

STATE OF MAINE

MAINE LABOR RELATIONS BOARD

Case No. 26-UD-01

Issued: September 28, 2026

MSAD 24/RSU 88 SUPPORT STAFF
ASSOCIATION

Petitioner,

And

MSAD 24

Respondent.

UNIT DETERMINATION REPORT
FOR PARTIAL OBJECTION TO
MAJORITY SIGN-UP PETITION

I. Statement of the Case

On June 4, 2026, the MSAD No. 24/RSU No. 88 Support Staff Association, MEA (Union) filed with the Maine Labor Relations Board (Board or MLRB) a Petition for Bargaining Agent Certification by Majority Sign-up to represent certain employees of MSAD No. 24/RSU No. 88 (School District) for the purposes of collective bargaining. The School District did not oppose the petition with the exception that it objected to the proposed inclusion of a supervisory Bus Driver/Custodian/Maintenance position in the same bargaining unit as non-supervisory Educational Technicians and Bus Driver/Custodian/Maintenance positions.

On July 24, 2026, 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 supervisory position should be included in the bargaining unit. The Union and School District filed post-hearing briefs on September 4, 2026. As set forth below, the record indicates a sufficient basis exists to include the supervisory Bus Driver/Custodian/Maintenance position in the bargaining unit.

II. Facts

Majority Sign-up Petition and Certification

As referenced above, the Union filed a majority sign-up petition with a proposed bargaining unit as follows:

Included: Ed Techs and Bus Driver/Custodian/Maintenance Employees.

Excluded: All other employees of MSAD No. 24/RSU No. 88.

Apart from its objection to the inclusion of the supervisory Bus Driver/Custodian/Maintenance position, the School District did not oppose the creation of the proposed bargaining unit.

The proposed unit included a total of seventeen employees, including the supervisor, and the Union provided authorizations from more than half of the bargaining unit, regardless of whether the supervisory position was included or excluded. Therefore, because the single supervisory position was not determinative of whether the Union provided sufficient authorizations to demonstrate majority support, the MLRB's Executive Director moved forward with the tally and certification of the bargaining unit/agent, without including the supervisory position, with the parties' understanding that the Board would subsequently conduct this hearing and decide the bargaining unit status of the supervisory position. Having found that a majority of the sixteen non-supervisory employees in the proposed unit authorized the Union to serve as their bargaining agent, the Executive Director issued the related certification of the Union as the designated bargaining agent for the proposed unit on June 23, 2026.

School District and Transportation/Custodial Department Background Information

The School District facilities are composed of a single building located in the town of Van Buren which provides classroom space for approximately 240 students ranging from pre-K through 12th grade.

The School District maintains a transportation/custodial department composed of bus driver/custodial/maintenance (Bus Driver/Custodian) positions. There are a total of four full-time Bus Driver/Custodian positions, including the supervisory position at issue in this matter, in addition to a single part-time custodian who works a night shift. Each of the full-time Bus Driver/Custodian positions are responsible for the custodial upkeep of a particular section of the school building.

Currently, there are two bargaining units of School District employees including a unit of teachers, which pre-existed the petition at issue here, as well as the more recently certified bargaining unit composed of educational technicians and Bus Driver/Custodian positions described above.

There is no separate bargaining unit for School District supervisors.

Supervisory Bus Driver/Custodian/Maintenance Position

The current incumbent of the supervisory Bus Driver/Custodian/Maintenance position (Bus Driver/Custodian Supervisor) has worked for the School District in this capacity since 2017. He reports directly to the School District superintendent, or the school principal in the superintendent's absence. His normal work schedule is 6:30 a.m. to 3:30 p.m. during the school year and 6:30 a.m. to 3:00 p.m. during the summer. He is paid \$22.20/hour and he has his own office/desk space located in a storage area.

On a typical workday during the school year, the Bus Driver/Custodian Supervisor conducts a morning and afternoon bus run and performs a wide variety of custodial and maintenance duties around the school building. During the summer, he also performs a variety of custodial and maintenance duties, but without the daily bus run. When he is absent, the other Bus Driver/Custodians help complete his bus run and custodial/maintenance duties.

The Bus Driver/Custodian Supervisor acts as a liaison between the superintendent and contractors who provide maintenance services to the School District facilities by facilitating the submission of estimates and coordinating when the work will be accomplished. He also serves as an initial layer of review and recommendation for the superintendent in relation to requested equipment or contracts for services and the appropriate expenditure of School District resources for custodial and maintenance issues.

Scheduling, Assigning, Overseeing, and Reviewing Subordinates

The Bus Driver/Custodians and the Bus Driver/Custodian Supervisor generally follow long-standing, existing custodial and transportation schedules. On an as needed basis, the supervisor coordinates transportation schedules, which may result in overtime¹, to accommodate a transportation need such as a bus run for a field trip or athletic event.

Regarding the assignment of work, several years ago, the Bus Driver/Custodian Supervisor drafted written descriptions of the daily expectations for custodial work and bus driver runs. He also drafted descriptions of the specific custodial work for the area of the school building that a Bus Driver/Custodian is assigned custodial responsibility for. At the start of each school year, he meets with the other Bus Driver/Custodians to review these expectations.

On a daily basis, the Bus Driver/Custodian Supervisor updates a whiteboard located outside of his office area where he writes updates on certain custodial or transportation duties that need to be accomplished that day. The other Bus Driver/Custodians know to check this board on a regular basis. Also, the Bus Driver/Custodian Supervisor may field a request or concern from a teacher or other staff member about a custodial issue. When those occur, the supervisor either addresses the issue himself or informs the responsible Bus Driver/Custodian if the issue arose in one of their assigned areas of the building. In sum, as needed, the supervisor determines who will perform transportation or custodial tasks.

When a Bus Driver/Custodian requests time off, they submit the request to the Bus Driver/Custodian Supervisor who provides an initial sign-off before forwarding it to the superintendent for final approval.

In terms of oversight of the Bus Driver/Custodians, the Bus Driver/Custodian Supervisor, apart from the meeting at the start of the school year, at most meets with his subordinate employees as a team monthly (and perhaps not even on a regular monthly schedule). On occasion, a teacher may complain to the supervisor about a particular custodial issue. When that occurs, the supervisor speaks with the responsible Bus Driver/Custodian to ensure the matter is addressed. At least once, the supervisor verbally reinforced that a subordinate needed to understand the fact that the supervisor, did, in fact, hold supervisory authority over the employee.

¹ For overtime, the Bus Driver/Custodians, including the supervisor, use a set rotation.

The supervisor does not regularly inspect the work of the other Bus Driver/Custodians and he has not issued any written warnings regarding performance.

Distinct and Dissimilar Duties from Subordinates

Apart from his role in facilitating the assignment of work to the Bus Driver/Custodians, the Bus Driver/Custodian Supervisor generally performs similar custodial work and transportation runs to the other Bus Driver/Custodians. The supervisor has not facilitated the promotion, transfer, layoff, or recall of a subordinate employee.

As to hiring, the Bus Driver/Custodian Supervisor participates in interviews of potential custodial or transportation employees and provides his opinion of the candidate to the decision-makers, namely the School District's board members via the superintendent.

Adjustment of Grievances or Establishing/Enforcing Performance Standards

On occasion, the Bus Driver/Custodian Supervisor has addressed complaints from the other Bus Driver/Custodians about working conditions. In response to the complaints, he spoke with the concerned employee to attempt to find a resolution and, absent resolution, directed the employee to take the matter up with the superintendent.

Regarding performance standards, as noted above, the Bus Driver/Custodian Supervisor drafted his expectations of how custodial work and bus runs should be performed and he occasionally speaks with the Bus Driver/Custodians if there is an issue with their performance. However, he did not draft a more formal position description maintained by the School District that sets forth the job expectations for the Bus Driver/Custodians. Several years ago, at the behest of the superintendent, he completed one set of more formal evaluations for his subordinates but had not conducted formal evaluations before then and he has not conducted them since.²

III. Analysis and Conclusions

The Municipal Public Employees Labor Relations Law sets forth several criteria to determine if a supervisory position should be placed in a separate unit from subordinate employees. See 26 M.R.S.A. § 966(1); see also *Freeport Police Benevolent Ass'n and Town of Freeport*, No. 13-UDA-01, slip op. at 8-10 (November 29, 2012) (*Freeport*); *Rockport Police Officers Ass'n and Town of Rockport*, No. 02-UD-05 (June 12, 2002) (*Rockport*). The Board has observed that the "purpose of creating separate supervisory employee bargaining units is to minimize potential conflicts of interest within bargaining units, between supervisors and their subordinate employees, as well as to lessen conflicts of loyalty for supervisors between duty to their employer and allegiance to fellow unit employees." *Penobscot Valley Hospital*, No. 85-A-01, slip op. at 8 (February 6, 1985).

The law sets forth a three-part test to determine if a supervisory position should be excluded from a bargaining unit. The test examines whether:

² The Bus Driver/Custodian Supervisor indicated he was supposed to more formally evaluate his subordinates this past year but did not ultimately do so such that the school principal conducted the evaluations.

- the principal functions of the position involve scheduling, assigning, overseeing, or reviewing the work of subordinates,
- a supervisory position performs distinct and dissimilar duties from subordinates, and
- the supervisor participates in adjusting grievances or establishing and enforcing performance standards.

Freeport, No. 13-UD-01 at 8-10; see also 26 M.R.S.A. § 966(1).

a. The Bus Driver/Custodian Supervisor position does not perform supervisory duties to the extent that requires exclusion from the bargaining unit.

In some ways, this case presents a close call as to whether the Bus Driver/Custodian Supervisor exercises a sufficient level of supervision that would support the exclusion of that position from the newly created bargaining unit. To decide this close call, the *Freeport* and *Rockport* decisions are instructive. In *Freeport*, the Board and hearing examiner agreed that police sergeants should be placed in their own separate unit largely relying upon the facts that the sergeants had “extended daily contact” with their subordinate patrol officers, supervised them “continuously” and conducted formal performance evaluations which factored into promotion opportunities. *Freeport*, No. 13-UD-01 at 8-9. In contrast, the *Rockport* hearing examiner found a single police sergeant should be included in a unit with patrol officers where the sergeant exercised limited discretion in scheduling, had a minimal role in assigning or overseeing work because the patrol officers worked independently, “spen[t] little time actively supervising”, and was more akin to a working foreman than supervisor. *Rockport*, No. 02-UD-05 at 11-12.

Keeping the guidance from *Freeport* and *Rockport* in mind, as explained below, the weight of the evidence and long-standing Board policy ultimately supports the inclusion of the Bus Driver/Custodian Supervisor in the bargaining unit.

Turning first to whether the principal function of the Bus Driver/Custodian Supervisor involves scheduling, assigning, overseeing or reviewing the work of the other Bus Driver/Custodians, the record clearly indicates that the supervisor holds primary responsibility for coordinating transportation schedules and assigning work as needed. However, it is noteworthy that the default schedules are long-established as are the overarching work assignments. Consequently, the daily interaction between the supervisor and other Bus Driver/Custodians appears more limited to addressing specific, one-off adjustments, e.g. a particular custodial task or transportation assignment to be accomplished that workday. Notably, the scope of communication of these adjustments appears limited to either quick conversations between the supervisor and employee or simply listing the task to be accomplished on the white board outside the supervisor’s office. Apart from these updates, there seems to be little daily supervisory contact between the supervisor and subordinates meaning there is a related lack of inspection of the subordinates’ custodial and maintenance work.

Therefore, along with the absence of regular, formal performance evaluations conducted by the Bus Driver/Custodian Supervisor, these facts seem quite distinct from those in *Freeport*

involving “extended daily contact”, “continuous” supervision, and formal evaluation that ultimately supported the exclusion of supervisors from the bargaining unit. Cf. *Freeport*, No. 13-UDA-01 at 8-9. Instead, while perhaps not entirely comparable, the Bus Driver/Custodian Supervisor’s lack of active, daily supervision of the other Bus Driver/Custodians, along with their adherence to a long-standing schedule and respective independence in completing their assigned work, appears more analogous to the relationship between the police sergeant and the patrol officers in *Rockport* which resulted in the sergeant’s inclusion in a bargaining unit with patrol officers. *Rockport*, No. 02-UD-05 at 10-13. Accordingly, this factor does not ultimately support the exclusion of the Bus Driver/Custodian Supervisor from the bargaining unit.

As to whether the Bus Driver/Custodian Supervisor performs duties that are distinct and dissimilar from those of the other bargaining unit employees, the Board’s examination of this factor focuses on involvement in hiring (including recommendations), transfers, layoffs, recalls, and promotions. *Freeport*, No. 13-UDA-01 at 8-9. Here, the record indicates that the supervisor participates in interviews of candidates and makes hiring recommendations but does not hold the ultimate hiring authority or otherwise engage in the other activities of consideration such as layoffs or promotions. As a result, this factor does not support the exclusion of the Bus Driver/Custodian Supervisor position from the bargaining unit. See *Freeport*, No. 13-UDA-01 at 9 (involvement in interviews, but with no ultimate hiring authority, does not, by itself, pass the threshold of distinct or dissimilar duties).

As to the Bus Driver/Custodian Supervisor’s adjustment of grievances of the establishment and enforcement of performance standards, the record indicates the supervisor responds to complaints about working conditions from his subordinates, and, while he attempts to resolve them at his level, the employees have the ability to ultimately present the issue to the superintendent.³ Additionally, although the Bus Driver/Custodian Supervisor follows up with the other Bus Driver/Custodians if a specific performance issue arises and provides written guidance on how to perform their tasks, he has not issued any written warnings in a near-decade of working as a supervisor and it is ultimately the School District that sets the overarching performance standards reflected in the position description. Given the lack of active disciplinary enforcement along with the level of decision-making authority reserved for the superintendent and School District, this factor does not rise to the level that would, by itself, support the exclusion of the supervisor from the unit. See *Freeport*, No. 13-UDA-01 at 10; *Rockport*, No. 02-UD-05 at 13-14.

b. The inclusion of the Bus Driver/Custodian Supervisor position in the bargaining unit is most consistent with the MLRB’s anti-proliferation policy that disfavors the creation of single-person bargaining units.

It is significant, and perhaps determinative, to recognize that the exclusion of the Bus Driver/Custodian Supervisor would result in a separate bargaining unit of one because there currently exists no supervisory bargaining unit of School District employees in which to place this position. The creation of a one-person supervisory bargaining unit runs contrary to the Board’s longstanding non-proliferation policy. See, for example, *Rockport*, No. 02-UD-05 at 14-

³ The examination of whether the Bus Driver/Custodian Supervisor adjusts grievances is somewhat limited given that the MLRB only recently certified a bargaining agent for the supervisor’s subordinate employees.

16; *MSAD No. 25 Education Ass'n and MSAD No. 25 Brd. Of Directors*, No. 01-UC-01 at 11-12 (December 21, 2000); *Lubec Education Ass'n and MSAD No. 19 Brd. of Directors*, No. 83-UD-17 (April 13, 1983). Similarly, it is reasonable to presume that a single-person unit could impede that individual in the full exercise of their right to collectively bargain, a result contrary to the foundation of the Municipal Public Employees Labor Relations Law. *Id.* In this case, the potential limited conflict-of-interest involving the Bus Driver/Custodian Supervisor and the other Bus Driver/Custodians is outweighed by providing the supervisor with a true opportunity to collectively bargain as provided under the law.

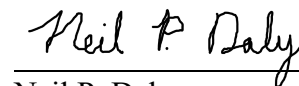
IV. Order

For the foregoing reasons, the undersigned ORDERS that the supervisory Bus Driver /Custodian/Maintenance position be INCLUDED in the bargaining unit certified by the Maine Labor Relations Board on June 23, 2026.

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 28th day of September 2026



Neil P. Daly
Executive Director