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CENTRAL LINCOLN COUNTY)		
EDUCATIONAL SPECIALISTS)		
ASSOCIATION/MEA/NEA,)		
)	
)	DECISION AND ORDER ON
Appellant,)		APPEAL OF
)	UNIT DETERMINATION
and)		
)	
AOS #93,)		
)	
)	
Appellee.)		
_____)		

The Central Lincoln County Educational Specialists Association/MEA/NEA (the "Association") filed this unit appeal on April 24, 2014, pursuant to 26 M.R.S.A. §968(4) of the Municipal Public Employees Labor Relations Law (the "Act") and Chapter 11, §30 of the Rules and Procedures of the Maine Labor Relations Board (the "Board"). The unit determination report which is the subject of this appeal was issued on March 20, 2014, following a proceeding on November 12, 2013, presided over by Gwendolyn D. Thomas, the Board's Hearing Examiner.

The November 12, 2013, proceeding addressed a unit determination petition filed by the Association, naming Alternative Organizational Structure #93 as the employer. The petition sought to create a new unit of specialists, including three speech therapists, four social workers, and two occupational therapists. These positions served the schools of Bristol, South Bristol, Jefferson, Nobleboro, and Great Salt Bay, which together make up Alternative Organizational Structure #93 ("AOS #93"). In its petition, the Association specifically noted that "some of the employees are currently represented and/or covered

under an existing bargaining unit and contract from one of the AOS" member towns, and listed the expiration dates of the agreements with each of the five towns. The petition also stated,

The filing of this petition is to comply with the requirements of title 20A - the reorganization of school districts. AOS employees must be represented and covered by an AOS bargaining unit and contract.

The Hearing Examiner dismissed the Association's petition after concluding that AOS #93 was not the employer of the employees holding the positions at issue and because seven of the eight positions in the sought-after unit were already covered by a bargaining agreement with the member school units. The Association appeals that decision.

JURISDICTION

The Central Lincoln County Educational Specialists Association is an aggrieved party within the meaning of 26 M.R.S.A. §968(4) and an employee organization within the meaning of 26 M.R.S.A. §967. AOS #93 is a public employer within the meaning of 26 M.R.S.A. §962(7). The jurisdiction of the Maine Labor Relations Board to hear this appeal and to render a decision herein lies in 26 M.R.S.A. §968(4).

PROCEDURAL HISTORY

The Educational Specialists Association filed its unit determination petition on July 17, 2013, seeking to create a new bargaining unit of specialists, including speech therapists, social workers, and occupational therapists serving various member schools of AOS #93. The petition named AOS #93 as the public employer. On July 24, 2013, the AOS #93 Board of Directors objected to the unit determination petition and asked that the petition be dismissed, asserting that the various

specialists were all employed by the individual schools, and were not employed by the AOS #93 Board. AOS #93 also asserted that five of the positions sought to be included in the new unit were already covered by existing collective bargaining agreements with another bargaining agent and thus could not be the subject of a unit determination petition under the contract bar rule.

A prehearing conference took place on October 16, 2013, at which time both parties presented their proposed witness lists, exhibits, and stipulations. The Central Lincoln County Educational Association/MEA/NEA was represented by Joan Morin and the AOS #93 Board of Directors was represented by Campbell Badger. The evidentiary hearing was scheduled for November 12, 2013. At that time, the parties made their opening statements on the record and presented arguments regarding the pending motion to dismiss. The Hearing Examiner orally granted AOS #93's motion to dismiss. In doing so, the Hearing Examiner relied on the oral arguments of the parties, as well as the exhibits and stipulations in the record, all pertinent statutes and Board Rules, and the parties' previously submitted written arguments. The Hearing Examiner indicated that a written decision would follow and that the appeal period would run from the date the written decision was issued.

The standard of review for bargaining unit determinations is well established: The Board will overturn a hearing examiner's rulings and determinations if they are "unlawful, unreasonable, or lacking in any rational factual basis." Council 74, AFSCME and Teamsters Local 48, No. 84-A-04 at 10 (Apr. 25, 1984), quoting Teamsters Local 48 and City of Portland, 78-A-10 at 6 (Feb. 20, 1979).

DISCUSSION

This is the first time the Board has been called upon to rule on the meaning of 20-A M.R.S.A. §1464-A or, for that matter, any aspect of the unit determination, merger and election issues raised by Maine's School Reorganization Law. Chapter 103-A of Title 20-A establishes the conditions for the formation, governance, and financing of regional school units ("RSU's"). P.L. 2007, c. 240, Pt. XXXX. The statute expressly states that RSU's function as the employer of all employees working within the RSU for all purposes, including §1464¹ and collective bargaining under Title 26, chapter 9-A, the Municipal Public Employees Labor Relations Law. 20-A M.R.S. §1452, sub-§8.

Within a year of the enactment of Chapter 103-A, the opportunity to submit an alternative plan was expanded to allow the creation of an "alternative organizational structure" if certain requirements were met. See P.L. 2007, ch. 668, §42 and P.L. 2009, c. 580, §5. The objective of the alternative organizational structure ("AOS") is to achieve consolidation of various core administrative functions such as business operations and system administration, special education administration, and transportation administration,² while allowing the AOS to permit the member school units maintain a certain amount of independence through the provisions of the Interlocal Agreement.³ Section 1464-A addresses collective bargaining issues for alternative organizational structures.

¹ §1464 established detailed procedures for transitioning the pre-existing collective bargaining obligations in separate schools or districts to RSU-wide bargaining obligations.

² An AOS must also adopt: Core curriculum and procedures for standardized testing, a plan for consistent school policies and calendars, and a plan for consistent collective bargaining agreements. 20-A MRSA §1461-B(3)(A).

³ For example, the Interlocal Agreement for AOS #93 expressly provides that the Member School Units are responsible for the operation of the schools within their jurisdiction, that all real and personal property remains the

P.L. 2009, c. 580, §8. The substance of §1464-A is quite similar to that of §1464, which sets forth detailed procedures for the transition of the collective bargaining obligations of multiple employers and multiple bargaining agents to RSU-wide bargaining. Section 1464-A applies only to AOS's and imposes comparable requirements and transition mechanisms for the employees of the alternative organizational structure. The most significant difference is that §1464-A does not require any restructuring of the existing bargaining units of employees who are employed by each member school unit in the AOS.

The relevant portions of §1464-A are set forth below, with language relevant to the issue before us highlighted in bold:

§1464-A. Collective bargaining in alternative organizational structures

1. Assumption of obligations, duties, liabilities and rights. On and after the operational date of an alternative organizational structure, **teachers and other employees whose positions are transferred from a school administrative unit or school union to the alternative organizational structure** and were included in a bargaining unit represented by a bargaining agent continue to be included in the same bargaining unit and represented by the same bargaining agent pending completion of the bargaining agent and bargaining unit merger procedures and bargaining for initial alternative organizational structure collective bargaining agreements covering alternative organizational structure employees, as described in this section. **After employees become employees of the alternative organizational structure**, the alternative organizational structure has the obligations, duties, liabilities and rights of a public employer pursuant to Title 26, chapter 9-A with respect to those employees.

2. Structure of bargaining units. All **bargaining units of alternative organizational structure employees** must be structured on an alternative organizational

property of the member school unit, and only the member school unit and not the AOS has the authority to close a school. Ex. E-1.

structure-wide basis. **Teachers and other school employees who are employed by the alternative organizational structure to provide consolidated services must be removed from the existing bargaining units of teachers and other employees who are employed by each member school unit and merged into units of alternative organizational structure employees.** Merger into alternative organizational structure-wide bargaining units is not subject to approval or disapproval of employees. Formation of alternative organizational structure-wide bargaining units must occur in accordance with this subsection.

A. In each alternative organizational structure, **there must be one unit of teachers if any teachers are employed by the alternative organizational structure,** and, to the extent they are on the effective date of this paragraph included in bargaining units, other certified professional employees, excluding principals and other administrators.

B. Any additional bargaining units in an alternative organizational structure must be structured as follows.

(1) In the initial establishment of such units, units must be structured primarily on the basis of the existing pattern of organization, maintaining the grouping of employee classifications into bargaining units that existed prior to the creation of the alternative organizational structure and avoiding conflicts among different bargaining agents to the extent possible.

(2) In the event of a dispute regarding the classifications to be included within an alternative organizational structure-wide bargaining unit, the current bargaining agent or agents or the alternative organizational structure may petition the Maine Labor Relations Board to determine the appropriate unit in accordance with this section and Title 26, section 966, subsections 1 and 2.

C. When there is the same bargaining agent in all bargaining units that will be merged into an alternative organizational structure-wide bargaining unit, the units must be separated and merged on the operational date or the date

represented employees are transferred to the alternative organizational structure, whichever is applicable, and the alternative organizational structure shall recognize the bargaining agent as the representative of the merged unit.

20-A M.R.S.A. §1464-A.

The remaining paragraphs of this sub-section go into great detail about representation and elections in an AOS-wide unit when, due to prior representation status, more than one bargaining agent represents employees in the newly merged bargaining unit.^{4 5}

Section 1464-A clearly contemplates two different kinds of employers in an AOS: Each member school unit is an employer and the AOS is an employer. This is evident from the wording of the second sentence of sub-§2:

Teachers and other school employees who are employed by the alternative organizational structure to provide consolidated services must be removed from the existing bargaining units of teachers and *other employees who are employed by each member school unit* and merged into units of alternative organizational structure employees.

Furthermore, as the repeated reference to being "employed by" the AOS indicates, the entire substance of 1464-A deals with the collective bargaining rights and responsibilities related to those employees who are employed by the alternative organizational structure, not those employed by the member

⁴ Paragraph D - when all bargaining agents are affiliates of same union, the units simply merge; ¶E - when agents are the same union/affiliate and some employees are not represented, union stays if majority were represented. If not, an election is held; ¶F - If different unions represent parts of the unit, election petition cannot be filed until 3 years from operational date of the AOS or the date of transfer of employees, whichever is later.

⁵ Subsection 3 has general language about the obligation to bargain and subsection 4 addresses the application of existing collective bargaining agreements before the execution of a collective bargaining agreement for an AOS-wide bargaining unit.

school units. Thus, for §1464-A to apply, the individuals in the positions at issue must be employees of the AOS.

On appeal, the Association argues that the Hearing Examiner erred in concluding that AOS #93 was not the employer of the individuals employed in the positions at issue. The Association argues "that the employees were through the actions of the AOS and as a matter of fact and law transferred to the AOS and are therefore employees of the AOS." (Brief to Board, p.1) The Association also argues on appeal that the Hearing Examiner "incorrectly characterized and misrepresented the Association's position" by stating that the Association had admitted that the employees involved had not been transferred to AOS #93. Id.

The Association's legal argument to the Hearing Examiner below was that if "an AOS employee is somebody who provides consolidated services throughout the schools contained within the AOS, . . . [then] Title 20-A, §1464-A really automatically says that you must pull them from their existing bargaining units and put them into their own AOS [bargaining unit]" to bargain with the AOS as the employer. (Oral arg. Tr. at 12). The Association contended that with the opportunity to present witnesses, it would become clear that even though the specialists had not been transferred to the AOS, the evidence would show that the specialists were employed by the AOS and should have been transferred. On appeal to this Board, the Association makes several factual assertions that it claims would have proved the existence of this employment relationship had the Hearing Examiner proceeded with an evidentiary hearing. We will first consider the statutory provisions underlying the Association's argument.

The Association's starting premise is based on an incorrect reading of the second sentence of §1464-A(2), which states:

Teachers and other school employees who are employed by the alternative organizational structure to provide consolidated services must be removed from the existing bargaining units of teachers and other employees who are employed by each member school unit and merged into units of alternative organizational structure employees.

20-A M.R.S.A. §1464-A(2).

The Association's position essentially transforms this sentence to read, 'teachers and other school employees who provide consolidated services are AOS employees and must be removed from the existing bargaining units.' This is incorrect. The clause "who are employed by the alternative organizational structure" qualifies which teachers or other school employees are being referred to. That qualification cannot be ignored. As the Hearing Examiner pointed out, the preceding subsection in §1464 makes it clear that teachers or other school employees from the member schools are not employees of the AOS unless they are transferred to the AOS.⁶

We also note that in the several instances where §1464-A establishes time-frames for merger of bargaining units of AOS employees, the statute requires that the units be merged "on the operational date or the date represented employees are transferred to the alternative organizational structure, whichever is applicable." This exact language occurs in §1464-A(2)(C),

⁶ "On and after the operational date of an [AOS] . . . employees whose positions are transferred from a school . . . to the [AOS] and were included in a bargaining unit . . . continue to be included in the same bargaining unit and represented by the same bargaining agent pending completion of the [merger of bargaining units] and bargaining for initial [AOS] collective bargaining agreements covering [AOS] employees, as described in this section. After employees become employees of the [AOS], the [AOS] has the obligations, duties, liabilities and rights of a public employer pursuant to Title 26, chapter 9-A with respect to those employees." 20-A MRSA §1464-A(1).

§1464-A(2)(D), and §1464-A(2)(E). With respect to timing when a bargaining agent election is required, the time frame is measured from "the operational date of the alternative organizational structure or the date on which positions are transferred from member school units to the alternative organizational structure, whichever is later". See §1464-A(2)(F) sub-¶(2) and (4). Given the frequency with which §1464-A refers to the date of the "transfer" of positions or employees to the AOS, it is reasonable to conclude that an actual transfer of the positions is required by the law.

The Hearing Examiner made her ruling based on the documentary evidence and the parties' oral and written argument on the AOS's Motion to Dismiss. The Hearing Examiner relied on the collective bargaining agreements and the teaching contracts signed by the specialists, the terms of the Interlocal Agreement assigning the responsibility of educating students to the member school units, and the methods by which State subsidies and other funds received by AOS are to be distributed to the member school units. She also concluded that while the AOS #93 2013-2014 budget has a line item for a Special Services Director, there is no money allocated for speech therapists, social workers, or occupational therapists. (Decision at 9, #5). Upon review, we note that there is no evidence of an actual transfer of these positions or their incumbents from a member school unit to the AOS. As we have concluded above that Title 20-A, §1464-A requires an actual transfer, we hold that the Hearings Examiner made no error of law in dismissing the petition because AOS #93 is not the employer. We need not rely on the Association's "admission" that a transfer did not occur, as there is no evidence of a transfer or any assertion that evidence of an actual transfer would be produced at a hearing.

In summary, the Association sought to have this Board create an AOS-wide bargaining unit through the application of the Association's mistaken view of the meaning of §1464-A(2). A clear prerequisite to the establishment of an AOS-wide unit by operation of §1464-A, however, is the employment by the AOS of teachers or other employees to provide consolidated services. The petition must be dismissed because AOS #93 is named as the employer but it is not the specialists' employer within the plain meaning of 20-A M.R.S.A. §1464-A.⁷

The Association's factual assertions that the AOS "illegally" assigned specialists to a bargaining unit does not alter our conclusion. If the AOS or the member school units made such changes in order to subvert the statutory rights of the specialists to collectively bargain as provided by Title 26, chapter 9-A, the filing of a prohibited practice complaint would have been appropriate. Similarly, the allegation that some specialists were initially employed by the AOS during its first year of operation in 2009 is not relevant to our analysis of the facts regarding a petition filed in 2013.

The Association notes that the Interlocal Agreement can be amended to enable the AOS to become the employer of the specialists in question, and argues that the Agreement should have been changed. It is not our place to comment on that assertion. We prefer to note that the Reorganization Plan and AOS #93 Interlocal Agreement approved by the State Board of Education includes a "Plan for Consistent Collective Bargaining Agreements" which includes the creation of an "AOS Joint Bargaining Advisory Committee" with specified duties and goals. (Section 13-E, p. 11 of Ex. E-1.) One of the stated duties of this advisory committee is "to meet and consult with any joint

⁷ Consequently, we need not address the contract bar issue.

bargaining committee formed by the bargaining agents of the local bargaining units." Thus, in addition to the possibility of amending the Interlocal Agreement, the issues unique to the specialists could be addressed at the bargaining table with the member school units, or through meeting with the Joint Bargaining Advisory Committee. With such a framework in place, we are confident that the parties can work together to address the issues involving the specialists.

ORDER

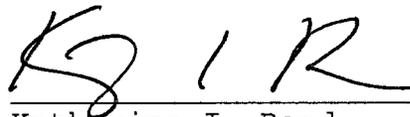
On the basis of the foregoing discussion and pursuant to the powers granted to the Maine Labor Relations Board by the provisions of 26 M.R.S.A. 968(4), it is ORDERED:

that the appeal of the Central Lincoln County Educational Specialists Association/MEA/NEA, filed with respect to the Unit Determination Report in Case No. 14-UD-01 is denied and the dismissal of the petition is affirmed.

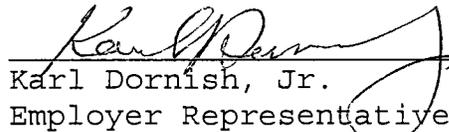
Dated at Augusta, Maine, this 11th day of June, 2014.

MAINE LABOR RELATIONS BOARD

The parties are advised of their right to seek review of this decision and order by the Superior Court by filing a complaint pursuant 26 M.R.S.A. § 968(4) and in accordance with Rule 80C of the Rules of Civil Procedure within 15 days of the date of this decision.



Katharine I. Rand
Chair



Karl Dornish, Jr.
Employer Representative



Wayne W. Whitney
Employee Representative