

STATE OF MAINE

MAINE LABOR RELATIONS BOARD

Case No. 17-UD-07

Issued: June 16, 2017

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MAINE EDUCATION ASSOCIATION, )  
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) )  
Petitioner, )  
) )  
and ) UNIT DETERMINATION REPORT  
) )  
MAINE SCHOOL OF SCIENCE AND )  
MATHEMATICS, )  
) )  
Employer. )

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PROCEDURAL HISTORY

This unit determination proceeding was initiated on February 24, 2017, when Ms. Louella Willey, UniServ Director for the Maine Education Association ("MEA"), filed a petition for unit determination with the Maine Labor Relations Board ("Board") requesting the creation of a bargaining unit, consisting of "all full and part-time instructors presently employed at the Maine School of Science and Math, located at 95 High Street, Limestone, ME 04750. Currently there are 18 employed instructors." The petition explicitly excluded custodians, bus drivers, residential employees, administrative assistants, and any administrative positions from the proposed bargaining unit. The petition was filed pursuant to § 966(1) and (2) of the Municipal Public Employees Labor Relations Law ("Act"),<sup>1</sup> 26 M.R.S. § 961, et seq.

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<sup>1</sup>An earlier representation proceeding involving MSSM was processed by the Board pursuant to the Municipal Public Employees Labor Relations Law, 26 M.R.S. § 961, et seq., and the controlling statutory provision was not at issue here. The hearing examiner notes that the proceeding could have been

The Maine School of Science and Mathematics ("MSSM") filed a timely response to the petition on March 13, 2017. MSSM objected to the proposed unit on the grounds that, although proposing a bargaining unit comprised of "all full and part-time instructors," the MEA was, in fact, excluding seven Adjunct Instructors from the unit sought through this proceeding. MSSM asserted that all of the non-supervisory faculty at MSSM should be included in the bargaining unit. On March 20, 2017, MEA filed an amended petition seeking a unit determination of a bargaining unit of MSSM employees, including "all full and/or half time instructors (12 class contact hours or more)" employed at MSSM and expressly excluding Adjunct Instructors, among other classifications.<sup>2</sup> MSSM filed a response to the amended petition on April 3, 2017, essentially renewing and incorporating its objection to the original petition.

The hearing examiner convened a telephone conference with the party representatives on March 23. The parties agreed that the position of Instructor/Dean of the Faculty will not be included in the bargaining unit. In an effort to narrow questions of relevant facts in dispute, the parties were asked to file and exchange offers of proof no later than April 21, with a focus on establishing whether the Adjunct Instructors share a clear and identifiable community of interest with the

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brought pursuant to the parallel provision of the State Employees Labor Relations Act, 26 M.R.S. §979-E(1) and (2). The representation process is identical under both Acts; therefore, the hearing examiner defers judgment as to which Act applies since it was not at issue here.

<sup>2</sup> During the telephone conference with the parties on March 23, MSSM correctly pointed out that the Board's Rules do not contemplate an amended petition, once the response to a petition has been filed. Since neither the Act nor the Rules precludes withdrawing a petition and filing a new one for essentially the same bargaining unit, the amended petition was allowed. MSSM requested the opportunity to file a response and did so.

full- and 2/3-time<sup>3</sup> Instructors. The parties agreed that a follow-up telephone conference would be held on April 28 and the evidentiary hearing would be held on May 19. The offers of proof were timely filed, with MSSM including 9 exhibits with its offer and MEA moving for a unit determination based on the pleadings. During the conference call of April 28, the parties' submissions were reviewed, including documents relating to the 2/3-time Instructor's health insurance coverage as a dependent of a full-time Instructor, and points of consensus as well as those in dispute were identified. The hearing examiner orally denied MEA's motion on the grounds that § 966(2) of the Act requires the hearing officer to assess whether the requisite community of interest exists among the employee classifications involved in determining any bargaining unit. The hearing examiner committed to drafting tentative findings of fact for review, which would include consideration of additional documents the parties agreed to submit. The draft findings were sent to the parties on May 12, after which the parties conferred. The parties were unable to agree on facts relevant to the "desires of affected employees" community-of-interest factor, and after discussing the matter with the hearing examiner, the parties agreed that the factor would not be considered in this unit determination. The parties reached a full stipulation of facts on May 19, 2017, subject to this caveat.

The parties have reviewed the exhibits each intended to offer and agreed that the following are admitted into evidence:

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<sup>3</sup> Although the petition seeks inclusion of half-time Instructors in the bargaining unit, the parties clarified that the only part-time position at issue, other than the Adjunct Instructors, is a 2/3-time Chemistry Instructor.

- MEA Exhibit 1, MSSM Bylaws, Article I
- MEA Exhibit 2, Current Instructor teaching contact hours, provided May 1, 2017
- MEA Exhibit 3, Offer of Employment to 2/3 Chemistry Instructor [redacted], June 6, 2016, with 3 Year Probationary Instructor Contract For Chemistry Instructor (2/3), 08/01/2016-07/31/2017 [redacted], p. 1
- MEA Exhibit 4, E-Mail message from Dean of Faculty to MSSM Faculty, May 2, 2017, soliciting Nominations of full-time faculty member for election as Faculty Representative to the MSSM Board for School Fiscal Year 2017-2018
- MSSM Exhibit 1, Current MSSM adjunct faculty members with date of hire and number of classes taught in 2016-2017 academic year
- MSSM Exhibit 2, MSSM Faculty Handbook 2016-2017
- MSSM Exhibit 3, Yearly Instructor Contract, Fiscal Year 2016-2017, for Full-Time Chemistry Instructor/Chemical Hygiene Officer
- MSSM Exhibit 4, 2 Year Probationary Instructor Contract, Fiscal Year 2016-2017, for Full-Time Mathematics Instructor
- MSSM Exhibit 5, 2 Year Probationary Instructor Contract, Fiscal Year 2016-2017, for Full-Time Humanities Instructor
- MSSM Exhibit 6, 2 Year Probationary Instructor Contract, Fiscal Year 2016-2017, for Full-Time Science Instructor
- MSSM Exhibit 7, Yearly Instructor Contract, Fiscal Year 2016-2017, for Part-Time Psychology Instructor
- MSSM Exhibit 8, Yearly Instructor Contract, Fiscal Year 2016-2017, for Part-Time Chinese Instructor
- MSSM Exhibit 9, 2 Year Probationary Instructor Contract, Fiscal Year 2016-2017, for Part-Time Health Instructor

MSSM Exhibit 10, 3 Year Probationary Instructor Contract  
for Chemistry Instructor (2/3),  
08/01/2016-07/31/2017

MSSM Exhibit 11, State of Maine, Group Health Insurance  
Application for full-time Instructor,  
opting for dependent coverage for his  
spouse who is the 2/3-time Chemistry  
Instructor [personal information  
redacted]

MSSM Exhibit 12, Adjunct Instructor Teaching Schedule,  
School Fiscal Years 2014-2015, 2015-2016,  
and 2016-2017

The parties filed simultaneous main briefs on May 26, 2017.  
MSSM filed a reply brief on May 30, and MEA opted not to file a  
reply brief. The parties' briefs have been considered in  
reaching the instant decision.

#### JURISDICTION

The petitioner, Maine Education Association, is a public  
employee organization within the contemplation of § 962(2) of  
the Act. The employer, Maine School of Science and Mathematics,  
is an agency of the State of Maine created by statute and is a  
public employer within the scope of § 962(7)(B). The juris-  
diction of the executive director to hear this matter and to  
make a determination lies in 26 M.R.S. § 966(1) and (2).

#### STIPULATIONS

The parties stipulated to the following facts:

1. The Maine School of Science and Mathematics ("MSSM") was  
chartered by the Legislature as "an instrumentality and agency  
of the State" to provide "certain high-achieving high school  
students with a challenging educational experience." 20-A  
M.R.S. § 8201.

2. MSSM is a residential high school located in Limestone.

3. The non-supervisory instructional faculty of MSSM consists of employees in the following classifications:

- Instructor
- Instructor/Department Head - Humanities
- Instructor/Department Head - Mathematics,
- Instructor/Department Head - Science
- Instructor/Instructor - Adjunct
- Instructor - Adjunct
- Instructor/Resident Instructor

4. The primary job function of all of the faculty members is to teach one or more academic courses, providing day-to-day instruction of students within the academic program of MSSM.

5. The full-time Instructors are required to teach (i) four non-lab courses, with each course involving four hours of instruction each week, or (ii) three lab courses, with each course involving six hours of instruction each week. The non-lab courses are in mathematics or humanities and the lab courses are in the sciences.

6. All but one of the Adjunct Instructors currently teach one or two courses per semester. One Adjunct Instructor currently teaches only one semester per year.

7. Full-time Instructors are required to have an advisory group of students with whom they meet as a group and one-on-one as the circumstances of the individual students may warrant. Full-time Instructors are also required to advise at least one extra-curricular activity or coach at least one sport. Historically, Adjunct Instructors have advised extracurricular activities or coached sports, both for additional compensation; however, they are not required to do so as a condition of employment.

8. Full-time Instructors are also subject to the following requirements as terms of their employment, unless the Instructor contracts for different terms. Absent an express contractual agreement to the contrary, each full-time Instructor must: (i) have at least three scheduled office hours per week; (ii) attend all faculty, team and department meetings; (iii) attend one-day faculty workshops three times per year--before the fall semester, at the end of the spring semester, and following graduation; (iv) attend at least some activities during move-in weekend; and (v) attend the Parent Conference Weekend in the fall semester and Parents' Weekend in the spring semester, both consisting of Friday afternoon and evening and Saturday day-long activities, including scheduled meetings with parents. Adjunct Instructors do not have mandatory office hours and, while invited to participate in faculty meetings and workshops, they are not required to attend. If particular parents desire to meet with an Adjunct Instructor, that Instructor will be required to meet with them.

9. The MSSM Faculty Handbook, at p. 6, provides that "[e]ach faculty member reports directly to the Department Chair of the respective academic area." There are three academic departments: Humanities, Mathematics, and Science, each headed by a department chair, who all report to the Dean of the Faculty.

10. Full-time Instructors undergo a comprehensive and on-going assessment process that includes self-evaluations; creating a portfolio of work performed; reviews of instructor benchmarks with the Dean of the Faculty; classroom visits by the department chair, Dean of the Faculty, and a peer chosen by the instructor; evaluations by students through questionnaires; and reports on professional development and advising activities. Following the

classroom observation, the portfolio and instructor benchmarks are discussed in a post-observation meeting. Historically, the assessment process has been intermittent and not every full-time Instructor has been evaluated each year.

11. Adjunct Instructors are also evaluated by the Department Chair or Dean of the Faculty. Historically, the evaluation process has been the same process as was utilized for full-time Instructors and, like the full-time Instructors, the use of the evaluation process for Adjunct Instructors historically has been intermittent. For the 2016-2017 academic year, MSSM introduced a pilot program requiring full-time Instructors to compile a course portfolio (which includes course syllabus and plan, student evaluation reflection and professional development). Adjunct Instructors do not have to compile a course portfolio.

12. The labor relations policies for all members of the faculty are determined by the Board of Trustees and are contained in the MSSM Faculty Handbook.

13. The full-time Instructors are compensated pursuant to a standardized pay scale which is based on the individual's years of experience and level of education. Full-time faculty can earn additional compensation for taking on special or additional responsibilities beyond those required as conditions of their employment. The salaries of four full-time instructors were provided. Those for three of the instructors range from \$45,400 to \$57,850. The fourth instructor's salary was \$73,000. This particular Instructor serves as the Chemical Hygiene Officer in addition to his instructional duties and MSSM modified his contractual duties to relieve him from responsibilities regarding a "Student Activity/Club Advisor" and attending the annual senior weekend activities.



14. The Adjunct Instructors are compensated on a "per course" basis, currently approximately \$7,400 per year-long course (which is the equivalent of \$3,700 per semester). As with full-time Instructors, Adjunct Instructors can earn additional compensation by taking on additional responsibility.

15. Full-time Instructors are eligible to participate in the school's group health insurance. Part-time and Adjunct Instructors are not eligible to participate. The premium for full-time Instructors who opt for individual employee coverage is 90% paid by MSSM and 10% paid by the employee, with different premium splits, depending on the type of dependent coverage sought.

16. Full-time Instructors earn sick leave at the rate of one day per month and can accumulate up to 120 days. Part-time and Adjunct Instructors earn sick leave with the rate of accumulation being based on the number of classes each teaches.

17. All Instructors participate in a retirement plan through the Maine Public Employees Retirement System.

18. The number of hours of classroom instruction per week by the Adjunct Instructors in SFY 16-17 range from a high of 7 hours in the fall semester to a low of 3 hours by another. The numerical average of hours taught by each Adjunct Instructor in the fall semester was 5 hours per week for the six Adjunct Instructors who taught that semester. The numerical average of hours taught per week by seven Adjunct Instructors who are teaching this spring semester is 4.1 hours.

19. Full-time, part-time, and Adjunct Instructors work under one-year agreements, which may or may not be renewed. Full-time Instructors serve a three-year probationary period. Adjunct

Instructors are always considered probationary employees.

20. All the Instructors, Adjunct and full-time, are provided notification of reasonable assurances of employment for the next school year during the February time frame.

21. Full-time Instructors who work an entire school year are paid through 26 biweekly payments and Adjunct Instructors who work an entire school year receive their pay through 21 biweekly payments.

22. All full-time Instructors are eligible for on-campus housing and participation in MSSM's meal plan. In fact, all staff are eligible for the MSSM meal plan. Although Adjunct Instructors typically are not eligible for on-campus housing, MSSM has afforded this opportunity to Adjunct Instructors in certain situations, such as in conjunction with additional Residential Life duties.

23. MSSM's Reduction in Force policy includes the following:

This policy applies to permanent MSSM employees who have completed their probationary periods (full-time and part-time regularly scheduled to work 20 or more hours each work week) and to employees in probationary periods who have completed at least six months of their contract.

Temporary employees, employees with time-limited appointments, permanent employees scheduled less than 20 hours per week, and probationary employees who have completed less than six months of their contract may be separated without following this policy and are not eligible for re-employment preference.

24. The Chapter of Public Law that established MSSM and pursuant to which it operates, 20-A M.R.S. Chapter 312, provides that a full-time teacher at the school, elected by the faculty, serves as a non-voting member of the school's Board of Trustees.

Section 8204(1)(F) provides that "[b]oth full-time and part-time teachers at the school may vote in the election of a faculty member to serve on the board of trustees and the election must be by secret ballot..." Historically, MSSM has interpreted the statute's reference to "full-time and part-time teachers" to encompass all MSSM faculty (including full-time Instructors and Adjunct Instructors) and has afforded all of its faculty the opportunity to participate in the statutory, secret ballot election process. The faculty member nominated for the position must be a full-time Instructor.

25. The MSSM Faculty Handbook incorporates the school's strong preference that faculty members, both full-time Instructors and Adjunct Instructors, have at least a master's degree in the area they teach, prior teaching experience, "the ability to communicate with high-ability students, and a sincere desire to work with and teach high school age students."

26. The process of instruction is inherently a singular activity, where an instructor introduces new learning and imparts knowledge through lectures, through the Socratic method of questioning students on their comprehension of assigned readings, or through practical demonstrations followed by direct student participation in science laboratories. Most professional contact or interchange among the faculty occurs at faculty, team and department meetings and workshops, during which Instructors recommend modifications to academic policies, procedures, programs, and courses. While Adjunct Instructors are invited to attend and participate in these meetings, only a few of the Adjunct Instructors attend.

27. One of the Instructors at MSSM teaches two lab courses and is recognized by the school as a 2/3-time Instructor. The 2/3-

time Instructor is required to have an advisory group and is expected to have regular office hours, similar to the requirements of the full-time Instructors. Since the 2/3-time Instructor teaches two lab courses and the normal full-time load is three, the Instructor's compensation is 2/3 of what it would be if the Instructor had a full load and considering the person's prior teaching experience. The 2/3-time Instructor is not eligible for coverage in the MSSM group health insurance plan by virtue of employment; however, that individual is married to a full-time Instructor and is eligible for inclusion in the plan as a dependent. The unique 2/3-time position was created for the 2016-2017 academic year.

28. All of the school's non-supervisory faculty members, consisting of 17 full-time Instructors, one 2/3-time Instructor, and 7 Adjunct Instructors, work at the MSSM campus, located in Limestone.

29. None of the faculty employee classifications previously has been involved in collective bargaining.

30. There is no direct evidence regarding the desires of the employees regarding the configuration of a bargaining unit of MSSM employees.

31. Five of the seven Adjunct Instructors have worked as an Instructor with MSSM for over 14 years. The remaining two Adjunct Instructors have worked as an Instructor with MSSM for 2 and 5 years respectively.

32. Employees of MSSM historically have moved between the Adjunct Instructor and full-time Instructor positions, including at least one employee moving from Adjunct Instructor to full-time Instructor and another moving from full-time Instructor to

Adjunct Instructor.

33. All MSSM faculty members have an email address associated with MSSM and MSSM regularly uses "all faculty" emails, which includes full-time Instructors, the 2/3-time Instructor and Adjunct Instructors, to communicate with its faculty members.

#### DISCUSSION

The Maine School of Science and Mathematics is a residential high school that was established by the Legislature, with the statutory mission to provide "certain high-achieving high school students with a challenging educational experience." The non-supervisory instructional faculty of MSSM consists of full- and regularly-scheduled part-time educators who all teach one or more academic courses within the school's rigorous academic program. The Board has held that regularly-scheduled part-time employees are public employees within the meaning of the Act and they may be included in the same bargaining unit with full-time employees, provided they all share the requisite community of interest. Bargaining units comprised of both types of employees are not uncommon.

When the public employer and the employee organization seeking to represent a group of employees are unable to agree on the classifications that will constitute an appropriate bargaining unit, either party can petition the Maine Labor Relations Board to determine the bargaining unit. In the instant case, the MEA has petitioned for the creation of a bargaining unit consisting of the full- and 2/3-time Instructors at MSSM. MSSM has taken the position that all of the non-supervisory academic faculty, both full-time Instructors and Adjunct Instructors, should be included in the bargaining unit.

A bargaining unit is a group of employee classifications which will negotiate together as a group with their employer over their wages, hours, working conditions, and contract grievance arbitration provisions. In order to constitute an appropriate grouping, the Act seeks to avoid internal conflicts of interest that could interfere with collective bargaining and requires that the classifications included in the bargaining unit share a clear and identifiable community of interest. In weighing whether the requisite community of interest exists, the hearing officer must consider the following factors: (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) desires of the affected employees; (10) extent of union organization; and (11) the employer's organizational structure. Chapter 11, § 22(3) of the Board's Rules. It is not unusual to have some factors weigh one way and some go the other way, and not all factors carry equal weight in every situation.

The facts relating to the following factors support a conclusion that all of the academic Instructors share the requisite community of interest. The labor relations policies covering all of them are determined by the MSSM Board of Trustees and are memorialized in the Faculty Handbook. Historically, all faculty members have been supervised by the Dean of Faculty and their respective Department Chair, using the same evaluation system. In practice, the assessment process has been intermittent and not every full-time Instructor or Adjunct

Instructor has been evaluated each year. All faculty members work under one-year agreements, which may or may not be renewed, and all are provided notification of reasonable assurances of employment for the next school year during the February time frame. All faculty members are eligible for the MSSM meal plan. MSSM has the same qualification preference that all faculty members possess at least a master's degree in their academic discipline and have prior teaching experience. They all work in the same classrooms on the MSSM campus in Limestone. None of them has had any involvement in collective bargaining as employees of MSSM. Finally, the faculty comprises the core element of the employer's organizational structure.

Statutory benefits, including workers compensation and unemployment coverage and participation in a retirement plan through the Maine Public Employees Retirement System, are required by law; therefore, such benefits do not militate either for inclusion in or exclusion from any bargaining unit. There was no direct evidence regarding the desires of MSSM employees regarding bargaining unit configuration and, by agreement of the parties, that factor was not considered in this determination.

The factors discussed below support the conclusion that the full-time Instructors do not share a clear and identifiable community of interest with the Adjunct Instructors. The primary function of each member of the academic faculty is teaching students; however, the fundamental nature of the full-time Instructors' employment is very different from that of the Adjunct Instructors. In addition to teaching a normal load of three lab science courses or four non-lab mathematics or humanities courses each semester, each full-time Instructor must engage in several activities, as a condition of employment and

unless expressly excused by contract. These latter responsibilities include: 1) having an advisory group of students, with whom they meet as a group or one-on-one, as required to meet the needs of the individual advisees; 2) holding at least three scheduled office hours per week; 3) attending all faculty, team and department meetings, during which Instructors work collegially, recommending modifications to academic policies, procedures, programs and courses; 4) attending one-day faculty workshops three times per year--before the fall semester, at the end of the spring semester, and following graduation; 5) attending at least some activities during move-in weekend; 6) attending the Parent Conference Weekend in the fall semester and Parents' Weekend in the spring semester, both of which consist of Friday afternoon and evening and Saturday day-long activities, including scheduled meetings with parents; and 7) advising at least one extracurricular activity or coaching at least one sport. The Adjunct Instructors' only responsibility as a condition of employment is to teach one or two courses per semester. The Adjunct Instructors may take on additional duties for additional compensation, but are not required to do so.

Historically, the Adjunct Instructors have been evaluated by the same people using the same process as the full-time Instructors; however, for the 2016-2017 academic year, MSSM introduced a pilot program requiring full-time Instructors to compile a course portfolio, which includes course syllabus and plan, student evaluation reflection, and professional development activities. Adjunct Instructors were not required to compile a course portfolio, resulting in a far more comprehensive and time-consuming evaluation process for the full-time Instructors.



The scale and manner of determining earnings are different for the two groups. The full-time Instructors are compensated pursuant to a standardized pay scale which is based on the individual's years of experience and level of education. Sample annual salaries in the record range from \$45,400 to \$57,850. The Adjunct Instructors are compensated on a "per course" basis of approximately \$7,400 per year-long course. Full-time Instructors who work an entire school year are paid through 26 biweekly payments and Adjunct Instructors who work an entire school year receive their pay through 21 biweekly payments.

The employment benefits, hours of work, and other terms and conditions of employment of the two groups are also different. The most significant employment benefit for most people is employer-sponsored group health insurance. Full-time Instructors are eligible to participate in the school's group health insurance; part-time and Adjunct Instructors are not eligible to participate. The premium for full-time Instructors who opt for individual employee coverage is 90% paid by MSSM and 10% paid by the employee, with different premium splits, depending on the type of dependent coverage sought. All full-time Instructors are eligible for on-campus housing; Adjunct Instructors are not unless they become eligible in certain situations, such as in conjunction with additional Residential Life duties. Full-time Instructors earn sick leave at the rate of one day per month and can accumulate up to 120 days. Part-time and Adjunct Instructors earn sick leave with the rate of accumulation pro-rated, based on the number of classes each teaches.

Commensurate with the wider variety and more intensive nature of their required professional activities, the full-time

Instructors work many more hours over the course of a semester or school year than do their Adjunct Instructor colleagues. Full-time mathematics and humanities Instructors teach four courses, with each course involving four hours of instruction each week, and full-time science Instructors teach three lab courses, with each course involving six hours of instruction each week. When mandatory office hours are considered, the full-time Instructors have a minimum of 19 to 21 scheduled work hours each week, not including the time commitment for their other required activities. In contrast, the number of hours of classroom instruction hours per week by the Adjunct Instructors is well under 10.

Most professional contact or interchange among the faculty occurs at faculty, team and department meetings and workshops, during which Instructors recommend modifications to academic policies, procedures, programs and courses. While Adjunct Instructors are invited to attend and participate in these meetings, only a few of the Adjunct Instructors attend.

Finally, the petitioning employee organization seeks to represent a bargaining unit consisting only of the full- and 2/3-time Instructors and excluding the Adjunct Instructors.

In conclusion, the factors establishing that the full-time Instructors do not share a clear and identifiable community of interest with the Adjunct Instructors are qualitatively more significant than those suggesting the alternate conclusion. While the Adjunct Instructors are important in filling out the school's academic curriculum, the full-time Instructors are intimately involved in all facets of the MSSM experience. Serving as a full-time Instructor at MSSM is an immersive experience, as evidenced by the extensive list of activities

that full-time Instructors are expected to perform. Not only do the Instructors teach a full course load, but they are very involved in the students' life at MSSM through their advisory commitment, their facilitating at least one extracurricular activity, and their participation in the several events involving the students' parents. MSSM encourages further student-faculty interaction by making on-campus housing available to the full-time faculty. The full-time Instructors are also involved in peer reviews and have an active role in MSSM's continual improvement process. MSSM recognizes both the high quality and commitment of the full-time faculty through a salary schedule that bases annual compensation on one's level of experience and academic achievement.

There are significant differences between the full-time Instructors and the Adjunct Instructors, particularly in the nature and scope of their respective professional responsibilities, the minimum time each is expected to work throughout the academic year, their respective compensation and benefits (especially employer-sponsored group health insurance), and in the level of professional contact or interchange between members of the two groups. These differences would reasonably be expected to result in each group pursuing different and competing objectives in the collective bargaining process.

The final question presented concerns the unit placement of the 2/3-time Instructor. MSSM created this position in June, 2016, for the 2016-2017 School Fiscal Year. While the rationale for MSSM's treatment of this position is not found in the record, what is apparent is that they decided to treat this position more like their full-time Instructors than the Adjunct Instructors. The duties of the position include teaching two

chemistry lab courses, having an advisory group of students, and holding regular office hours. Rather than being remunerated on a per-course basis, the salary for the position was based on the regular pay scale, considering the individual's prior public school and community college teaching experience, pro-rated to reflect that the educator would be teaching two lab courses, rather than the full load of three such courses. Just as with the full-time Instructors, the 2/3-time Instructor did not receive additional compensation for the additional duties; performance of such duties being expected aspects of employment for full-time Instructors and, consequently, included in the normal pay scale. The 2/3-time Instructor is paid through 26 biweekly pay periods like the full-time Instructors. The 2/3-time Instructor was offered the opportunity to live on campus rent-free. The minimum work time of the 2/3-time Instructor (15 hours per week during the academic year) is considerably greater than that of the Adjunct Instructors. The individual contract of employment for the position is designated as "3 Year Probationary Instructor Contract Fiscal Year 2016-2017" and only the full-time Instructors serve a probationary period. Finally, the petitioning employee organization seeks to represent the position in the bargaining unit. For all of these reasons, I conclude that the 2/3-time Instructor shares the requisite community of interest with the full-time Instructors and will be included in the bargaining unit.

#### CONCLUSION

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. § 966, the hearing examiner ORDERS:

1. The petition for unit determination brought by the Maine Education Association as clarified herein is

granted.

2. The Instructors employed by the Maine School of Science and Mathematics, including the Instructors, Instructor/Department Head - Humanities, Instructor/Department Head - Mathematics, Instructor/Department Head - Science, and 2/3-time Chemistry Instructor, share a clear and identifiable community of interest, as required in 26 M.R.S. § 966(2), and constitute an appropriate bargaining unit within the meaning of 26 M.R.S. § 966(1).
3. Excluded from the above-described bargaining unit are the Instructor/Dean of the Faculty, the Adjunct Instructors, and all other employees of the Maine School of Science and Mathematics.
4. A representation election for the Maine School of Science and Mathematics Instructors bargaining unit should be scheduled in the normal course of the Board's business.

Dated at Augusta, Maine, this 16<sup>th</sup> day of June 2017

MAINE LABOR RELATIONS BOARD

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Marc P. Ayotte  
Executive Director

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 date of the issuance of this report. See Chapter 10 and Chapter 11 § 30 of the Board Rules.