

MAINE LABOR RELATIONS BOARD

AFSCME Council 93, )  
 )  
Petitioner ) Response of the Town of Orono to Petition for  
 ) Administrative Unit Determination  
Town of Orono, ) and Bargaining Agent Election  
 )  
Respondent. )  
 )

Respondent, the Town of Orono (“Orono” or “Town”), objects to the above-captioned Petition filed by Petitioner AFSCME Council 93 (“Union” or “Petitioner”) on the following basis:

**1. Respondent Challenges the Inclusion of the Assessor Position Because that Position is Performed by an Independent Contractor, Who is Not a Town Employee.**

The Assessor’s role in the Town of Orono is currently performed by an outside, Independent Contractor who is not an employee of the Town. At the time the petition was filed, the Assessors’ services are performed under a written contractual agreement with Downeast Assessing and Real Estate Services (“DARESVCS”). All persons performing the Assessor role for the Town are employed by DARESVCS, and not by Respondent. As such, the position must be excluded from the proposed unit.

Further, to the extent the person in the Assessor position executed an authorization form, that form should be disregarded from purposes of a “majority sign-up” petition or from the analysis of the sufficiency of any showing of interest.

**2. Respondent Challenges the Inclusion of the Code Enforcement Officer on the Grounds that the CEO is Appointed, Pursuant to 26 M.R.S. § 962(6)(B).**

Title 26 M.R.S. § 962(6)(B) prohibits from inclusion in a bargaining unit of any person who is “appointed to the office pursuant to statute, ordinance or resolution for a specified term of office by the executive lead or body of the public employer...” Respondent’s Code Enforcement Officer (CEO) is annually appointed in such a manner. Accordingly, the CEO position is not a “public employee” as defined by statute, and is ineligible for inclusion in the proposed unit.

Further, to the extent the person in the CEO position executed an authorization form, that form should be disregarded from purposes of a “majority sign-up” petition or from the analysis of the sufficiency of any showing of interest.

**3. Respondent Challenges the Inclusion of the Town Planner on the Grounds that the Planner is Appointed, Pursuant to 26 M.R.S. § 962(6)(D).**

Title 26 M.R.S. § 962(6)(D) prohibits from inclusion in a bargaining unit of any person who is “department head or division lead appointed to office pursuant to Statute, ordinance or resolution for an unspecified term by the executive lead or body of the public employer.” Respondent’s Planner is appointed by Respondent in such a manner. Therefore, the Planner position is not a “public employee” as defined by statute and is ineligible to be included in any proposed bargaining unit.

Further, to the extent the person in the Planner position executed an authorization form, that form should be disregarded from purposes of a “majority sign-up” petition or from the analysis of the sufficiency of any showing of interest.

**4. Respondent Challenges the Composition of the Proposed Unit on the Grounds that Several are “Professional Employees.”**

The proposed unit includes the following positions: Library Circulation Manager, Systems Administrator, Library Circulations Manager and Library Youth Services Manager. These positions perform duties and have the responsibilities that fall within the definition of “Professional Employees” pursuant to 26 M.R.S. § 926(5). As such, those positions do not share a community of interest with the listed clerical members of the proposed unit, and should be excluded from the proposed unit in favor of a separate Professional Employees Unit. To the extent the Code Enforcement Officer and Town Planner are not otherwise excluded from the proposed unit, they are also Professional Employees.

**5. Respondent Challenges the Inclusion of Part-Time or Per Diem Employees for the Proposed Unit.**

The proposed unit includes at least three part-time, per diem employees: the Staff Accountant and two library Circulation Clerks. Respondent objects to the inclusion of any non-full-time employees proposed in the unit, particularly employees whose status is part-time or per diem. Such employees do not share a community of interest with the full-time employees.

Further, to the extent any part-time or per diem employees executed an authorization form, that form should be disregarded from purposes of a “majority sign-up” petition or from the analysis of the sufficiency of any showing of interest.

**6. Respondent Challenges the Petition on the Grounds that Members of the Proposed Bargaining Unit Misunderstood the “Majority Sign-Up” Process.**

On information and belief, Respondent believes that at least one, if not more, of the employees signing authorizations did not understand, or were provided inaccurate information, regarding the effect of signing an authorization form. On information and belief, at least one affected employee, if not more, believed or were led to believe that signing an authorization form would not result in the formation of a unit by majority sign-up, but rather would only result in the process to explore possible unionization.

**7. Respondent Challenges the Sufficiency of the Showing of Interest Proffered by the Petitioner.**

Petition has listed twelve (12) classifications and/or positions it seeks to include in the proposed bargaining unit, and listed fifteen (15) persons covered under the proposed bargaining unit. Pursuant to Chapter 11§ 11(1) of the MLRB rules, these listed positions are set forth in the attached Exhibit A.

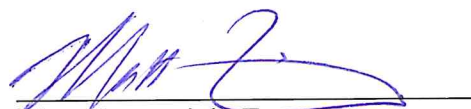
Respondent does not know what date, lists or information Petitioner has submitted to the Executive Director to support its showing of interest upon which the Executive Director has determined the sufficiency of the proposed unit, or a majority sign-up.

The proposed unit covers four different Town departments: Town Office, Parks and Recreation, Library and IT. It also includes two (2) vacant positions: Assistant Clerk and Systems Administrator, and three (3) positions that must be excluded from any bargaining unit: Code Enforcement Officer, Town Planner, and Town Assessor. None of these persons or positions should be eligible to be considered for sufficiency purposes. Accordingly, the Respondent challenges the sufficiency of interest.

Accordingly, Respondents are challenging the showing of intent for the proposed 12 classification, 15 person unit.

Respondent requests that, in light of the above, the Executive Director review the showing of interest sufficiency and majority sign-up determination, in order to determine if the showing is sufficient based upon a correct identification of the individuals covered in the proposed units, and that a unit hearing be scheduled to resolve the other legal and functional disputes raised herein.

Dated: March 1, 2023

  
Matt Tarasevich, Esq.  
Attorney for the Town of Orono

### Exhibit A

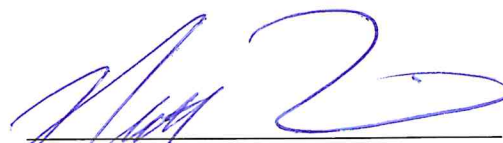
- (1) Staff Accountant (PT): Robert Bass (should be excluded)
- (2) Circulation Clerk: Jessica Black
- (3) Administrative Assistant: Jessica Chadborne
- (4) Bookkeeper: Patricia Davis
- (5) Town Planner: Kyle Drexler (should be excluded)
- (6) Code Enforcement Officer: Patrick Estey (should be excluded)
- (7) Library Circulation Manager: Cecilia Jolliffe (Professional Employee)
- (8) Parks and Recreation Programmer: Shawn Owens (Professional Employee)
- (9) Assistant Clerk: Lori Speed
- (10) Library Youth Services Manager: Lindsay Varnum (Professional Employee)
- (11) Circulation Clerk: Katrina Wynn
- (12) Circulation Clerk: Peter Yezvkevich
- (13) Assistant Clerk: Vacant
- (14) Systems Administrator: Vacant (Professional Employee)
- (15) Assessors: Downeast Assessing and Real Estate Services (should be excluded)

**Certificate of Service**

I, Matt Tarasevich, certify that on the below date, I served a copy of this Petition for Administrative Unit Determination and Bargaining Agent Election on the following parties via simultaneous electronic mail and U.S. mail at the following addresses:

John Nuttall, AFSCME Council 93  
6 Rockwood Drive  
Manchester, ME 04351  
[jnuttell@afscme93.org](mailto:jnuttell@afscme93.org)

Date: March 1, 2023



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