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TEAMSTERS UNION LOCAL NO. 340,)	
)	
	Petitioner,)	
)	UNIT DETERMINATION
and)	REPORT
)	
M.S.A.D. No. 27,)	
	Employer.)	
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PROCEDURAL HISTORY

This unit determination proceeding was initiated on March 20, 2015, when Mr. Ed Marzano, Business Agent for Teamsters Union Local No. 340 ("Union"), filed a petition for unit determination with the Maine Labor Relations Board ("Board"), seeking the creation of a bargaining unit consisting of the I.T. Lead Technicians employed by Maine School Administrative District No. 27. The petition was filed pursuant to § 966(1) of the Municipal Public Employees Labor Relations Law ("Act"), 26 M.R.S.A. § 961 et seq. M.S.A.D. No. 27 ("Employer") filed a timely response to the petition on April 7, 2015. The Employer objected to the granting of the relief sought on the grounds that the three employees in the position at issue are confidential employees, within the exclusion set forth in § 962(6)(C) of the Act, and cannot be included in any bargaining unit.

Due notice having been given, an evidentiary hearing on the petition was held at the Board hearing room in Augusta, Maine, on June 17, 2015. Ms. Traci Place, Business Agent, appeared on behalf of the Union, and Tom Trenholm, Esq., appeared on behalf of the Employer.

During the course of the hearing, the following exhibit was admitted into evidence without objection:

Union Exhibit 1, current job description for the M.S.A.D.
#27 District-Wide Technology Aide

The Union presented as its witnesses the three persons who were employed as I.T. Aides at the time the petition was filed: Don Cyr, Lee Reynolds,¹ and Deborah Gagnon. The Employer also presented three witnesses: Tim Doak, Superintendent of Schools; Ann Marie Guerrette, District Technology Coordinator; and Lucie Tabor, the district's Director of Finance and Projects. The parties were given the opportunity to examine and cross-examine witnesses, offer evidence, and present argument. Written post-hearing briefing was completed on August 7, 2015.

JURISDICTION

The jurisdiction of the executive director to hear this matter and to make a determination lies in 26 M.R.S.A. § 966(1) and (2).

STIPULATIONS

The parties stipulated to the following facts:

1. The formal title for the classification in contention is District-Wide Technology Aide ("I.T. Aide") and that is the title we will use in this proceeding.

2. In the event that they are held to be public employees, within the definition of § 962(6) of the Act, the I.T. Aides share a clear and identifiable community of interest with each other and, together, constitute an appropriate bargaining unit within the meaning of § 966(1) and (2) of the Act.

¹Due to insufficient funds, Mr. Reynolds and approximately 6 other employees were laid off by the Employer the evening before the date of the evidentiary hearing in this matter.

3. The I.T. Aides are not deputies, administrative assistants or secretaries.

FINDINGS OF FACT AND DISCUSSION

District Technology Coordinator Ann Marie Guerrette described the ascendancy of computer technology at M.S.A.D. 27, which mirrors that in public and private sector workplaces throughout the economy over the past several years. When Ms. Guerrette started working for the district 17 years ago, setting up and maintaining the district's information technology apparatus comprised only part of her job duties. Since then, the district has gone from having about 100 computers to over 1,200 devices, including computers, laptops, ipads, smartphones, printers, copiers, and servers. The district's information technology work group developed from a part-time technician to a full-time Technology Coordinator, assisted by three full-time I.T. Aides.

Section 962(6)(C) of the Act excludes from the definition of "public employee," and hence, from the grant of rights provided by the Act, those persons "[w]hose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head, body, department head, or division head" (emphasis added).

Persons exempted from the coverage of the Act through this exclusion are those employees who are permanently involved in collective bargaining on behalf of the employer or whose duties involve the formulation, determination and effectuation of the employer's employee relations policies. In addition, this exclusion applies to employees who have, as part of their job duties, access to the employer's negotiations positions, before such positions are disclosed at the bargaining table, and who, as an integral part of their job duties, assist and act in a

confidential capacity with respect to those who formulate or determine the employer's bargaining positions or bargaining strategy. At the time the Act was enacted, this latter group of support staff employees included deputies, administrative assistants, and secretaries who processed confidential collective bargaining information.²

The Board has held that, since the public policy reflected in the Act is to grant public employees the right to bargain collectively, the exceptions from the coverage of the Act must be narrowly construed. *Town of Topsham and Local S/89 District Lodge #4, International Association of Machinists and Aerospace Workers*, No. 02-UCA-01, at 12 (MLRB Aug. 29, 2002).

Interpreting and applying the section of the State Employees Labor Relations Act, § 979-A(6)(C), which is identical with § 962(6)(C), the Board has held that the critical language of the exclusion provides that employees "whose duties necessarily imply a confidential relationship" with the public employer are excluded from collective bargaining. The Board went on to hold:

The language cited clearly justifies and mandates that a hearing examiner, weighing whether an employee is "confidential," inquire as to whether the allegedly confidential aspects of the employee's work are an inherent portion thereof. Such an inquiry is contemplated by the Act and is required to effect the legislative intent embodied in Section 979-A(6)(C).

State of Maine and Maine State Employees Association, No. 82-A-02, at 19 (MLRB June 2, 1983).

The technological revolution has transformed the nature of work generally and the nature of clerical support work in particular. Whereas in the past, the persons who formulated the

² *Portland Administrative Employee Ass'n and Portland Superintending School Committee*, No. 86-UD-14, at 10-12, for a more comprehensive discussion of relevant law, *aff'd*, No. 87-A-03 (MLRB May 29, 1987)

employer's collective bargaining positions and strategies relied on clerical employees to produce draft and final documents for use in bargaining, the employer's decision-makers now prepare, circulate and finalize their own documents and spreadsheets and the clerical support is largely provided by information technology. In the instant case, the Superintendent and the Director of Finance and Projects use information technology to create, modify and finalize bargaining proposals; to record current salaries and to cost-out proposals using spreadsheets; to communicate with School Committee members and the District's labor counsel via e-mail; and to store all of the District's collective bargaining information. A properly functioning information technology system is essential for the management personnel to perform their collective bargaining duties.

The job duties and responsibilities of the I.T. Aides are to provide support, maintenance and repair of the School District's information technology hardware and software. This work primarily consists of fixing things that are not functioning and answering questions regarding how an application or operating system was meant to work. Much of the I.T. Aides' work involves troubleshooting problems students, teachers and administrators (collectively referred to as "users") have with computers, ipads, laptops, and desktops. Using an administrative profile (a separate password recognized by the machine), the I.T. Aides can logon to a user's device to perform maintenance, troubleshooting, and install software without having access to the user's profile. This simply means that the I.T. Aides can perform their work without having access to the user's information stored on the device.

The I.T. Aides are not assigned to perform any confidential labor relations functions. In addition, access to the Employer's

confidential labor relations information is not an inherent part of the I.T. Aides' employment duties. In fact, access to any user's personal information is not required for the I.T. Aides to perform their job duties, whether that user is a student or the Superintendent.

As the domain administrator for the School District, the Technology Coordinator necessarily has access to all devices and all information stored in the District's computer system. The Technology Coordinator provides logon credentials to the users of the system, setting the "permissions" that determine what devices, software, and hardware each user can access, including the degree of access accorded to the I.T. Aides. Google for Education includes a shared drive, which students and teachers use for creating and sharing documents, and is the e-mail provider for the District. The Technology Coordinator maintains a list of usernames and passwords for Google for Education, including e-mail, and the I.T. Aides have access to that list.

The essence of the claimed "confidential" status in this case is that the I.T. Aides have access to the Google for Education "master list" of usernames and passwords and they could surreptitiously use that information to gain unauthorized access to the Employer's confidential labor relations information. In the alternative, the I.T. Aides could access the Employer's confidential collective bargaining information while working on the devices of the Superintendent or the Finance Director, if the users left confidential documents on their desktops or if they failed to logoff from their e-mail on that particular device before providing it for service. This speculative and unauthorized access to the Employer's confidential labor relations information does not justify an exclusionary designation.

The public policy of the State of Maine is to extend collective bargaining rights to public employees. The exclusions from the grant of the statutory right are narrowly drawn and are strictly construed. As demonstrated in the case of *Portland Administrative Employees Ass'n and Portland Superintending School Committee*, No. 86-UD-14, at 14-16, an information technology employee who, as an inherent part of their job duties, has access to the employer's confidential labor relations positions and spreadsheet analyses, is a confidential employee. In *Portland*, the Coordinator for Computer Services who, like the Technology Coordinator here, was the system administrator and necessarily had access to the all information stored of the school department's computer system, required an exclusionary designation. A different employee in *Portland*, the Coordinator of Evaluation and Data Management, had performed the spreadsheet work in the previous round of bargaining; however, this latter coordinator was not exempt because the spreadsheet work did not necessarily reveal the scope of the employer's bargaining authority and the Coordinator of Computer Services was available as a confidential employee, if the work required the expertise of an information technology professional.

Employees who represent the employer in collective bargaining or who formulate the employer's collective bargaining positions and strategies have an obligation for safeguarding the confidentiality of collective bargaining information, whether such material was developed with pen and paper and stored in a file cabinet or was prepared and stored electronically. In either case, intentional unauthorized access can result in discipline. The confidentiality of the work product could easily be assured in the case of M.S.A.D. 27 by: 1) deleting the usernames and passwords of the Superintendent, the Finance Director and any other employee who is involved in collective bargaining on behalf

of management from the Google list; 2) the managerial employees could logoff a device before presenting it for service; and 3) if the I.T. Aides cannot access a device using their administrative profile, relying on the Technology Coordinator to perform the repair.³

ORDER

On the basis of the foregoing findings of fact and discussion and by virtue of and pursuant to the provisions of 26 M.R.S.A. § 966, the hearing examiner ORDERS:

1. The petition for appropriate unit determination, filed by Teamsters Union Local No. 340 on March 20, 2015, is granted.

2. The District-Wide Technology Aides employed by M.S.A.D. No. 27 together constitute an appropriate bargaining unit.

3. A representation election for the M.S.A.D. No. 27 District-Wide Technology Aides bargaining unit should be scheduled in the normal course of the Board's business.

Dated at Augusta, Maine, this 17th day of August, 2015.

MAINE LABOR RELATIONS BOARD



Marc P. Ayotte
Executive Director

The parties are hereby advised of their right, pursuant to 26 M.R.S.A. § 968(4), to appeal this decision 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 date of issuance of this report. See Chapters 10 and 11(30) of the Board Rules.

³As the Board discussed in *State of Maine, supra*, at 19-20, a public employer has an affirmative obligation to concentrate its confidential labor relations functions to the extent reasonably practicable. The preferences of the users in this case must give way to the statutory rights of the I.T. Aides.