

_____)	
INTERNATIONAL ASSOCIATION OF)	
MACHINISTS AND AEROSPACE WORKERS)	
)	
Petitioner,)	
)	
And)	UNIT DETERMINATION REPORT
)	FOR OBJECTIONS TO
)	MAJORITY SIGN-UP PETITION
)	
TOWN OF WINTHROP)	
)	
Employer.)	
_____)	

I. Statement of the Case

On March 26, 2024, the International Association of Machinists and Aerospace Workers (Union) filed with the Maine Labor Relations Board (Board or MLRB) a petition for majority sign-up. Through the petition, the Union originally sought to represent a proposed bargaining unit composed of the following Town of Winthrop (Town) employee positions:

Assistant EMS Director, Code Enforcement Officer, Finance Director, Police Lieutenant, Public Works Supervisor, Town Clerk, Town Planner, and Transfer Station Supervisor.

The Town filed objections to the petition asserting the proposed unit lacked a community of interest, that the Town Clerk, Code Enforcement Officer, Finance Director, and Town Planner are department heads ineligible for bargaining unit inclusion, and that the Finance Director, Assistant EMS Director, and Police Lieutenant are confidential employees also ineligible for bargaining unit inclusion.

On May 23, 2024, the undersigned Hearing Examiner conducted a hearing at which the parties introduced documentary and testimonial evidence into the record to address the question of whether the proposed unit is appropriate for bargaining and whether certain employees must be excluded from the unit as described above. The Union and Town filed post-hearing briefs.

Following the hearing, and in light of certain positions taken by the parties in their post-hearing briefs, the Union confirmed that it withdrew the positions of Assistant EMS Director and Police Lieutenant from the petition and the Town confirmed that it withdrew its objection that certain positions were department heads. As a result, this decision and order will address the remaining

objections, specifically (1) whether the Finance Director is a confidential employee as defined in 26 MRSA § 962(6)(C) and, (2) whether the employees of the proposed bargaining unit share a sufficient community of interest.

II. Facts

Finance Director's Involvement in Collective Bargaining

The Finance Director holds oversight authority for the Town's overall budget of approximately eleven million dollars. The then-incumbent Finance Director¹ testified at hearing that she participated on behalf of the Town in collective bargaining agreement negotiations in the preceding year with several of the Town's bargaining units. She characterized her attendance as limited to an informational role in that she would compute the fiscal impact of potential wage proposals. She indicated that she did not have any say over what the Town might offer as a wage proposal, she would only compute the amounts at issue for a proposal.

In relation to the Town's negotiation of several collective bargaining agreements in 2021 and 2022, the then-Finance Director testified that she did not remember sitting in on any executive sessions with Town leadership and counsel to discuss the Town's strategy for the negotiations. However, during that same 2021-2022 timeframe, the Finance Director confirmed she attended collective bargaining negotiations as a member of the Town's bargaining team for the respective law enforcement unit and general unit negotiations. For those negotiations, she sat in on meetings with the then-Town Manager and counsel which involved discussion of prospective proposals as well as mid-negotiation caucuses that addressed bargaining strategy. Generally, she characterized her attendance at these meetings as passive in that she would present information, typically cost of wage proposals, when asked.

In 2023, the then-Finance Director engaged in email correspondence with the Town Manager (and other Town management officials) which involved management's discussion of the EMS union's proposal to adjust retirement benefits. The emails indicate the Finance Director's participation generally involved contacting the Maine Public Employees Retirement System for related information and costing out the proposal.

In some contrast to the then-Finance Director's testimony, the Town Manager testified at hearing that the Finance Director is not only involved in the financial management of the Town but also helps set a strategy for the Town's finances. As an example, the Town Manager indicated the Finance Director actively guided the Town through review of the EMS unit retirement proposal to an option that would be palatable to both the EMS union and the Town. Additionally, the Town Manager indicated the Finance Director sat in on bargaining strategy meetings and caucuses during negotiations.

Proposed Bargaining Unit Employees²

Code Enforcement Officer

The Code Enforcement Officer is responsible for issuing building, plumbing and land use permits and for conducting related inspections to ensure compliance with the Town's zoning ordinance and related laws. On a daily basis, the Code Enforcement Officer generally works on

their own and typically engages in phone and email correspondence and works on permits and inspections and the related documentation. On an annual basis, the Code Enforcement Officer prepares and submits an annual budget for their position.

The Code Enforcement Officer is required to obtain and maintain a state certification for code enforcement officers which entails passing an examination as well as participating in continuing education. They are also a licensed plumbing inspector.

The Town Manager supervises the Code Enforcement Officer who does not have any supervisory responsibility of their own. The Code Enforcement Officer's work schedule is Monday-Friday, 8:00 a.m. to 4:30 p.m. and they work on the lower level of the Town's administrative building (Town Building) but may spend a significant amount of their workday on the road to conduct inspections.

The Town provides the Code Enforcement Officer a benefits package contained in the Town's personnel policy (Personnel Policy) that includes health and dental insurance, sick leave and two weeks of annual vacation leave, along with the ability to buy supplemental insurance for the employee or family members.

The Code Enforcement Officer is paid approximately \$67,000 annually. Historically, this position would have received a raise equivalent to the wage increases negotiated with the Town's various bargaining units. More recently, under the current Town Manager, the Town Manager compares the Code Enforcement Officer's salary to similar positions in other similarly situated municipalities using the Maine Municipal Survey. Depending on where the incumbent sits in relation to similarly situated officers from other municipalities, the incumbent could be eligible for a raise, or, if they are at the higher end of the salary spectrum, may receive no annual raise.

On a monthly basis, the Code Enforcement Officer participates in a monthly meeting (Leadership Meeting) with the Town Manager and certain other upper-level Town staff including, in part, the Town Clerk and Town Planner. On a daily basis, the Code Enforcement Officer has limited interaction with other members of the proposed bargaining unit which typically involves potentially seeing someone around the Town Building.

Public Works Supervisor

The Public Works Supervisor is the second-in-command, after the Public Works Director, of the Town's Public Works department. In this capacity, the Public Works Supervisor supervises and assists a crew of truck drivers and equipment operators in the maintenance of municipal streets, drainage systems, buildings and grounds. As required, they operate a Loader Sweeper truck in order to remove snow, sand streets, and assist in road construction. They also schedule, coordinate, and check the work of subordinates and assist the Public Works Director with administrative duties as necessary.

A review of the Public Works Supervisor position description indicates the qualifications and skills required for that position are generally related to public works operations and range from knowledge of construction methods and equipment to maintaining a productive work environment.

The Public Works Supervisor is supervised by the Public Works Director, who, in turn, reports to the Town Manager. It is unclear from the record what the annual salary of the Public Works Supervisor is, but it appears that their salary is subject to the evaluation process through which the Town Manager compares their salary to similarly situated employees of other municipalities to determine whether their salary should be adjusted.³

While not addressed with any specificity on the record, it appears the Public Works Supervisor derives the bulk of their employment benefits from the Personnel Policy. Additionally, they work out of the Town's Public Works garage and their hours are seasonal. During daylight savings, they work Monday through Thursday for ten hours per day and, outside of daylight savings, they work Monday through Friday, for eight hours per day. During storms they work extended hours either plowing or addressing storm-related public works issues. They do not participate in the monthly Leadership Meeting.

Town Clerk

The Town Clerk, who is supervised by the Town Manager, works in the Town Building and supervises two clerical employees. The Town Clerk's work schedule is 7:30 a.m. to 4:30 p.m., Monday through Friday.

Generally, the clerk's duties involve directing all activities of the office of the Town Clerk. More specifically, the clerk is responsible for preparing and maintaining all Council records and municipal documents, supervising Town elections, issuing Town licenses and permits. The position description for the Town Clerk indicates the incumbent should have considerable clerical experience as well as experience dealing with the public. They should also possess town clerk certification or be able to obtain such certification.

The Town Clerk's salary is approximately \$70,200 annually and is apparently subject to the evaluation process through which the Town Manager compares their salary to similarly situated employees of other municipalities to determine whether their salary should be adjusted. The Town Clerk derives the bulk of their employment benefits from the Personnel Policy, with the exception that the clerk negotiated with the Town Manager for additional vacation time apart from what is provided in the Personnel Policy.

Town Planner

According to the Town Planner's position description, the planner is responsible for delivering technical assistance to municipal officials, including the Town Council, Town Manager, Planning Board, Board of Zoning Appeals and the Comprehensive Plan Committee on land use, development, environmental and infrastructure topics. The qualifications for the Town Planner position include a four-year college degree, working knowledge of community and land use planning, grant writing experience, excellent communication skills and the potential for certification through the American Institute of Certified Planners. The Town Planner is also expected to participate in related continuing education classes.

The Town Planner is supervised by the Town Manager. Their work schedule is generally 10:00 a.m. to 6:00 p.m., but they also attend Town Council meetings in the evening on a regular basis.

They work in the Town Building three days a week and also work remotely from home for two days.

The Town Planner's salary is \$80,000 annually and is apparently subject to the evaluation process through which the Town Manager compares their salary to similarly situated employees of other municipalities to determine whether their salary should be adjusted. The Town Planner derives the bulk of their employment benefits from the Personnel Policy.

In terms of engagement with the other employees in the proposed unit, the Town Planner indicated she regularly engages with the Code Enforcement Officer, rarely engages with the Town Clerk, and has not engaged with either the Transfer Station Manager or Public Works Supervisor (but could wind up asking for information from Public Works in relation to any subdivision applications filed with the Town).

At hearing, the Town Planner indicated she did not want to be part of the proposed bargaining unit or otherwise represented by the Union.

Transfer Station Supervisor

The Transfer Station Supervisor is responsible for supervising the operation of the Town's transfer station. In this capacity, the Transfer Station Supervisor assists with performance reviews, oversees the work of the transfer station to ensure it is completed properly, assists the Public Works Supervisor with administrative activities as necessary, and maintains a record of operations. They engage with the public in a variety of ways including providing guidance in the correct removal of waste and ensuring the correct calculation of related fees.

A review of the Transfer Station Supervisor's position description indicates this position requires the incumbent to have working knowledge of solid waste rules with the ability to apply the Town's transfer stations manual to everyday operations. Additionally, the incumbent should have public relations, math, and organization skills with at least a high school diploma and preferably some previous transfer station experience.

The Transfer Station Supervisor is supervised by the Public Works Director. Like the Public Works Supervisor, it is unclear from the record what the annual salary of the Transfer Station Supervisor is, but it appears that their salary is subject to the evaluation process through which the Town Manager compares their salary to similarly situated employees of other municipalities to determine whether their salary should be adjusted. Likewise, it appears the Transfer Station Supervisor derives the bulk of their employment benefits from the Personnel Policy.

The Transfer Station Supervisor works out of the Town's transfer station which is located approximately three miles from the Town Building and has limited contact with the other employees in the proposed bargaining unit. Their hours of work are 7:00 a.m. to 4:00 p.m., Tuesday through Saturday. They do not participate in the monthly Leadership Meeting.

III. Analysis and Conclusions

a. The Finance Director is a Confidential Employee Who is Ineligible for Bargaining Unit Inclusion.

Under the Municipal Public Employees Labor Relations Law, public employees have the right, in part, to form, join, or participate in a labor organization for the purposes of collective bargaining. See 26 MRSA § 963(1). Notably, the law excludes from the definition of public employee those individuals whose duties necessarily imply a confidential relationship to the executive head or body of a public employer. See 26 MRSA § 962(6)(C). However, the Board has indicated that such exceptions must be construed narrowly so as to effectuate the public policy in favor of providing public employees the right to collectively bargain. *Town of Topsham and Local S/89 District Lodge #4, IAMAW*, No. [02-UCA-01](#), slip op. at 12 (August 29, 2002).

The purpose of the confidential employee exception is to avoid a conflict between an employee's duty to their employer and loyalty to fellow employees. *AFSCME Council 93 and Town of Sanford*, [92-UD-03](#) at 36 (February 21, 1992) (*AFSCME and Town of Sanford*). More specifically, the confidential employee exception addresses the potential risk of an employee's disclosure of their employer's confidential bargaining strategy to a bargaining agent which would provide the bargaining agent with unfair leverage in negotiations. *Id.* at 36-37 quoting *Town of Fairfield and Teamsters Local Union No. 48*, [No. 78-A-08](#), slip op. at 3 (November 30, 1978); see also *Maine State Employees Association and County of York*, No. [04-UD-04](#) at 22 (March 30, 2004).

The Board and hearing examiners have relied upon a variety of factors to determine if an individual should be considered a confidential employee. These factors include:

- Permanent assignment to collective bargaining,
- Rendering advice on a regular basis to management personnel on labor relations matters,
- Job duties involve a labor relations nexus above and beyond contract administration,
- As inherent part of job duties, employee has access to employer's bargaining positions, before that information is disclosed at the bargaining table, and
- Assists and acts in a confidential capacity with positions who formulate or determine the employer's bargaining position or strategy.

See *Teamsters Local Union No. 340 and MSAD 27*, No. [15-UD-03](#) at 3-4 (August 17, 2015); *AFSCME Council 93 and Town of Readfield*, No. [14-UD-05](#) at 9 (September 19, 2014); *Sanford School Committee and Central Office Staff EA*, Nos. [12-UDA-01](#) & [12-UCA-01](#) at 5-6 (May 24, 2012) at 5-6; *AFSCME and Town of Sanford*, No. [92-UD-03](#) at 36.

Regarding the factor of an employee's involvement in labor relations matters, as referenced above, the confidential exception does not apply to the administration of a collective bargaining agreement, e.g. the processing of a contractual grievance, but rather "the strategic and tactical considerations involved in negotiating collective bargaining agreements." *AFSCME and Town of Sanford*, No. [92-UD-03](#) at 37 quoting *State of Maine and MSEA*, No. [82-A-02](#) at 10 (June 2,

1983); see also *Maine Maritime Academy and MSEA*, No. [03-UC-02](#) at 18-19 (January 21, 2003). Likewise, an “information provider” is not considered a confidential employee. *Teamsters Local Union No. 340 and Town of Boothbay Harbor*, Nos. [99-UD-03](#) and [99-UD-05](#) at 24 (January 20, 1999); see also *State of Maine and MSEA*, No. [78-A-09](#) at 8 (March 2, 1979) (employees not regularly assigned to collective bargaining and who do not participate in bargaining strategy meetings, but who occasionally provide management with information related to collective bargaining, do not qualify as confidential employees).

Here, the available evidence indicates the Finance Director qualifies as a confidential employee. First, the Finance Director appears to be permanently assigned to collective bargaining in that they consistently participate on the Town’s bargaining team during negotiations of collective bargaining agreements for the Town’s various bargaining units. Second, the record also indicates the Finance Director’s participation on the bargaining team is an inherent part of their job duties because they hold direct oversight of the Town’s budget and are presumably in a position to provide accurate review, or at least calculation, of wage or retirement proposals. Third, and perhaps most determinative, the Finance Director, through their consistent participation on the bargaining team, regularly attends meetings in which the Town Manager and counsel discuss bargaining strategy. This includes the Town’s discussion of prospective proposals as well as mid-bargaining caucuses.

While the then-Finance Director described her role at those meetings as limited to providing the costs of proposals, that does not negate the fact that she was present while the Town discussed its bargaining strategy. In other words, the Finance Director, as an inherent part of their duties, has access to the Town’s bargaining positions before they are disclosed at the bargaining table. This access goes to the root of the existence of the confidential employee exception, i.e. the potential risk of disclosure of the public employer’s bargaining positions. It also therefore requires the exclusion of the Finance Director from the proposed bargaining unit.⁴ *Portland Administrative Employees Ass’n and Portland Superintending School Committee*, [No. 86-14](#) at 14-16 (October 27, 1986) (employee with regular access to employer’s confidential bargaining information considered a confidential employee).

b. The Remaining Positions Share a Sufficient Community of Interest.

The Municipal Public Employees Labor Relations Law permits a union to file a petition for majority sign-up through which that union can be certified as the bargaining agent for an unrepresented group of employees based on a majority of those employees authorizing the union to serve in that capacity. See 26 MRSA § 967(1-A). Where a majority sign-up petition likely involves the establishment of a new bargaining unit, it is also considered a petition for unit determination. See Chapter 11, § 1(1-A) of the MLRB Procedural Rules (Rules). In turn, an employer’s response to a majority sign-up petition may include a challenge as to whether the petitioned-for bargaining unit is appropriate for collective bargaining. See Chapter 11, § 12-A(2)(D) of the Rules.

When deciding whether a group of employees constitutes an appropriate bargaining unit, the decision should ensure the employees at issue have the fullest freedom in exercising their rights provided by the Municipal Public Employees Labor Relations Law and that a community of

interest exists amongst the employees. 26 MRSA § 966(2); see also *Granite City Employees Association and City of Hallowell*, No. [01-UD-04](#) at 33 (May 23, 2001) citing *Lewiston Firefighters Ass'n, Local 785, IAFF, and City of Lewiston*, [354 A.2d 154](#), 160 (Me. 1976) (fundamental purposes of the law are to protect employees' right to self-organization and promote the voluntary adjustment of their terms of employment). To determine whether a community of interest exists between certain employees, the Board applies eleven well-established criteria. See Chapter 11, § 22(3) of the Rules. In this case, where the Town has objected to the Union's petition by asserting, in part, that the proposed unit lacks a community of interest, this decision will review each of the established criteria in relation to the employees still at issue.

- **Similarity in Work**

When reviewing similarity of work, a critical focus is on the essence of a position, i.e. the basic type of functions performed, rather than the details of a position's work responsibilities. *MSAD 29* at 15 quoting *Auburn Education Ass'n and Auburn School Comm.*, No. [91-UD-03](#) at 11 (February 27, 1991). Here, the essence of the positions could be fairly viewed in a number of ways. In favor of the Union's perspective are that the positions are all upper-level management that either supervise or effectuate a number of the Town's core functions. Moreover, these positions generally entail some level of document preparation and record keeping, although some more than others. On the other hand, it is reasonable to acknowledge that, for example, the Public Works Supervisor, who is directly involved in work that requires physical labor, engages in work that is fundamentally distinct from that of the Town Planner or Town Clerk.

While the essence of the positions may be arguably distinct, that is not necessarily determinative as to whether the proposed unit is ultimately appropriate for bargaining. In effect, the petition at issue is requesting a supervisory wall-to-wall bargaining unit. In previous instances of proposed wall-to-wall units, the Board has approved bargaining units that include dissimilar positions, depending on a review of the other community of interest factors. *Granite City Employees Association and City of Hallowell*, No. [01-UD-04](#) at 35-37.

- **Common Supervision and Labor Relations Policy**

Three of the five employees at issue share the Town Manager as their direct supervisor. The other two employees have an identical supervisory chain-of-command composed of the Public Works Director as their direct supervisor, with the director reporting to the Town Manager. Given the general overlap of supervision, this factor supports a finding of a community of interest.

- **Similarity in Scale and Manner of Determining Earnings**

The evidence indicates a similar scale and manner of determining earnings. In terms of scale, while the record did not include the salaries of either the Public Works Supervisor or the Transfer Station Supervisor, the remaining three employees share a salary range of \$67,000 to \$80,000, a not unreasonable range. Additionally, the Town Manager indicated a generally consistent method of determining each employee's salary through comparison of similarly situated employees in other municipalities. Even if the Public Works Supervisor and the Transfer Station Supervisor earn a salary outside the range described above, there is still

sufficient commonality for this factor given the Town Manager's consistent process for determining salaries.

- **Similarity in Employment Benefits, Hours of Work, and other Terms and Conditions of Employment**

The employees here share nearly identical employment benefits where they all derive the bulk of their benefits from the Personnel Policy. While one employee negotiated additional vacation time, that, by itself, is not sufficient to undermine the fundamental commonality of the proposed unit's employment benefits.

In terms of hours of work, there was a slightly broader range in that four of the five employees work Monday through Friday with a variety of start times, most of which generally tracked the core business hours of 8:00 a.m. through 5:00 p.m. While there is not 100% uniformity, it is notable that, for a typical day, the employees generally work a regular business day of hours with the exception of the Town Planner who regularly attends Town Council meetings in the evenings and the Public Works Supervisor who may more sporadically work extended hours to address the impact of storms. Overall, due to the near-identical employment benefits and the general commonality of work schedules, this factor supports a community of interest. *Granite City Employees Association and City of Hallowell*, No. [01-UD-04](#) at 38.

- **Similarity in Qualifications, Skills, Training**

The record indicates a lack of uniformity in terms of the qualifications, skills, and training for each of the positions at issue. As noted by a previous hearing examiner, this is not terribly surprising given the nature of a wall-to-wall unit. *Granite City Employees Association and City of Hallowell*, No. [01-UD-04](#) at 38-39. Like the discussion of similarity of work, the fact that the employees in a proposed wall-to-wall unit have distinct qualifications, skills, and training may not be ultimately fatal to finding a sufficient community of interest after consideration of the other factors and the wishes of the employees. *Id.*

- **Frequency of Contact with other Bargaining Unit Employees**

Generally, the record indicates a limited amount of contact between the proposed bargaining unit employees with the exception of the Code Enforcement Officer and the Town Planner who engage with each other daily according to the planner. To a certain extent, the three employees who work in the Town Building presumably have some limited level of contact given their proximity to each other, however, there is very little indication of any substantive engagement between those employees and the Public Works Supervisor and Transfer Station Supervisor. As a result, this factor does not support a community of interest.

- **Geographic Proximity**

As noted above, three of the proposed bargaining unit employees work in close proximity to each other in the Town Building although one of those three employees, the Code Enforcement Officer, is often on the road. While the record indicates the Transfer Station Supervisor works approximately three miles away, that does not appear such a significant impediment in relation to the potential of negotiating collective bargaining terms. *AFSCME Council 93 and Town of Readfield*, No. [14-UD-05](#) at 17. Accordingly, this factor suggests a community of interest.

- **History of Collective Bargaining**

This factor is inapplicable to the proposed creation of a new bargaining unit and, therefore, neither supports nor undermines a finding of community of interest.

- **Desires of the Affected Employees**

At hearing, one of the five employees at issue in the proposed unit, the Town Planner, testified that she did not wish to be part of the unit or represented by the Union. Apart from the Town Planner there was no direct testimony indicating any employee did not want Union representation. Significantly, three of the five employees from the proposed unit signed cards in which they authorized the Union to serve as their bargaining representative. In light of the number of signed cards in relation to the overall number of proposed bargaining unit employees, this factor supports a finding of community of interest.

- **Extent of Union Organization**

The Town has a number of other organized bargaining units. As noted, the petition at hand seeks to certify a bargaining agent for an unrepresented group of employees. To the extent that union organization has occurred for those employees, it is reflected in the fact that a majority of employees from the proposed unit, as described in the preceding paragraph, authorized the Union to serve as their bargaining representative. *Granite City Employees Association and City of Hallowell*, No. [01-UD-04](#) at 40. In turn, this factor supports a community of interest.

- **Employer's Organizational Structure**

The record indicates the proposed wall-to-wall bargaining unit is not necessarily contained in one discrete component of the Town's organizational structure. Foremost, where the proposed unit includes employees who are effectively upper-level managers or supervisors, it is logical that their positions could fall in different areas of Town functions. Similarly, as noted by the Town Manager's testimony, several of the employees supervise members of separate bargaining units. On the other hand, there are indications that the Town's organizational structure would not serve as an ultimate barrier to effective collective bargaining for the proposed unit. In particular, the Town applies consistent employment benefits and salary analysis to the proposed unit employees without apparent, significant difficulty. As a result, this factor neither supports nor undermines a finding of community of interest.

- **Summary**

Overall, the weight of the evidence supports a finding that the proposed bargaining unit shares a sufficient community of interest. While the positions vary in specific duties and qualifications, the Town is nonetheless able to apply a common foundation of employment benefits, determination of salary, and consolidated supervisory structure for a group of employees who work in relatively close proximity. Also significant, a majority of the employees authorized the Union to serve as their bargaining agent. The finding of an existing community of interest for this wall-to-wall supervisory unit is therefore consistent with the Board's role to provide employees the right to organize. Without a shared unit here, employees who would otherwise be eligible, by a majority determination, to engage in collective bargaining would be deprived of that right.⁵

IV. Order

For the foregoing reasons, the undersigned ORDERS that the petition in case no. 24-UD-01 be, and hereby is, DISMISSED in part, and is GRANTED in part. Specifically, the portion of the petition requesting the inclusion of the Finance Director in the proposed bargaining unit is DISMISSED.

As to the remainder, the portion of the petition requesting the creation of a bargaining unit composed of the Code Enforcement Officer, Public Works Supervisor, Town Clerk, Town Planner, and Transfer Station Supervisor is GRANTED. Moreover, a review of the authorization cards submitted along with the petition indicates that a majority of the employees in that proposed unit authorized the Union to serve as their agent for collective bargaining. As a result, the Union is certified as the bargaining agent for the bargaining unit described below:

Included: Code Enforcement Officer, Public Works Supervisor, Town Clerk, Town Planner, and Transfer Station Supervisor.

Excluded: All other employees of the Town of Winthrop.

V. Right to Appeal

The parties are hereby advised of their right, pursuant to 26 M.R.S.A. § 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 MLRB within fifteen (15) days of the date of the issuance of this report. See Chapter 10 and Chapter 11, § 30 of the MLRB Rules.

Dated this 22nd day of August 2024

/s/

Neil P. Daly
Executive Director

¹ The then-Finance Director testified she was leaving employment with the Town shortly after the hearing.

² As explained in the analysis portion of this report, the Finance Director is a confidential employee who is excluded from the proposed bargaining unit. Given this exclusion, the report will not address the facts of the Finance Director's working conditions as they relate to the community of interest criteria as those facts are not determinative of the Finance Director's membership in the unit or whether such a unit should exist.

³ The Town Manager's testimony regarding his comparison of the compensation of similarly situated employees in other municipalities did not indicate he only applied this evaluation to certain employees at issue in this petition. Instead, it appears this evaluation/comparison is consistently undertaken for the employees at issue here.

⁴ The designation of the Finance Director as a confidential employee is consistent with the Board's preference that employers centralize confidential functions, to the maximum extent practicable. *Teamsters Local Union No. 340 and Town of Fairfield*, No. [03-UC-04](#) at 10 (October 29, 2003). As noted above, the Finance Director has direct oversight over the Town's budget and appears best situated to provide accurate information to the Town as it considers the fiscal impact of bargaining proposals.

⁵ This decision is also consistent with the well-established guidance that the duty of a hearing examiner “is to determine whether the unit proposed by the petitioner is an appropriate one, not whether the unit is the most appropriate unit.” *Town of Yarmouth and Teamsters Local Union No. 48*, No. [80-A-04](#) at 4 (June 16, 1980).