

MAINE LABOR RELATIONS BOARD

Case No. 24-UD-02

Issued: October 11, 2024

KENNEBUNK, ARUNDEL, AND  
KENNEBUNKPORT EDUCATORS'  
ASSOCIATION

Petitioner,

And

RSU 21

Respondent.

# UNIT DETERMINATION REPORT FOR OBJECTION TO ELECTION PETITION

## I. Statement of the Case

On June 17, 2024, the Kennebunk, Arundel, and Kennebunkport Educators' Association (Union or KAKEA) filed with the Maine Labor Relations Board (Board or MLRB) a petition for an election to add the positions of Athletic Trainer and Board-Certified Behavioral Analyst to an existing unit of certain RSU 21 (School District or District) employees currently represented by the Union. While the School District did not object to the potential inclusion of the Board-Certified Behavioral Analyst in the existing unit, it did assert that the position of Athletic Trainer lacks a community of interest with that bargaining unit.

On August 21, 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 Athletic Trainer shares a sufficient community of interest with the existing bargaining unit represented by the Union. The Union and School District filed post-hearing briefs.

As set forth below, the record indicates a sufficient community of interest exists between the Athletic Trainer position and the remainder of the Union's bargaining unit such that an election will be conducted to determine whether the Athletic Trainers and the Board-Certified Behavioral Analyst wish to ultimately join the Union's existing bargaining unit.

## **II. Facts**

### **Stipulated Facts**

Prior to the hearing, the parties stipulated to certain facts for the record, as follows:

- 1) There are two current athletic trainers currently employed by RSU 21- one trainer and one assistant trainer. They are both employed full-time.
- 2) RSU 21 is a school administrative unit providing education to students in the Towns of Arundel, Kennebunk and Kennebunkport. There are six schools in the District: Mildred Day Elementary School; Kennebunk Consolidated Elementary School; Kennebunk Elementary School; Sea Road Elementary School; Middle School of the Kennebunks; and the Kennebunk High School.
- 3) The lines of supervision for the positions in the KAKEA and for the athletic trainers are different. The KAKEA unit employees are all, at least in part, supervised by the educational administrators--the building Principals or the Director of Special Services--who in turn report directly to the Assistant Superintendent and Superintendent of Schools. The athletic trainers are supervised by a non-academic administrator, the Athletic Director, who in turn reports to the Assistant Superintendent and Superintendent of Schools. Both employees serving in the athletic trainer role are supervised by the Athletic Director, Joe Schwartzman, who oversees the Athletic Department.
- 4) The athletic trainers provide support to the District's non-academic athletics program. The athletic trainers focus on the prevention, assessment and treatment / rehabilitation of sports related injuries for the portion of the student population who participate in the RSU 21 sports programs. They review preparticipation sports physical forms and note changes in medical history. The work of the athletic trainers includes, but is not limited to, treating strains, sprains, concussions, and other sports-related injuries as needed. Their work also includes implementing individualized health plans for athletes with significant health concerns including diabetes, epilepsy, and hemophiliacs. They also are responsible for monitoring weather like lightning, cold, and heat related issues. They are prepared to manage as many emergencies as possible like heat exhaustion, cardiac arrest, and drug overdoses. Athletic trainers have 15 days to assess and treat injuries within the scope of their practice prior to referring a student out to an appropriately credentialed health care professional.
- 5) The athletic trainers generally work independently but do work closely with and support athletic coaches, the athletic director, and those students who participate in athletics as part of the RSU 21 extracurricular program. Athletic trainers may refer a student to the school nurse when a student's condition falls under the expertise of the nurse, and the school nurse may refer a student to the athletic trainer when the student's condition falls under the expertise of the athletic trainer.
- 6) The athletic trainers are itinerant and perform their responsibilities both on RSU 21 properties and off RSU 21 properties. They perform work in the training room that is

adjacent to the gymnasium in the High School. They also spend a considerable amount of their time on the sports fields / courts / ice arenas for both home and away contests.

- 7) The work year for members of the KAKEA unit revolves around the student academic calendar. For 2024-2025, the student instructional year commences during the first week in September. Professional development days for professional staff in the KAKEA unit are planned for August 26 and 27. The athletic trainers are not expected to attend these professional days due to scheduled sports matches. Although KAKEA members are professional, salaried employees and may work as needed outside of regular school hours, KAKEA unit members are not expected to attend to their responsibilities at school or any particular location on weekends, evenings, or during holidays / vacations weeks. The last student day of the 2024-2025 school year is anticipated to be June 17.
- 8) The work year for athletic trainers is dictated by the sports schedule as opposed to the academic calendar. The trainers need to be present for preseason practices and scrimmages in August, which commences on or about August 15. During preseason, the trainers generally work Monday through Saturday, based on team practice schedules. One trainer will generally work 6 a.m. to 2 p.m. and the other will generally work 1 p.m. to 7:30 p.m., again depending on the team practice, scrimmage or training schedules.
- 9) Once school begins in September, the athletic trainers generally work Monday through Saturday and are expected to work on holidays and during school vacation weeks depending on the sports schedules. Due to extended sports seasons, the trainers work throughout the December, February and April breaks. One trainer will generally work 11 a.m. to 8:30 p.m. and the other will generally work 2 p.m. to 8:30 p.m. (although this is often later in the fall season due to the required documentation and later during the winter season due to hockey games that can begin as late as 8 p.m.) The trainers will stay until practices / games have concluded and all students have left.
- 10) During the 2023-2024 year, the athletic trainers commenced their work year on August 14. During the 2024-2025 year, the athletic trainers were working on August 13, 2024.
- 11) Athletic trainers are not certified or licensed by the Maine Department of Education. Rather, they are licensed by a separate state agency, the Department of Professional and Financial Regulation. Under Title 32, to qualify for a license as an athletic trainer "...an applicant must: (A.) Demonstrate that the applicant is trustworthy and competent to engage in practice as an athletic trainer in a manner that safeguards the interests of the public; (B.) Be a graduate of a college or university approved by the department and have successfully completed that college's or university's curriculum in athletic training or other curricula acceptable to the department and have completed an athletic training education program approved by the National Athletic Trainers' Association or its successor or other organization approved by the department or a program of practical training in athletic training acceptable to the department; and (C.) Have passed the National Athletic Trainers' Association Board of Certification examination or be currently certified by the National Athletic Trainers' Association or its successor or other organization approved by the department."

- 12) In regard to terms and conditions of employment:
- a) The athletic trainers are paid with reference to the KAKEA unit salary scale. They also are offered insurance benefits that other staff receive, including the Superintendent, Assistant Superintendent, Director of Human Resources, school administrators and members of the KAKEA unit.
  - b) The KAKEA unit has a grievance procedure that culminates in binding arbitration. The athletic trainers do not have a grievance procedure at this time.
  - c) Non probationary members of the KAKEA unit have just cause employment protection; the athletic trainers do not.
  - d) Whereas KAKEA unit members have access to contractual benefits such as sabbatical leave, access to the sick bank pool, and retirement benefits, the athletic trainers do not have such contractual benefits.
- 13) The positions at issue are in separate divisions of the Employer's organizational structure. The athletic trainers are in the Athletic Department under the Direction of the Athletic Director. The KAKEA unit employees are all in the educational / academic division under the direct supervision of building administrators (principals) or Director of Special Services, and ultimately the Superintendent of Schools.
- 14) The KAKEA unit is a long-standing bargaining unit with a mature collective bargaining agreement dating back to the formation of RSU 21 on July 1, 2009. The athletic trainers have not been organized in the past; there is no history of collective bargaining for the athletic trainers.
- 15) The athletic trainers serve on the Concussion Management team together with the Athletic Director, one or more administrators, the school physician and the school nurse, as determined by the Superintendent of schools. The trainers attend one required annual training on concussions, which the school nurse also attends.

## **Facts from Hearing and Documentary Evidence**

### **Bargaining Units**

As reflected in the recognition clause of the most recent collective bargaining agreement between the Union and the School District, the Union's current bargaining unit is composed of the following positions: certified teachers, librarians, guidance counselors, nurses, and specialists including instructional strategists/integrators, social workers, speech and language pathologists, occupational therapists, physical therapists, and school psychologists.

Apart from the Union's bargaining unit, there are a total of four other bargaining units of School District employees including an administrators' unit, a custodial/maintenance unit, an educational technicians' unit, and a transportation unit.

In relation to the aforementioned administrators' unit, the School District's Athletic Director is a member of that bargaining unit. The Athletic Director testified at hearing that, from his perspective, his position does not "fit" with the other administrators' unit positions. In particular, the Athletic Director generally works longer hours than the other unit members which

includes being the only unit member expected to respond on a regular basis to texts and communications outside of the school day. Likewise, the Athletic Director testified that he regularly works on Saturdays and holidays for which he is not compensated.

### **Job Duties and Qualifications Established in Position Descriptions**

The School District maintains job descriptions for the positions currently included in the Union's bargaining unit as well as the athletic trainers. A summary of the responsibilities and qualifications described in each position description introduced into the record follows:

- **Athletic Trainer**

Trainers are responsible for the implementation of a comprehensive student athletic health care system which includes the recognition, evaluation, and immediate care of injuries and illnesses, and the rehabilitation and reconditioning of these injuries and illnesses. Trainers must have a National Athletic Trainers Association Board of Certification, a valid Maine State Athletic Trainers License, and a bachelor's degree.<sup>1</sup>

- **Teacher**

Classroom teachers are expected to be dynamic leaders, effective educators who deliver measurable results through high-quality and intentional instructional planning, curriculum design and delivery to improve student outcomes and transform students' lives. Teachers must possess a bachelor's degree or higher with a valid Maine teaching certificate in the appropriate subject area.

- **Nurse**

A school nurse delivers measurable results in advancing the well-being, academic success, and lifelong achievement and health of students by promoting the health and safety of students as well as a healthy environment, preventing illness and disability through early detection and treatment of health problems, and communicating and collaborating with families, school personnel, and community providers to meet the needs of students.<sup>2</sup> Nurses must possess a current license as a registered nurse, certification as a school nurse from the Maine Department of Education, a baccalaureate degree (or be enrolled in a baccalaureate program), and CPR certification.

- **School Counselor (Secondary)**

A school counselor delivers measurable results in helping students overcome problems that impede learning and to assist them in making educational, occupational, and life plans that hold promise for the students' personal fulfillment as mature and responsible members of the community. Counselors must possess a Maine certification and/or license in secondary school guidance as well as a master's degree with major study in guidance and/or counseling.

- **Occupational Therapist**

An occupational therapist delivers measurable results in assisting students in the achievement of maximal academic/physical function using appropriate occupational behaviors. Occupational therapists must possess a Maine certification and/or licensure as well as a bachelor's degree.

- Physical Therapist

A physical therapist delivers measurable results in assisting students in the achievement of maximal academic/physical function using appropriate occupational behaviors.<sup>3</sup> Physical therapists must possess a current license from the Maine Board of Physical Therapists.

- School Psychologist

The School Psychologist position referenced in the bargaining unit description apparently falls under two separate position descriptions, School Psychologist Specialist and School Psychological Provider, each of which is reviewed below.

School psychologist specialists deliver measurable results in providing psycho-educational evaluations for students referred to special education and those students in special education at RSU 21. They enable students exhibiting serious behavioral problems to be able to benefit from their education program and enhance the ability of regular/special education staff to program for students with serious behavioral problems. School psychologist specialists must be licensed as a psychologist in Maine or possess educational certification as Special Education Consultant or a School Psychological Services Provider, NASP certification or equivalent.

School psychological providers deliver measurable results by identifying, evaluating, and supporting students' academic, cognitive, social-emotional, mental and behavioral health by providing a thorough psychoeducational assessment for students referred to special education, as well as those students already in need of special education services. They help to identify, collect, and interpret data in order to identify strategies to improve student, classroom, and school outcomes. They conduct functional behavior assessments with the assistance of special and general education staff and assist special and general education staff in the development of a positive behavior intervention plan, with ongoing consultation as to the effectiveness of the plan. School psychological providers must be licensed as a Psychologist in Maine or an educational certification as a School Psychologist and have a master's degree with successful experience conducting cognitive and behavioral, functional/adaptive, and educational assessments.

- Instructional Strategist

Instructional strategists collaborate with teaching staff, administration, and district instructional strategists to provide high-quality educational experiences. Instructional strategists must possess at least a bachelor's degree and a valid Maine teaching certification or eligibility for endorsement.

- Speech and Language Pathologist

A speech and language pathologist delivers measurable results in screening, evaluating, treating and consulting with students to enable them to benefit from their educational program. Speech and language pathologists must possess a master's degree in communication disorders and a State of Maine Speech-Language Pathologist license.

- Social Worker

Social workers deliver measurable results in assisting in the development of student's personal,

emotional and social growth to enable them to benefit from their educational program. Social workers must possess a Maine certification as either an LMSW, LCSW, and/or a master's degree from an accredited school of social work.

### **Athletic Trainer and Bargaining Unit Working Conditions**

As stipulated by the parties, the Athletic Trainers annual work schedule is tied to the school sports calendar as compared to the academic calendar. As a result, the Athletic Trainers work from mid-August (when sports practices start) through just after the last championship game in the spring sports season. According to the School District's sports calendar for the 2023-2024 school year, the last regular season game did not occur until June 24.

Generally, as stipulated, the Union's bargaining unit employees only work during the academic year. As clarified at hearing, the school counselors for the high school also work for approximately ten days prior to the start of the school year to assist with scheduling.

As referenced in the stipulated facts, the Athletic Trainers' rate of pay is based, in part, on the Union's contractual pay scale. For example, prior to the start of the 2023-2024 school year, the School District provided a non-probationary Athletic Trainer with a document entitled "Notification of Annual Salary Rate" which indicates the Athletic Trainer would be paid at Step 29 of the salary schedule for employees with bachelor's degrees included in the Union – School District collective bargaining agreement. At hearing, an Athletic Trainer testified that she has been paid on the same scale as the Union's bargaining unit, or at least the same scale as the nurses, since 2010.

As stipulated by the parties, the Athletic Trainers work in the training room adjacent to the high school's gymnasium. As clarified at hearing, the trainers spend about half of their day in the training room and the other half attending practices or games, most typically at the athletic fields that are part of the high school's property. When one trainer is attending a practice or game, the other trainer works in the training room to ensure there is always coverage in the room.

In terms of performance evaluations, the record included an Athletic Trainer's annual review for the 2023-2024 school year. The Athletic Trainer is grouped with "Operations Staff" in terms of the framework applied to the evaluation process for those employees. The School District also introduced into the record a document entitled "Educator Performance Evaluation and Professional Growth System" which contains the frameworks by which certain Union bargaining unit employees are evaluated including teachers, librarians, school counselors, therapeutic specialists, nurses, and school psychologists. Generally, the educator performance evaluation frameworks appear more robust than the performance evaluation process applied to operations staff.

At hearing, one Athletic Trainer testified that she wanted to be represented by the Union. Additionally, at least one Athletic Trainer signed a showing of interest card that was filed with the Union's petition at issue.

### **Interaction Between Athletic Trainers and Union Bargaining Unit Members**

As clarified at hearing, Athletic Trainers interact with certain Union bargaining unit members in a number of ways. An Athletic Trainer testified that she and the high school nurse collaborate as often as weekly to the extent that their patients overlap, and they need to discuss specific treatment plans. In slight distinction, the high school nurse indicated she and the Athletic Trainers have some sort of overlap on essentially a daily basis. These overlaps range from direct communication about a shared patient to the nurse referring to a note from an athletic trainer regarding a concussed athlete's progress. Similarly, at the start of the school year, the high school nurse shares relevant medical information with the Athletic Trainers for student athletes with certain medical conditions, e.g. a student who needs access to an EpiPen. On a more limited basis, the Athletic Trainers may engage with a middle school nurse.

When a student athlete suffers a concussion, the Athletic Trainers serve as the point person for a concussion management team composed of the Athletic Trainer, the student's family or guardian, the student's physician, the student's school counselor, the school nurse, and a school administrator. The Athletic Trainer's role includes providing the team with guidance and recommendations as to the overall process as well as the specific steps necessary to return the student to full academic participation. Typically, the Athletic Trainer conveys this information on an ongoing basis in a written form to the school counselor who is responsible for distributing the information to the student's teachers. On occasion, a teacher may follow up directly with the Athletic Trainer for clarification on what restrictions may apply to a student.

Additionally, an Athletic Trainer testified at hearing that she has conducted up to four professional development trainings for RSU staff on concussion protocol over the last ten years, including two in the past year.

### **III. Analysis and Conclusions**

#### **a. The Athletic Trainers Share a Sufficient Community of Interest with the Other Members of the Union's Bargaining Unit.**

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). In turn, a union may file a petition, along with a showing of interest from certain unrepresented employees, to request an election to add the unrepresented employees to an existing bargaining unit currently represented by the union. E.g. *Mountain Valley Education Ass'n./MEA/NEA and MSAD No. 43 Brd. of Directors*, No. 97-UC-03 at 8 (September 18, 1998); see also *County of Cumberland and Teamsters Local Union No. 340*, No. 07-UDA-01 at 9 (January 16, 2007). An employer's response to such an election petition may include a challenge as to whether the petitioned-for bargaining unit is appropriate for collective bargaining. See Chapter 11, § 11(2) 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 School District has objected to the Union’s petition by asserting that the proposed unit lacks a community of interest, this decision will review each of the established criteria in relation to the employees 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. E.g. *Auburn Education Ass’n and Auburn School Comm.*, No. 91-UD-03 at 11 (February 27, 1991). Here, the essence of the Athletic Trainers’ duties compared to those of the Union’s bargaining unit employees could be fairly viewed in a number of ways. On the one hand, the Athletic Trainers help student athletes maintain or improve their physical health, a function not entirely dissimilar to certain bargaining unit employees such as the school nurse, the occupational therapist, and the physical therapist. On the other hand, it is reasonable to acknowledge that the roles of the nurse and therapists are related to the student’s academic experience, as compared to the Athletic Trainer, whose role is more related to the athletic realm, although the trainers do actively participate in facilitating a concussed student athlete’s return to the classroom. Ultimately, given the material commonalities and distinctions, this factor neither supports nor undermines finding a community of interest.

- **Common Supervision and Labor Relations Policy**

The Athletic Trainers have a distinct first-level supervisor, the Athletic Director, from the rest of the Union’s existing bargaining unit who are either initially supervised by a school principal or the Director of Special Services. However, there is some commonality in the supervisory chain-of-command as the Athletic Director and principals all ultimately report to the Assistant Superintendent and Superintendent. As to labor relations policy, the Athletic Trainers are obviously not covered by the terms of the Union – School District collective bargaining agreement, as the existing bargaining unit employees are. To find the trainers lack a community of interest because they do not share the same collective bargaining coverage that they are seeking to acquire seems a bit circular. As a result, this factor neither supports nor undermines finding a community of interest.

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

The evidence indicates a similar scale and manner of determining earnings. Specifically, the School District has paid the Athletic Trainers on the Union’s pay scale for a number of years. Accordingly, this factor supports a community of interest.

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

Here, the Athletic Trainers and the Union’s bargaining unit employees share access to certain personnel benefits offered to all School District employees. Apart from this commonality, there

are a number of substantive distinctions between the conditions of employment for the Athletic Trainers and the Union's bargaining unit employees. Foremost, the Athletic Trainers generally work for more days annually, and potentially more hours per week, than the bargaining unit employees. Likewise, while both groups share a set number of common working hours during the school day, the Athletic Trainers generally work about 50% of their workday when school ends and athletic activities begin. Finally, and of somewhat less significance, the Athletic Trainers are currently evaluated under, what appears to be, a less-voluminous evaluation framework when compared to the frameworks applied to the other bargaining unit employees. Given these distinctions, this factor weighs against a community of interest.

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

A review of the position descriptions for the Athletic Trainers and the Union's bargaining unit employees indicates that, in almost all cases, the incumbent is required to possess some combination of at least a bachelor's (or higher) degree and licensure or certification from the relevant governing body and/or the State of Maine. Notably, as it applies to the Union's current bargaining unit employees, there is a wide variety as to what certification or license is required, which is not surprising given the scope of positions included in the unit. Given this variety, the record supports a finding that the Athletic Trainers, who are required to have a bachelor's degree, licensure from the State of Maine, and certification from a governing board, have sufficient similarity to the qualifications, skills, and training of the existing unit employees to support a community of interest.

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

The record indicates a somewhat limited amount of contact between the Athletic Trainers and the majority of the Union's bargaining unit employees with the significant exception of the high school nurse, with whom the trainers interact at least weekly, if not daily. Apart from the nurse, the trainers directly engage with the school counselors on concussion management teams which may also involve more limited, sporadic engagement with teachers who contact the trainers with questions. Also, the Athletic Trainers provide staff-wide training on concussion protocols, but only on a handful of occasions over the last ten years. Due to the regular contact with the nurse and the more occasional engagement with certain other bargaining unit employees, there is an adequate basis to conclude this factor supports a community of interest.

- **Geographic Proximity**

The Athletic Trainers work in the same building as a number of other Union bargaining unit employees, which typically supports finding a community of interest. E.g. *Sanford School Committee and Central Office Staff EA/MEA/NEA*, Nos. 12-UDA-01 & 12-UCA-01 at 12-13 (May 24, 2012); see also *MSAD 43 Brd. of Directors and SAD 43 Teachers Ass'n.*, No. 84-UC-05 at 11 (April 23, 1984). While the trainers also spend about 50% of their workday outside the high school building at the athletic fields, given their overall proximity to the high school and the other Union bargaining unit employees, at least during the school day, this factor suggests a community of interest.

- **History of Collective Bargaining**

Where the parties' stipulated that the bargaining unit at issue is a long-standing unit that has not previously included the Athletic Trainers, this factor weighs against a community of interest.

- **Desires of the Affected Employees**

At hearing, one of the two Athletic Trainers testified that she wanted to be represented by the Union. Moreover, at least one of the Athletic Trainers signed a card in which they authorized the Union to serve as their bargaining representative. In light of the evidence indicating the employees' wishes demonstrated through the testimony at hearing and the showing of interest filed along with the election petition, this factor supports a finding of community of interest. Additionally, the Union president indicated her belief that the Union's bargaining unit represented the appropriate unit for the Athletic Trainers.

- **Extent of Union Organization**

The School District has a number of other organized bargaining units apart from the Union's bargaining unit. The significance of this factor to a determination of whether a community of interest exists is unclear other than to note that none of the other existing bargaining units appear a natural fit for the Athletic Trainers. As a result, this factor neither supports nor undermines a community of interest finding.

- **Employer's Organizational Structure**

The Athletic Trainers work in a distinct department from the remainder of the Union's bargaining unit, a fact which runs contrary to a community of interest. On the other hand, many, if not all, of the purported difficulties that arise from this distinction (as described by the Athletic Director) are not necessarily a direct result of the School District's organizational structure but are more a function of the differences in the hours of work, and perceived lack of compensation, between the athletic department employees and the School District's other employees. Nonetheless, taking the organization structure by itself, it is clear the trainers are organized in a separate department; therefore, this factor does not support finding a community of interest.

- **Summary**

Overall, the weight of the evidence supports the finding that the Athletic Trainers share a sufficient community of interest with the Union's bargaining unit employees. While the record indicates some level of distinction between the trainers and the employees currently in the bargaining unit, the factors in common outweigh those that are distinct. In other words, the inclusion of the Athletic Trainers results in *an* appropriate unit, even if, arguably, not *the most* appropriate unit. *Town of Yarmouth and Teamsters Local Union No. 48*, No. 80-A-04 at 4 (June 16, 1980). Moreover, this finding is consistent with the directive of the Municipal Public Employees Labor Relations Law to provide these employees with the fullest freedom in exercising their statutory collective bargaining rights.<sup>4</sup>

#### **IV. Order**

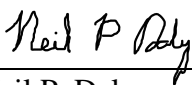
For the foregoing reasons, the undersigned ORDERS that the petition in case no. 24-UD-02 be, and hereby is GRANTED. The Board will conduct an election amongst the Athletic Trainers

and the Board-Certified Behavioral Analyst to determine if they wish to join the Union's existing bargaining unit.

## **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 11<sup>th</sup> day of October 2024

  
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Neil P. Daly  
Executive Director

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<sup>1</sup> At hearing, an athletic trainer testified that she is also credentialed in impact testing in order to help treat student athletes who have experienced a concussion.

<sup>2</sup> At hearing, the Union president testified that while the nurse's duties could be considered non-instructional, their presence in the school system is to, in large part, ensure that students have academic success.

<sup>3</sup> At hearing, testimony indicated that physical therapists provide students with assistance in fine or gross motor control, e.g. throwing a ball, walking up steps, riding bikes to facilitate core strength development. The Union president also testified that while the physical therapist's duties could be considered non-instructional, their work with students during the school day is to help the students better access educational programming.

<sup>4</sup> While not determinative, it is worth recognizing the School District does not dispute the Athletic Trainers are employees eligible for collective bargaining under the Municipal Public Employees Labor Relations Law. In effect, the School District's objection to the proposed unit could result in a two-person unit composed only of the Athletic Trainers. While the Board's anti-proliferation policy often focuses on employees in the same organizational division, which may not be applicable here given the undisputed membership in separate departments, a two-person unit does seem inconsistent with the Board's long-standing precedent, so long as a community of interest exists between the Athletic Trainers and the Union's bargaining unit. See *United Paperworkers International Union and MSAD No. 43*, No. 77-A-01 at 2 (December 14, 1976).