

Center Director, Waste Water Superintendent, and Highway Director were appointed by the Town Council within the meaning of 26 M.R.S. § 962(6)(D) and, therefore, were excluded from the definition of "public employee"; and that all of the General Government employees in the petition were appointed by the Town Council within the meaning of 26 M.R.S. § 962(6)(D) and, therefore, were also excluded from the definition of "public employee." Individuals excluded from the statutory definition of "public employee" cannot be included in a bargaining unit pursuant to Sec. 966(1).

Hearing notices were issued on June 18, 2013, and posted for the information of the affected employees. The hearing was conducted on August 6, 2013. The Teamsters Local Union No. 340 was represented by Traci Place. Van Buren was represented by Town Council member William Smith, Esq. The parties were afforded the full opportunity to examine and cross-examine witnesses, and to present evidence. The following witnesses were presented at hearing: for the Teamsters and the proposed Public Works Unit, Rick Sirois, Van Buren's Wastewater Supervisor; Joey Dumond, the Town's Recycling Supervisor; and Michael Roy, the Highway Department Supervisor. For the proposed General Government Unit, Colby Doody, the Assessor's Agent; Daniel LaPointe, the Director of Economic and Community Development; Nicholas Hale, the Recreation Director; and Kristen Streck, the Bookkeeper, Town Clerk, General Government Department Head, Registrar of Voters, and Acting Town Manager, appeared. Van Buren presented no witnesses of its own. Following the conclusion of the hearing, the parties agreed that they would submit briefs 20 days after receipt of the hearing transcript. The transcript was provided to the parties on August 15, 2013, and briefs filed on September 4, 2013.

JURISDICTION

Jurisdiction of the executive director of the MLRB or his designee to hear these matters and make determinations lies in 26 M.R.S. § 966(1). Any subsequent statutory references in this report are all to Title 26 of the Maine Revised Statutes unless otherwise noted.

EXHIBITS

The following exhibits were admitted without objections of the parties:

- A-1: Unit Determination Petition for the Public Works Unit, filed May 3, 2013.
- A-2: Response to Public Works Unit Determination Petition, dated May 16, 2013.
- A-3: Notice of Hearing for Public Works Employees Unit, dated June 18, 2013.
- A-4: Unit Determination Petition for the General Government Employees Unit filed May 3, 2013.
- A-5: Response to General Government Unit Determination Petition, dated May 16, 2013.
- A-6: Notice of Hearing for General Government Unit Employees Unit, dated June 18, 2013.
- J-1: Van Buren Town Charter (Revised November 8, 2011)
- J-2: Town of Van Buren Personnel Policies (12/27/2010)
- J-3: Job descriptions, Public Works Department Unit: Recycling Director, Wastewater Supervisor, and Highway Department Supervisor.
- J-4: Job descriptions, General Government Department Unit: Deputy Assessor, Town Clerk, Recreation Director, Economic Development Director, and Bookkeeper.

- J-5: 26 M.R.S. § 962
- U-1: List of designated Municipal Appointments dated June 26, 2013
- U-2: Teamsters and City of Presque Isle, No. 92-UD-10 (MLRB Aug. 18, 1992)
- E-1: October 19, 2011, memo from Thomas R. Cannon regarding appointment of Kristen Streck as the General Government Department Head
- E-2: June 13, 2012, Emergency Town Council meeting notes
- E-3: Van Buren 2012-2013 budget proposal

FINDINGS OF FACT

1. The Town of Van Buren operates under a representative town meeting form of government, as established in the Town charter adopted in November 8, 1983. Article III ("Town Council") of the charter states:

Sec. 313. GENERAL POWERS AND DUTIES

The Council shall have the power to:

- A. Appoint and remove for cause after hearing, the Town Manager, and Department Head, and any town official serving in an appointed position, unless provided otherwise by State or Federal law. All appointments shall be made annually in July unless otherwise provided for in Maine Revised Statutes.

2. Exhibit U-1, a June 26, 2013 memorandum from Town Manager Thomas R. Cannon to the Town Council, contains a list of designated appointed Town positions. Of the ones at issue in these petitions, only the "wastewater collector," "road commissioner," and "registrar of voters" are on the on the Town Manager's list.

3. Van Buren's Town charter, Article IX, sets forth general

provisions regarding its administrative organization, and states:

- A. Creation of Departments: The Town Council by ordinance, may establish town departments, offices and agencies in addition to those created by this Charter and may prescribe the functions of departments, offices and agencies. No function assigned by this Charter to a particular department, office or agency may be discontinued or, unless this Charter specifically so provides, assigned to any other department, office, or agency.

4. Annual budgets for departments are proposed by department heads and submitted to the Town Manager. The Town Manager reviews the requested allotments and may revise or change them before submitting a proposed budget to the Town Council. The Town Council reviews the budget prepared by the Town Manager and adopts it after the chance to make amendments. The Budget and Advisory Committee (BAC), made up of Van Buren registered voters, then reviews the completed proposed Town budget and submits its recommendation to the Town Council. The Council submits the proposed budget to a Town Meeting with or without any recommended changes, but the BAC's recommendations are provided as a commentary to the Town meeting. Appropriations for the budget are made at the Town meeting by majority vote for warrant articles for each office, department, or agency as published on the warrant.

5. On December 27, 2010, the Van Buren Town Council approved the Town of Van Buren Personnel Policies, which was last reviewed for revision on May 14, 2012. The handbook includes policies and procedures for discipline in Article VII, which states, in part, in the introductory section:

To insure the equitable processing of disciplinary actions the Town Manager will be responsible for the proper handling of such matters, including the assurance that employee rights are protected, and that appropriate action is taken when circumstances warrant. Supervisory

personnel shall consult with the Town Manager prior to the implementation of discipline when practical. No employee shall be terminated without the consent of the Town Manager.

6. The handbook does not include job descriptions for Van Buren personnel. The job descriptions admitted into evidence at hearing and used in these unit determinations were provided by the parties as joint exhibits 3 and 4.

7. Joey Dumond has been Van Buren's recycling director for over seven years and earned \$29,129.60 in 2012.

8. Mr. Dumond recalls being appointed to his position by the Town Council, but is not sure it has been on a yearly basis.

9. The written job description for the recycling director contains the following:

Nature of work:

This is [sic] supervisory/working position involving the operation of the recycling facility, the maintenance of all operational records, assisting in the practical work at the station, dealing with rubbish haulers and waste disposal services, and supervising the staff. Work is performed under the general supervision of the Town Manager in accordance with established procedures and routines.

Essential Duties and Responsibilities:

Examples of Work (Illustrative Only)

Supervises the staff of the recycling facility.

Maintains records of Department operation, and schedules delivery and removal of storage containers.

Operates the facility equipment including the forklift and cardboard baler and knuckle boom.

Prepares and administers yearly operating budget.

Assists citizens in the correct disposal of refuse materials.

Writes and updates solid waste ordinances, and oversees enforcement.

Meets with citizen groups explaining formulates [sic] and advocating recycling.

Ensures all safety procedures are followed in the operation of the recycling facility.

Performs maintenance on facility equipment.
Performs related work as required.

Requirements of Work:

Ability to maintain the recycling facility in accordance with rules and regulations.

Knowledge of the operation and maintenance of mechanical equipment together with the ability to make repairs and adjustments and to do necessary servicing work.

Ability to supervise and direct the work of other staff.
Knowledge of hazards and applicable safety rules and regulations in equipment operation.

Ability to operate and service equipment skillfully and safely.

Ability to understand and carry out oral instructions and to work independently in the performance of routine duties.

Ability to establish and maintain effective working relationships with the public and other Town employees.

Ability to maintain records of facility operation.
Knowledge of solid waste and recycling management.

Training and Experience Required:

High school graduate or GED, plus experience in the operation or maintenance of a town dump or transfer station, or any equivalent combination of experience and training.

10. Rick Sirois has worked at Van Buren's wastewater plant for sixteen years and has been its supervisor for four years. He earned \$41,159.00 in 2012.

11. Mr. Sirois testified that he remembered being appointed by the town council, but when asked if it was annually, stated, "[t]his would be the first time I hear[d] this."

12. The written job description for the wastewater supervisor contains the following:

Nature of Work:

This is responsible technical and administrative work in directing the operations of the Waste Water Treatment Facility.

Employee of this class is responsible for directing the work and administration of a municipal wastewater treatment facility. Work involves responsibility for the technical aspects of plant operations, compliance with state and federal operating regulations, and responsibility for the maintenance of the plant and underground sewer system. Work is performed with considerable independence under the direction of the Town Manager.

Essential Duties and Responsibilities:

Examples of Work (Illustrative Only):

Performs all aspects of chemical testing done at the Treatment Plant.

Is responsible for preparing all required reports to local, state and federal officials, detailing plant operation and compliance with regulations.

Prepares and submits a proposed yearly operating budget, controls expenditures throughout the year, and makes recommendations to the Town Manager on revenues and expenditures.

Oversees and participates in the installation and inspection of new sewer lines.

Performs the installation, maintenance and repair of the physical plant and all equipment.

Reviews and approves the design of sewer extensions proposed by others and coordinates financial and construction arrangements.

Ensures that the Plant's plans and records are maintained and up to date.

Analyze, evaluate and monitor daily operation and maintenance procedures.

Acts as the Department's representative to the public on a day-to-day basis and handles all non-routine customer or public concerns.

Coordinates appropriate activities with State DEP, EPA and other state and federal agencies.

Performs other duties as required.

Requirements of Work:

Extensive knowledge of the methods, procedures and practices in the operation of a wastewater treatment plant. Thorough knowledge of State and federal laws and regulations affecting the treatment and collection of sanitary sewage.

Thorough knowledge of the methods, materials and practices essential to the maintenance and repair of sanitary sewers and treatment plants.

Thorough knowledge of the processes and equipment involved in wastewater treatment, including the basic chemical, bacteriological and biological processes.

Ability to communicate effectively orally and in writing.

Training and Experience Required:

Experience in the operation of a wastewater treatment facility; or any equivalent combination of experience and training.

Must possess a valid Class III Treatment Plant Operator's license.

Must possess valid Class II motor vehicle operator's license.

12. Michael Roy has worked for Van Buren's highway/public works department for 28 years and has been its foreman for twelve years. Mr. Roy earned \$38,521.60 in 2012.

13. Mr. Roy recalls being appointed as the highway supervisor/department head by the Town council, but not on a yearly basis since his first appointment.

14. The written job description for the highway department supervisor contains the following:

Nature of work:

This is [sic] supervisory/working position with a group of workers and equipment operators engaged in highway construction and maintenance operations.

Employee of this class supervises and assists crews that frequently include equipment operators, truck drivers, mechanics and laborers. Work of this class involves snow removal and sanding, road construction, and the scheduling, coordinating and supervision of various work performed in the Highway Department. This employee is further responsible for checking work performed by subordinates, to ensure that streets are made according to prescribed lines and grades. Work is reviewed through daily contact with and regular reports to the Town Manager.

Essential Duties and Responsibilities:

Examples of Work (Illustrative Only):

Supervises a crew of equipment operators and truck drivers in snow removal and sanding of Town streets and municipal parking lots.

Supervises a crew of equipment operators and truck drivers in the maintenance of municipal streets, parks and cemeteries, and other municipal facilities.

Responsible for maintaining storm drainage system above and below ground, when required.

Inspects work to ensure conformance with given engineering specifications and standards, and makes necessary adjustments in assignments and methods to correct deficiencies.

Supervises and assists in repairing streets and sewer basins, placing and rolling asphalt, repair of ditches and culverts and related activities.

Supervises the maintenance and repair of municipal vehicles.

Schedules work assignments, conducts evaluations and discipline matters, and is responsible for keeping all related work records.

Prepares the departmental budget and oversees departmental purchases and bills.

Prepares all equipment and material bids, evaluates bids and makes purchases or recommendations for purchase.

Performs other duties as required.

Requirements of Work:

Thorough knowledge of materials, methods and techniques commonly used in street, sidewalk activities.

Thorough knowledge of the hazards and applicable safety precautions of the work.

Thorough knowledge of the operation of construction equipment such as trucks and loaders used in road construction work, and the ability to supervise and direct the activities of employees engaged in the operation and maintenance of such equipment.

Ability to lay out, direct and supervise the work of a crew and equipment operators performing semi-skilled road construction activities to obtain efficient results.

Ability to assist crews in the completion of projects and regular tasks.

Ability to understand and follow complex oral and written directions.

Ability to establish and maintain harmonious relationships with employees and the public, and to effectively obtain satisfactory work output.

Ability to keep records and prepare reports.

Ability to supervise and assist as necessary, the general maintenance of all public work equipment.

Physical strength and agility sufficient to perform the work of the class.

Training and Experience Required:

Extensive experience as a labor foreman on major road construction, or any equivalent combination of experience and training.

Extensive experience in snow removal and sanding techniques.

Extensive experience in all aspects of equipment operation.

Extensive experience in storm drainage systems installation and repairs.

Experience in engineering standards and blueprint specifications.

Experience in supervisory oversight.

Must possess valid Class II motor vehicle operator's license and be insurable under the Town's vehicle insurance coverage.

15. At the time of the hearing, Colby Doody had been Van Buren's deputy assessor for approximately one year. He is the only person working as an assessor of real and personal property in Van Buren, and works under the Board of Assessors, which is comprised of the members of the Town council. Mr. Doody earned \$31,009.22 in 2012.

16. There was no evidence presented that Mr. Doody was appointed as the deputy assessor by the Town council.

17. The written job description for the deputy assessor contains the following:

Nature of work:

This is specialized technical work in the valuation and assessment of real and personal property.

Employee of this class is responsible for appraising and assessing real and personal property for taxation within the Town, and for assisting in administration and maintenance of all records necessary to administer the assessment program.

Work involves extensive fieldwork in the review [sic] existing and new properties. Employee is required to exercise considerable independent judgment in administering the assessment program within general policy guidelines and is subject to specific state laws and regulations under guidance of the Town Assessors.

Essential Duties and Responsibilities:

Appraises residential and commercial properties; special rights and interests; personal property; and public utility equipment and properties.

Assists in the maintenance and reviews of official maps, transfers, and other records maintained in the assessment office; makes and enters computation valuations and other data in valuation commitment books; determines the valuations to be placed on new, renovated, and existing property based on changing market value.

Develops and administers a program for the collection of sales, cost, income, and other economic and social data affecting property values; prepares appraisal and other reports as necessary.

Maintenance of all property cards and files on all Town properties and updates tax books.

Performs extensive measurement and inspecting of all buildings; compares with previous information to determine whether changes have been made in violation of building requirements.

Answers calls and inquiries made by banks, lawyers, citizens and other parties.

Performs other duties as required.

Requirements of Work:

Knowledge of the principles, methods, and techniques of real and personal property assessment. Working knowledge of the charter provisions, ordinances, and general laws governing real and personal property, assessment, and statutory exemptions.

Ability to analyze factors which may influence the value of

property and to exercise judgment in determining property values and changes in city structures and physical properties. Ability to plan and organize the maintenance of assessment and property records to facilitate the preparation of varied assessment roles and reports.

Ability to establish and maintain effective working relationships with taxpayers, the general public, employees, and other departments.

Knowledge of building construction methods and architecture, Town planning and real estate laws, Town zoning and tax policy, and the mechanics of real estate sale and finance. Familiar with computer operation and utilization.

Considerable knowledge of the geographic layout of the Town.

Training and Experience Required:

Experience in real and personal property assessment work involving appraisal and evaluation of land and buildings; satisfactory completion of a course leading to certification in real property appraisal, or graduation from an accredited college program specializing in property assessment, business or policy administration; or an equivalent combination of experience and training.

Must possess a valid Maine State Drivers license.

18. Daniel LaPointe has held the position of director of economic and community development for the Town of Van Buren for fifteen years. Mr. LaPointe earned \$41,288.01 in 2012.

19. Although he has had one Town employee and people participating in the State Workforce Program who worked in his office previously, he is the only person in his department at the present time.

20. Mr. LaPointe testified that he was first hired as a Contractor by the Town council but is not aware of being appointed or re-appointed by the Town Council. Mr. LaPointe considers the Town Manager his supervisor.

21. The written job description for the economic development director contains the following:

Nature of work:

This is a supervisory/working position responsible for administrative and specialized technical work in the economic development program.

Employee of this class is responsible for maintaining an economic development program to encourage community improvement activities. Employee has responsibility for the development and initiation of the Town's Economic Development and Industrial Development Programs. Work includes supervising staff, planning, coordinating and implementing economic development projects. Work is performed under the general supervision of the Town Manager and is evaluated through observation, reports and results obtained.

Essential Duties and Responsibilities:

Examples of Work (Illustrative Only):

Maintains liaison with various State and federal agencies; coordinates projects with other agencies such as FHA HUD, Maine State Planning Office, Regional Planning Commission, and Maine State Housing Authority. Closely works with other local agencies such as Chamber of Commerce, Main St. Main, Revolving Loan and Van Buren Economic Development Corporation in fostering community coordination in economic development.

Prepares and administers departmental budget; supervises departmental personnel; monitors project budgets. Prepares grant proposals and applications, contracts and other necessary documents as may be required for acquisitions, demolitions, public works, and public services.

Prepares reports such as grant progress and performance, housing assistance plans, financial assessments, and project budgets.

Performs public relations activities for specific projects such as holding press conferences, conducting public meetings, speaking to civic organizations.

Conducts special projects and studies such as industrial development proposals as requested by the Town Manager.

Performs other duties as required.

Requirements of Work:

Thorough knowledge of the federal grant process from application to evaluation.

Knowledge of the laws and regulations pertaining to community development programs.

Ability to express ideas effectively both orally and in writing.

Ability to analyze community improvement needs and to plan and coordinate community development activities.

Ability to establish and maintain effective working relationships with State and federal agencies, other agencies, Town officials, employees and the general public.

Ability to direct, supervise and motivate staff.

Training and Experience Required:

Considerable experience in community development including administrative responsibility; graduation from a four-year college or university, preferably with a specialization in community development or a related field; or an equivalent combination of experience and training.

22. Nicholas Hale has held the position of recreation director for the Town of Van Buren for two years. Mr. Hale earned \$22,850 in 2012 for working a 35-hour week.

23. There was no written or testimonial evidence that Mr. Hale was appointed to his position.

24. Mr. Hale works 35 hours a week and typically supervises seasonal, part-time staff in the summer and winter months to cover recreational programs that are offered. When school is in session, the part-time staff may decrease to "one or two, or possible even zero."

25. Mr. Hale develops the programs to be offered with the input of a recreation committee.

26. The written job description for the recreation director contains the following:

Nature of work:

This is a supervisory/working position, involving planning and direction of municipal recreation programs.

Employee of this class is responsible for developing and administering community, cultural, recreational and other leisure time activities on a year-round basis in addition to coordinating the work of staff, handling publicity and public relations, scheduling events, maintenance of facilities and equipment, maintaining and processing program records and reports. Work is performed under the supervision of the Town Manager.

Essential Duties and Responsibilities:

Develop the overall municipal recreation program and prepare rules and regulations governing each activity. Compile periodic summary reports of recreational activities.

Maintain facilities, equipment and supervise seasonal personnel who perform maintenance and program activities at various recreational facilities.

Evaluate the adequacy of existing facilities and develop plans for alteration and expansion of areas.

Supervise all seasonal recreational personnel. Maintain time and personnel records on all seasonal employees. Maintain activity and attendance reports.

Prepare budget requests for various recreational requirements.

Prepare correspondence and communicate recreational activities and meet with social, civic and community groups explaining recreational programs and stimulate public interest.

Perform other duties as required.

Requirements of Work:

Plans, develops, administers and supervises a wide variety of recreation activities and the operation of Town recreation facilities. Directs and assists in the maintenance and upkeep of municipal facilities, recreation areas, and the ice arena.

Prepares proper records of personnel and equipment needs; requisitions supplies, equipment and materials. Plans department budgets and oversees the control of expenditures.

Responsible for supervision of recreation department seasonal employees. Develops training procedures and evaluates personnel. Prepares news releases and publicity for program activities.

Prepares reports of departmental activities for the Town Manager, Town Council, and Town Recreation Advisory Board. Evaluates recreational needs, activities and facilities, making recommendations for improvements, changes, expansions and reductions. Promotes interest in Town programs through correspondence and the media. Coordinates Town program with other area activities.

Instructs seasonal employees on policy matters and on method and procedures which are to be followed in carrying out the various activities, maintains activity and attendance reports and compiles annual reports of recreation programs and activities.

Training and Experience Required:

Progressive experience in recreation leadership in a supervisory capacity and graduation from a four-year college with specialization in recreation leadership and management; or any equivalent combination of experience and training.

27. At the time of hearing, Kristen Streck was the Town Clerk for Van Buren.

28. According to Section 203 of the Town charter, the Town Clerk is elected each year at the annual Town meeting for a term of one year.

29. The written job description for the Town Clerk contains the following:

Nature of Work:

Employee of this class is responsible for the preparation and maintenance of official documents; supervision of elections; issuance of various licenses and permits; recording of various documents; and preparation of reports. Work is performed in accordance with the Town ordinances and State and federal laws with a high degree of independence and general supervision from the Town Manager.

Essential Duties and Responsibilities:

Examples of Work (Illustrative Only):

Validates official documents, oversees posting of official notices and advertisements, records papers with federal and state government as received.

Issues various licenses such as marriage, hunting, fishing and dog licenses, and maintains all related records.

Maintains records of births, deaths, marriages, burials and sends copies of monthly reports to the State of Maine Office of Vital Statistics; issues certified copies of same.

Prepares monthly reports on Inland Fisheries & Wildlife and other required office activity.

Administers all elections including scheduling and appointing ballot clerks; orders and prepares ballots; issues absentee ballots; processes and records ballots and reports election results and accepts voter registration.

Collects monies and answers inquiries at Town Office.

Administers all "oaths of office;" maintains terms of office for boards/committees.

Performs other duties as required.

Requirements of Work:

Thorough knowledge and understanding of the State statutes relating to the duties and responsibilities of town and city clerks.

Thorough knowledge of modern office procedures, practices and equipment.

Ability to establish and maintain effective working relationships with other Town officials, employees and the general public.

Ability to rapidly acquire and assimilate knowledge of the provisions of the Town ordinances and state regulations relating to the operation of the office and Town government, and ability to communicate this to office staff and the public.

Proficiency in the use of the adding machine and typewriter.

Ability to maintain records and prepare reports.

Ability to plan, assign and supervise the work of subordinates.

Ability to use the computer system to conduct business and maintain records.

Training and Experience Required:

High school graduation and experience in work involving the maintenance and preparation of records supplemented by courses in business education or office procedures; or any equivalent combination of experience and training. Must be able to obtain certificate as a municipal clerk.

30. At the time of hearing, Kristen Streck also held the position of the Town bookkeeper.

31. The written job description for the bookkeeper contains the following:

Nature of work:

This is responsible fiscal, clerical and accounting work in the maintenance and preparation of Town financial records.

Employee of this class is responsible for the performance of varied accounting and clerical assignments involving the application of bookkeeping skills for the town books and accounts. Work is performed under the supervision of the Town Manager and involves a considerable range of accounting, payroll and related processes and includes the operation of a computer and other business machines. Employee follows established procedures and regulations but must exercise judgment and initiative. Work is checked by observation, verification, internal controls, and through fiscal audits.

Essential Duties and Responsibilities:

Examples of Work (Illustrative Only):

Processes and prepares payroll for Town; prepares payroll related reports such as FICA, state and federal withholding payments; maintains departmental records, and issues pay checks.

Receives and processes invoices for payment and purchase orders, prepares checks and maintains related records.

Prepares reports for unemployment, Social Security, and the Maine Public Employee Retirement System (MainePERS).

Oversees preparation of daily cash reports, bank deposits and reconciliation of bank statements.

May review source documents such as vouchers, invoices, cash receipts, purchase orders, and master file lists for completeness and accuracy.

May periodically review account records and subsequent computer printouts to balance accounts and to identify suspense items or delinquent accounts for further action.

Verifies and reconciles errors on computer printouts to maintain proper account records. Prepares input forms to reconcile errors and adjustments.

Prepares and maintains files on all vendors doing business with the Town.

Prepares a monthly report of each Town account and its appropriations and spending balances.

Performs other duties as required.

Requirements of Work:

Knowledge of bookkeeping principles and procedures, particularly as applied to governmental accounting and computers.

Knowledge of modern office practices, procedures and equipment.

Ability to exercise judgment and initiative in analyzing and evaluating accounting problems and in developing or recommending modifications and improvements in existing account procedures.

Ability to analyze cash flow and investments.

Ability to perform complex accounting work accurately and rapidly.

Ability to establish and maintain effective working relationships with other Town officials, employees and the general public.

Training and Experience Required:

Considerable experience in bookkeeping and accounting procedures of a progressively responsible nature involving a complete computer system; high school graduation including or supplemented by two years of a course in accounting and general commercial subjects, or any equivalent combination of experience and training.

32. Ms. Streck was appointed as the General Government Department Head on October 25, 2011. No written job description for that position was entered into evidence prior to or at hearing.

33. Ms. Streck testified that her primary duties as General Government Department Head include carrying out the regular day-to-day affairs of the department. She also acts as a go-between with the Town Manager and the three deputy clerks so that work is divided up; works with the Town manager on a budget for the General Government Department; and provides input on personnel questions affecting her division (i.e., sitting in on interviews and making recommendations on hiring; scheduling vacation time).

34. Ms. Streck has also been appointed as the registrar of voters by the Town Council.

35. Additionally, Ms. Streck has been appointed as the Acting Town Manager, a position she would have to fill in the case where the Town Manager was incapacitated or unavailable for some reason.

DISCUSSION

The issues presented by this case are whether Van Buren's Deputy Clerk/Bookkeeper, Recreation Director, Assessor's Agent, and Economic Development Director should be recognized and included for the purposes of collective bargaining in the proposed "General Government Unit" pursuant to 26 M.R.S. § 966(1) as petitioned for by the Teamsters; and whether Van Buren's Highway Mechanic, Highway Driver/Equipment Operator, Assistant Waste Water Superintendent, Recycling Director, Wastewater Superintendent, and Highway Director should be recognized and included for the purposes of collective bargaining in the proposed "Public Works Unit," pursuant to 26 M.R.S. § 966(1), as also petitioned for by the Teamsters.

Van Buren argues that the General Government unit determination petition should be denied because three of the positions included in the petition- the deputy assessor, the economic development director, and the recreation director- are appointed and, therefore, excluded from the definition of "public employee" pursuant to 26 M.R.S. § 962(6)(D). In addition, Van Buren argues that the Town clerk is elected and, therefore, excluded as a "public employee" pursuant to M.R.S. § 962(6)(A); and that the bookkeeper position, which shares a position with the Town Clerk, head of General Government, and Acting Town Manager, necessarily shares a confidential relationship with the Town

Manager and, therefore, exempts that position from "public employee" status pursuant to 26 M.R.S. § 962(6) (C).

Finally, Van Buren argues that three of the positions in the proposed Public Works Department Unit- the Recycling Director, the Waste Water Superintendent, and the Highway Director- should be excluded because they are appointed department heads and, thus, excluded from the definition of "public employee" pursuant to 26 M.R.S. § 962(6) (D).

Section 962(6) of the Municipal Public Employees Labor Relations Law provides:

6. Public employee. "Public employee" means any employee of a public employer, except any person:

- A. Elected by popular vote; or
- B. Appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, except that appointees to county offices shall not be excluded under this paragraph unless defined as a county commissioner under Title 30-A, section 1302; or
- C. Whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head, body, department head or division head; or
- D. Who is a department head or division head appointed to office pursuant to statute, ordinance or resolution for an unspecified term by the executive head or body of the public employer[.]

Exclusionary designation precludes inclusion in any bargaining unit. 26 M.R.S. § 966(1). Van Buren claims the Section D exemption for all of the positions in both petitions.

Establishing such exclusionary status requires Van Buren to demonstrate that these positions are appointed pursuant to statute, ordinance, or resolution for an unspecified term by the executive head or body of the public employer; and that the employees in these positions function as the head of a department

or division within Van Buren's workplace. *Teamsters Union Local 340 and Town of South Berwick*, No. 10-UD-09 at 7 (MLRB July 16, 2010).

Exclusions from coverage of the Act are narrowly drawn and strictly construed. "The statute is remedial in nature and therefore the exclusions must be narrowly drawn to effectuate the fundamental purpose of the statute." *Granite City Employees Association and City of Hallowell*, No. 01-UD-04 at 15 (May 23, 2001), citing *State of Maine and MSEA*, No. 82-A-02, First Interim Order, slip op at 6 (MLRB June 2, 1983).

Four requirements must be met in order to meet the "appointment" requirement of the department head exclusion: the department head must be appointed to office; the appointment must be pursuant to a statute, ordinance, or resolution; the appointment must be for an unspecified term; and the appointment must be made by the executive head or body of the public employer. Appointments require greater significance or formality than the general hiring process. See *Teamsters Local 340 and Presque Isle*, No 92-UD-10 (MLRB Aug. 18, 1992) (When city charter gives the city council discretion to make one-year appointments to all employment positions in the city, practice is at odds with the intent of the MPELRL). In the vast majority of Board cases addressing appointments, the department head was appointed by or at least confirmed by the selectmen or city council. See, e.g., *AFSCME Council 93 and Town of Sanford*, No. 92-UD-03 (MLRB Feb. 21, 1992), aff'd., 92-UDA-03 (MLRB May 7, 1992) (appointment by selectmen); *Teamsters Local Union 48 and Town of Wells*, No. 84-A-03, slip op. at 6-7 (MLRB Apr. 11, 1984), aff'd. sub nom. *Inhabitants of the Town of Wells v. Teamsters Local Union No. 48*, CV-84-235, York Sup. Ct. (Feb. 28, 1985) (appointed by selectmen). The Board has also made clear that if the statute, ordinance, or resolution the employer relies upon to establish appointment requires confirmation by the

executive body, evidence of confirmation by the executive body is required. That confirmation in the appointment process is what distinguishes the appointment of department heads from ordinary hires. *Town of Topsham and District Lodge #4, IAMAW*, No. 02-UCA-01 (MLRB Aug. 29, 2002).

In this case, Van Buren produced no documentary evidence or testimony of its own to support its claim that six out of the seven employees were appointed pursuant to Sec. 313(A) of the Town Charter, which requires that department head appointments occur annually. Testimony by the employees did not support the claim that the Charter's requirement had been fulfilled either: the recycling director recalls being appointed to his position by the town council, but was not sure it was on a yearly basis; the wastewater plant manager remembered being appointed to his position, but not yearly; the highway/public works supervisor remembers being appointed by the town council, but not yearly; there was no evidence presented at all regarding the appointment of the assessor's agent; the director of economic and community development doesn't remember ever being appointed by the Town Council; and there was no testimonial or other evidence that the recreation director was ever appointed to his position. The June 26, 2013 memorandum from Town Manager Thomas Cannon to the Town Council regarding municipal appointments only furthers confusion about "manager" position appointments because it only identifies the wastewater collector, road commissioner, and registrar of voters as "designated appointed positions." Based on the record, it appears that although Van Buren's Town Charter requires annual appointment of department heads, Van Buren has not complied with this requirement for the positions of wastewater superintendent, recycling director, highway department supervisor, assessor's agent, economic and community development director, and recreation director. These positions, therefore, do not meet the

appointment requirement of Sec. 962(6)(D) of the MPELRL. See, e.g., *Presque Isle* at 19 (Hearing officer has no choice but to interpret the charter and any other statute, ordinance or resolution upon which the [Town] relies in making its assertions.)

The remaining employee, Kristen Streck, was elected by popular vote by Van Buren residents as the Town Clerk. Further, unlike the other "department heads" Van Buren claims to have appointed, Ms. Streck was, in fact, appointed as the General Government Division Head on October 19, 2011, apparently for an indefinite period of time. Because of her position as Town Clerk, Ms. Streck is exempt from being considered as a public employee under Sec. 962(6)(A) of the statute because she is an elected official. Additionally, Ms. Streck's appointment as the head of the General Government Division exempts her from "public employee" status pursuant to Sec. 962(6)(D). Based on both of these exemptions, I find that Ms. Streck is not a public employee under the MPELRL. Therefore, she will not be included in the proposed General Government Bargaining Unit.

Under the MPELRL, a determination of whether a position is a "department head" depends on the employee's actual job duties and functions of the position rather than the job title alone. In interpreting the Sec. 962(6)(D) exclusion, the Board has looked at the three types of job duties normally inherent in a department or division: day-to-day, rank-and-file work; supervision of other employees; and management of the department, which includes formulating and administering department policies and practices. The Board has found that the "primary function" of the department head position must be in managing and directing the affairs of the department, not performing the everyday work for which the department is responsible:

Our cases establish that for an employee to be a "department head" within the meaning of Section

962(D), the employee's primary responsibility must be that of managing or directing the affairs of the department, as opposed either to acting as a supervisor or to performing the day-to-day work of the department. For example, in *Teamsters Local 48 and City of Portland*, Unit Determination Report at 2 (Sept. 13, 1978), the hearing examiner declared 12 employees to be Section 962(6)(D) division heads because they were "responsible for the day-to-day administration" of their divisions, and because their principal duties were those of "formulating and administering division policies and practices." On the other hand, in *Teamsters Local 48 and Town of Bar Harbor*, Unit Determination Report at 3 (Nov. 15, 1979), a Treatment Plant Operator who was responsible for the day-to-day operation of the treatment plant and who performed such administrative duties as setting the work schedules of other employees, arranging for the purchase of equipment and supplies, and submitting a budget to the town manager was found not to be a department head because, among other things, the employee "spent the major portion of his time performing the same work as other operating employees." See also *Teamsters Local 48 and Boothbay Harbor Water System*, Unit Determination Report at 6-8 (May 11, 1982) (Foreman who performed various administrative duties was not an administrator because "on balance the primary function of the Foreman's position is to act as a supervisor"). Our cases thus require hearing examiners, when presented with evidence showing that an employee performs both administrative duties and supervisory or rank-and-file duties, to decide whether the primary duties of the position are those of an administrator or those of a supervisor of a rank-and file employee.

Town of Wells, No. 84-A-03, slip op. at 6-7. True department heads as defined by the Act have been more often found employed by larger municipalities or other public employers because within these larger entities, management functions of a department are genuinely given over to department heads, who actually spend the majority of their day as administrators or managers. See, e.g., *Maine State Employees Association and State of Maine Judicial Department*, No. 98-UC-01 (MLRB Jan. 21, 1998).

Pursuant to the MPELRL, supervisors have collective bargaining rights while department heads do not. Section 966(1) of the Act lists some of the factors that must be considered in order to determine whether an employee is a supervisor who may be placed in a supervisory unit. The relevant portion of Sec. 966(1) states:

In determining whether a supervisory position should be excluded from the proposed bargaining unit, the executive director or his designee shall consider, among other criteria, if the principal functions of the position are characterized by performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees, or performing such duties as are distinct and dissimilar from those performed by the employees supervised, or exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing a collective bargaining agreement or establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards.

"Clearly, more than mere supervisory duties must be performed by an individual before that person can be considered a department head, otherwise section 966(1) would be meaningless." *AFSCME Council 93 and Town of Paris*, No. 97-UD-14 at 12- 13 (Oct. 1, 1997). See also Sanford at 29. ("[A] true department or division head does not simply coordinate, oversee and supervise a program.") (citing *Bangor Education Association and Bangor School Committee*, No. 80-UC-02, slip op at 8 (Me.L.R.B. Nov. 16, 1979).

Recycling Director

In the present matter, the recycling director, Joey Dumond, by written job description and his own testimony, performs extensive hands-on work by operating and maintaining the town's solid waste and recycling facility under the general supervision of the town manager. Mr. Dumond has only one part-time assistant to help him with his work. Although Mr. Dumond prepares the

budget for the operation of the plant for presentation to the Town Manager, performs necessary record-keeping, and writes and oversees enforcement of solid waste ordinances, it is clear that his is a "supervisory/working position" that requires operation of facility equipment, including the forklift, cardboard baler, and knuckle boom, and that he assists citizens in the correct disposal of refuse materials. On balance, the recycling director is not what one could consider to be a department head because he does not spend the majority of his day as an administrator or a manager. The written job description as well as the fact that Mr. Dumond must carry out his work by himself more than half the time make it clear that the primary function of the recycling director is to carry out the substantive responsibilities of the recycling facility, not management functions contemplated by the Sec. 962(6)(D) exclusion. For these reasons, I find that the recycling director is not a department head within the meaning of Sec. 962(6)(D) of the MPELRL. Therefore, the recycling director is a "public employee" within the meaning of the Act.

Wastewater Plant Supervisor

Rick Sirois is Van Buren's wastewater plant supervisor. Mr. Sirois is licensed to operate the facility as a Class III operator. Mr. Sirois carries out his responsibilities with considerable independence and works under the direction of the Town Manager. The one other wastewater plant employee is a laborer who is licensed at a Class II level. Because he has a higher licensure level, Mr. Sirois assumes more responsibility for the operation of the wastewater plant. His major focus is the physical operation of the plant, including maintenance of the plant and underground sewer system; chemical testing at the treatment plant; overseeing and participating in the installation and inspection of new sewer lines; performing the installation,

maintenance, and repair of the physical plant and all equipment; and analyzing, evaluating, and monitoring daily operation and maintenance procedures. His position also requires him to complete necessary paperwork for local, state, and federal agencies. If components of the facility need to be replaced, Mr. Sirois makes recommendations to the Town Manager, who then takes the recommendations to the Town Council; if the recommendation is agreed upon, engineers design and complete the project, and Mr. Sirois oversees the project. In sum, the primary function of the wastewater plant supervisor is the day-to-day operation of the plant, not the type of management contemplated by the Sec. 962(6)(D) exception. Based on the evidence in the record, I find that the wastewater plant supervisor is not a department head within the meaning of 962(6)(D) because he spends "the major portion of his time performing the same work as [the] other operating employee[]." *Teamsters Local 48 and Town of Bar Harbor*, No 80-UD-09, slip op. 3 (MLRB Nov. 15, 1979). Therefore, the wastewater plant supervisor is a "public employee" within the meaning of the Act.

Highway Department Supervisor

Michael Roy is the highway department supervisor for Van Buren, which is described as a "supervisory/working position" in the job description provided by the parties. His work is reviewed through daily contact and regular reports to the Town Manager. Mr. Roy is engaged in highway construction and maintenance, including supervising and assisting in repairing streets and sewer basins, placing and rolling asphalt, repair of ditches and culverts, sanding and snow removal. He is responsible for maintaining the storm drainage system above and below ground, and supervises the maintenance and repair of municipal vehicles. His supervisory duties include scheduling work assignments, conducting

evaluations and discipline matters, and keeping work-related records. Although he spends some of his time supervising other highway department workers, Mr. Roy, as his job description states, is a working supervisor rather than a department head as contemplated by the Sec. 962(6)(D) exception and is a "public employee" within the meaning of the Act.

Deputy Assessor

At the time of the hearing, Colby Doody was the deputy assessor for the town of Van Buren. The deputy assessor is responsible for appraising and assessing real and personal property for taxation within the town, and for assisting in administration and maintenance of all records necessary to administer the assessment program. As mentioned above, there was no evidence presented at hearing that Mr. Doody was appointed to his position. Mr. Doody is the only assessor for the town, so he is a one-person "department" who operates under the guidance of the Town Assessors. There is no evidence in the record to support Van Buren's argument that Mr. Doody formulates assessing policies. Rather, Mr. Doody testified that he works within Title 36 on predetermined forms designed by the State. The deputy assessor is a "public employee" within the meaning of the Act.

Economic Development Director

The overall job description for the economic development director includes responsibility for planning, coordinating, implementing, and maintaining economic development projects and whose work is performed under the general supervision of the Town Manager. Although the job description for this position refers to it as a "supervisory/working" position responsible for administrative and specialized technical work in the economic development program, Daniel LaPointe is the only employee of this

department. Since he is the sole employee of the department and is responsible for carrying out all of its functions, he does not function as a "department head" as contemplated by Sec. 962(6)(D). Based on the record presented, I find that the economic development director is not a department head within the meaning of Sec. 962(6)(D). For these reasons, the economic development director is a "public employee" within the meaning of the Act.

Recreation Director

The recreation director is described as a "supervisory/working position" that involves planning and direction of municipal recreation programs. The recreation director develops and administers recreational and leisure activities on a year-round basis, coordinates the work of staff, schedules events, maintains facilities, and processes program records and reports. Depending on the time of year, the recreation director may be the only person providing services to the community, or he may be providing services and supervising seasonal, part-time employees. For instance, when school is in session, he may have no employees, while in the summer there may be as many as four seasonal employees. Given that the recreation director is the only full-time, permanent position within the recreation department, I find that the recreation director is not a department head within the meaning of Sec. 962(6)(D) of the MPELRL. For that reason, he is a "public employee" within the meaning of the Act.

Community of Interest Factors

Section 966(2) of the MPELRL requires the hearing examiner to determine appropriate bargaining units for the public employer unit. In order to do so, the hearing examiner must consider, at a minimum, the following factors set forth in the Board's Rules and Procedures:

- (1) Similarity in the kind of work performed;
- (2) Common supervision and determination of labor relations policy;
- (3) Similarity in the scale and manner of determining earnings;
- (4) Similarity in employment benefits, hours of work and other terms and conditions of employment;
- (5) Similarity in the qualifications, skills and training of employees;
- (6) Frequency of contact or interchange among the employees;
- (7) Geographic proximity;
- (8) History of collective bargaining;
- (9) Desire of the affected employees;
- (10) Extent of union organization; and
- (11) The employer's organizational structure.

MLRB Rules and Procedures, Chapter 11, Section 22(3). Here, the Teamsters are seeking two separate units--a General Government Unit to consist of the deputy assessor, the economic development director, and the recreation director;¹ and a Public Works Unit to consist of the recycling director, the wastewater superintendent, the assistant wastewater superintendent, the highway director, the highway mechanic, and the highway driver/equipment operator.² It is well established that the hearing examiner's duty is to "determine whether the unit proposed by the petitioner is an appropriate one, not whether the proposed unit is the most appropriate unit." *Town of Yarmouth and Teamsters Local Union No.*

1 I have already excluded the Town Clerk/bookkeeper from the General Government Unit.
2 As stated earlier, Van Buren objects to the placement of the recycling director, wastewater supervisor, and highway department supervisor in the unit because of their status both as appointees and department heads.

48, No. 80-A-04, slip op. at 4 (Me.L.R.B. June 16, 1980). The employees' right to self-organization is best protected when their judgment on the appropriate unit is respected, as long as the positions share the community of interest required by 966(2). See *Portland Administrative Employees Ass'n and Portland Superintending School Committee*, No. 87-UD-14, slip op. at 28 (Me. L.R.B. Oct. 27, 1986, aff'd, No. 87-A-03 (Me.L.R.B. May 29, 1987) (examination of the bargaining unit proposed by the employer not proper until the bargaining unit proposed in the Union's petition has been considered and rejected).

Proposed Public Works Unit

Regarding the first community-of-interest factor, although the wastewater positions perform the same types of work and the highway positions perform some of the same types of work, the recycling director does not perform similar kinds of work. However, bargaining units have been approved by the Board with similarly divergent positions, depending on a consideration of the other community of interest factors. Educational support units in school units, for instance, often contain positions with duties as varying as those under consideration here. In *East Grand Teachers' Ass'n/MTA/NEA and MSAD No. 14 Board of Directors*, No. 92-UD-01 (Me.L.R.B. Oct. 1, 1991), a unit was approved which consisted of such divergent positions as teachers' aides, school secretaries, the food service director, bus drivers, and custodians. In that case, the hearing examiner noted that the nature of work performed is important in fashioning a coherent bargaining unit, but that factor is "by no means dispositive." *East Grand Teachers'* at 23. See also *Lubec Education Ass'n/MTA/NEA and MSAD and No. 19 Board of Directors*, No. 83-UD-17 (Me.L.R.B. Apr.13, 1983) (approving unit which included teachers' aides, secretaries, cooks plant operator, bus drivers, and

custodians). All of these school positions, though not the same, serve the common function of supporting the educational process. Similarly, Van Buren's employees here all serve its Town members in the delivery of public works services. Therefore, while the positions in this proposed unit are dissimilar, units with positions that are just as dissimilar have been approved, depending on a review of other community of interest factors.

The second community-of-interest factor is common supervision and determination of labor relations policy. All of the positions are supervised by the Town Manager. The Town Personnel Policy allows what it terms the "Non-Disciplinary Actions" of counseling, verbal warning, and written reprimand to be carried out by supervisors. However, "Disciplinary Actions" including temporary relief from duty, suspension, disciplinary demotion, and removal/discharge from employment can only occur after a review and action by the Town Manager. Based on these facts, there is common supervision in the proposed bargaining unit.

Evidence regarding scale and manner of determining earnings, the third community-of-interest factor, indicate that, to at least some extent, earnings are related to number of years served with the Town. In 2012, the proposed Public Works Unit positions earned: \$29,129.60 for the full-time recycling director, who has served seven years with the Town; \$41,159.00 for the full-time wastewater supervisor, who has served sixteen years with the Town, four years as a supervisor; and \$38,521.60 a week for the full-time highway director, who has served twelve years with the Town, four years as a supervisor. Qualifications and training of the employees (factor number five) depends on the work performed. The job descriptions for the Public Works positions, as opposed to those for the General Government positions, ask for a high school diploma or experience in the field rather than a particular academic achievement.

Benefits for Van Buren employees (factor number four) are available to all regular, full-time employees. Hours of work are set by the various departments to "provide the greatest service to the public and best meet departmental operating requirements, as well as within the confines of each department's operating budget." Town of Van Buren Personnel Policies, Article IV, Section 5.1. Therefore, community-of-interest factor four is met.

There is no evidence that community-of-interest factor six, frequency of contact or interchange among the supervisors, has been met in this case. All of the proposed public works unit supervisors work in a facility or in the field. The same can be said for factor seven, geographic proximity. None of these positions offers the opportunity for working in close proximity with one another.

With respect to factor eight, the proposed Public Works unit supervisors have no history of collective bargaining. While this could negate the finding of a community of interest, the petitioner presented a sufficient showing of interest for this proposed unit with the petitions. Even though the true desires of the affected employees cannot be tested until an election is held (factor nine), the showing of interest demonstrated ample evidence of a desire among these employees to organize.

There are presently two units organized by the Teamsters in Van Buren, the police department unit and the ambulance unit (factor ten). The addition of the proposed units could make four units represented by the Teamsters in Van Buren, representing many of the Town's eligible employees in separate, appropriate bargaining units.

The final community-of-interest factor (factor eleven) is the employer's organizational structure. In this case, the Town Council has created departments whose supervisors are supervised by the Town Manager. As set forth in the Findings, however, some

of these "departments" consist of one employee (the economic development director, for instance). For that reason, the employer's organizational structure does not appear to be key to a finding of community of interest.

Proposed General Government Unit

The positions in the proposed General Government Unit, like those in the proposed Public Works Unit, are diverse and do not perform similar types of work. As already stated, however, the Board has approved bargaining units with diverse positions depending on a review of the other community of interest factors. East Grand Teachers' Ass'n, 92-UD-01 at 23.

Common supervision and determination of labor relations policy is the second community-of-interest factor. Two of the three positions at issue are supervised by the Town Manager, while the deputy assessor works under the guidance of the Town Assessors. The Town Personnel Policy includes the same "Non-Disciplinary Actions" and "Disciplinary Actions" that require review and action by the Town Manager as set forth in the "Public Works" section, above, which indicates common overall supervision in the bargaining unit.

In the proposed General Government Unit, the scale and manner of determining earnings, the third community-of-interest factor, indicate that to at least some extent, earnings are related to academic expectations and numbers of years served with the Town. In 2012, the proposed General Government Unit positions earned: \$31,009.22 for the full-time deputy assessor, who has served one year with the Town; \$41,288.01 for the full-time economic development director, who has served fifteen years with the Town; and \$22,850.00 for a 35-hour week for the recreation director, who has served two years with the Town. Factor five, the

qualifications and training for the three positions in the proposed General Government Unit, request achievement of a four-year college degree for the deputy assessor, economic development director, and the recreation director.

Community-of-interest factor four is met because all full-time Van Buren employees are eligible for benefits provided by the Town. In addition, hours of work are similar (7 a.m. - 4 p.m.; 8 a.m. - 5 p.m.), though not exactly the same.

Factor six, frequency of contact or interchange among the positions, does not appear to be present here. All of the proposed General Government Unit positions work in the field or in separate offices. Whether or not they share geographic proximity by having offices in a central Town building was not raised at hearing, so no finding can be made on factor seven.

It is quite clear that the proposed General Government Unit has no history of collective bargaining. However, the petitioner presented a sufficient showing of interest with the petition. As stated above, the true desires of the affected employees (factor nine) cannot be tested until an election is held, but the showing of interest indicates evidence that there is a desire among these employees to organize.

As also stated above, Van Buren currently has two units organized by the Teamsters, the police department unit and the ambulance unit (factor ten). The two additional units, as proposed by the petitions, could place many of the Town's eligible employees in separate, appropriate units.

Factor eleven, the final community-of-interest factor, is the employer's organization structure. Van Buren has created departments whose supervisors are supervised by the Town Manager. However, in the proposed General Government Unit, the positions are essentially one-person "departments." For purposes of a community of interest analysis, I make no finding on this factor.

In conclusion, several of the factors support a finding that the employees in the proposed bargaining units share a community of interest with each other. These include common supervision and determination of labor relations policy; similarity in the scale and manner of determining earnings; similarity in employment benefits, hours of work and other terms and conditions of employment; similarity in the qualifications and training of employees; history of collective bargaining; and desires of the affected employees. The factors that militate against finding a community of interest include similarity in the kind of work performed; frequency of contact or interchange among the employees; and geographic proximity.

It is noteworthy that Van Buren did not challenge at hearing or in its post-hearing brief that a community of interest exists among the members of each of the proposed units. In approving the two units as petitioned for by the Teamsters, I look to Board precedent that strongly favors the rights of public employees to organize and petition for bargaining units they believe will best represent their needs. On balance, I conclude that the classifications in both bargaining units created in this unit determination report share a clear and identifiable community of interest and are appropriate for purposes of collective bargaining.

ORDER

On the basis of the foregoing facts and discussion, and pursuant to the provisions 26 M.R.S. § 966(2), the following described units are held to be appropriate for purposes of collective bargaining:

GENERAL GOVERNMENT UNIT

INCLUDED: Deputy Assessor, Economic Development Director,
Recreation Director

EXCLUDED: Town Clerk, Bookkeeper, General Government Division
Head; all other employees of the Town of Van Buren

PUBLIC WORKS UNIT

INCLUDED: Recycling Director, Wastewater Supervisor,
Assistant Wastewater Superintendent, Highway
Department Supervisor, Highway Mechanic, Highway
Driver/Equipment Operator

EXCLUDED: All other employees of the Town of Van Buren

Bargaining agent elections for these units will be conducted
forthwith.

Dated at Augusta, Maine, this 10th day of December, 2013.

MAINE LABOR RELATIONS BOARD

/s/ _____
Gwendolyn D. Thomas
Hearing Examiner

The parties are hereby advised of their right, pursuant to
26 M.R.S. § 968(4), to appeal this report to the Maine Labor
Relations Board. To initiate such an appeal, the party seeking
appellate review must file a notice of appeal with the Board
within fifteen (15) days of the issuance of this report. See
Chapter 10 and Chapter 11(30) of the Board Rules.