

SO ORDERED.

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE MASSACHUSETTS
LABOR RELATIONS COMMISSION

AN AGENCY OF THE COMMONWEALTH OF
MASSACHUSETTS

The Massachusetts Labor Relations Commission has determined that the Bristol County Sheriff’s Department has violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by unilaterally changing holiday scheduling and vacation selection procedures.

WE WILL NOT fail and refuse to bargain in good faith with the Massachusetts Correction Officers Federated Union (Union) by requiring the Union’s bargaining unit members to: 1) receive holiday pay in lieu of time off for scheduled holidays; and 2) select their vacation by shift, instead of bargaining unit, seniority.

WE WILL NOT in any like manner, interfere with, restrain and coerce any employees in the exercise of their rights guaranteed under the Law.

WE WILL restore to bargaining unit members represented by the Union the holiday scheduling and vacation selection procedures in effect prior to April 18, 2003 of: 1) granting bargaining unit members all scheduled holidays off with pay; and 2) allowing bargaining unit members to select their vacation weeks on the basis of bargaining unit seniority.

WE WILL provide the Union with prior notice of any proposed change to the holiday scheduling and vacation selection procedure described in the preceding paragraph, and, upon request by the Union, bargain in good faith with the Union to resolution or impasse before implementing any changes to that procedure.

WE WILL make whole bargaining unit members for any economic losses they may have suffered as a result of the Sheriff’s unlawful changes to holiday scheduling and vacation selection procedures, plus interest on any sums owing at the floating interest rate specified in M.G.L. c. 231, §6I, compounded quarterly.

[signed]
BRISTOL COUNTY SHERIFF’S OFFICE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE
DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Labor Relations Commission, 399 Washington St., 4th Floor, Boston, MA 02108-5213 (Telephone: (617) 727-3505).

* * * * *

In the Matter of LOCAL 888, SERVICE EMPLOYEES
INTERNATIONAL UNION

and

TOWN OF MILLBURY

Case No. CAS-05-3607

- 32. *Binding Effect of a Unit Determination*
- 34.2 *community of interest*
- 34.92 *clarification*
- 35.411 *tax collectors*
- 35.7 *supervisory and managerial employees*
- 91.1 *dismissal*
- 93.4 *petition for clarification*

September 14, 2006

John F. Jesensky, Chairman
Hugh L. Reilly, Commissioner

Susannah Hegarty, Esq. *Representing Local 888, Service Employees International Union*

Sharon P. Siegel, Esq. *Representing the Town of Millbury*

DECISION¹

Statement of the Case

The Town of Millbury (Town) filed a petition with the Labor Relations Commission (Commission) on February 4, 2005 seeking to exclude the position of assistant treasurer/collector from a bargaining unit of clerks, custodians, library workers, and police dispatchers for whom Local 888, Service Employees International Union (Union) is the exclusive collective bargaining representative.

The Commission investigated the issues raised in the petition and, on February 1, 2006, provided the parties with a summary of the information adduced during the investigation. Further, because it did not appear that any material facts were in dispute, the Commission requested the parties to show cause why it should not resolve the unit placement issue based on the information summary. The Town responded to the Commission’s show cause letter on February 16, 2006 by providing additional information to clarify the amount of time the treasurer/collector had been out of the office during the fiscal year of 2005. The Town also seeks additional findings based on the information that it had provided previously to the Commission. The Union submitted no further response. The Commission has reviewed the Town’s submission and, where the information is supported by an affidavit made by individuals with personal knowledge of the facts, the Commission has included and or modified the statement of fact, below. Accordingly, the Commission will proceed to decide whether the assistant treasurer/collector’s position should be excluded from the Union’s bargaining

1. [See next page.]

unit based on the information provided by the parties during the investigation.

Statement of Fact²

History and Background of the Union's Bargaining Unit

Prior to July 1, 1976, the Town recognized Local 495, Service Employees International Union, AFL-CIO (Local 495) as the exclusive bargaining representative for junior, senior, and head clerks employed by the Town in the following departments: Town Clerk's Office, Veteran's Benefit Office, Selectmen's Office, Town Collector's Office, Treasurer's Office, Police Department, Board of Health, Sewer Department, Assessor's Office, and Auditor's Office.³ The bargaining unit has expanded over the years to also include custodians, library workers, and police dispatchers.

Prior to July 24, 2002, the Town and Local 495 negotiated over a proposed reorganization of several Town offices, including the treasurer/collector's office. Town Manager Raymond W. Houle, Jr. (Houle) represented the Town, and the local board of union stewards, including Jayne Marie Davolio (Davolio), Local 495's head union steward, served as Local 495's bargaining team for these reorganization negotiations. The Town and Local 495 reached an agreement with the Union on a number of issues, including the creation of the assistant treasurer/collector's position in the treasurer/collector's office. The negotiations about the creation of the assistant treasurer/collector's position centered only on a discussion that the position would be in the Union's bargaining unit with a slightly higher salary. There was no discussion during these negotiations that the assistant treasurer/collector's position was a statutory position.

The parties memorialized their agreement in a Memorandum of Understanding (Memorandum) dated December 2, 2002. The Memorandum provides, in part, as follows:

This Memorandum of Understanding is to outline the agreements made between the parties as a result of both the Early Retirement Incentive Program (ERIP) and the Town of Millbury reorganization plan. The following positions shall be included in the recognition clause of the NAGE Clerical 495 and the Town of Millbury agreement:

1. The parties agree to create a position of Assistant Treasurer/Collector at an hourly rate of \$17.40....

The Memorandum includes eight other numbered paragraphs regarding staffing changes in other Town departments, like an increase in the hours of work for clerical positions working in the Town's fire department and the department of public works, the

addition of a head clerk in the personnel department, and the merger of two positions in the library.

Houle signed the Memorandum on behalf of the Town, and four members of Local 495's bargaining team signed the Memorandum on behalf of the Union. During these negotiations, Houle did not notify the Union that his signature on this Memorandum was insufficient to bind the Town to its provisions. The Town implemented the provisions of the written Memorandum. During the negotiations over the Town reorganization, Davolio spoke with a member of the Town's Board of Selectmen who expressed to her his desire that the negotiations and the reorganization succeed, and that the result would be satisfactory to all parties. After the parties had signed the Memorandum, Davolio spoke with the Chairman of the Town's Board of Selectmen regarding the content of the Memorandum and the progress on the implementation of its terms. There is no record that the Town's Board of Selectmen discussed and/or formally ratified the Memorandum during its meetings.⁴ In July of 2004, the Town appointed Paul J. Guida (Guida) to the position of town manager.⁵ On or about August 6, 2004, Guida started negotiating with the Union over the terms of a successor collective bargaining agreement. During the negotiations, the Town proposed removing the assistant treasurer/collector's position from the bargaining unit. The Union rejected the Town's proposal, and the parties agreed to refer the unit placement issue to the Commission for decision. The Town filed this petition with the Commission on February 5, 2005.

On March 15, 2005, the Town and the Union signed a collective bargaining agreement covering the period of July 1, 2004 through June 30, 2007 (2004-2007 Agreement). Article 1, Recognition, of the 2004-2007 Agreement provides, in part, as follows:

A. The Town of Millbury (referred to as the Employer) recognizes Local 888, SEIU, AFL-CIO (referred to as the Union), as the sole and exclusive bargaining agent for the purposes of establishing salaries, wages, hours and all other conditions of employment, for the following positions.⁶

1. Library Assistants
2. Head Custodian/Maintenance and Custodian at the Municipal Office Building, Custodian at the Council on Aging and Custodian at the Library.
3. Emergency Civilian Dispatchers that are permanently scheduled in the Police Department.
4. Regular part-time employees.
5. The Junior, General and Head Clerks in the following offices:
Assessor's Office

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. The Town submitted a copy of the recognition clause of a collective bargaining agreement between the Town and Local 495 covering the period July 1, 1976 through June 30, 1978 (1976-1978 Agreement). The Town researched its files, but it did not locate any records that establish the date the Town first recognized any employee organization as the exclusive representative of these clerical employees. The 1976-1978 Agreement is the earliest contract that the Town located in its re-

ords. The Union does not dispute this information, nor does the Union provide any further information on this issue.

4. In its written submission, the Town states that it has thoroughly searched its records for copies of any Board of Selectmen's minutes pertaining to the Memorandum, or any Selectmen's vote ratifying the Memorandum, but this search did not locate any of these documents.

5. Houle left the Town's employ in late 2003.

6. There are about thirty-four employees in the Union's bargaining unit.

Finance Director's Office
 Board of Health Office
 DPW Office (Highway and Sewer)
 Building Department
 Conservation Commission Office
 Council on Aging Office
 Fire Department Office
 Library
 Planning Board Office
 Police Department
 Town Clerk's Office
 Treasurer/Collector's Office
 Town Manager's Office
 Veterans Agent's Office

F. The Union agrees to exclude the following positions in any Town office:

1. All managers
2. All part-time board clerks that have an approved salary budget for less than ten (10) hours per week (as determined at the beginning of the fiscal year)
3. All positions in Section A that have an approved salary budget for less than ten (10) hours per week (as determined at the beginning of the fiscal year)

A list of classifications in the Union's bargaining unit arranged by department and denoting whether the position is full-time or part-time is found in an Appendix to this decision. The Appendix also includes the 2005 fiscal year hourly salary schedule for the classifications as it appears in the 2004-2007 Agreement.

Treasurer/Collector's Office - Assistant Treasurer/Collector

Prior to the 2002 reorganization, the following positions existed in the treasurer/collector's office: one full-time tax collector, one part-time treasurer, two full-time head clerks, one full-time general clerk, and one part-time general clerk, who worked about ten to twelve hours each week.

On July 24, 2002, the Town posted a vacancy for the newly created position of assistant collector/treasurer. The position vacancy provides as follows:

The Town of Millbury is seeking qualified candidates for the newly formed position of Assistant Collector/Treasurer. This position is a full-time (35 hours per week or as needed) position reporting directly to the Collector/Treasurer.

The ideal candidate will have experience in banking and will have a working knowledge of collections and collections procedures and functions. A high degree of accuracy in accounting as well as a strong willingness to assist the Treasurer/Collector is of paramount importance. The position also requires great flexibility, and the successful candidate may be working in several function areas on a daily basis.

The salary for this position is subject to further negotiations with the Union and the Town Manager.

Interested persons may apply in writing to the Town Manager NO LATER THAN THURSDAY, AUGUST 8, AT 4:00 P.M.

POSTING:

Board of Selectmen

All Town Bulletin Boards

Maureen Gibson (Gibson), the full-time general clerk who had worked exclusively under the full-time tax collector since 1998, applied for the assistant treasurer/collector's position. On or about August 12, 2002, the Town notified Gibson that she was the successful candidate for the position. By letter dated September 4, 2002, Houle notified Gibson that she was appointed the assistant treasurer/collector, and that her appointment was for the period of time retroactive from September 1, 2002 through April 30, 2005. Houle sent a copy of this appointment letter to the town clerk. By letter dated May 5, 2005, Guida notified Gibson that he had reappointed her to the assistant treasurer/collector's position for an indefinite term in accordance with the provisions of Section 4-2 of the Town's charter. The Certificate of Reappointment attached to this May 5, 2005 letter states that the certificate was received and approved by the Town's Board of Selectmen on May 2, 2005.

After the 2002 reorganization and continuing as of June 2005, the staffing pattern in the treasurer/collector's office consists of a full-time treasurer/collector, a full-time assistant treasurer/collector, a full-time head clerk, a part-time head clerk who works about seven hours each week,⁷ and a part-time general clerk who works about twenty hours each week. The treasurer/collector, who is appointed by the town manager, 1) oversees the Town's investments, cash management, and revenue collection activities; 2) manages all Town debt services; 3) participates in the bond issuance process; and, 4) administers the Town payroll, including all fringe benefits. The treasurer/collector's annual salary for the 2005 fiscal year is \$44,780. The Town lists the qualifications of the treasurer/collector as follows:

Knowledge of applicable state and federal laws relating to finance and taxation; a Bachelors Degree in Business, Accounting, Finance or related field; five to seven years working knowledge of municipal procedures and in local government finance and accounting; excellent communication skills and strong customer service ethic; and five years of demonstrated supervisory experience. Must be able to qualify for fidelity bonds. Certification as a Treasurer and/or Collector by the MA Treasurer Collectors Association preferred.

One head clerk in the treasurer/collector's office is primarily responsible for: 1) municipal payroll preparation, record keeping, and bookkeeping; 2) personnel administration bookkeeping; 3) employee benefit management and record keeping; 4) bookkeeping, data entry, customer service, and special project assignment support; and, 5) clerical and general office duties as assigned. The duties of the other head clerk in the office include: 1) the preparation of the daily deposits slips; 2) the entry of department and state

7. The part-time head clerk position was scheduled to be full-time effective July 1, 2005.

advice transfers into the cash management system; 3) the preparation of the treasurer's monthly cash report; and, 4) the preparation of the monthly audit of health and life insurance accounts. The general clerk's duties include: 1) daily collections; 2) monthly reconciliations; 3) tax title accounts record keeping; 4) generating the refund report for real estate and the Massachusetts Registry of Motor Vehicles; and, 5) health insurance postings. As a Town practice, all employees in the treasurer/collector's office are bonded.

Except for the treasurer/collector's position, all other positions in the treasurer/collector's office are included in the Union's bargaining unit and enjoy the same benefits under the terms of the existing collective bargaining agreement between the Town and the Union. The assistant treasurer/collector and the clerks all report directly to the treasurer/collector, and they are all supervised by the treasurer/collector. Further, the assistant treasurer/collector and the clerks are all bonded, and they all have desks in the same room. The assistant treasurer/collector and the full-time clerks work thirty-five hours each week, Monday through Friday from 8:45 a.m. to 4:15 p.m. The assistant treasurer/collector also works each first and third Tuesday of each month from 4:15 p.m. to 7:00 p.m. and, if applicable, receives overtime pay in accordance with the terms of the existing collective bargaining agreement. The hourly salary for all Town head clerks, including the head clerks working in the treasurer/collector's office, for the 2005 fiscal year is \$16.87. The hourly salary for the assistant treasurer/collector for the 2005 fiscal year is \$18.54.

In her capacity as assistant treasurer/collector, Gibson performs the following job duties:

- Answers telephones and waits on customers
- Maintains a daily schedule of all collections, balances the previous day's collections, and prepares a weekly schedule of all collections for the treasurer/collector
- Transfers money on a weekly basis from the collector's account to the treasurer's account
- Handles most of the bank deposits
- Researches and corrects incorrect payments from banks and mortgage companies
- Works with a computer company to input all real estate and excise information
- Sends out verified information for the printing of bills and online servicing
- Processes all electronic payments
- Processes and sends out all real estate demands
- Processes and prints all sewer bills and demands
- Tracks all excise payments for reports to the printing company to send demands, warrants, and marking at the registry
- Does the collections process for real estate, including demands and collections letters, works with the assessor's office to ensure that all

the information is updated, and checks with the registry of deeds to ensure that the information is accurate before advertising tax takings

- Prepares advertisements and all final documents for the treasurer/collector's signature to record at the registry of deeds
- Reconciles both collector's accounts monthly
- Handles all insufficient checks from the collector's accounts, deleting payments from bills, sending letters, and correcting all collection totals
- Prepares the town report for the collector's side of the treasurer/collector's office with the totals collected from the previous fiscal year
- Sends information to the assessor's office for unpaid personal property bills for abatements
- Works with the auditor's office for all collector's information
- Prepares municipal lien certifications when backlogged in that area
- Tracks bankruptcies and files proof of claim forms
- Researches and processes refunds on real estate accounts when her help is needed in this area

The duties listed above are substantially the same duties Gibson performed as the general clerk in the treasurer/collector's office. In the absence of the treasurer/collector, the assistant treasurer/collector supervises the other employees in the office.⁸ Gibson does not set employees' hours or approve their vacation requests. Further, Gibson does not have the authority to hire, fire, or discipline the employees, and she has never participated in any of these employment-related decisions.

Sections 39A, *Assistant treasurer*, and 39C, *Assistant collector*, of M.G.L. c. 41 provide as follows:

Section 39A, Assistant treasurer

The treasurer of a city or town may in writing appoint, with the approval of the mayor or the selectmen thereof, an assistant treasurer who may be an employee in the treasurer's department. The assistant treasurer shall be sworn to the faithful performance of his duties, and a record shall be made of his appointment and oath. The assistant treasurer shall be a citizen of the United States and a resident of the commonwealth, and shall give bond annually for the faithful performance of his duties in a form approved, and in an amount determined, by the commissioner of revenue. Unless a temporary treasurer is appointed in accordance with law, the assistant treasurer may, in the absence of the treasurer, perform his duties and when performing such duties shall have the powers and be subject to the requirements and penalties applicable to him.⁹ The person appointed as assistant treasurer may receive a salary from the city or town for service as such.

Section 39C, Assistant collector

The collector of a city or town may in writing appoint, with the approval of the mayor or the selectmen thereof, an assistant collector who may be an employee in the treasurer's department. The assistant collector shall be sworn to the faithful performance of his du-

8. The parties' submissions do not describe or give examples of the nature and extent of Gibson's supervision when the treasurer/collector is absent.

9. See, Sections 35, 36, and 37 of M.G.L. c. 41.

ties, and a record shall be made of his appointment and oath. The assistant collector shall be a citizen of the United States and a resident of the commonwealth, and shall give bond annually for the faithful performance of his duties in a form approved, and in an amount determined, by the commissioner of revenue. Unless a temporary collector is appointed in accordance with law, the assistant collector may, in the absence of the collector, perform his duties and when performing such duties shall have the powers and be subject to the requirements and penalties applicable to him; provided, however, that the assistant collector shall not be authorized to sign for the collector instruments of taking pursuant to section fifty-four of chapter sixty.¹⁰ The person appointed as assistant collector may receive a salary from the city or town for service as such.

If the treasurer/collector is out of the office on leave, the assistant treasurer/collector, by operation of the statutes, above, may perform the duties of the treasurer/collector. During the fiscal year of 2005, the treasurer/collector, Denise Marlborough (Marlborough), was out of the office for about seventeen days.¹¹ In practice, Marlborough ensures that the critical functions of her position are completed before she is out of the office.¹² Gibson has the training and experience to perform the duties of the collector but not the duties of the treasurer. Gibson does not possess the personal identification numbers (PIN) and other information necessary to perform all the functions of the treasurer/collector, like depositing the funds collected by the Town.¹³

At the time of hire, the successful applicant for the assistant treasurer/collector's position is required to possess, at minimum, a high school education or equivalent with several years experience in town government and finance and meet the bonding requirements for the position. Further, the successful applicant should be able to: 1) operate a computer and various software programs; 2) accurately prepare financial records and reports; and, 3) deal with people appropriately and effectively.

It is undisputed that the job duties of the assistant treasurer/collector have not changed since the parties entered into the Memorandum including the position in the Union's bargaining unit. Further, neither the Town nor the Union asserts that the assistant treasurer/collector is a professional employee within the meaning of Section 1 of M.G.L. c. 150E (the Law). From the time Gibson was first appointed assistant treasurer/collector, she has worked the same hours as all other full-time bargaining unit members, and in all other areas the Town has treated and accorded her the same contractual benefits. Gibson's hourly rate of pay is not listed in the negotiated salary schedule that appears at Appendix B of the 2004-2007 Agreement, but she has received the contractual percentage wage increases that are given to all other members of the Union's bargaining unit in accordance with the terms of the Agreement. If the Union had filed a grievance on behalf of the as-

stant treasurer/collector, the Town would have processed that grievance in accordance with the contractual terms.

Other Bargaining Units of Town Employees

There are two other bargaining units of Town employees: 1) a bargaining unit of police officers and police sergeants for whom the Massachusetts Coalition of Police, AFL-CIO is the exclusive bargaining representative; and, 2) a bargaining unit of certain employees in the Town's highway, health, sewer, and parks departments for whom the Union is the exclusive bargaining representative.

Other Town Employees Not Currently Organized

A list of Town employees who are not organized for the purposes of collective bargaining is found in an Appendix to this decision.

Town Charter

Section 8-5(e)(1) of the Town's charter provides, in part, that the Board of Selectmen shall appoint a town manager in accordance with a detailed selection process, and that the town manager shall serve for an indefinite term. Section 8-5(e)(1) of the charter also provides, in part, that the town manager shall appoint a town treasurer and a town collector, among numerous other positions, as well as members of various commissions. Further, Section 8-5(e)(1) provides that the town manager shall appoint all other officers, department heads, and employees for whom no other method of selection is provided, and that, unless otherwise provided, all appointments made by the town manager shall be for a term of three years.

Section 4-2 of the Town's charter provides, in part, that the powers and duties of the town manager shall include, but are not intended to be limited to, the following:

(b) To appoint, and in appropriate circumstances to remove, subject to the provisions of the civil service law and of any collective bargaining agreements as may be applicable, all department heads, officers, members of boards and commissions and employees for whom no other method of selection is provided by this charter or by law. Such appointments shall become effective on the fifteenth day following the day on which notice of the appointment is filed with the board of selectmen, unless, within that period, the board of selectmen by a vote of at least three of its members shall vote to reject such appointment, or, has sooner voted to affirm it. Copies of the notices of all such appointments shall be posted on the town bulletin board when submitted to the board of selectmen.

(k) To negotiate all contracts involving any subject within the jurisdiction of the office of town manager, including contracts with town employees, except employees of the school department, involving wages, hours and other terms and conditions of employment. All contracts shall be subject to ratification and execution by the board of selectmen.

10. See, Sections 38 and 39 of M.G.L. c. 41.

11. After reviewing the Town's response to the show cause letter, the Commission has modified this fact to accurately reflect the information contained in Marlborough's affidavit that accompanied the Town's submission.

12. Marlborough held the position of head clerk in the treasurer/collector's office prior to the reorganization of that office in 2002. The 2002 reorganization led to the creation of both the treasurer/collector's position and the assistant treasurer/collector's position.

13. After reviewing the Town's response to the show cause letter, the Commission has amended this fact to more accurately comport with the information provided during the investigation.

Opinion

A unit clarification petition is the appropriate vehicle to determine whether newly created positions should be included or excluded from a bargaining unit and to determine whether substantial changes in the job duties of existing positions warrant either their inclusion or exclusion from a bargaining unit. *Sheriff of Worcester County*, 30 MLC 132, 136 (2004), *citing*, *North Andover School Committee*, 10 MLC 1226, 1230 (1983). Further, a timely filed unit clarification petition may be used to decide whether a position should be excluded from a recognized bargaining unit because it satisfies the managerial or confidential criteria found in Section 1 of the Law, even if the job duties of the position have not changed substantially since the parties voluntarily agreed to include the position in a bargaining unit. *Town of Athol*, 32 MLC 50, 52 (2005), *citing*, *Fall River School Committee*, 27 MLC 37, 40 (2000). The Commission cannot “compel an employer to continue applying the terms of a collective bargaining agreement if doing so would improperly extend collective bargaining rights to employees not covered by Chapter 150E.” *Town of Greenfield*, 32 MLC 133, 149 (2006), *citing*, *City of Somerville v. Labor Relations Commission*, 53 Mass. App. Ct. 410, 412 (2001) (additional citations omitted).

Here, the Town argues that the assistant treasurer/collector is an appointed official and a managerial employee within the meaning of Section 1 of the Law and, therefore, is statutorily excluded from the Union’s bargaining unit. Section 1 of the Law defines an employee or public employee as:

Any person in the executive or judicial branch of a government unit employed by a public employer except elected officials, appointed officials, members of any board or commission, representatives of any public employer, including the heads, directors and executive and administrative officers of departments and agencies of any public employer, and other managerial employees or confidential employees

The Commission has construed the above statutory language to exclude from collective bargaining only those “appointed officials” who are also managerial employees within the meaning of Section 1 of the Law. *Commonwealth of Massachusetts*, 30 MLC 67, 69 (2003), *citing*, *City of Chicopee*, 19 MLC 1765, 1767-1768 (1993), *aff’d sub nom.*, *City of Chicopee v. Labor Relations Commission*, 38 Mass. App. Ct. 1106 (1995) (additional citations omitted).

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. *Town of*

Easton, 31 MLC 132, 144 (2005), *citing*, *Town of Manchester-by-the-Sea*, 24 MLC 76, 18 (1998).

The Town argues that the assistant treasurer/collector is a managerial employee because the incumbent: 1) acts as the treasurer/collector in the absence of that official; 2) has significant responsibility for the collection of revenue on a regular basis; and, 3) performs many of the statutory duties of the tax collector on a daily basis. The Town does not argue, nor is there any evidence to support a finding that the assistant treasurer/collector: 1) assists to a substantial degree in the preparation for or the conduct of collective bargaining on behalf of the Town; or 2) has 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. Therefore, for the Town to prevail in its argument that the assistant treasurer/collector is a managerial employee within the meaning of Section 1 of the Law, the evidence must demonstrate that the assistant treasurer/collector participates to a substantial degree in formulating or determining policy.

Managerial employees make policy decisions that are of major importance to the mission and objectives of the public employer. *Wellesley School Committee*, 1 MLC 1299, 1400 (1975), *aff’d sub nom.*, *School Committee of Wellesley v. Labor Relations Commission*, 376 Mass. 112 (1978). Neither limited participation in the decision-making process, nor attendance and participation in policy-making discussions is sufficient to consider an employee “managerial,” if the person’s input is merely informational or advisory in nature. *Town of Medway*, 22 MLC 1261, 1268 (1995); *Town of Wellfleet*, 11 MLC 1238, 1241 (1984); *Wellesley School Committee*, 1 MLC at 1403. Rather, an employee must participate in the policy decision-making process on a regular basis, with the authority to select and implement a policy alternative, to satisfy this first criterion of a managerial employee. *Town of Plainville*, 18 MLC 1001, 1009 (1991), *citing*, *Town of Agawam*, 13 MLC 1364, 1368 (1986).

Here, the information establishes that, like all other employees in the treasurer/collector’s office, the assistant treasurer/collector reports directly to and is supervised by the treasurer/collector. The assistant treasurer/collector collects, records and deposits tax monies on a daily basis, processes and prints bills for collection, reconciles financial records and accounts on a monthly basis, prepares reports for the treasurer/collector, and answers telephone and in-person inquiries directed to the treasurer/collector’s office. Further, when the treasurer/collector is absent, the assistant treasurer/collector may perform the duties of the treasurer/collector. Undoubtedly, the Town relies on the assistant treasurer/collector’s skill and expertise in the performance of these duties to ensure the availability of revenue to support various municipal functions and activities. However, the information fails to establish that the assistant treasurer/collector participates to a substantial degree in policy formulation and determination that is of major importance to the mission and objectives of the Town. Therefore, applying the statutory criteria to the information here, we conclude that the assistant treasurer/collector is not a managerial employee within the meaning of Section 1 of the Law and, therefore, is not excluded

from the Union's bargaining unit. *See, e.g., Town of Easton*, 31 MLC at 145 (treasurer/collector who prepares deposits, balances all bank accounts, reconciles cash to the general ledger, prepares all borrowings of authorized debt, supervises the billing and collection of all monies owed to the town, initiates tax liens, and invokes legal remedies for non-payment of taxes is not a managerial employee); *City of Amesbury*, 25 MLC 7, 9 (1998) (treasurer/collector who does not participate in policy decisions or collective bargaining is not a managerial employee).

The Town also argues that the position should be excluded from the Union's bargaining unit, because the Memorandum that recognized the Union as the exclusive representative of the assistant treasurer/collector's position was not submitted to the Board of Selectmen for ratification and execution as required by the Town charter. Therefore, in the Town's view, the Memorandum is null and void. In contrast, the Union argues that the Town should be held to the terms of its negotiated agreement. We decline to address this argument. Although this petition is the appropriate vehicle to determine whether the assistant treasurer/collector should be excluded from the Union's bargaining unit because it meets the statutory criteria of a managerial employee, it is not the appropriate vehicle to decide whether a binding agreement occurred under the circumstances presented in this case.

The Town next argues that the assistant treasurer/collector does not share a community of interest with other employees in the Union's bargaining unit because, unlike other employees in the unit, the assistant treasurer/collector is an appointed official. Further, pursuant to sections 39A and 39C of M.G.L. c. 41, the assistant treasurer/collector is a sworn officer, must be a citizen and a resident of Massachusetts, must be bonded, can earn a salary, and can exercise the statutory powers of her department head, unlike other bargaining unit members. And, in the Town's view, the assistant treasurer/collector earns a significantly dissimilar wage from other employees in the bargaining unit.

Here, the record establishes that the job duties of the assistant treasurer/collector have not changed substantially since the Town, through its town manager, agreed to voluntarily recognize the Union as the exclusive representative of this newly created position. Further, the record demonstrates that the duties Gibson has performed since her appointment as the assistant treasurer/collector

are substantially the same duties she performed when she held the bargaining unit position of general clerk before the Town reorganization in 2002. Absent substantial changes in the job duties, we decline to disturb the agreement reached by the parties during their negotiations over the reorganization of several Town departments. A unit clarification petition may not be used to frustrate the parties' unit placement of a disputed position. *Town of Athol*, 32 MLC at 52, *citing, City of Somerville*, 1 MLC 1232, 1236 (1975).

Further, although there are rare instances where the Commission has examined the continued appropriateness of a bargaining unit, even absent a substantial change in the job duties of the disputed position(s), the facts here do not fall within any exception to the rule. *See, e.g., Town of Provincetown*, 31 MLC 55, 59 (2004) (Commission granted a petition to sever sergeants from a police bargaining unit where the parties had signed a side letter of agreement that preserved the town's right to challenge the appropriateness of the bargaining unit); *Town of Burlington*, 5 MLC 1234 (1978) (Commission amended its certification to include a position that had been previously excluded from a bargaining unit). In this narrow line of cases, the Commission concluded that its statutory directive to determine appropriate bargaining units would not be served by the perpetuation of an inappropriate bargaining unit. Here, the Town's community of interest argument does not convince us that the inclusion of the assistant treasurer/collector in the Union's bargaining unit is inappropriate as a matter of law. *Compare, City of Boston*, 2 MLC 1347, 1356 (1976) (Commission used its authority to exclude special investigative police officers, who investigated other police officers, from a unit of patrol officers).

Conclusion

For the reasons stated above, we conclude that the assistant treasurer/collector is appropriately included in the Union's bargaining unit. The Town's petition seeking to exclude the position from the Union's bargaining unit is dismissed.

SO ORDERED.

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