seasonal employees. If the airport manager is on vacation or otherwise unavailable, the operations supervisor may stand in the place of the manager and interview and hire all employees.

The fueling supervisor coordinates the fuel handling operations of the airport, supervises the record keeping activities associated with fuel activities, and operates, and maintains fuel farm and fuel dispensing equipment. The fueling supervisor works under the general supervision of the airport manager or the assigned supervisor. The fueling supervisor trains employees in the proper handling of fuel and related equipment, and ensures that fueling activities by employees conform with acceptable levels of quality and service. In addition, other experienced airport employees train newly hired employees in the airport's fueling operations. The fueling supervisor's oversight of an employee's work is limited to their fueling duties. The fueling supervisor does not participate in the hiring process for any airport employees.

Both the operations supervisor and the fueling supervisor also perform job duties of the same or similar nature as the laborer, lineman/night watchman, janitor/gardener, and clerk, who themselves share many of the same job duties like fueling aircraft, ramp security, and maintenance of the airport's buildings and grounds. In practice, daily job assignments are determined in a collegial manner among the employees themselves. On a rare occasion, the operations supervisor or fueling supervisor will step in and resolve an employee difference over work assignments.

Both the operations supervisor and the fueling supervisor possess the authority to issue oral reprimands. If an oral reprimand is documented, or if it is brought to the county manager's attention, it is considered when the county decides whether an employee receives an annual wage increase. It is the airport manager who forwards oral reprimand documentation to the county personnel office. Depending on the incident, the operations supervisor may impose a higher level of employee discipline on his own, or he may first discuss the issue with the airport manager.

The airport manager evaluates annually all employees. The airport manager talks with the operations supervisor to get his input about an employee's performance before completing the written evaluation form. The airport manager submits all employee evaluations to the county manager. The county uses an employee's

2. The Commission's jurisdiction is uncontested.

3. The record does not contain the grade classification for two airport positions, janitor/gardener and clerk.

4. Although county manager Carol Borer testified that the operations supervisor has independent authority to hire seasonal employees, Ms. Borer also testified that she was unaware of the interchange, if any, between the airport manager and the operations supervisor in this hiring process. Based on this record, the evidence is insufficient to find that the operations supervisor independently hires seasonal employees.

evaluation to determine whether the employee receives an annual wage increase.

The Airport hires seasonal employees, employees who work for a ninety (90) day period each summer season between Memorial Day and Labor Day. Before each season, the Airport advertises all openings for seasonal employment, and hires about three or four persons from the applicant pool. Persons who worked the previous season are not recalled, nor re-hired automatically. Rather, they must follow the application process like any other candidate. Seasonal employees perform the same or substantially similar job duties as year round employees, like fueling aircraft, ramp security, and maintenance of buildings and grounds, although seasonal employees will work alongside experienced employees until they have acquired an accepted skill level. Seasonal employees are paid less than year round employees.⁵ And, seasonal employees do not receive any employment benefits, like medical insurance, life insurance, county retirement plan participation, and sick, vacation and personal leave credits, that year round employees receive.

Over the past five summer seasons, 1994 through 1998, the Airport has hired sixteen (16) seasonal employees, eleven (11) of which worked for 90 days in one of the five summer seasons. The employment history for the remaining five employees is as follows:

Kate McEowen worked two successive ninety day periods starting April 30, 1994.

Scott Colella worked two successive ninety day appointments in the spring/summer of 1994, one ninety-day period in the summer of 1996, and a thirty day period starting April 29, 1997. He did not work in the summer of 1995 nor 1998.

Donald Smith worked for a ninety-day period in the summers of 1995, 1996, and 1998. He did not work in the summers of 1994 or 1997.

Michael Valenti worked one ninety-day period in the summer of 1995, 1996, and 1997. In the summer of 1998, he worked a thirty day period, April 20, 1998 to May 20, 1998, and a ninety day period, June 29, 1998 to August 30, 1998.

Joseph Coveny worked as a seasonal employee starting July 8, 1998 and continues to be employed at the airport as of October 28, 1998, but not as a regular, year-round employees.

In addition, the Airport first hired Richard Michelson as a seasonal employee starting June 23, 1997. He continued working at the airport on an emergency/seasonal appointment basis until on or about January 1998 when the Airport hired him as a twenty (20) hour temporary lineman and a twenty (20) hour permanent clerk. Mr. Michelson continues to work at the airport.

Decision

Section 3 of 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 representation; and 3) safeguarding the rights of employees to effective representation. *Town of Bolton*, 25 MLC 62, 65 (1998).

In deciding whether employees share a community of interest, the Commission examines factors like similarity of skills and functions, similarity of pay and working conditions, common supervision, work contact, and similarity of training and experience. *Id.* at 65 (citing *Boston School Committee*, 12 MLC 1175, 1196 (1985)). The Commission traditionally favors broad, comprehensive units over small, fragmented units. *Higher Education Coordinating Council*, 23 MLC 194, 197 (1997). No single factor is outcome determinative. *City of Worcester*, 5 MLC 1018, 1111 (1978). The Law requires that employees share only a community of interest rather than an identity of interest. *Springfield Water and Sewer Commission*, 24 MLC 55, 59 (1998)(citations omitted). The Commission has consistently found a community of interest among employees who share similar interests and working conditions based upon common supervision and similar work environment. *Id.*

To satisfy the second and third statutory criteria, the Commission considers the impact of the proposed unit structure upon the public employer's ability to effectively and efficiently deliver public services, while safeguarding the rights of the public employees to effective representation. *Town of Bolton*, 25 MLC at 66. The Commission satisfies these obligations by placing employees who share a community of interest in the same bargaining unit. *Id.* This avoids placing unnecessary burdens on the employer while maximizing the strength of public employees in the bargaining relationship. *Id.* (citations omitted).

Based on the evidence contained in the record, we find that the operations supervisor and the fueling supervisor share a community of interest with the other employees in the proposed bargaining unit. The fueling supervisor and the operations supervisor perform job duties and functions similar to those of the other employees. All year round employees receive the same employment benefits such as medical insurance, life insurance, county retirement plan participation and sick, vacation and personal leave credits. Additionally, all the full-time and regular part-time employees are under the common supervision of the airport manager. We have previously determined that only significant differences that would result in inevitable conflicts constitute a basis for excluding employees from the bargaining unit on the ground that the employees lack a community of interest with the other bargaining unit members. *Franklin Institute of Boston*, 12 MLC 1091, 1093 (1985) (citations omitted). Here, although they do not necessarily work the same schedule as some of the other employees, it is clear that the fueling supervisor and the operations supervisor share a community of interest with the other members of the proposed bargaining unit.

The Airport wishes to place the fueling supervisor and the operations supervisor in a separate bargaining unit, arguing that

5. In the summer 1998, the Airport paid all seasonal employees \$9.00 per hour. The entry level hourly rate effective July 1, 1998 for a Grade 4 airport laborer is

\$11.20 per hour, and for a Grade 5 airport lineman/night watchman is \$11.99 per hour.

both employees are supervisory employees. Historically, the Commission has established separate bargaining units for supervisors and the employees that they supervise. *Boston School Committee*, 11 MLC 1352, 1360 (1985); *Town of Greenfield*, 5 MLC 1036, 1040 (1978); *City of Chicopee*, 1 MLC 1195, 1196 (1974). This decision is based on the rationale that individuals who possess significant supervisory authority owe their allegiance to their employer, especially with respect to issues involving employee discipline and productivity. *Town of Bolton*, 25 MLC at 67 (citations omitted). By creating separate bargaining units, the Commission avoids placing supervisors in the position of having to discipline employees on whom the supervisors rely in the exercise of their collective bargaining rights. *City of Westfield*, 7 MLC 1245, 1250 (1980). The Commission recognizes that the mere existence of supervisory authority causes an inherent conflict between supervisors and the employees they supervise. *Id.*

In *Town of Bolton*, 25 MLC 62 (1998), the Commission set forth some of the factors it considers in determining whether an employee is a supervisory employee. Some of those factors include whether the employee has the independent judgment and authority to assign and to direct the work of employees, *Worcester School Committee*, 22 MLC 1762, 1766 (1996); *City of Westfield*, 7 MLC at 1252; the authority to initiate and to recommend discipline, *Id.*; the authority to adjust grievances, *Eastham School Committee*, 22 MLC 1190, 1197 (1995); *Town of Newbury*, 14 MLC 1660, 1662 (1988); and, the independent authority to make, or the power to recommend effectively, personnel decisions like hire, transfer, suspend, promote or discharge employees. *Town of Sturbridge*, 18 MLC 1416, 1421 (1992); *Town of Hadley*, 11 MLC 1457, 1460 (1985). Additionally, the Commission considers non-binding recommendatory authority in hiring decisions indicative of supervisory status. *Eastham School Committee*, 22 MLC at 1197. However, all of the employee's job duties do not have to involve supervisory responsibilities. *City of Westfield*, 7 MLC at 1252.

Based on these factors, we find that the operations supervisor is a supervisory employee. The operations supervisor assists in the scheduling of shifts and job assignments. He interviews and recommends temporary seasonal employees for hire, subject to the airport manager's approval. If the airport manager is unavailable, the operations supervisor may interview and hire employees without the airport manager's approval, although there is no indication that the operations supervisor has ever exercised this authority.

Further, the airport manager consults with the operations supervisor when preparing employee performance evaluations. The operations supervisor provides input to the airport manager regarding wage increases for seasonal employees. Additionally, the operations supervisor has the authority to issue verbal warnings and has done so on at least one occasion. He may also impose a higher level of discipline without first discussing the issues with the airport manager.

However, applying the same criteria to the fueling supervisor, we determine that the fueling supervisor is not a supervisory employee. The fueling supervisor does not participate in the hiring process for any airport employees. Although the fueling supervisor trains new

employees in the airport's fueling operations, other experienced airport employees also perform this function. The fueling supervisor does not oversee all the responsibilities of the other employees. He watches over only the fueling activities of the other employees. There is no indication that the fueling supervisor participates in any way in the employee performance evaluation process.

As with the operations supervisor, the fueling supervisor has the authority to issue verbal warnings and has done so on at least one occasion. However, the record fails to identify any additional authority he may have in disciplining employees. Even when combined with the fact that, on rare occasions, the fueling supervisor resolves employee differences over work assignments, the record does not support a finding that the fueling supervisory is a supervisory employee.

Accordingly, the evidence indicates that the operations supervisor is a supervisory employee, and the fueling supervisor is not. However, we decline to exclude the operations supervisor from the bargaining unit on the basis of his supervisory status. The Commission has previously determined that, where there is a larger appropriate unit, a one-person bargaining unit will be rejected. *Freetown-Lakeville Regional School District*, 11 MLC 1508, 1517, n.6 (1985); *Chatham School Committee*, 6 MLC 1042 (1975). Therefore, because he shares a community of interest with the other airport employees, the operations supervisor should be included in the bargaining unit with the other employees.

The Union seeks to include the seasonal employees in the bargaining unit, but the Airport argues that they should be excluded. The Commission has previously determined that seasonal employees may be included in a bargaining unit with regular employees if the seasonal employees have a community of interest with the other employees and there is a substantial stability in the seasonal work force from year to year. *Town of Wellfleet*, 11 MLC 1238, 1243 (1984). In determining the appropriateness of including seasonal employees in a bargaining unit with regular employees, the Commission examines the seasonal employees' expectation of continuing employment. *Town of Wellfleet*, 11 MLC 1238, 1243 (1984); *City of Gloucester*, 1 MLC 1170, 1171 (1974). The employees' expectation of continuing employment is commonly expressed as the percentage of employees in any year who were employed the previous year. *City of Gloucester*, 1 MLC at 1171. If the percentage is high enough, the employees are considered to have a significant enough interest in the affairs of the bargaining unit to allow them to participate in the collective bargaining process. *Id.* However, if the rate of employee return is below a certain figure, then the employees are considered casual and are excluded from the bargaining unit. *Id.* See *City of Springfield*, 5 MLC 1170 (1978)(high turnover from year to year in seasonal bath attendants warrants exclusion from unit); *Bay State Harness Horse-Racing and Breeding Association, Inc.*, 2 MLC 1340 (H.O. 1976) (seasonal employees included in the bargaining unit where seventy percent or more of those employees return from year to year).

Here, we find that the seasonal employees do not have a sufficient continuing expectation of employment to warrant including them

in the bargaining unit with the full-time and regular part-time employees. First, there is a high turnover rate among seasonal employees. Of the sixteen (16) seasonal employees hired between 1994 and 1998, only three (3) have been rehired for another season. Second, seasonal employees who work one summer are not rehired automatically. Each year, they must go through the application process. No hiring preference is given to previous seasonal employees. Third, seasonal employees do not receive any employment benefits that are enjoyed by year-round employees. Seasonal employees do not receive medical insurance, life insurance and sick, vacation and personal leave time as do the year-round employees. Finally, other than Michelson, there is no evidence that seasonal employees are hired as permanent employees. For these reasons, we find that the appropriate unit for the purposes of collective bargaining consists of the operations supervisor, the fueling supervisor, the laborer, the lineman/night watchman, the janitor/gardener and the clerk.

CONCLUSION AND DIRECTION OF ELECTION

Based on the record and for the reasons stated above, we conclude that a question of representation has arisen concerning certain employees of the County of Dukes County/Martha's Vineyard Airport Commission and that the following employees constitute an appropriate bargaining unit for collective bargaining within the meaning of Section 3 of the Law:

All full-time and regular part-time non-professional employees of the County of Dukes County/Martha's Vineyard Airport including the operations supervisor, the fueling supervisor, the laborer, the lineman/night watchman, the janitor/gardener and the clerk but excluding the airport manager, the administrative secretary, all managerial, confidential, seasonal and casual employees, and all other employees.

IT IS HEREBY DIRECTED that elections by secret ballot shall be conducted to determine whether a majority of the employees in the above-described bargaining units desire to be represented by the Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 59 or by no employee organization. The eligible voters shall include all those persons within the above-described units whose names appear on the Airport's payroll for the payroll period for the week ending Saturday, April 3, 1999 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 election eligibility list for each of the bargaining units containing the names and addresses of all eligible voters must be filed by the District 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 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 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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