

AFSCME COUNCIL 93,	)	
	)	
Appellant,	)	DECISION AND ORDER ON
	)	APPEAL OF
and	)	UNIT DETERMINATION
	)	
TOWN OF READFIELD,	)	
	)	
Appellee.	)	
	)	

AFSCME Council 93 filed this unit determination appeal on October 6, 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 that is the subject of this appeal was issued on September 19, 2014. In that report, the Hearing Examiner determined that the proposed unit was an appropriate bargaining unit, but concluded that the Town Clerk could not be included as she was excluded from coverage of the Act under 26 M.R.S.A. §962(6)(B).

On October 16, 2014, AFSCME filed its Memorandum of Appeal, in which it challenged the Hearing Examiner's conclusion that the Town Clerk was "appointed to office" as required by the exclusion in §962(6)(B). AFSCME was represented by Erin L. DeRenzis, Esq. and Anna Shapell, Esq., with Attorney Shapell presenting oral argument. Matthew Tarasevich, Esq., represented the Town of Readfield, and filed its response to AFSCME's Appeal on October 27, 2014. The Board, comprised of Chair Katharine I. Rand, Employer Representative Robert W. Bower, Jr., and Employee

Representative Amie M. Parker, heard oral argument and deliberated this matter on Tuesday, December 2, 2014.

#### JURISDICTION

AFSCME is an aggrieved party within the meaning of 26 M.R.S.A. §968(4) and Chapter 11, §30 of the Rules and Procedures of the Board. The Town of Readfield is a public employer within the meaning of §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).

#### FINDINGS OF FACT

Neither party has taken exception to any finding of fact in the Unit Determination Report. Upon review, we adopt those findings and deem them incorporated into this decision.

#### DISCUSSION

The question on appeal is whether the Hearing Examiner erred by concluding that the Town Clerk must be excluded from the bargaining unit because she was "appointed to office" within the meaning of 26 M.R.S.A. §962(6)(B). That section excludes any employee "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." AFSCME argues that there is a degree of formality implicit in the phrase "appointed to office" that was not met by the "perfunctory" re-appointment of the Town Clerk in this case.

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).

We have reviewed the unit determination report in light of the standard of review and the arguments of the parties. The hearing examiner properly applied the existing case law on the statutory exclusion of employees appointed to office for a specified term and his conclusion was not "unlawful, unreasonable, or lacking in any rational factual basis." It therefore is affirmed.

ORDER

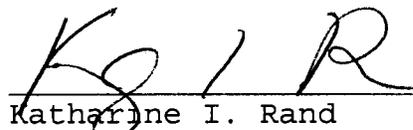
On the basis of the foregoing discussion and pursuant to the powers granted to the Maine Labor Relations Board by the provisions of 26 M.R.S.A. §968(4), it is ORDERED:

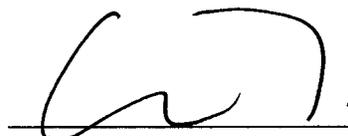
that the appeal of AFSCME Council 93 filed with respect to the Unit Determination Report in Case No. 14-UD-05 is denied and the report is affirmed.

Dated at Augusta, Maine, this 18th day of December, 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

  
Robert W. Bower, Jr.  
Employer Representative

  
Amie M. Parker  
Employee Representative