

In the Matter of TOWN OF BARNSTABLE  
and  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
LOCAL 59  
and  
BARNSTABLE MUNICIPAL EMPLOYEES  
ASSOCIATION

Case No. MCR-01-4885

32. *Binding Effect of a Unit Determination*  
34.3 *desires of employees*  
34.5 *established practice (history)*  
34.93 *severance*  
35.41 *clericals*

November 13, 2001  
Helen A. Moreschi, Chairwoman  
Mark A. Preble, Commissioner

*Nancymarie Schwinn*      *Representing the Town of Barnstable*  
*Leonard Schneider, Esq.*      *Representing Teamster, Local 59*  
*James F. Norton, Esq.*      *Representing the Barnstable  
Municipal Employees  
Association*

### DECISION<sup>1</sup>

#### Statement of the Case

On March 15, 2001, the International Brotherhood of Teamsters, Local 59, (Petitioner) filed a petition seeking to sever certain non-uniformed employees employed by the Town of Barnstable (Town) in its police department (Department) from a bargaining unit represented by the Barnstable Municipal Employees Association (BMEA). Specifically, the Petitioner seeks to sever the following positions in the Department from the existing bargaining unit and represent them in a separate unit: Records/Property Supervisor, Secretary to the Detective Division, Financial Coordinator, Principal Department Assistant, Domestic Violence Specialist, Administrative Assistant-Prosecution and Administrative Assistant (collectively referred to as the Police Clericals<sup>2</sup> or the petitioned-for unit). The only issue before the Commission is whether it should sever the Police Clericals from the existing unit.

On April 19, 2001, the Commission allowed the BMEA to intervene to participate in the hearing. On April 23, 2001, Hearing Officer Betty Eng conducted the first day of hearing. On May 14, 2001, the Commission notified the parties that it had reassigned the petition to Hearing Officer Marjorie F. Wittner, who conducted two further days of hearing on June 12 and June 19, 2001.<sup>3</sup> On all three days of hearing, the parties had an opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence.<sup>4</sup> The Petitioner delivered an oral, closing argument on June 19, 2001 and declined to file a written brief. The Petitioner argues that the Police Clericals meet the Commission's standards for severance because they comprise a functionally distinct unit within the existing bargaining unit that has special concerns relating to a Town-wide salary reclassification that were not addressed by the BMEA. On August 3, 2001, the BMEA filed a brief opposing the petition. The BMEA argues that the Police Clericals do not comprise a functionally distinct unit. The BMEA further argues that its actions in the reclassification process served all members of the bargaining unit, including the Police Clericals. The Town did not file a brief and takes no position concerning the petition.

#### Finding of Fact<sup>5</sup> *Bargaining History*

The BMEA has represented the Police Clericals since 1969. The Police Clericals were originally included in one of the four separate bargaining units<sup>6</sup> that the Commission certified in 1969. In 1987, AFSCME, Council 93, AFL-CIO filed a petition seeking to represent those four units. A Commission hearing officer found that the Town and BMEA had consistently treated all four units as a single bargaining unit, and directed an election in the single, combined unit. *Town of Barnstable*, 14 MLC 1454, 1455 (H.O., 1987). That decision does not reflect that there was any dispute at the time about whether the clericals in the police department should be included in the larger bargaining unit. *Id.* In 1988, the Commission certified the BMEA as the collective bargaining representative of a bargaining unit described as:

All permanent full-time and regular part-time professionals and non-professional Town of Barnstable employees in the office of the Board of Selectmen, Board of Appeals, Assessors, Legal Department, Personnel Department, Planning Board, Tax Collector, Town Accountant, Clerk-Treasurer, Planning and Development Board, Natural Resources Department, Building Inspection department, Police Department, Weights and Measures, Licensing and Parking Department, Data Processing Department, Health Department, Conservation Commission, Council on Aging, Recreation Department, Sandy Neck Governing Board, Department of Public Works, Harbormaster Department, Pollution Control

1. Pursuant to 456 CMR 13.02(1), the Commission has designated this case as one in which the Commission shall issue a decision in the first instance.

2. We use the term "Police Clericals" solely to distinguish the employees in the petitioned-for unit from the Department custodians, crossing guards and mechanics who are members of the existing BMEA bargaining unit, but not part of the petitioned-for unit.

3. None of the parties objected to that procedure.

4. A representative of the Town appeared and testified at the hearing on April 23, 2001, but expressly declined to attend, or otherwise participate in, the final two days of hearing.

5. The Commission's jurisdiction is uncontested. At hearing, extensive factual stipulations together with numerous exhibits were introduced into the record. The findings of fact are based upon those stipulations as well as all testimonial evidence and other documentary evidence introduced during the course of the hearing.

6. The Police Clericals were originally included in "Unit A" which consisted of: All clerical employees in the offices of the Assessor, Selectmen, Town Clerk, Board of Health, Plumbing Inspector, Wiring Inspector, Gas Inspector, Building Inspector, Civil Defense, Personnel, Planning Board, Highway, Tax Collector, Police, Airport, Council on Aging, Engineering and Legal Department; excluding all other employees of the Town, seasonal employees and those who work less than 20 hours per week.

Division, Cemetery Maintenance Division, Dog Officer Dep't, excluding all managerial, confidential, and casual employees, all employees in the municipal airport, all uniformed personnel in the police department, and all other employees currently represented in other bargaining units and all other employees.

*Town of Barnstable*, Case No. MCR-3758, Certification of Representatives (9/22/88). The BMEA has continuously represented those employees in a single bargaining unit since 1988, and has negotiated and entered into a series of collective bargaining agreements with the Town on behalf of those employees.

The existing BMEA bargaining unit comprises approximately one hundred sixty four (164) employees in over one hundred (100) separate job titles spread across at least eleven (11) separate locations: Town Hall, School Administration Building, Senior Services, Police Department, Division of Natural Resources, Recreation Department, Centerville Recreation Building, Old Town Hall, Water Pollution Control Department, Structures and Grounds Department and the Town Cemetery. The Police Department and Natural Resources Division are across the street from one another and a ten-minute drive from Town Hall. The Town Hall and the School Administration Building are adjacent to one another. Old Town Hall is within a short walking distance of Town Hall, and the buildings that house the Water Pollution Control department and the Recreation Department are a five-minute drive from Town Hall.<sup>8</sup>

The bargaining unit includes seven (7) separate "Administrative Assistant" positions, two of which are in the petitioned-for unit. The BMEA also represents financial coordinators in both the Police and Recreation Departments.

*The Police Department and Job Functions of the Petitioned-For Employees*

The Police Department consists of its uniformed personnel, the Police Clericals, two (2) mechanics, six (6) crossing guards and two (2) custodians. The mechanics, crossing guards and custodians are not part of the petitioned-for unit. There are also several positions that are not currently represented for the purposes of collective bargaining, including the chief of police, the deputy chief of police and director of support services.

The Director of Support Services supervises all civilian personnel in the Department, although only one employee, the Records/Property Supervisor reports directly to her. The Director of Support Services reports to the Chief of Police. The Town fills open clerical positions in the Department in the same way it fills other Town positions.

The Police Department is funded by the Town budget. The Police Clericals' paycheck comes from the Town Treasurer's office.

Department employees receive all the benefits provided for in the BMEA collective bargaining agreement, including paid sick, vacation and personal leave. However, unlike other bargaining unit members, the paid leave taken by Department employees is not reflected on their paychecks because the Department maintains its own records concerning those benefits. The Town's Human Resource Department processes Department employees' requests for extended leaves of absence and the Town Manager grants final approval of such requests.

The Police Department is open twenty-four (24) hours a day, seven (7) days a week. The Sandy Neck Beach is the only other Town Department that is open around the clock and to which employees currently represented by the BMEA are assigned. All but one of the Police Clericals<sup>9</sup>, work 37.5 hours a week, Monday – Friday, from 8:30 a.m. to 4:30 p.m., although they are allowed some flexibility to change their hours within the confines of the collective bargaining agreement. The employees at Town Hall generally work the same hours as the Police Clericals. Only one Police Clerical, a Principal Assistant, regularly works an overtime weekend shift. Certain bargaining unit members from the Department of Human Resources also work on weekends.

For approximately the last three years, the Police Department has annually required its clericals, mechanics and custodians to swear to and sign a Code of Ethics requiring them to maintain Department confidentiality and live an ethical life.<sup>10</sup> The Department puts copies of the signed Codes of Ethics in the respective employees' personnel files. There is no evidence that other Town departments require their employees to sign a Code of Ethics.

The Town has designated all Police Department employees, civilian and sworn, as essential employees, which means that they are required to report to work in the event of an emergency. The Town has also designated all employees of the Building Department and all staff of the Harbormaster and Health and Natural Resources Departments, who are scheduled to work the shift in which the closure applies, as essential employees.

The Police Department uses a database software program specifically designed for police departments. All of the Police Clericals have had to undergo special training off-site to use this special software and as of July 2001, they were still learning how to use this program. Other Town departments, like the Recreation, Tax and Assessors Departments use software that is unique to their department and that requires specialized training.

Since sometime in 2000, all Police Department employees have been unable to receive e-mail message from, or send e-mail messages to, other Town employees on the Town-wide e-mail net-

7. In addition to the BMEA, there are three other employee organizations that represent Town employees. AFSCME Council 93, Local #2977 represents certain employees in the Town's Department of Public Works and at the Town golf course. The International Brotherhood of Police Officers (IBPO), Local 448 represents all permanent police officers and permanent intermittent full-time police officers and metermen. The IBPO Superior Officers Local 463 represents the Deputy Chief of Police, Lieutenants and Sergeants. The Petitioner also presently represents all but two employees of the Barnstable Municipal Airport in a separate unit.

8. Town Hall houses the Assessing, Town Clerk, Tax Collector, Town Manager, Town Council, Health, Public Works (Engineering), Public Works (Administration) and Conservation departments.

9. The Records/Property Supervisor works 40 hours a week.

10. The Police Clericals' job descriptions do not reflect this requirement and the Department has not otherwise put this requirement in writing.

work.<sup>11</sup> There are other bargaining unit members who do not have access to the Town-wide e-mail network. The BMEA has pre-designated all BMEA bargaining unit members on the Town-wide network as “BMEA1” and routinely sends e-mail messages to this group of employees. The BMEA is aware that its e-mails to BMEA1 will not reach all bargaining unit members and uses alternative means of communication, like hand-delivery or fax, to communicate with those members.

The Police Department has a certain amount of contact with other Town departments. Employees must contact the Human Resources Department regarding benefits changes and employee discipline. In addition, certain of the petitioned-for employees give classes to Town employees on sex offender registration and criminal and public offender background checks. The Administrative Assistant to the Chief of Police and the Financial Coordinator are the only Police Clericals whose job descriptions state that they have “frequent contact with other Town departments.”

All Police Department employees speak on a recorded phone line and have to undergo a criminal background check. Many of them have frequent contact with criminal offenders as well as agitated or angry members of the public. Employees of the Recreation Department are routinely exposed to confidential information about Town residents, including financial information, and the medical records and Individual Education Plans (IEPs) of children participating in Recreation Department programs. Recreation Department employees also have occasional contact with criminal offenders. Other Town employees, including those in the Tax and Assessors’ Department have to deal with agitated or angry individuals. The Town requires a number of Police Department Clericals, as well as Recreation Department employees to be familiar with the Criminal Offender Record Information (CORI) procedures and to be subject to criminal background checks.

All but two of the Police Clericals are required to have a high school diploma and three years of related experience. The Domestic Violence Specialist is required to have a bachelor’s degree in either criminal justice or social work. The Records/Property Supervisor is required to have a Bachelor’s Degree, but not in any particular field. The following is a brief, more detailed description of each of positions set forth in the petition.<sup>12</sup>

*Administrative assistant* – This individual works under the general direction of the Chief of Police, performing routine and specialized administrative work.

*Records/Property Supervisor* – This individual works under the administrative direction of the Director of Support Services. The Records/Property Supervisor supervises the three Principal Department

ment Assistants<sup>13</sup> and manages the storage and custody of property and evidence brought into the Police Department. The Town requires the Records/Property Supervisor to have a license to carry a firearm and work 40 hours per week.<sup>14</sup> The Department created the position in or around 1999. The property-related job functions performed by the Records/Property supervisor had previously been performed by a uniformed officer.

*Secretary to the Detective Division* – The individual holding this position works under the general direction of the supervisor for the Detective Division performing secretarial work.

*Financial Coordinator* – This position works under the general direction of the Police Chief. The Financial Coordinator performs a number of skilled, clerical and administrative functions for the Police Department, including maintaining attendance, personnel and payroll records and determining overtime and longevity pay.

*Principal Department Assistant* – This position reports to the Records/Property supervisor. There are three Principal Department Assistants in the Department who are responsible for maintaining all police records, including citations, licenses and the daily police log.

*Domestic Violence Specialist* – This position works under the direction of the Lieutenant in Charge of Detectives and may also receive direction from specific detectives regarding specific cases. The work is performed in an office setting and off-site and involves initiating and maintaining contact with domestic violence investigators and victims of domestic violence.

*Administrative Assistant - Prosecution* – This position works under the general and specific direction of the Police Prosecutor. This employee is responsible mainly for coordinating police court appearances with the police officers, the public and the court.<sup>15</sup>

*The Police Clericals’ Participation in the BMEA and Collective Bargaining*

From February 1998 to February 2000, Christine Sullivan (Sullivan), Secretary to the Detective Division, was secretary to the BMEA. In April 1999, Sullivan wrote an article in “BMEA News,” a monthly newsletter distributed to all BMEA unit members, explaining why she had chosen to be active in the BMEA. The article stated in pertinent part that:

[T]here was an issue at the police department for the BMEA civilian employees and we needed the union’s help. Suddenly, the board, who we thought didn’t know we existed, promptly addressed our concerns and was there for us....

Take it from someone who learned the lesson, the union representatives are there for EVERYONE. You may not always get

11. Those Police Department employees who have Internet access can send and receive e-mail messages via the Internet.

12. Between 1998 and 2001, as part of a Town-wide reclassification process, the Town, the BMEA and Town employees exhaustively reviewed and updated most of the Town’s job descriptions. The brief descriptions set forth above are based on the Town’s finalized job descriptions and as well as the testimony of Kathy Hinckley (Hinckley), the Records/Property Supervisor (Hinckley), and Christine Sullivan (Sullivan), Secretary to the Detective Division.

13. No party to this proceeding has sought to exclude the Records/Property Supervisor on the basis that it is a supervisory position.

14. The Records/Property Supervisor is the only employee in the petitioned for unit who is required to have a license to carry a firearm or work 40 hours per week.

15. The record contains no job descriptions for BMEA positions outside of the petitioned-for unit.

the answer you want, but they will address every concern and every member.

Sullivan also participated in successor contract negotiations in the spring of 1999, but neither she, nor any other Police Clerical, volunteered to be on the bargaining committee or submitted any proposals on behalf of the Police Department. No Police Clerical volunteered to participate on the BMEA's Reclassification Committee. The members of this committee performed a variety of functions relating to the reclassification, including meeting with Town officials and reviewing new job descriptions and grade assignments. Other than the Police Clericals' dissatisfaction with BMEA's participation in the Town-wide reclassification, described below, the Petitioner was unable to identify any other conflict that they had with the BMEA or any grievances or negotiating issues that they had brought forward that the BMEA had not handled, nor had they previously voiced any such concerns. There appears to have only been one grievance filed by any of the Police Clericals in the four years preceding the filing of the petition.<sup>16</sup>

#### *The Reclassification*

In 1998, the Town decided to evaluate and reclassify all of its job classifications (reclassification). In July 1998, the Town commissioned a private firm, Bennett Associates (Bennett), to complete a salary survey of comparable communities, review the job descriptions of all Town employees and make a final report. In the study's initial stages, from July 1998 to approximately spring 1999, Bennett sent questionnaires to all Town employees (except sworn police officers) and compared the completed questionnaires to the existing job descriptions. Bennett also met with individual department representatives. On March 22, 1999, Town Manager James Tinsley (Tinsley) sent an e-mail to all Town employees updating them on the reclassification and indicating that "the Town will negotiate those issues related to the implementation of this study that require union input."

Bennett Associates completed the first phase of the reclassification in April 1999 and the Town made a copy of its findings available to the Town's unions. The Town distributed revised job descriptions to its employees and solicited their input on the proposed changes. In January 2000, Bennett Associates issued its final report. It recommended changes in the grades of approximately thirty employees, including an increase from grade 7 to grade 8 for the Administrative Assistant – Prosecution<sup>17</sup> and the Domestic Violence Specialist. Bennett did not recommend a grade increase for any of the other Police Clerical positions.

Between February and March 2000, Human Resources sent a notice to all Town employees, which enclosed their individual job descriptions and new grade. The notice informed Town employees that they had the right to appeal their grade to Human Resources and the Town's Personnel Advisory Board. The BMEA also contacted its members and offered to assist bargaining unit members in the appeals process. On May 22, 2000, the BMEA sent an e-mail to BMEA1 reminding them, among other things, that "The Town still

needs to negotiate with the Association on the reclassification. Now is the time to come to us, not after the Reclassification has been implemented."

Eight Police Clericals filed appeals of their job upgrades and classifications. All eight employees won their appeals, and, in or about June 2000, the Town upgraded each of them by one grade. The Town upgraded a total of fifty-six (56) bargaining unit members at that time.

After the Town had completed reviewing all the appeals, in or around August 2000, it asked the BMEA to accept the new job descriptions and rating system so that it could implement the upgrades. The BMEA indicated that it could not accept the new grades or classifications until it had reviewed all of the job descriptions and provided individual copies to its members. The Police Clericals, who were at this point, satisfied with their job descriptions and grade assignments, were frustrated by the delay in the actual implementation of their upgrade. As a result, starting in the summer of 2000, Kathy Hinckley, the Records/Property Supervisor, began a series of weekly phone calls to the Union and the Town, in which she expressed her frustration on behalf of the Police Clericals and asked when they would receive their upgrades. In response to those phone calls, the Union claimed the Town was responsible for the delay in implementation, while the Town claimed the converse was true.

On September 13, 2000, Kathy Hinckley and Kathy Schavio, another employee in the Police Clericals group, met with Brenda Evans, a member of the BMEA Reclassification Committee. Schavio asked Evans why the BMEA was holding up her upgrade and Hinckley indicated that she thought the BMEA should accept the upgrades right away. Evans told her that she thought that it would be negligent of the BMEA to accept the upgrades at that time and that the BMEA intended to have all bargaining unit members review their respective job descriptions for accuracy. At that meeting, Hinckley requested, and received, a list of the names of all bargaining unit members who had already received upgrades.

On September 15, 2000, all Police Clericals attended the BMEA's regularly-scheduled Executive Board meeting. Approximately thirty of the fifty-six bargaining unit members whose upgrades had not yet been implemented by the Town attended the meeting. Hinckley spoke on behalf of the Police Clericals, indicating that, although they supported the BMEA in its quest to receive updated job descriptions and did not blame the BMEA for the delay, the reclassification had taken over nineteen months to implement, and the affected individuals needed action now. Hinckley stated that the employees awaiting reclassifications should not be held hostage while the BMEA scrutinized each job description.

The Town provided the BMEA with the job descriptions on October 17, 2000. The BMEA distributed the job descriptions to the respective employees at its quarterly meeting, taking steps to ensure that the employees who were not present received a copy. On

16. The grievance was over the alleged wrongful termination of a Police Clerical, who was terminated in November 2000.

17. The former title of that position was Records Account Clerk-Prosecution.

October 19, 2000, the BMEA sent an e-mail to its members asking them to review their job description for accuracy and to contact Human Resources or their supervisor if they wanted to make any changes to it. Referring to the length of time the process was taking, the e-mail stated, "Please don't kill the messenger! We are doing the best we can!" The BMEA sent additional e-mails in October, November and December 2000 to its members reporting on the progress being made by the reclassification committee. The BMEA also updated members on the reclassification in its newsletter and at quarterly meetings.

The Town completed reviewing all requested changes by December 2000, and the BMEA essentially accepted all these changes by January 23, 2001. As a result of the BMEA's redistribution of job descriptions in October 2000, only one bargaining unit member received a grade increase, although 25 bargaining unit members sought and received increases to their job ratings and changes in their job description. The higher ratings brought these jobs closer to an upgrade in the event of further changes to those jobs,<sup>18</sup> but did not impact these employees' rate of pay.

After the job descriptions and ratings were finalized, the Town and the BMEA began to negotiate a Memorandum of Agreement (MOA) on job descriptions and classifications. The BMEA had originally planned to submit the results to its members for ratification on February 20, 2001 at its annual meeting. However, the BMEA changed those plans after the parties were unable to reach agreement on a clause in the MOA regarding the interaction between the job duties listed on the job descriptions and the state and federal handicap discrimination laws before the annual meeting.

On February 20, 2001, all of the Police Clericals attended the BMEA's annual meeting. The agenda for the meeting included electing new officers and discussing the reclassification. Before the elections took place, Hinckley asked to speak. Although the BMEA president initially told Hinckley that she was out of order, he permitted her to read a speech on behalf of the Police Clericals. In the speech, Hinckley proposed that the BMEA increase the number of members on the reclassification committee from three to six and asked bargaining unit members to abstain from casting ballots in the upcoming election in protest of the fact that the reclassification and current contract negotiations remained unresolved. Hinckley also stated that the Town's commitment to implementing the job upgrades might be jeopardized by the length of time it was taking BMEA to complete its review of the reclassification. The BMEA president refused to expand the number of members on its reclassification committee, and the union elections went forward as scheduled.

At the close of this meeting, two BMEA members strongly indicated to Hinckley and Natalie Depuis, another Police Clerical, that they disagreed with her speech and disputed Hinckley's statement that she spoke on behalf of all Department bargaining unit members. Hinckley conceded that she was only speaking on behalf of some members of the Police Department as well as the other BMEA

unit members who had upgrades in place as a result of the reclassification but who had not yet received the pay associated with the upgrade.

After this meeting was over, the Police Clericals decided to attempt to sever from the BMEA because they were frustrated with the length of the reclassification process and believed they were not going to get their voices heard through the BMEA regarding the reclassification.

The BMEA reclassification committee and the Town met approximately four times between February and March 2000 to negotiate the MOA, which was ultimately signed on April 4, 2001. By July 2001, the Town had implemented virtually all the BMEA upgrades, retroactive to July 1, 2000. The Town had previously implemented upgrades for the bargaining unit members represented by AFSCME in December 2000. However, as of July 2001, the Town had still not implemented upgrades and reclassifications for the BMEA bargaining unit members employed in the Senior Services Department due to that department's reorganization. At no point during the reclassification process did the Union propose that the Town implement upgrades for those employees who were satisfied with the grade the Town had assigned to them. The Union believed that the Town would not implement the upgrades in a piecemeal fashion.

#### Opinion

The Commission does not favor severance petitions and has declined to use them to fix imperfectly constructed bargaining units. *City of Fall River*, 26 MLC 13, 17 (1999); *Lowell School Committee*, 8 MLC 1010 (1981). In *City of Boston*, 20 MLC 1431 (1994), the Commission articulated the criteria a petitioner must satisfy to warrant severing positions from an existing bargaining unit:

[t]he petitioner must demonstrate that the petitioned-for employees constitute a functionally distinct appropriate unit with special interests sufficiently distinguishable from those of other unit employees, and that special negotiating concerns resulting from those differences have caused or are likely to cause conflicts and divisions within the bargaining unit.

20 MLC at 1448.

Absent evidence of serious divisions and conflicts within the bargaining unit, the Commission has consistently applied this standard in deciding to maintain historical bargaining unit structures that are not fully consonant with the general principles of initial bargaining unit determinations. *City of Fall River*, 26 MLC at 17; *New Bedford School Committee*, 12 MLC 1058 (1985). Under the first prong of the severance analysis, the petitioner must demonstrate that the proposed bargaining unit consists of employees who comprise a functionally distinct appropriate unit with special interests sufficient distinguishable from those of the existing unit of employees. *City of Lawrence*, 25 MLC 1,5 (1998) (citing *City of Boston*, 20 MLC 1431, 1448 (1994)).

18. Bennett Associates recommended, and the Town adopted, a 14 factor rating system to rate each job. The sum of the numbers assigned to each of the factors

under this system (e.g. "Knowledge, training, education" and/or "complexity") determines the job grade and therefore the level of compensation for each job.

The Commission considers many factors in determining whether the petitioned-for employees constitute a functionally distinct unit from the existing bargaining unit, including whether: 1) the petitioned-for unit of employees have specialized skills that are acquired through a required course of study; 2) the petitioned-for unit of employees maintain and enhance their skills through continuing education; 3) the petitioned-for unit of employees perform significantly different job functions compared with the existing unit of employees; 4) the petitioned-for unit of employees and the existing unit of employees share work locations or common supervision; and 5) the petitioned-for unit of employees either interact with or share duties with any other bargaining unit member. *City of Lawrence*, 25 MLC at 5; *City of Boston*, 20 MLC at 1449-50.

Applying these factors to the positions at issue in Barnstable, we find that, although there are some distinctions between the Police Clerical job titles and other bargaining unit members, those distinctions are insufficient for us to find that the Police Clericals comprise a functionally distinct unit. First, we note that, unlike the group of employees that sought severance in *City of Boston*, 25 MLC 105 (1999), whom we found were a functionally distinct group, the Police Clericals are not a homogeneous group all of whom perform the same job duties, report to the same supervisor, or work the same hours. Other than the three Principal Department Assistants who report directly to Records/Property Supervisor, the Police Clericals each have unique job responsibilities within the petitioned-for unit. Moreover, except for the Administrative Assistant and the Financial Coordinator, who both report to the Chief of Police, each of the titles within the petitioned-for unit directly reports to a different supervisor.

Although the Petitioner points to a number of other factors that it claims make the Police Clericals functionally distinct, those factors are not sufficient to warrant severing that group from the overall unit, particularly because the alleged differences are not unique to the Police Clericals. Thus, although it is not disputed that many of the Police Clericals are exposed to confidential and graphic information, are not on the Town's e-mail system, are essential employees, are subject to background checks, work for a department that is twenty-four (24) hours a day, and have contact with criminal offenders and the public, who could often be angry or disturbed, the same can be said of other employees in other departments that are in the existing bargaining unit. Physically, the Police Department is no more isolated than the Department of Resources, which is located across the street from the Department and is a ten minute drive from Town Hall.

Moreover, even though the Police Department requires Police Clericals to swear to a Code of Ethics and speak on a recorded line, this requirement is not unique to Police Clerical, because the Police Department custodians and mechanics, who are not part of the petitioned-for unit, are also subject to those same requirements. Indeed, the Police Clericals' argument that they are functionally distinct is vastly undercut by the fact that the Department mechanics and custodians are subject to many of the same terms and conditions of employment as the Police Clericals but are not part of the petitioned-for unit. A group cannot be functionally distinct if other employees outside of the petitioned-for unit share the very qualities that purportedly make them distinct.

Even if we were to find that the Petitioner has demonstrated that the petitioned-for employees constitute a functionally distinct appropriate unit, the Petitioner has not met the second prong of the Commission's well-settled severance standard. Under this prong, we must determine whether special negotiating concerns resulting from any differences in the bargaining unit have caused or are likely to cause conflicts and divisions within the bargaining unit. *City of Fall River*, 26 MLC at 17; *City of Boston*, 20 MLC at 1448. The Commission has previously decided that separate units are required only when the differences among the different groups in the bargaining unit are so significant as to produce conflicts in the collective bargaining process. *City of Lawrence*, 25 MLC at 5.

Although there is no dispute that the Police Clericals had concerns over the BMEA's refusal to immediately accept the Town's proposed upgrades, there is no evidence that these concerns resulted from any differences between the Police Clericals and other bargaining unit members. Rather, the fact that all of the Police Clericals were satisfied with their upgrades prior to September 2000, when the BMEA and Town first started to discuss the Reclassification, was mere happenstance and had no connection with any aspect of their employment in the Police Department. Thus, the Petitioner's argument that the BMEA treated the Police Clericals differently is not supported by the record. The BMEA did not treat the Police Clericals any differently than it treated the other fifty-six or so bargaining unit members who were satisfied with their upgrades prior to September 2000. Moreover, as of July 2001, the bargaining unit members employed in the Town's Senior Services Department had still not received their upgrade pay. This demonstrates that the concerns voiced by the Police Clericals were not unique to them or the result of any particular problems caused by the nature or location of their work.

The Police Clericals filed this petition because they believed that the BMEA was not responding to their concerns over the reclassification. However, the Commission has previously held that certain employees' inability to achieve their bargaining goals within a larger unit or such employees' dissatisfaction with the bargaining representative's accomplishments is insufficient to establish the irreconcilable conflict necessary to warrant severance. *City of Fall River*, 26 MLC at 13 (fact that EMT's and library employees were unable to achieve their bargaining goals within the larger bargaining unit failed to satisfy the Commission's standard for severance); *New Bedford School Committee*, 12 MLC 1058 (1985)(clerical employees' inability to negotiate different, preferential benefits from others in the unit did not warrant disturbing a twenty-year bargaining relationship). Where the evidence establishes that there is a stable and historical bargaining relationship and effective representation has existed over a number of years, the Commission will be disinclined to disrupt a working collective bargaining relationship. *Massachusetts Port Authority*, 2 MLC 1408 (1976).

Here, other than issues surrounding the reclassification, the Petitioner does not dispute that the BMEA has effectively represented the Police Clericals since 1969. There was no evidence that the BMEA refused to handle any grievances or negotiating issues that had been raised by the Police Clericals. Indeed, aside from the reclassification, the Petitioners did not claim to have any special negotiating issues and had filed only one grievance in the four years

preceding the petition. There is no evidence that the BMEA prevented the Police Clericals from participating in the negotiating or reclassification process. In addition, the BMEA provided the Police Clericals with the information they sought regarding the reclassification, returned most of the Police Clericals' phone calls concerning the reclassification and allowed them to speak at meetings to voice their concerns. Moreover, until June 2000, one of the Police Clericals was a union officer who had publicly voiced her satisfaction with the way in which the BMEA responded to the concerns of police civilian employees. While the Petitioner might have demanded that the Town implement upgrades for those bargaining unit members who were happy with their upgrade, its failure to do so alone does not warrant severing the Police Clericals under well-established Commission standards. *See City of Boston*, 25 MLC 105, 121 (1999)(Union's inattention or inadequate response to a training request, its failure to respond to telephone calls and heated exchange concerning a pay upgrade do not rise to the level of serious conflicts or divisions within the bargaining unit that interfere with bargaining). In sum, there is no evidence that would warrant disturbing the successful bargaining relationship that has existed for three decades.

Conclusion

For the reasons stated above, we conclude that the Police Clericals should not be severed from the existing bargaining unit represented by the BMEA, and we dismiss the petition.

SO ORDERED.

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In the Matter of TOWN OF STONEHAM  
and  
STONEHAM POLICE ASSOCIATION, MASSACHUSETTS  
COALITION OF POLICE, AFL-CIO

Case No. MUP-2615

54.25 work shifts  
67.8 unilateral change by employer  
91.11 statute of limitations

November 15, 2001  
Helen A. Moreschi, Chairwoman  
Mark A. Preble, Commissioner

Tim D. Norris, Esq. Representing the Town of Stoneham  
Leigh A. Panettiere, Esq. Representing Stoneham Police Association, Massachusetts Coalition of Police, AFL-CIO

DECISION<sup>1</sup>

Statement of the Case

On February 16, 2000, the Stoneham Police Association, Massachusetts Coalition of Police, AFL-CIO (Union) filed a charge of prohibited practice with the Labor Relations Commission (Commission) alleging that the Town of Stoneham (Town) had violated Sections 10(a)(1) and (5) of M.G.L. c. 150E (the Law) by involuntarily assigning police patrol officers to changeable bouncing routes that had previously been filled by a single, volunteer patrol officer. Pursuant to Section 11 of the Law and Section 15.04 of the Commission's Rules, the Commission investigated the charge and, on December 27, 2000, issued its own Complaint of Prohibited Practice alleging that the Town had violated Sections 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by involuntarily assigning police patrol officers to bouncing routes without giving the Union prior notice and an opportunity to bargain.

Pursuant to notice, Hearing Officer Marjorie F. Wittner conducted an evidentiary hearing on June 11, 2001. Both parties had a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Both parties filed post-hearing briefs on or before July 16, 2001.

In accordance with 456 CMR 13.03(2), the hearing officer issued recommended findings of fact on August 6, 2001. Neither party challenged those findings pursuant to 456 CMR 13.02(2).

Facts<sup>2</sup>

The Union is the exclusive collective bargaining representative for the police patrol officers employed by the Town in its police department (Department). The Union and the Town are parties to

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1. Pursuant to 456 CMR 13.02(1), the Commission has designated this case as one in which the Commission issues a decision in the first instance.

2. The Commission's jurisdiction in this matter is uncontested.