

In the Matter of TOWN OF SOUTH HADLEY

and

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

Case No. MCR-07-5276

33. *Consent Agreements and Stipulations*  
34.2 *community of interest*  
35.7 *supervisory and managerial employees*

December 23, 2008

Marjorie F. Wittner, Chair

Elizabeth Neumeier, Board Member

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Tim D. Norris, Esq.

*Representing the Town of South  
Hadley*

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

#### DECISION AND DIRECTION OF ELECTION<sup>1</sup>

##### Statement of the Case

On March 31, 2007, the American Federation of State, County and Municipal Employees, Council 93, AFL-CIO (Union) filed a petition with the Commission in Case No. MCR-07-5276 seeking to represent a bargaining unit consisting of certain full-time and regular part-time employees of the Town of South Hadley (Town). The Union subsequently amended its petition on or about July 26, 2007 to seek two bargaining units: a bargaining unit of non-supervisory, administrative, clerical, inspectional and support service employees of the Town (Unit A) and a bargaining unit of supervisory employees of the Town (Unit B).

On October 5, 2007, a duly designated Commission hearing officer, Margaret M. Sullivan, Esq., (Hearing Officer) conducted a hearing at which both parties had the opportunity to be heard, to examine witnesses and to introduce evidence. On October 5, 2007, before any witnesses testified, the Hearing Officer allowed the Union's motion to sequester witnesses prior to giving testimony, except Patricia Vinchesi (Vinchesi), the town administrator. Pursuant to the parties' requests, the Hearing Officer kept the record open in order that the parties could file additional stipulations of fact about the positions, which they were seeking to exclude, and they did so on February 7, 2008.<sup>2</sup> The parties filed their post-hearing briefs postmarked on or about March 31, 2008.

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1. Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission." References in this decision to the Commonwealth Employment Relations Board (Board) include the former Labor Relations Commission (Commission). Pursuant to Section 13.02(1) of the Commission's Rules in effect prior to November 15,

2007, the Commission designated this case as one in which it would issue a decision in the first instance.

2. Those additional stipulations of fact are contained in enumerated stipulations 11-21, below.

The Union seeks to include the position of assistant town clerk/treasurer in Unit B, a unit of supervisory employees. The Town opposes including the position on the grounds that the assistant town clerk/treasurer is a managerial or confidential employee within the meaning of Section 1 of the Law. The Union and the Town stipulated to the appropriate unit placement of the other petitioned-for positions.

#### Stipulations of Fact

1. The Town of South Hadley (the Town) is a public employer within the meaning of Section 1 of the Law.
2. The Union is an employee organization within the meaning of Section 1 of the Law.
3. The positions that are the subject of MCR-07-5276 are currently unrepresented.
4. The job descriptions that will be entered into the record as joint exhibits accurately reflect the duties and requirements for those positions.
5. There are no job descriptions for the position of assistant cook, assistant dog officer, dog officer, and library page.
6. The sole issue that is being presented to the Board in Case No. MCR-07-5276 is whether the petitioned-for units are appropriate bargaining units within the meaning of Section 3 of the Law. However, the parties have preserved the right to argue whether the position of assistant town clerk/treasurer is a managerial and/or confidential employee within the meaning of Section 1 of the Law.
7. The parties are not invoking managerial, confidential or supervisory status for the following positions: administrative assistant library, assistant associate assessor, assistant cook, custodian, dispatcher, library assistant, meals on wheels coordinator, minivan driver, page, senior account clerk, senior clerk in all departments, senior library technician, van driver, volunteer coordinator, plumbing and gas inspector, wiring inspector, social service coordinator, nurse, reference librarian, or the youth services librarian.
8. The parties are not invoking managerial or confidential status under the Law for the following positions: assistant director council on aging, assistant supervisor of wastewater treatment, assistant tax collector, cataloguer/head technical services, circulation coordinator, food service coordinator, and solid waste coordinator.
9. The reference librarian, the youth/child services librarian, the nurse, the circulation coordinator, and the cataloguer/head technical services perform professional duties pursuant to Section 1 of the Law and will be entitled to a *Globe* ballot.
10. The parties agree that the petitioned-for positions shall be included in the following bargaining units:

#### *Unit A*

Administrative Assistant Library  
 Assistant Associate Assessor  
 Assistant Cook

Custodian  
 Dispatcher  
 Library Assistant  
 Meals on Wheels Coordinator  
 Minivan Driver  
 Page  
 Senior Account Clerk  
 Senior Clerk (All Departments)  
 Senior Library Technician  
 Van Driver  
 Volunteer Coordinator  
 Plumbing and Gas Inspector  
 Wiring Inspector  
 Social Service Coordinator  
*Unit B*  
 Assistant Supervisor Wastewater Treatment Plant (WWTP)  
 Food Service Coordinator  
 Circulation Coordinator  
 Cataloguer/Head Technical Services  
 Reference Librarian  
 Youth/Child Services Librarian  
 Nurse  
 Solid Waste Coordinator  
 Assistant Director Council on Aging  
 Assistant Tax Collector

11. The applications specialist performs work of a confidential nature in that the incumbent is called upon to do cost-outs of collective bargaining proposals as an advisor to the management bargaining team, and in that capacity sees proposals that are being considered by the Town prior to their submission at the bargaining table. The incumbent also assists the personnel officer in preparing for disciplinary actions and researching grievance responses.

12. The assistant town accountant supervises the applications specialist in the performance of confidential duties and performs confidential and managerial duties as well. The assistant town accountant is called upon to cost-out collective bargaining proposals, and advises Town officials in the formulation of collective bargaining positions, particularly as it concerns Town finances. The incumbent also has advance notice of significant employment actions, including suspensions and terminations, and either computes or supervises the computation of pay and benefit consequences for personnel affected. The incumbent also assists the town administrator and personnel officer in allocating merit increases in accordance with the performance evaluation system.

13. The building commissioner is a managerial employee in that the incumbent researches and recommends new policies and

changes to existing policies regarding the building department. Policies recommended may be brought to the selectboard or to town meeting for final approval and are typically approved without any changes.

14. The conservation administrator is a managerial employee in that the incumbent drafts policies relating to the preservation of land within the town of South Hadley. These policies are presented to the conservation committee and to town meeting as necessary, and are approved without significant changes.

15. The dog officer and assistant dog officer have no fixed hours and perform most of their work off of Town premises. Their work also combines with individually owned and operated businesses involved in the kenneling of canines, and the performance of similar services for other municipalities. As such, these positions do not share a community of interest with any of the employees in the proposed units in this matter.

16. The office manager/Department of Public Works (DPW) is a confidential employee in that the incumbent works closely with the DPW superintendent and sees drafts of grievance responses prior to their issuance. The incumbent also performs research and advises the DPW Superintendent in connection with grievances. The office manager/DPW has access to all personnel files for DPW employees and has advance knowledge of disciplinary actions, and requests from the DPW superintendent for proposals in collective bargaining.

17. The secretary to the police chief is a confidential employee working closely with the police chief. In that capacity, the incumbent assists the chief in formulating grievance responses and has access to grievance responses in draft form prior to their issuance. The incumbent is also privy to, and sees, any and all documents produced by the police chief, even documents that are created by the chief himself. The incumbent provides information to the police chief who sits at the bargaining table in connection with collective bargaining negotiations on the cost of proposals made by the union, as well as the cost of proposals under consideration by the Town. The incumbent is also aware of the contents of internal affairs investigations, and is privy to police officer medical records in connection with injured on duty claims.

18. The director of public health is a managerial employee in that the incumbent writes and recommends policy regarding the protection of the public health, and those policy recommendations are

typically approved without changes by the board of health, the selectboard or town meeting, as applicable.

19. The information technology director is a managerial and confidential employee who supervises the computer systems within the Town. The incumbent has access to every computer and every user account within the Town, including that of the town administrator. The incumbent also formulates policy relating to computer usage within the Town, and that policy is approved by the selectboard without changes.

20. The wastewater treatment plant (WWTP) compliance manager and the WWTP operations manager are managerial and confidential employees in that they make policy affecting unionized employees within the WWTP, and assist the DPW superintendent with responses to grievances affecting WWTP employees. They are also privy to sensitive disciplinary investigations and are aware of disciplinary actions before they occur.

21. The veteran's agent is employed pursuant to an arrangement among three communities which split his salary and his time. Because of this arrangement and the impact upon his schedule, compensation and working conditions, the parties agree that he does not share a community of interest with any of the employees in the proposed units at issue in this matter.

#### Findings of Fact<sup>3</sup>

The Town has a population of approximately 17,000 residents. The Town's legislative body is a representative town meeting elected by five districts,<sup>4</sup> while an elected five-member selectboard<sup>5</sup> and an appointed town administrator provide the Town's administrative governance. Town Hall is open Monday through Friday from 8:30 AM to 4:30 PM. The Town's departments include: the ambulance department, the accounting office, the assessors office,<sup>6</sup> the board of health,<sup>7</sup> the building inspector, the cable studio, the collector's office,<sup>8</sup> the conservation department, the council on aging, the department of public works (DPW),<sup>9</sup> the golf course,<sup>10</sup> human resources, information technology, the planning department,<sup>11</sup> the police department, the public library,<sup>12</sup> the recreation department, the selectboard,<sup>13</sup> the town clerk/treasurer,<sup>14</sup> and the veterans department. Currently, the Town has two bargaining units. The International Brotherhood of Police Officers represents the Town's full-time police officers, excluding the police chief and the ranking lieutenant of police, while the Union represents non-supervisory DPW employees.<sup>15</sup>

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

4. The 120 elected members serve three year terms, and there are twenty-eight ex officio members.

5. The selectboard members meet every three weeks.

6. An elected three-member board of assessors oversees the assessors department.

7. An elected three-member board oversees the board of health.

8. An elected tax collector is in charge of the collector's office.

9. The DPW has the following divisions: highway, water pollution control, which includes the wastewater and sewer divisions, parks, trees, and the landfill.

10. The golf course is named the Ledges Golf Club.

11. An elected five-member board administers the planning department.

12. An elected nine-member board of trustees directs the library.

13. The town administrator's office is also included within this department.

14. The elected town clerk/treasurer is in charge of the town clerk/treasurer's office.

15. The non-supervisory DPW employees include the positions of wastewater treatment plant senior attendant, wastewater treatment plant attendant, wastewater treatment plant laboratory technician, maintenance craftsman, motor equipment operator, heavy motor equipment operator, special heavy equipment operator, and mechanic.

*Town Clerk / Treasurer*

The town clerk / treasurer has two distinct roles as town clerk and as treasurer and those functions will be discussed separately below. The town clerk/treasurer<sup>16</sup> oversees four employees at her office in Town Hall: the assistant town clerk/treasurer, two senior account clerks,<sup>17</sup> and a senior clerk.<sup>18</sup> The position of town clerk/treasurer is for a three-year term and the incumbent in the position Judy Barthelette (Barthelette) has performed those duties for a period between seven and eleven years.<sup>19</sup> The incumbent attends meetings with the town administrator and other department heads<sup>20</sup> that take place on the first Thursday of each month.<sup>21</sup> At those meetings, the department heads discuss various topics, including the status of contract negotiations, financial and budgetary matters, and issues involving the personnel bylaws of the Town.

The town clerk is responsible for the preservation of the Town's vital records,<sup>22</sup> town meeting records, and certain federal and state records. The town clerk issues birth certificates, marriage certificates, marriage licenses, dog licenses, hunting licenses, fishing licenses, and vendor licenses. The incumbent in the position is responsible for the oversight of all elections and voter registration, including motor voter registration.<sup>23</sup> She prepares the warrant<sup>24</sup> for the town meeting, reads it at town meeting, and presents it to the moderator.<sup>25</sup> During a town meeting, the town clerk is responsible for the signing in of each elected town meeting member. She also takes the official minutes of the town meeting,<sup>26</sup> records all votes, and certifies actions that are taken at Town Meeting as the official actions of the Town. The incumbent also has to submit for approval by the Attorney General any changes that the Town Meeting authorizes in the municipal bylaws.

The town administrator, the selectboard, the town accountant, and the treasurer and their respective offices are responsible for the Town's fiscal affairs. The treasurer is responsible for the Town's

funds, which total approximately thirty-nine million dollars, and the investing of those funds. The treasurer works closely with various banks to maximize the Town's returns from its accounts. The incumbent in the position oversees all borrowing that the Town undertakes, manages its long-term debt, and ensures that the Town complies with all statutory requirements.

Additionally, the treasurer administers the Town's payroll. During the last round of successor contract negotiations for the DPW and police bargaining units, the Town and the unions agreed that the Town would convert to a bi-weekly payroll, and the treasurer is now managing that conversion.<sup>27</sup> During the negotiations over that issue, the treasurer met with representatives from both unions to answer their questions about the conversion. The treasurer also provided information to the town administrator when questions arose about the conversion during successor contract negotiations.<sup>28</sup>

Finally, the treasurer also administers the benefit plans that the Town offers its employees, including health insurance.<sup>29</sup> When the town administrator compiles her projections for the Town's revenue sources and budgetary expenditures for the next fiscal year, the treasurer provides almost half of the information about the potential expenditures for benefits, which includes the costs of Medicare, FICA, pensions and health insurance. The treasurer also manages the Town's funds for worker's compensation benefits and injured on duty leave benefits, funds which total approximately two million dollars.<sup>30</sup> The treasurer participates on the Insurance Advisory Committee (IAC)<sup>31</sup> on behalf of the Town.

*Assistant Town Clerk/Treasurer<sup>32</sup>*

Under the general supervision of the town clerk/treasurer, the assistant town clerk/treasurer performs skilled clerical, bookkeeping, and record keeping in the maintenance and processing of fi-

16. The only qualifications for the town clerk/treasurer position are that the incumbent must be a registered voter of the Town and eligible to be bonded.

17. The two senior account clerks perform payroll and benefits functions.

18. The senior clerk is also sometimes referred to as the town clerk's clerk.

19. The town clerk/treasurer has a salary of approximately \$51,000. As an elected official, the town clerk/treasurer has autonomy over her use of sick and vacation leave.

20. The meetings are attended by department heads or those employees who by their job descriptions can act in the absences of department heads.

21. There are approximately ten meetings per year, because meetings take place every other month in the summer.

22. Vital records include birth certificates, marriage certificates, and death certificates.

23. Motor voter registration refers to the requirements of the National Voter Registration Act of 1993.

24. The warrant has a set number of articles.

25. The Town does not schedule a fixed number of town meetings each year. In 2006, the Town held six town meetings, while, as of the date of the hearing, the Town had held three or four town meetings in 2007. The selectboard in consultation with the town clerk and the moderator decides when to call a town meeting.

26. The town clerk's minutes are public records.

27. Employees of the Town's School Department, whose payroll the treasurer also manages, already are on a biweekly payroll system.

28. The treasurer is not a member of the Town's bargaining teams for successor contract negotiations with its employee bargaining representatives. However, the town administrator indicated that she envisions the treasurer playing a larger role in future successor contract negotiations.

29. The treasurer recently informed the selectboard and the town administrator that the Town needed to adopt legislation to effectively implement Chapter 56 of the Acts of 2006, as amended by Chapters 324 and 450 of the Acts of 2006 (Health Care Reform Law) requiring nearly every resident of the state to obtain health insurance coverage.

30. The treasurer does not approve or deny an employee's claim for worker's compensation benefits or injured on duty leave. Instead, the town administrator in consultation with the human resources officer decides to approve or deny an employee's claim.

31. The IAC is constituted under the provisions of MGL c.32B, §3. The IAC includes representatives of the groups of employees affected by the purchase of insurance and makes recommendations to the appropriate public authority.

32. Because the current assistant town clerk/treasurer Diana Monahan-Brown (Monahan-Brown) had taken over the position approximately seven months prior to the hearing, was still in her probationary period, and admittedly still was learning the position, much of the information about the position comes from the testimony of the former assistant town clerk/treasurer Katherine Ingram (Ingram), who held the position for four and one-half years, and from the job description. The town administrator also testified about certain functions of the position.

nancial billing<sup>33</sup> and maintenance of records requiring a great deal of attention to details and sequencing of actions in processing work consistent with policies and procedures. The assistant town clerk/treasurer processes weekly transfers of funds<sup>34</sup> to cover payroll expenditures<sup>35</sup> and accounts payable.<sup>36</sup> The incumbent in the position prepares and processes purchases orders and maintains the filing system for official records and correspondence. The incumbent in the position balances all town accounts on a monthly or quarterly basis.<sup>37</sup> The assistant town clerk/treasurer maintains detailed and accurate records pertaining to the treasurer's department, which includes making postings<sup>38</sup> to various accounts according to standard office procedures and performing basic arithmetic computations to maintain records of fees collected. The assistant clerk/treasurer assists in the preparation of official documents such as the municipal budget, activity reports for the treasurer's office, and state agency reports to ensure accuracy and compliance with local and state laws and policies.

Additionally, the assistant town clerk/treasurer maintains vital records,<sup>39</sup> municipal deeds, state and federal liens, and releases on liens in a detailed and accurate manner. The incumbent in the position prepares required information for Town Meetings, including

aiding the town clerk in the preparation of the warrants,<sup>40</sup> and assists in recording Town Meeting minutes, elections, and census including voter lists.<sup>41</sup> The incumbent issues licenses, including marriage, hunting, fishing, dog, and vendor licenses, permits, and balances the resulting daily cash receipts.<sup>42</sup> The assistant town clerk/treasurer answers and screens in-coming telephone calls and visitors, which includes attending the counter and answering routine inquiries and complaints. The incumbent routes requests to the appropriate staff, and explains procedures, regulations and/or policies based on her knowledge of office functions and services.

Also, the incumbent in the position provides work leader supervision to other employees in the town clerk/treasurer's office and assists them in the completion of assigned duties and responsibilities.<sup>43</sup> The assistant town clerk/treasurer would be responsible for training the senior clerk, if a new hire took over that position. Also, Ingram previously has recommended discipline in the form of a written warning for the senior clerk, and the town clerk/treasurer subsequently adopted that recommendation. Also, Ingram recommended to Barthelette that the senior clerk no longer accept deposits from other departments of fees for licenses, permits, etc.<sup>44</sup> In-

33. While processing bills, the assistant town clerk/treasurer views third party bills submitted on behalf of employees receiving worker's compensation benefits from the Town. Those bills include medical bills and legal bills. Ingram also saw certain settlement agreements between the Town and injured employees and processed invoices for those settlement agreements. Ingram would submit the bills and invoices to the Town's accountant's office, which would prepare warrants to pay the bills and invoices and issue checks. She then compared the amount of the checks with the amount of the bills and invoices in order to verify their accuracy before she mailed out the checks.

34. Ingram suggested to Barthelette that the Town convert to on-line banking, especially to transfer funds between municipal accounts. Barthelette subsequently agreed after she and Ingram met with representatives from several banks about their on-line banking programs. Certain less active municipal accounts are not yet on-line, and the assistant town clerk/treasurer signs checks for those accounts to move funds into other municipal accounts.

35. The Town offers its employees the option of having their paychecks directly deposited to their bank accounts and the funds are available to employees on Thursdays. On one instance, an error occurred in the processing of the direct deposit and the funds were not available on the usual day. After some employees notified Ingram that the funds had not been placed in their bank accounts, Ingram made several telephone calls to investigate what had happened and ascertained that it was a processing error. Because several employees had automatic withdrawals from their bank accounts, they became overdrawn when their paychecks were not deposited. The town clerk/treasurer's office offered to contact the employees' banks, to inform those banks that the overdrafts resulted from an error, and to ask the banks to waive any overdraft charges. Employees subsequently needed to submit their bank account numbers, the names of their banks and their social security numbers to Ingram in order that she could contact the banks.

36. The town accountant's office disperses checks for vendors, and the town clerk/treasurer or the assistant town clerk/treasurer puts these checks through the check signing machine. The senior account clerks in the town clerk/treasurer's office process the payroll checks and also place those checks through the check signing machine. However, only the town accountant's office distributes replacement checks, both payroll checks and vendor checks, and either the town clerk/treasurer or the assistant town clerk/treasurer must sign those replacement checks.

37. Because Ingram brought most of the deposits to the banks where the Town had accounts, she became very familiar with the services that those banks offered, including their interest rates and their staff. On six or seven occasions, Ingram recommended to Barthelette that the Town transfer its funds to another bank, and Barthelette agreed with those recommendations. Ingram described her role as exercising a lot of influence in making suggestions about better ways of doing things, but, ultimately, it was not her responsibility as an assistant to say that this was the

way it would be done. There are also certain statutory guidelines that apply to the Town's selection of a bank.

38. Ingram had full access to the Town's bank accounts, which included having her own computer passwords to access those accounts.

39. Previously, employees in the town clerk/treasurer's office typed each license or certificate by hand. Ingram worked with Barthelette to establish an Access database, which was used first for dog licenses. Thereafter, Ingram and Barthelette took additional classes about databases and established databases for the Town's vital records and business certificates, which allowed employees to more easily retrieve and sort information and to create lists. Because most of the forms that employees previously had completed manually could be completed on the computer, the Town no longer needed to purchase blank forms for certificates and licenses.

40. Ingram developed a database containing the names, addresses, and other pertinent information about the elected town meeting members, which allowed the Town to print mailing labels and more easily send them information. Ingram was responsible for maintaining the database, which included noting when an incumbent resigned and marking that town meeting member's position as vacant to ensure that the position was placed on the ballot in the next election.

41. Ingram's election duties included: 1) contacting the DPW in order to have its employees transport the voting machines to the various polling sites; 2) arranging the voting machines at the polling places; 3) testing the voting machines; 4) placing names in the voter registration system; and 5) compiling the voter lists for election day.

42. Previously, the town clerk/treasurer's office recorded monies that were received for licenses, copies of vital records, etc. manually in a book, which often resulted in discrepancies in the cash totals at the end of a day, if an employee forgot to record a payment. Ingram suggested the use of a spreadsheet to record the information, and Barthelette agreed.

43. Ingram previously has recommended discipline in the form of a written warning for the senior clerk, and the town clerk/treasurer subsequently adopted that recommendation.

44. Because it is the treasurer's responsibility to handle the Town's funds, other departments would turn over monies that they had collected to the town clerk/treasurer's office along with turnover sheets indicating the accounts to which the treasurer should deposit funds. When an employee in the town clerk/treasurer's office receives a deposit, the employee counts the funds to verify that the amount listed on the turnover sheet is correct. Departments vary as to whether they make daily, weekly or monthly deposits. A few departments, which collect monies on weekends, make bank night deposits.

stead, Barthelette agreed that she, Ingram, or, in their absences, the senior account clerks would handle those deposits.<sup>45</sup>

Finally, the assistant town clerk/treasurer serves as the department head in the absence of the town clerk/treasurer. Ingram previously filled in as town clerk/treasurer for three extended periods of time, including two four-week periods and one six-week period, while Barthelette was on sick leave, and for other shorter periods of time when Barthelette was at conferences or on vacation.<sup>46</sup> When Ingram acted as the town clerk/treasurer, she received additional compensation and was permitted to use the town clerk's seal and stamp. Ingram attended approximately a dozen department head meetings,<sup>47</sup> received correspondence from the town administrator that was addressed to her as the town clerk/treasurer, and responded to such correspondence in her substitute role.<sup>48</sup> While filling in for Barthelette, Ingram had to investigate why a municipal bank account was overdrawn and ultimately learned that the bank had mistakenly transferred two million dollars from the account rather than twenty thousand dollars. Ingram needed to contact various bank representatives in order to resolve the matter. On another occasion, Ingram took over the town clerk's functions at Town Meeting. Additionally, Ingram, as the acting town clerk/treasurer, dealt with the Town's attorney when the Town initiated foreclosures of tax titles on two properties and an eviction proceeding for one of the properties.<sup>49</sup>

The qualifications for the assistant town clerk/treasurer position include a high school diploma or equivalent and three to five years of experience in business or financial management or a related field. The incumbent in the position must be eligible to be bonded and must have a working knowledge of municipal accounting and bookkeeping principles, of applicable office and financial software programs,<sup>50</sup> and of Town government. The incumbent needs to have a thorough knowledge of office billing practices and procedures, of office terminology, procedures, and equipment, and of business arithmetic. The starting salary for the position is \$11.30 per hour for a thirty-five hour week.

#### *Building Commissioner*

Under the general direction of the board of selectmen, the building commissioner administers the enforcement of the Town's land use and building-related permitting functions in accordance with the Town by-laws, the Town charter, and the state building code. The building commissioner reviews and issues zoning and building permits, issues certificates of inspection, and conducts a thorough review of all related files, including planning board notices of action. The incumbent in the position conducts plan reviews with architects and makes changes or corrections as necessary. The in-

cumbent resolves, through the exercise of judgment, most issues involving land use, and the issuance of permits, bringing important issues to the town administrator for discussion and resolution. The incumbent inspects projects during construction and maintains related detailed and accurate inspection files. The building commissioner performs safety inspections of places of public assembly.

As the Town's zoning enforcement officer, the building commissioner meets with the Town's planning and zoning boards and answers questions from the public and staff concerning state and local land use law ordinances, and provides verbal and written interpretations and administrative decisions to appropriate town boards/committees concerning new developments. The incumbent works with town staff, local officials, and attorneys representing the Town regarding the review, adoption and enforcement of current or new zoning regulations and ordinances. The incumbent performs special assignments for the town administrator, provides written comments for the selectboard's agenda items, and attends selectboard, zoning board and planning board meetings as required. The building commissioner prepares court documents relative to the issuance of violations and the compiling of the certified record of the zoning board relative to lawsuits filed against the zoning board in superior court, which includes assisting the Town's attorney, responding to depositions, and testifying in court.

The building commissioner supervises the staff of the inspections department, which includes conducting a daily review of the inspection schedule, providing special instructions pertaining to construction projects, and assisting the staff with public relations. The incumbent recommends discipline of employees and evaluates personnel performance on an ongoing and annual basis. Additionally, the incumbent in the position prepares and administers the operating budget of the inspections department.

The qualifications for the position include a college degree in engineering, or in a field related to land use and/or construction; five to seven years prior experience in municipal land use and construction regulatory functions is required, including at least two years in a supervisory capacity, or any equivalent combination of education and/or experience. The incumbent in the position must have a valid motor vehicle operator's license and state certification as a building commissioner.

#### *Conservation Administrator*

Under the administrative direction of the conservation commission and in accordance with municipal policies and objectives, the conservation administrator assists in the administration and provi-

45. Ingram made the recommendation, because the senior clerk was not bonded.

46. Barthelette has not been absent from work for an extended period of time during the seven months that Monahan-Brown has worked as the assistant town clerk/treasurer.

47. Ingram heard information at those department head meetings, which she described as information that was not made available to all employees, including information about the Town's wage classification scale.

48. Monahan-Brown also has attended one department head meeting on behalf of the town clerk/treasurer who was on vacation. The record does not show that Monahan-Brown otherwise has filled in for the town clerk/treasurer.

49. Barthelette had returned to active duty when the actual foreclosure auctions took place, and she acted as the tax title custodian at those auctions.

50. When the Town hired Ingram as assistant town clerk/treasurer, it was seeking a candidate who was familiar with Access and Excel as well other automated functions.

sion of the Town's conservation programs. The conservation commissioner advises the conservation commission in the formulation and implementation of departmental policy and practices in accordance with existing state and federal laws, rules, regulations and standards. The incumbent assists the conservation commission in land acquisition and protection in cooperation with other municipal departments, local land trusts, town counsel and state agencies. The incumbent attends meetings of the conservation commission and maintains the meeting calendar. The conservation administrator also attends various meetings related to environmental issues on behalf of the conservation commission.

The conservation administrator is responsible for the development and implementation of municipal sponsored conservation programs and the administration of the Wetlands Protection Act. The incumbent in the position maintains the conservation department's records, including financial records and the database, and prepares status reports as required. The incumbent conducts site inspections and reviews and drafts required documents and reports. The conservation commissioner prepares grant applications and administers grants from local, state, and federal agencies. The incumbent in the position oversees and assigns the work of a part-time clerk.

The qualifications for the position include an associate's degree in biology, environmental science or related field, one to three years experience in conservation and wetland regulations, or any combination of education and/or experience. The incumbent in the position is required to have a valid motor vehicle driver's license.

#### *Information Technology Director*

As systems administrator, the information technology director, under the administrative supervision of the town administrator, manages the data processing and information systems for the Town, including the coordination of the Town's system hardware and software in conjunction with all municipal departments. The information technology director maintains the operations of all system applications, which includes performing daily systems back up and hot and cold starts, running diagnostic tests, troubleshooting problems, and installing upgrades. The information technology director prepares and maintains equipment, cleans printers and PCs, and replaces parts as required. The incumbent in the position assures that all daily, weekly and other production schedules are met in a timely and accurate manner. The incumbent coordinates the installation of computer systems and peripherals, and works with vendors to ensure timely installation. The information technology director implements and maintains the software security system to ensure optimum control and security of information. The incumbent develops and maintains the Town's disaster recovery program.

The information technology director consults with department heads to determine departmental data processing needs, determines boundaries and priorities of new projects, discusses and researches system capacity needs and equipment acquisitions, evaluates and determines appropriate methods to address needs, and coordinates the chosen approach to meet operational requirements. The information technology director develops, prepares,

and implements the Town's Information Technology Master Plan governing the use of all system applications. The incumbent determines and prepares recommendations for new or additional hardware and software needs and evaluates the need for information technology on an ongoing basis. The incumbent coordinates training sessions for Town employees on proper use of software applications, programs, and hardware to improve the operational efficiency and effectiveness of the Town's computer system and provide staff support as required. The information technology director uses the Town main frame and PC computer system to produce reports and other documents.

The information technology director prepares and administers the information technology department's operating and capital budget. The incumbent in the position exercises supervision of the information technology department, including contractors providing support services to the Town. The incumbent maintains knowledge about current computer developments and keeps abreast of new technologies. The qualifications for the position include a bachelor's degree in computer science, business administration, or related field, five to seven years of experience in computer systems or data processing management, preferably in a municipal setting, or an equivalent combination of education and experience.

#### *WWTP Compliance Manager*

The WWTP compliance manager maintains compliance with the WWTP's National Pollution Discharge Elimination System (NPDES) permit, which includes adhering to federal and state reporting requirements, overseeing the operation of the laboratory, combined sewer overflow (CSO) compliance, the inflow and infiltration (I/I) program, and industrial and commercial discharges. The WWTP compliance manager works under the general direction of the DPW superintendent. The DPW superintendent reviews major decisions that the WWTP compliance manager makes and refers questionable cases for action. The WWTP compliance manager also is responsible for storm water management and compliance with the federal/state issued general permit for the WWTP, which is located in the City of Chicopee, in accordance with its storm water permit. The incumbent conducts quarterly monitoring of the Town of Granby's wastewater discharge to the WWTP in accordance with the Intermunicipal Agreement. The incumbent has access to lawsuits for violators of the industrial pretreatment and storm water regulations and to the sewer use regulations, which includes proprietary information.

#### *Industrial pre-treatment*

The WWTP compliance manager coordinates and implements the Town's federally mandated industrial pretreatment program, which includes maintaining familiarity with the Town's sewer use rules and regulations and federal pretreatment regulations and related information. The WWTP compliance manager prepares reports related to the pretreatment program to state and federal authorities, updates federally approved local limits, the industrial pretreatment program and the enforcement response plan as needed, and prepares or revises local regulations as necessary. The incumbent cooperates with state and federal authorities during



program inspections and audits and provides information and assistance during investigations.

The WWTP compliance manager reviews permit applications and issues industrial water discharge permits, which includes establishing industrial discharge limitations, monitoring requirements, and reporting requirements for all industrial users, and incorporates categorical standards when applicable. The incumbent issues permits and conducts scheduled and unscheduled monitoring of industrial users via sampling and periodic inspections. The incumbent also oversees compliance and enforcement for industrial/commercial establishments regulated under a local Wastewater General permit, for all establishments regulated under a local Small Commercial Discharge Authorization for a commercial category, and for any locations requiring temporary discharge permits for miscellaneous short-term discharges. The WWTP compliance manager reviews all required compliance reporting by industrial users and determines compliance status. The incumbent addresses noncompliance in accordance with the federally approved Enforcement Response Plan (ERP). The incumbent coordinates and implements corrective action procedures for recurring and ongoing noncompliance in accordance with the ERP and develops and oversees industrial compliance schedules as necessary. The incumbent calculates sewer billing for commercial and industrial establishments annually.

#### Treatment plant

The WWTP compliance manager oversees laboratory operations, which includes ensuring that procedures are prepared, maintained, and observed in compliance with permitting authorities and ordering supplies as needed. The incumbent coordinates specialized testing as required by the WWTP's NPDES permit, including toxicity, sludge, and influent/effluent testing, and coordinates routine monitoring of parameters that the in-house laboratory does not perform. The incumbent coordinates and implements Discharge Monitoring Report Quality Assurance Studies as required by the state and the Environmental Protection Agency for laboratory certification for both the in-house laboratory and all outside labs that the Town utilizes. The WWTP compliance manager investigates any occurrences of WWTP inhibition and pass-through and maintains detailed records of the occurrence, investigation, and any involvement with state and federal agencies. The WWTP compliance manager prepares numerous state and federal compliance reports for the WWTP on a monthly, semi-annual and annual basis, which includes maintaining necessary and appropriate records as required by departmental and town policies and procedures and state and federal regulations. The incumbent represents the Water Pollution Control Division of the DPW at required meetings as necessary.

The WWTP compliance manager works closely with the WWTP operations manager on compliance issues at the WWTP and with DPW personnel on sewer issues related to commercial and industrial wastewater discharges. The incumbent coordinates timely submittal of the NPDES permit applications in conjunction with the WWTP operations manager and the DPW superintendent, and each prepares applicable portions of the applications. The incumbent assists with the preparation of the annual operating budget

and the capital plan, which includes aiding the DPW superintendent in the budget process and attending meetings as necessary. The incumbent processes invoices and prepares warrants for plant expenditures, monitors the status of the operational budget, and maintains all associated paperwork. The incumbent purchases facility supplies, materials and services, and prepares specifications and department requirements.

#### Storm water

The WWTP compliance officer is responsible for overall compliance with a jointly issued state/federal General Storm Water permit. The WWTP compliance officer works on addressing CSO compliance issues and interacts with federal and state agencies on CSO management, including the preparation and submission of the annual I/I report for the nine required Minimum Control Measures (MCMs) to federal and state agencies. The incumbent develops, implements, and enforces a Storm Water Management Program to reduce the discharge of pollutants and to protect water quality that incorporates six required MCMs, including complying with the minimum requirements for each measure, determining the best management practices (BMPs) for each measure, and identifying timelines and milestones for implementation. The six required MCMs and the WWTP compliance manager's duties for each of those MCMs include: 1) public education and outreach—implement a public education program to distribute educational material to the community; 2) public involvement and participation—provide opportunities for the public to participate in implementation and review of the Storm Water Management Program; 3) illicit discharge detection and elimination—develop, implement and enforce a program to detect and eliminate illicit discharges; 4) construction site storm water runoff control—develop, implement, and enforce a program to reduce pollutants in storm water runoff from construction activities that disturb one acre or more or less than one acre if part of a larger common plan; 5) post construction storm water management—develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than one acre and discharge into the municipal system; and 6) pollution prevention/good housekeeping for municipal operations—develop and implement a program with a goal of preventing and/or reducing pollutant runoff from municipal operations. The WWTP compliance manager implements the BMPs and/or coordinates implementation with other departments and maintains appropriate documentation.

The WWTP compliance manager annually evaluates the Storm Water Management Program with the conditions of the General Storm Water permit and in meeting defined measurable goals for each MCM and BMP, which includes examining the appropriateness of the selected BMPs and modifying the Storm Water Management Program, if necessary. The incumbent prepares reports related to the Storm Water Program to state and federal authorities, and prepares and submits applications for General Storm Water permits in a timely manner. The incumbent oversees storm water management and compliance with a Multi-Sector Storm Water permit for industrial activity for the WWTP. The incumbent cooperates with state and federal authorities during program inspections and audits. The WWTP compliance officer may represent



the Town on the Connecticut River Storm Water Committee, organized through the Pioneer Valley Planning Commission.

The WWTP compliance manager has direct supervision of the laboratory technician and shares supervision of another employee. The incumbent assigns work tasks and evaluates performance. The incumbent maintains employee files, including tracking time and benefits, is responsible for escalated disciplinary actions for employees of the Water Pollution Control Division, and may participate with the DPW superintendent in the selection process for new employees.

The qualifications for the position include an associate's degree in environmental science or a related science and two years of experience in waste water operations including field and lab work. The incumbent in the position must hold a state grade II industrial wastewater license and valid Class D driver's license.

#### *WWTP Operations Manager*

Working under the general direction of the DPW superintendent, the WWTP operations manager oversees the WWTP to ensure that its performance and that the quality of the wastewater meet federal and state regulations. The incumbent directs plant operations and maintenance functions in accordance with regulatory requirements. The WWTP operations manager ensures compliance with state and federal regulations and requirements pertaining to discharge quality, sewage sludge management, and WWTP operations, which includes interacting with state and federal agencies for annual inspections and operating requirements. The incumbent in the position completes daily process control calculations that are needed to determine daily operating parameters for effective wastewater treatment and enters data in the Op10 database. In the event of a treatment plant upset or bypass, the WWTP operations manager responds appropriately to protect the WWTP and the receiving water. The incumbent oversees and coordinates the sludge dewatering process and makes adjustments as necessary to maximize cake solids and minimize chemical usage.

The WWTP operations manager plans and prioritizes long-range work programs and capital projects for the WWTP. The incumbent assists with the development of the WWTP's annual operating budget. The incumbent assists with the preparation of the NPDES application by completing applicable sections. The WWTP operations manager prepares and updates operating, safety, and other procedures as necessary for the treatment plant and pump stations, which includes acting as a safety representative, writing and enforcing standard operating and safety procedures, and providing appropriate and timely training to employees. The incumbent meets and interacts with members of the public, contractors, engineers, attorneys, the media and others as needed.

The WWTP operations manager oversees the maintenance activities of the treatment plant and four pumping stations and insures that paper and computer maintenance files are up to date. The incumbent purchases facility supplies, chemicals, materials and services as necessary and prepares specifications and requirements. The incumbent may be required to perform the duties of a plant operator or a laborer as needed.

The WWTP operations manager supervises up to five full-time employees and seasonal help. The incumbent evaluates personnel performance on an ongoing and annual basis and recommends hiring, firing, and discipline to the DPW Superintendent.

The qualifications for the position include a bachelor's degree in environmental science, civil or chemical engineering or public health, three to five years experience at a wastewater treatment facility with at least one year in a supervisory capacity; or an equivalent combination of education and/or experience. The WWTP operations manager is required to hold a grade VI wastewater treatment operator's certification and a class B commercial driver's license. The holding of a grade IV collection system certification is also preferred.

#### *Opinion*

When certain issues raised by a representation petition are resolved by the parties' stipulations, the Board will adopt the stipulations if those stipulations do not conflict with the Law or established Board policy. *Town of Hopedale*, 20 MLC 1059, 1067 (1993), citing *Board of Trustees, State Colleges*, 4 MLC 1427, 1428 (1977).

Here, at the outset of the proceeding, the parties stipulated that the two bargaining units that are described below constitute appropriate bargaining units within the meaning of the Law. Unit A includes the positions of administrative assistant library, assistant associate assessor, assistant cook, custodian, dispatcher, library assistant, meals on wheels coordinator, minivan driver, page, senior account clerk, senior clerk (all departments), senior library technician, van driver, volunteer coordinator, plumbing and gas inspector, wiring inspector, and social service coordinator. Unit B includes the positions of assistant supervisor wastewater treatment plant, food service coordinator, circulation coordinator, cataloguer/head technical services, reference librarian, youth/child services librarian, nurse, solid waste coordinator, assistant director council on aging, and assistant tax collector. The parties also stipulated that the reference librarian, the youth/child services librarian, the nurse, the circulation coordinator, and the cataloguer/head technical services are professional employees within the meaning of Section 1 of the Law. Additionally, the parties stipulated that the following employees are managerial and/or confidential employees within the meaning of Section 1 of the Law: a) the applications specialist is a confidential employee; b) the assistant town accountant is a confidential employee; c) the building commissioner is a managerial employee; d) the conservation administrator is a managerial employee; e) the office manager/DPW is a confidential employee; f) the secretary to the police chief is a confidential employee; g) the director of public health is a managerial employee; h) the information technology director is a managerial or confidential employee; i) the WWTP operations manager is a managerial or confidential employee; and j) the WWTP compliance manager is a managerial or confidential employee. Finally, the parties stipulated that the dog officer and assistant dog officer do not share a community of interest with employees in either proposed bargaining unit A or B and that the veteran's agent is an employee of multiple and/or joint employers, including the Town, and thus, is not appropriately included in either Unit A or B.

Because the parties' stipulations as to the proposed composition of Unit A or Unit B do not appear to be in conflict with the Law or established Board precedent or policy, we adopt those stipulations with limited exceptions. Upon review of the parties' stipulated facts and the job descriptions that the parties submitted as joint exhibits, we decline to adopt certain of the parties' stipulations excluding particular positions from either Unit A or B for reasons that we will discuss later in this decision. Specifically, we decline to adopt the parties' stipulations concerning the building commissioner, the conservation administrator, the information technology director, the WWTP operations manager, the WWTP compliance manager, the dog officer, and the assistant dog officer. Accordingly, we turn to our analysis of the specific job titles at issue.

*Assistant Town Clerk/Treasurer*

We turn first to examine whether the assistant town clerk/treasurer should be excluded from Unit B, because the incumbent in the position is either a managerial or a confidential employee within the meaning of Section 1 of the Law.

Section 1 of the Law contains the following three-part test to determine whether an employee 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 of the three statutory criteria. *Town of Manchester-by-the Sea*, 24 MLC 76, 81 (1998).

Unlike supervisory personnel who "transmit policy directives to lower 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 sub nom.*, *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 decisions, is sufficient to consider an employee managerial, if the employee'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. To participate to a substantial degree in formulating policy includes not only the authority to select and to implement a policy alternative but also regularly participating 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 Manchester-by-the-Sea*, 24 MLC at 81; *City of Boston*, 19 MLC at 1050, 1063 (1992); *Wellesley School Committee*, 1 MLC at 1407.

Construing the third statutory test of a managerial employee, the Board previously has determined that the words "independent judgment" require that an employee exercise discretion without consultation or approval. *Town of Manchester-by-the-Sea*, 24 MLC at 81, *citing Wellesley School Committee*, 1 MLC at 1408. A coincidence of recommending and accepting 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. *Town of Agawam*, 13 MLC at 1369.

Turning to the first prong, we examine whether the assistant town clerk/treasurer participates to a substantial degree in formulating or determining policy on behalf of the Town. The Town contends that Ingram took responsibility for and implemented certain policy changes in the town clerk/treasurer's office, including the use of on-line banking for certain accounts, the selection of banks, the utilization of a spreadsheet to record fees, the placement of many licenses and certificates on databases, and the prohibition against the senior clerk receiving deposits from other municipal departments. However, a review of the record shows that Ingram only made recommendations, and the town clerk/treasurer exercised final approval over those proposals. *See Worcester School Committee*, 3 MLC 1653, 1672 (1977) (in determining managerial status, Board examines at what level of the school administration decisions and opinions are not screened by another layer before being implemented or presented to the school committee). Although the town clerk/treasurer accepted Ingram's recommendations, Ingram's role was still advisory and she did not have discretionary authority to implement any of those changes without first obtaining the approval of the town clerk/treasurer. *See Town of Plainville*, 18 MLC at 1010 (town accountant's level of discretion in fiscal matters was not sufficient to classify him as a managerial employee). Accordingly, we find that the assistant town clerk/treasurer does not have sufficient independent authority to be classified as a managerial employee. *See generally Town of Bridgewater*, 15 MLC 1001 (1988) (associate library directors were not managerial where they participated in decision making at the sufferance of the library director rather than on their own institutionally-based authority).

Because the assistant town clerk/treasurer currently does not participate in collective bargaining, the second prong of the managerial test is inapplicable. Focusing then on the third prong of the

managerial test, we consider whether the assistant town clerk/treasurer 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. Because the assistant town clerk does not participate in the grievance process, the focus of the Town's argument under this prong is not her role in the administration of a collective bargaining agreement, but instead her role filling in for the town clerk/treasurer. However, the mere fact that the assistant town clerk/treasurer fills in for the town clerk does not by itself confer managerial status. See e.g., *Town of Acton*, 33 MLC 169, 173 (2007) (the fact that lieutenants fill in for the police chief does not confer managerial status); *Town of Millbury*, 33 MLC 52, 53 (2006) (although the assistant treasurer/collector has valuable skills and expertise and may fill in for the treasurer/collector, the assistant treasurer/collector does not make the types of policies decisions that a managerial employee makes); *Town of Wareham*, 26 MLC 206, 207 (2000) (fact that lieutenants and captains may serve as the police chief in the chief's absence does not warrant designating them as managerial employees). Moreover, the record before us does not show during those periods, both longer and shorter, in which Ingram filled in for the Barthelette that she ever independently undertook a personnel action such as hiring an employee or disciplining an employee. Compare *Town of Holden*, 25 MLC 175, 177 (1999) (lieutenant, who had the authority to act as police chief in the chief's absence, was not a managerial employee, because he independently did not hire or discipline employees while acting as chief) with *Town of Medway*, 22 MLC at 1269-1270 (an administrative assistant to the board of selectmen, who also acted as the personnel director, was a managerial employee, because she had independent authority to determine salary classifications). Accordingly, we find that the assistant town clerk/treasurer does not possess the requisite appellate responsibility to be deemed a managerial employee.

Next, we consider whether the town clerk/treasurer is a confidential employee within the meaning of the Law. Section 1 of the Law defines the "confidential" exclusion as follows:

Employees shall be designated as confidential employees only if they directly assist and act in a confidential capacity to a person or persons otherwise excluded from coverage under this chapter.

To be regarded as confidential, an employee must have a direct and substantial relationship with an excluded employee that creates a legitimate expectation of confidentiality in their routine and recurrent dealings. *Town of Medway*, 22 MLC at 1269, citing *Littleton School Committee*, 4 MLC 1405, 1414 (1977); *Town of Plainville*, 18 MLC at 1010. Employees who have significant access or regular exposure to confidential information concerning labor relations matters, management's position on personnel matters, or advanced knowledge of the employer's collective bargaining proposals are excluded as confidential. *Town of Brookline*, 30 MLC 71, 72 (2003); *Fall River School Committee*, 27 MLC 37, 39 (2000). This exclusion has been narrowly interpreted to exclude as few employees as possible, while not unduly hindering the employer's operations. *Silver Lake Regional School Committee*, 1 MLC 1240, 1243 (1975). First, the Town contends that the assistant town clerk/treasurer is a confidential employee, because the

incumbent in the position has access to and handles sensitive employee information, including social security numbers, bank account information, and other payroll information, and other banking information on behalf of the Town. However, the Board previously has held that access to sensitive materials like financial data, personnel records, or medical records, and audits, without more, does not necessarily make an employee confidential. *Fall River School Committee*, 27 MLC at 40, citing *Town of Milton*, 8 MLC 1234 (1981).

Further, the Town, citing to *Massachusetts Turnpike Authority*, 31 MLC 87 (2004), contends that the assistant town clerk/treasurer's handling of worker's compensation cases renders her a confidential employee. However, the facts of the *Massachusetts Turnpike Authority* case can be distinguished from the facts of the present case. In the *Massachusetts Turnpike Authority* case, an attorney handling the employer's worker's compensation litigation was found to be a confidential employee. *Massachusetts Turnpike Authority*, 31 MLC at 107. Here the assistant town clerk/treasurer plays no role in the Town's decision-making concerning an employee's eligibility for worker's compensation benefits. Rather, the town administrator, in consultation with the human resources officer, makes that determination.

The exposure of an employee to the employer's own labor relations information forms the basis of an employer's claim that an employee is confidential. *Greater Lawrence Sanitary District*, 34 MLC 86, 96-97 (2008). Here, the assistant town clerk/treasurer receives third party bills that the Town has received on behalf of injured employees, including medical bills and legal bills, and invoices for settlement agreements and submits those materials to the town accountant's office. After the town accountant's office prepares the checks, the assistant town clerk/treasurer verifies the dollar amounts of those checks with the amounts on the bills and invoices. Thus, the only documents that the assistant town clerk/treasurer views in regards to worker's compensation cases are bills or invoices that are submitted on behalf of injured employees, documents that those employees know of or already have seen. Finally, although the assistant town clerk/treasurer sometimes attends department head meetings as a substitute for the town clerk/treasurer, the record does not contain sufficient evidence for us to find that, in that capacity, the assistant town clerk/treasurer is privy to the type of information that would render her a confidential employee. Therefore, we conclude that the assistant town clerk/treasurer is not a confidential employee within the meaning of Section 1 of the Law and include the position in Unit B.

#### *Building Commissioner*

The parties stipulated that the building commissioner is a managerial employee, because the incumbent in the position researches and recommends new policies that are ultimately approved by the selectboard or by Town Meeting. However, a review of the position's job description shows that when faced with important issues concerning land use, the building commissioner places those issues before the town administrator for discussion and resolution. Coupling that fact with the fact that the building commissioner can only recommend new policy, we conclude based on the facts before us that the building commissioner does not have sufficient in-

dependent policy making authority to be classified as a managerial employee. *Compare Town of Greenfield*, 32 MLC 133, 154 (2006) (library director is managerial employee because budget and policy recommendations are not screened through another layer of management before presentation to the board of trustees). Moreover, the parties do not contend and there is no evidence that the building commissioner is involved in collective bargaining or exercises independent judgment of an appellate responsibility not initially in effect in the administration of a collective bargaining agreement or in personnel administration. Thus, we conclude that the building commissioner is not a managerial employee.

Next, we must consider the appropriate unit placement for the position of building commissioner. Section 3 of the Law requires the Board to determine appropriate bargaining units that are consistent with the purpose of providing for stable and continuing labor relations while giving due regard to the following considerations: 1) community of interest; 2) efficiency of operations and effective dealings; and 3) safeguarding the rights of employees to effective representation. *City of Everett*, 27 MLC 147, 1501-151 (2001); *Town of Bolton*, 25 MLC at 67. Applying the criteria set forth in Section 3 of the Law, the Board generally establishes separate bargaining units for supervisory employees and the employees they supervise. *Sheriff of Worcester County*, 30 MLC 132, 137 (2004) (additional citations omitted). This policy is rooted in the judgment that individuals who possess significant supervisory authority owe their allegiance to their employer, particularly in the areas of employee discipline and productivity. *Town of Bolton*, 25 MLC 62, 67 (1998). Supervisors and the employees they direct have different obligations to the employer in personnel and policy matters, therefore to retain them in the same bargaining unit would likely lead to a conflict of interest within the bargaining unit. *City of Chicopee*, 1 MLC 1195, 1197-1198 (1974). To determine whether an employee is a supervisor, the Board distinguishes between a true supervisor and an employee who possesses more limited supervisory authority. "A true supervisor has independent authority to make, or the power to effectively recommend, personnel decisions such as whether to hire, transfer, suspend, promote or discharge employees or to resolve grievances." *Greater New Bedford Regional Vocational School Committee*, 15 MLC 1040, 1045 (1988). Here, the building commissioner's job description reveals that the incumbent recommends discipline for the inspections staff, whose positions are included in Unit A. Accordingly, it is appropriate to include the building commissioner in Unit B, the supervisory bargaining unit.

#### *Conservation Administrator*

The parties stipulated that the conservation administrator is a managerial employee, because the incumbent drafts policies relating to the preservation of Town land and that those policies are presented to the appointed conservation committee and to the town meeting as necessary. Although the conservation administrator may draft those policies, the job description for the position indicates that the conservation administrator performs an advisory role to the conservation commission and acts in accordance with the Town's by-laws and charter and the state building code. Further, the organizational chart that the parties submitted as a joint exhibit indicates that the conservation administrator also reports to the town

administrator. On the evidence before us, we are not persuaded that the conservation commissioner makes decisions for and determines the objectives of the conservation department. Further, without more information about the policies that the conservation commissioner has drafted, we cannot conclude that those policies are decisions that impact a significant part of the public enterprise. *Masconomet Regional School District*, 3 MLC 1034, 1040-1041 (1976) (employee who are involved in some personnel decisions and have operational control over their respective areas of responsibility do not exercise the breadth and scope of decision making authority necessary to be managerial employees). Nor is there evidence, and the parties do not contend that the conservation administrator is involved in the collective bargaining process or has substantial responsibilities 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. Thus, we conclude that the conservation administrator is not a managerial employee and turn to consider the appropriate unit placement of the position. Because a review of the job description reveals that the conservation administrator exercises supervisory authority over a clerical position in Unit A, it is appropriate pursuant to Section 3 of the Law to include the position in Unit B.

#### *Information Technology Director*

The parties stipulated that the information technology director was both a managerial and a confidential employee. Turning first to the claim that the incumbent in the position is a managerial employee, the parties rely on the fact that the information technology director formulates policy relating to computer usage within the Town and that policy is approved by the selectboard without changes. However, while the job description shows the information technology position to be highly technical with considerable responsibility for operation of the Town's computer systems, the record before us is devoid of evidence showing that the information technology director formulates policies that are of major importance to the mission and objectives of the Town. *Compare Taunton Municipal Light Plant*, 30 MLC at 21 (energy supply and planning manager who has a substantial part in determining the energy supply policy and manager of special services who has a substantial role in developing a corporate strategic plan and executes and tracks those plans to maintain the employer's competitive edge in the marketplace are managerial employees); and *Town of Manchester-by-the-Sea*, 24 MLC at 76 (1998) (library director's input on all major policy issues, including fiscal, personnel, building maintenance, and library services constitutes significant policy formulation and determination) with *Wellesley School Committee*, 1 MLC at 1403 (school principals who make policy determinations concerning weapons, final examinations, schedules, bicycle use, and safety patrols do not make policy considerations that impact a significant part of the public enterprise and are not managerial employees). Also, there is insufficient evidence in the record and the parties do not contend that the information technology director is involved in collective bargaining or exercises independent judgment of an appellate responsibility not initially in effect in the administration of a collective bargaining agreement or in personnel

administration. Therefore, we decline to find that the information technology director is a managerial employee.

Second, we consider whether the information technology director is a confidential employee, because the incumbent in the position has access to every computer and every user account within the Town, including that of the town administrator. However, the record before us contains no evidence about exactly what information is present on those computers, whether that information is actually confidential, and whether the information concerns labor relations matters, management's position on personnel matters or advanced knowledge of the employer's collective bargaining proposals. *Compare Board of Higher Education*, 33 MLC 12, 14 (2006) (administrative assistant to the college president who opens mail and receives faxes from labor counsel regarding pending cases and contract negotiations, types the president's tenure recommendations to the board of trustees, and has access to all materials in the tenure files is a confidential employee). Further, the facts before us do not demonstrate whether the information technology director has unfettered access to those computers and user accounts or whether certain safeguards or guidelines are in place, which restrict or track the incumbent's access in some manner. Accordingly, we decline to find the information technology director to be a confidential employee.

Next, we must determine the appropriate unit placement for that position. Because the incumbent exercises supervisory responsibility over employees in the information technology department, the position is properly included in Unit B.

#### *Dog Officer and Assistant Dog Officer*

The parties stipulated that the dog officer and assistant dog officer do not share a community of interest with other employees in Unit A or B and, thus, should not be included in either bargaining unit. To determine whether employees share a community of interest, the Board considers factors like similarity of skills and functions, similarity of pay and working conditions, common supervision, work contact, and similarity of training and experience. *Princeton Light Department*, 28 MLC 46, 48 (2001); *Town of Bolton*, 25 MLC at 65; *Boston School Committee*, 12 MLC 1175, 1196 (1985). No single factor is outcome determinative. *City of Springfield*, 24 MLC 50, 54 (1988); *City of Worcester*, 5 MLC 1108, 1111 (1978). The Law requires that employees share only a community of interest rather than an identity of interest. *County of Dukes County/Martha's Vineyard Airport Commission*, 25 MLC 153, 155 (1999); *Springfield Water and Sewer Commission*, 24 MLC 55, 59 (1998).

To satisfy the second and third statutory criteria, the Board considers the impact of the proposed bargaining unit structure upon a public employer's ability to effectively and efficiently deliver public services while safeguarding the rights of employees to effective representation. *Peabody School Committee*, 27 MLC 7, 8 (2000); *Town of Bolton*, 25 MLC at 66. The Board satisfied these obligations by placing employees with common interests in the same bargaining unit. *Id.* This avoids the proliferation of units that places an unnecessary burden on the employer, while maximizing the collective strength of employees in the bargaining relationship.

*City of Springfield*, 24 MLC 50, 54 (1998); *Mass. Board of Regional Community Colleges*, 1 MLC 1426, 1440 (1975). The Board's preference for broad comprehensive units is balanced by its concern that a unit should not include employees so diverse as to produce inevitable conflicts in the collective bargaining process. *University of Massachusetts*, 4 MLC 1384, 1392 (1977). Only significant differences that would result in inevitable conflicts constitute a basis for excluding employees from a bargaining unit on the grounds that the employees lack a community of interest with other bargaining unit members. *West Boylston Water District*, 25 MLC 150, 1515 (1999); *Franklin Institute of Boston*, 12 MLC 1091, 1093 (1985).

Here, the parties argue that because the dog officer and assistant dog officer have no fixed hours and perform most of their work away from Town premises, they have diverse interests from other potential members of Unit A or Unit B, which would produce conflicts in the collective bargaining process. First, if the Board were to create a bargaining unit consisting only of the dog officer and the assistant dog officer, it would be contrary to the Board's policy favoring broad comprehensive units. *Cf. Town of Malden*, 28 MLC 130, 134 (2001) (although the matron's position is the only on-call position, it is included in the bargaining unit in accordance with Board policy favoring broad, comprehensive bargaining units). Furthermore, other members of Unit A perform at least some of their duties away from Town premises, including the minivan driver, van driver, plumbing and gas inspector, and the wiring inspector. Also, a review of the organizational chart shows that the dog officer and the assistant dog officer report to the town administrator and ultimately to the selectboard as do other potential members of Unit A or Unit B.

Next, we need to ascertain the appropriate unit placement(s) for the positions. Because no job descriptions exist for the positions and the record contains no other information about their duties, we cannot conclude that either position possesses any supervisory authority. There, we include the positions in Unit A, the non-supervisory bargaining unit.

#### *WWTP Operations Manager and WWTP Compliance Officer*

The parties stipulated that the WWTP operations manager and the WWTP compliance officer were managerial or confidential employees. Turning first to the claim that the incumbents in those positions are managerial employees, the parties argue that the WWTP operations manager and the WWTP compliance manager make policies affecting unionized employees within the WWTP, and assist the DPW superintendent with responses to grievances affecting WWTP employees. However, because the record before us does not reveal the nature of those policies, we cannot conclude that the WWTP operations manager and the WWTP compliance manager formulate policies that are of major importance to the mission and objectives of the Town. *See Georgetown Light Department*, 21 MLC 1771, 1775 (1995) (plans and procedures are not managerial policy decisions unless decisions involve subjects of major importance when examined in light of the objectives of the public enterprise). Although the job descriptions for the WWTP operations manager and the WWTP compliance manager show that the positions are highly technical with considerable re-

sponsibility for the Town's WWTP, the actions of the incumbents are governed by applicable state and federal laws. *See also Greater Lawrence Sanitary District*, 34 MLC at 95 (because compliance benchmarks are regulatory matters, the monitoring manager who monitored the sanitary district's compliance with state and federal regulatory requirements did not play a significant role in the establishment of the employer's objectives). Further, we note that because the job descriptions for both positions indicate that the incumbents work under the general supervision of the DPW superintendent and that the DPW superintendent reviews major decisions that the WWTP compliance manager makes and refers questionable cases for action, there is insufficient evidence to establish that those policies are not screened by another level of administration, *i.e.*, the DPW superintendent. *Worcester School Committee*, 3 MLC at 1653.

Next, although the parties stipulated that the WWTP operations manager and the WWTP compliance manager assist the DPW superintendent with grievances affecting WWTP employees, those duties, on the facts before us, are insufficient to render the incumbents in those positions as managerial or confidential employees. First, the record does not contain any information describing the nature of the assistance that the incumbents in the two positions provide to the DPW superintendent or at what point in the contractual grievance procedure they provide the assistance. Thus, we cannot conclude that the incumbents exercise independent judgment beyond the first-step in the grievance-arbitration procedure pursuant to the third prong of the managerial test. Nor is there any evidence that the WWTP operations manager and the WWTP compliance manager are involved in collective bargaining pursuant to the second prong of the managerial test. Furthermore, we do not have any evidence showing that the WWTP operations manager's and the WWTP compliance manager's role in providing the DPW superintendent with assistance on grievances exposes them to confidential information concerning labor relations matters, management's position on personnel matters, or advance knowledge of the Town's collective bargaining proposals. *Compare Board of Higher Education*, 31 MLC 149, 152 (2005) (administrative assistant, who schedules Step 1 grievances, maintains files pertaining to such grievances, works with the employer's attorney to gather necessary materials for grievances proceeding to arbitration, and forwards memos regarding those topics, is a confidential employee).

Additionally, although the parties stipulated to the fact that the WWTP operations manager and the WWTP compliance manager are privy to sensitive disciplinary investigations and are aware of disciplinary actions before they occur, we do not find that this fact alone supports the conclusion that the WWTP operations manager and the WWTP compliance officer are managerial or confidential employees. Instead, this fact supports the conclusion that the WWTP operations manager and the WWTP compliance manager should be placed in a separate bargaining unit from the bargaining unit of non-supervisory DPW employees, which is what will take place here. *See Town of Wilmington*, 33 MLC 18, 21 (2006) (police sergeants' role in investigating complaints against patrol officers also warrants their placement in a separate bargaining unit).

Finally, we consider the appropriate unit placement for the disputed positions. The job description for the WWTP operations manager shows that the incumbent in the position conducts annual performance evaluations and recommends hiring, firing, and discipline to the DPW superintendent. Additionally, a review of the job description for the WWTP compliance manager reveals that the incumbent in the position assigns work tasks, evaluates performance, may participate with the DPW superintendent in the hiring process for new employees, and is responsible for escalated disciplinary actions for employees of the Water Pollution Control Division. Therefore, we conclude that pursuant to Section 3 of the Law, the appropriate unit placement for both positions is Unit B, the supervisory bargaining unit.

#### Conclusion/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 Town of South Hadley and the following units constitute appropriate units within the meaning of Section 3 of the Law:

*Unit A*-All full-time and regular part-time administrative, clerical, inspectional, and support service personnel employed by the Town of South Hadley, including employees in the following positions:

Administrative Assistant Library  
 Assistant Associate Assessor  
 Assistant Cook  
 Assistant Dog Officer  
 Custodian  
 Dog Officer  
 Dispatcher  
 Library Assistant  
 Meals on Wheels Coordinator  
 Minivan Driver  
 Page  
 Senior Account Clerk  
 Senior Clerk (All Departments)  
 Senior Library Technician  
 Van Driver  
 Volunteer Coordinator  
 Plumbing and Gas Inspector  
 Wiring Inspector  
 Social Service Coordinator

but excluding the applications specialist, the office manager/DPW, the secretary to the police chief, the veteran's agent, all supervisory, managerial, confidential, and casual employees, and all other employees.

*Unit B*-All full-time and part-time supervisory personnel employed by the Town of South Hadley, including employees in the following positions:



Assistant Director Council on Aging  
 Assistant Supervisor WWTP  
 Assistant Tax Collector  
 Assistant Town Clerk/Treasurer  
 Building Commissioner  
 Cataloguer/Head Technical Services  
 Circulation Coordinator  
 Conservation Administrator  
 Food Service Coordinator  
 Information Technology Director  
 Nurse  
 Reference Librarian  
 Solid Waste Coordinator  
 WWTP Compliance Manager  
 WWTP Operations Manager  
 Youth/Child Services Librarian

but excluding the assistant town accountant, the director of public health, all non-supervisory, managerial, confidential and casual employees, and all other employees.

IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted to determine whether a majority of employees in each of the above-described separate bargaining units desire to be represented by the American Federation of State, County and Municipal Employees, Council 93, AFL-CIO or by no employee organization.

Inasmuch as the above-referenced bargaining Unit B includes the positions of cataloguer/head technical services, circulation coordinator, nurse, reference librarian, and youth/child services librarian, who are professional employees within the meaning of Chapter 150E, the cataloguer/head technical services, the circulation coordinator, the nurse, the reference librarian, and the youth/child services librarian shall be given an opportunity to vote as to whether or not they wish to be included in Unit B, a bargaining unit consisting of both professional employees and non-professional employees. If a majority of the professional employees vote for inclusion in Unit B, they shall be given the opportunity with other Unit B employees to vote as to 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.

If the majority of professional employees vote not to be included in Unit B, they shall be in a separate professional unit consisting of the cataloguer/head technical services, the circulation coordinator, the nurse, the reference librarian, and the youth/child services librarian, but excluding all other employees of the Town of South Hadley, and they shall have the 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 each above-described bargaining unit whose names appear on the Town of South Hadley's payroll for the payroll period for the week ending the Saturday preceding the date of this decision and who have not yet since quit or been discharged for cause. The list of eligible voters must be either electronic (e.g. Microsoft Access or Excel) or in the form of mailing labels.

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 in each unit and their addresses which may be used to communicate with them.

Accordingly, IT IS HEREBY FURTHER DIRECTED that two (2) copies of election eligibility lists containing names and addresses of all eligible voters, separated by bargaining units and separately noting the identities of the professional employees, must be filed by the Town of South Hadley with the Executive Secretary of the Division of Labor Relations, 19 Staniford Street, 1st Floor, Boston, MA 02114 no later than fourteen (14) days from the date of this decision.

The Executive Secretary shall make the lists available to all parties to the election. Failure to submit the lists in a timely manner may result in substantial prejudice to the rights of employees and the parties; therefore, no extension of time for filing the lists 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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