

Conclusion

For the foregoing reasons, we find that the I.B.P.O. did not breach its duty to represent Michael Ciccolini fairly. Accordingly, we dismiss the Complaint of Prohibited Practice.

SO ORDERED.

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In the Matter of TOWN OF WAKEFIELD

and

WAKEFIELD INDEPENDENT EMPLOYEES
ASSOCIATION

and

AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, COUNCIL 93, LOCAL 3117,
AFL-CIO

Case No. MCR-01-4922

34.1 *appropriate unit*
34.2 *community of interest*
34.71 *departmental unit*
34.9 *unit modification*
35.42 *craft employees*
35.45 *maintenance and custodial*

March 27, 2002

Helen A. Moreschi, Chairwoman
Peter G. Torkildsen, Commissioner

<i>Scott C. Merrill, Esq.</i>	<i>Representing the Town of Wakefield</i>
<i>Dana Brickett</i>	<i>Representing the Wakefield Independent Employees Association</i>
<i>Wayne Soini, Esq.</i>	<i>Representing the American Federation of State, County and Municipal Employees, Council 93, Local 3117, AFL-CIO</i>

DECISION

Statement of the Case

On October 26, 2001, the Wakefield Independent Employees Association (Association) filed a petition with the Labor Relations Commission (Commission) under Section 4 of M.G.L. c. 150E (the Law) seeking to represent all public works employees employed by the Town of Wakefield (Town), excluding supervisory employees, professional employees, and office and clerical employees. On December 7, 2001, the Commission allowed the American Federation of State, County and Municipal Employees, Council 93, Local 3117, AFL-CIO (Union) to intervene.

The petitioned-for unit combines two (2) existing bargaining units currently represented by the Union for the purposes of collective bargaining: 1) a unit consisting of all non-supervisory, maintenance and custodial employees, excluding the electrician, boiler/plumbing mechanic and HVAC maintenance mechanic and all other Town employees; and, 2) a trades unit including the electrician, boiler/plumbing mechanic and HVAC maintenance mechanic, excluding all other Town employees. The Union argues that the petitioned-for bargaining unit is inappropriate. Rather, the Union requests that the Commission determine that the existing two (2) bargaining unit structure is appropriate within the meaning of the Law. The Town maintains that it is inappropriate to include the electrician, boiler/plumbing mechanic and HVAC maintenance mechanic in the existing DPW bargaining unit. If the Commission determines that it is inappropriate to combine the two (2) existing bargaining units, the Association wishes to proceed to an election in the bargaining unit consisting of all non-supervisory, maintenance and custodial employees, excluding the electrician, boiler/plumbing mechanic and HVAC maintenance mechanic.

On December 11, 2001 and December 13, 2001, Hearing Officer Ann T. Moriarty, Esq. conducted a hearing during which all parties had an opportunity to present testimonial and documentary evidence. The Union filed a post-hearing brief with the Commission on January 10, 2002.

Findings of Fact

The Town, the Association and the Union stipulated to the following facts:

1. The Town of Wakefield (Town) is a public employer within the meaning of Section 1 of M.G.L. c. 150E (the Law).
2. The Wakefield Independent Employees Association (Association) is an employee organization within the meaning of Section 1 of the Law.
3. The American Federation of State, County and Municipal Employees, Council 93, Local 3117, AFL-CIO (Union) is an employee organization within the meaning of Section 1 of the Law.
4. The petition filed with the Labor Relations Commission (Commission) on October 26, 2001 by the Wakefield Independent Employees Association is timely filed under the Commission's rules and regulations and Commission case law.
5. By its petition, the Association seeks to represent employees in the below described bargaining unit for the purposes of collective bargaining under the Law:

All full-time and regular part-time non-supervisory maintenance and custodial employees employed by the Town of Wakefield in all divisions of the Department of Public Works including the Boiler/Plumbing Mechanic, Building Custodian, Carpenter, Dispatcher, Electrician, Equipment Lubricator, Heavy Motor Equipment Operator, HVAC Maintenance Mechanic, Laborer, Maintenance Craftsperson, Maintenance Employee, Mechanic, Motor Equipment Operator, Public Works Job Coordinator, Pumping Station Operator, Special Motor Equipment Operator, Stockroom Attendant, Tree Climber, Water Treatment Coordinator,

be rescinded. Moreover, the Union knew that the Mayor considered the matter to be an in-house union issue and the Charging Party points to no other relevant facts that the Mayor, Board or Civil Service Commission could have provided.

Third, the Union's failure to contact the Union's Executive Board, bargaining team and General Counsel does not render its investigation perfunctory. Gallant's practice was to call the Union's national office when he had questions or needed advice and there was no evidence of any contrary internal Union policy that Gallant failed to follow. The Union's Executive Board did not make decisions and there was no evidence that the bargaining team had a role in the matter. Therefore, contacting the Executive Board or bargaining team would have been futile. The Union is not required to poll all of its attorneys when an issue arises and there was no evidence that Donnellan possessed any unique information or insight into the matter.

Finally, the Union's investigation was not perfunctory merely because Gallant did not seek out Bourque regarding the 1988 contractual amendment that enabled Bourque to take a twenty-four month leave of absence without losing his departmental seniority. Bourque's request was distinguishable from Ciccolini's request because Bourque sought to amend the collective bargaining agreement before he left the department and before affecting the seniority rights of other bargaining unit members. Conversely, the seniority rights of other members had vested by the time the Charging Party sought to amend the agreement and the action he proposed would have detrimentally affected their rights. Moreover, the Charging Party fails to demonstrate why Gallant should have recalled a ten-year old incident that occurred prior to his tenure as Union president. In short, the record evidence in this case demonstrates that the Union pursued Ciccolini's request promptly, attentively and thoroughly. It did not give the matter only cursory attention or fail to take a required step. See *Independent Public Employees Association, Local 195*, 12 MLC 1558, 1565 (1986). After Ciccolini requested a vote, Gallant contacted the Union's national office and solicited assistance and advice from Loughnane and Terry. The Union decided to allow a vote, so long as it was unanimous, conveyed the decision and the rationale to the Charging Party and took the vote in timely manner.

We next consider the Charging Party's contention that the Union acted in a manner that was arbitrary, invidious or inexcusably negligent. The Charging Party first characterizes Gallant's conduct as a failure to act and faults him for deferring to a unanimous vote instead of exercising leadership. We are not persuaded by this argument because it mistakes deference for indecision. Gallant acted by allowing the membership, including the affected officers, to determine whether to restore the Charging Party's seniority, and the Law permits unions to defer decisions on an individual member's grievance to the entire membership body. See, *University of Massachusetts Faculty Federation*, 25 MLC 194 (1999); *Transit Union Division 822 and German Trujillo*, 305 NLRB 946, 140 LRRM 1016 (1991).

The Charging Party next argues that the Union's conduct was arbitrary and inexcusably negligent because Gallant did not explain to the members at the meeting that a majority vote could change

the contract and because Gallant violated the Union's by-laws by failing to take a vote to determine whether the vote to restore his seniority should be unanimous or by a majority of voters. We disagree. As long as the reason for the unanimous vote was related to the Union's interests, the Union's decision to require a unanimous vote was not arbitrary. It is undisputed that the reason for the unanimous vote was to protect the rights of unit members whose seniority would have been adversely affected by Ciccolini's request. Moreover, there was no evidence that the Union's internal decision to require a unanimous vote constituted a policy change requiring a vote of the membership. Therefore, we do not find that the Union violated its by-laws by requiring the vote to be unanimous.

The Charging Party argues further that Gallant engineered an obvious result against him by requiring the unanimous vote, thereby creating and compounding a bad situation, and that this action rises to the level of invidious conduct. The record does not support this argument because there is no evidence of intentional, severe bad faith that was unrelated to legitimate union objectives, see, *Graham v. Quincy Food Service Employees Assoc.*, 407 Mass. 601, 609 (1990), and no evidence that personal hostility motivated the Union's decision. See *Vaca v. Sipes*, 386 U.S. 171, 194 (1967). Conversely, Gallant demonstrated good faith and a lack of hostility by initiating contact with MacAlister to find an open position for Ciccolini and by offering to postpone the seniority vote.

Finally, Charging Party faults the Union for failing to give him advance notice of the date of the vote and reiterates his arguments regarding the Union's failure to contact the Union's bargaining team, General Counsel and Executive Board, as well as the Appointing Authority/Mayor, Board and Civil Service Commission and Bourque. We have found that there is no evidence that Union was required to contact these individuals or entities or that they possessed any additional, relevant information. The Charging Party's argument regarding lack of notice also fails because Gallant offered to postpone the vote when he protested the timing. Accordingly, Ciccolini waived any claim to insufficient notice of the vote by agreeing to proceed with the vote on January 4, 1999.

In discharging the Union's duty, there is room for discretion and consideration of the interests of the over-all union membership in relation to that of the individual aggrieved member. *NAGE*, 38 Mass. App. Ct. at 613. Gallant, Terry and Loughnane discussed Ciccolini's request and considered his rights as well as the rights of bargaining unit members whose seniority would be adversely affected by the proposed amendment. They discussed various options and decided to allow the membership to vote on the request. They decided to require a unanimous vote to ensure that all officers who would be negatively affected by restoring Ciccolini's seniority assented to the action. These facts demonstrate that the Union properly balanced Ciccolini's interests with the rights of members whose seniority might be adversely affected by his proposed contractual amendment and made a decision that was rationally related to the interests of the membership.

Water/Sewer Jobs Coordinator, Water/Sewer Systems Coordinator, Water/Sewer Systems Operator, Working Foreman, Working Foreperson - Mechanics, and Utility/Meter Reader, but excluding the Director of Public Works, Business Manager, Town Engineer, Conservation/Environmental Engineer, Town Buildings Director, all supervisory employees, professional employees and office and clerical employees, all managerial, confidential and casual employees, and all other employees of the Town of Wakefield

6. In or about September 2000, three (3) positions, Electrician, Boiler/Plumbing Mechanic, and HVAC Maintenance Mechanic, were transferred from the payroll of the Wakefield School Committee to the Town's payroll.

7. Since in or about September 2000, the Electrician, Boiler/Plumbing Mechanic and HVAC Maintenance Mechanic have worked for the Town in its Department of Public Works.

8. While employed by the School Committee prior to in or about September 2000, the Electrician, Boiler/Plumbing Mechanic, and HVAC Maintenance Mechanic, were included in a bargaining unit that included maintenance and custodial employees. The Union is the exclusive bargaining representative of all employees in this unit. The collective bargaining agreement covering this unit expired June 30, 2001. A copy of this collective bargaining agreement is attached to this stipulation.¹

9. There are currently eight (8) bargaining units in the Town of Wakefield:

- a) Non-supervisory public works employees currently represented by AFSCME, Council 93, Local 3117.
- b) Non-supervisory library employees represented by the Lucius Beebe Memorial Library Staff Association.
- c) Clerical and secretarial employees represented by AFSCME, Council 93.
- d) Supervisory, administrative and professional employees represented by the Wakefield Municipal, Administrative, Supervisory and Professional Employees Association.
- e) Police patrol officers represented by the Massachusetts Coalition of Police.
- f) Police superior officers represented by the Massachusetts Coalition of Police.
- g) Firefighters, excluding the Chief, represented by the International Association of Fire Fighters, Local 1478.
- h) Trade workers transferred in July 2000 from the Wakefield school department to the Town's Department of Public Works represented by AFSCME, Council 93, Local 3117, AFL-CIO.

10. The recognition clause of the collective bargaining agreement between the Town and AFSCME for the period July 1, 1998 - June 30, 2001 that covers the petitioned-for employees reads as follows:

The Town hereby recognizes the Union as the exclusive representative of all public works employees, excluding supervisory employees, professional employees and office and clerical employees, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

11. The bargaining unit described in paragraph 5, above, includes all the public works employees currently represented by the Union in the bargaining unit described in paragraph 10, above. The only difference between the existing bargaining unit described in paragraph 10, above, and the petitioned-for bargaining unit described in paragraph 5, above, is that the petitioned for bargaining unit includes the positions of Electrician, Boiler/Plumbing Mechanic, and HVAC Maintenance Mechanic.

12. The sole issue in dispute is whether the petitioned-for bargaining unit that includes the three (3) positions of Electrician, Boiler/Plumbing Mechanic, and HVAC Maintenance Mechanic is appropriate within the meaning of the Law.

The following facts are based on testimonial and documentary evidence and further stipulations.

Town Charter Change Effective July 2000 - Transfer of Certain School Department Employees to the Town's Department of Public Works

Prior to July 2000, a carpenter, an electrician,² a boiler/plumbing mechanic, and a HVAC maintenance mechanic worked for the Wakefield school department and were represented by the Union in a bargaining unit that included school department maintenance and custodial staff. Prior to and in the Spring of 2000, Town representatives met with Union representatives and discussed the status of the electrician, the boiler/plumbing mechanic, and the HVAC maintenance mechanic, who would be moved from the school department to the Town, effective July 2000, pursuant to a charter change. The school department carpenter had decided to retire just prior to the date his position was scheduled to be moved from the school department to the Town in the same manner and at the same time as the other three (3) positions.

At the conclusion of these meetings, the Town agreed to recognize the Union as the exclusive representative of these three (3) individuals. Further, the Town agreed that the three (3) individuals would be in a separate unit apart from the existing DPW unit represented by the Union. Finally, the Town and the Union agreed that the terms of the school department contract would remain in effect for these three (3) individuals through its term ending June 30, 2001. The parties did, however, agree to substitute the grievance procedure in the existing DPW contract for the school department contract grievance procedure. The parties did not reduce these oral agreements to a writing(s). In June 2001, just prior to the expiration of the school department contract, the Town and the Union met again and agreed to keep these three (3) individuals in a separate

1. The hearing officer kept the record open until December 18, 2001 to receive a copy of this collective bargaining agreement from the Union. However, the Union did not file this contract with the Commission.

2. In or about 1999, the school department posted and hired James Ross as its full-time electrician. Prior to this, the school department did not have a full-time electrician on staff. Rather, since in or about 1995, the school department had contracted with Mr. Ross for electrical services.

bargaining unit at least for the next round of negotiations which would cover the successor to the contract that expired June 30, 2001.

Town Department of Public Works

The Town's department of public works (DPW) has a workforce of about seventy-nine (79) employees. Fifty-six (56) DPW employees are currently represented by the Union in a bargaining unit of all non-supervisory maintenance and custodial employees (Unit A). Three (3) DPW employees, the electrician, the boiler/plumbing maintenance mechanic, and the HVAC maintenance mechanic, are represented by the Union in a separate bargaining unit (Unit B).³ The DPW is organized by divisions, including buildings, parks/forestry/cemetery, fleet maintenance, highway, water/sewer, engineering, and administration. The Town's director of public works oversees the administration and operation of all DPW divisions. The Director of Public Works, the administration division and the engineering division are located in town hall. The buildings division is located at 5 Common Street, which abuts Town Hall. The highway, parks/forestry, and fleet maintenance divisions are located at 35 North Avenue. The cemetery division is located on Lowell Street. The water/sewer division is located at the Broadway Pumping Station and Treatment Plant.

All non-supervisory maintenance and custodial DPW employees including the electrician, boiler/plumbing mechanic and the HVAC maintenance mechanic, are assigned to a DPW division where they work under the direct or indirect supervision of a division head who reports directly to the DPW director. DPW employees rarely perform non-emergency work assignments outside their respective divisions. In snow and ice emergencies, all DPW employees, are subject to assignments appropriate to the licenses they possess. Generally, all employees in the petitioned-for bargaining unit (Unit A and Unit B) work regularly Monday through Friday, 7:00 a.m. to 3:00 p.m. Generally, all employees in the petitioned-for bargaining unit are required to possess, at minimum, a high school diploma or its equivalency at the time of hire. Every DPW employee in Unit A is required to perform not only the duties specific to their position, but also the duties of any position in a lower classification. For example, a heavy motor equipment operator may be required to perform laborer's work while repairing a road.

DPW employees, excluding the electrician, boiler/plumbing mechanic and HVAC maintenance mechanic, are classified for pay purposes as W-1 through W-9, with W-1 minimum annual pay at \$25,064 and W-9 minimum annual pay at \$32,552. The Town has retained and adopted the school department's pay classification plan for the electrician, boiler/plumbing mechanic and the HVAC maintenance mechanic, MO-9, with a minimum annual pay at about \$41,000.

The Town has an overtime budget in all divisions and a specific snow emergency budget. In certain years, a Unit A employee could earn up to an additional 20% above their base salary by working snow/overtime work. Within the past year while working for the DPW, the electrician has earned about an additional 23% above his

base salary by working overtime. According to the director of public works, overtime is equitably distributed among all DPW employees, including the electrician, the boiler/plumbing mechanic and the HVAC maintenance mechanic.

DPW - Highway Division and Parks/Forestry/Cemetery Division

The highway division and the parks/forestry/cemetery divisions are staffed, in part, by about thirty-two (32) non-supervisory employees currently represented by the Union in Unit A, including about six (6) working foremen, one (1) special motor equipment operator, twelve (12) heavy motor equipment operators, ten (10) motor equipment operators, two (2) tree climbers, and one (1) maintenance employee.

Working Foreman - W-8 Pay Grade

Under the direction of the division supervisor, the working foreman coordinates the work of crews numbering up to ten (10) employees. Depending on the assigned division, he/she possesses a commercial drivers license (CDL), and a hoisting license. Generally, the Town looks for an applicant with five (5) to seven (7) years experience. In addition to snow and ice emergencies, working foremen may report for water and hurricane emergencies.

Special Motor Equipment Operator - W-7 Pay Grade

Under the direction of a working foreman, the special motor equipment operator operates the Town's largest heavy equipment in the highway division. At hire, the incumbent must possess a CDL, and a hoisting license(s). Generally, the Town looks for an applicant with three (3) to five (5) years experience.

Heavy Motor Equipment Operator- W-6 Pay Grade

Heavy motor equipment operators operate large, heavy equipment like front end loaders, sweepers, and catch basin cleaners. The Town requires these operators to have both a CDL and a hoisting license at the time of hire. Further training is provided on-the-job. Generally, the Town looks for an applicant with three (3) to five (5) years experience. Heavy motor equipment operators work in assigned crews interacting with other equipment operators.

Motor Equipment Operator -W-3 Pay Grade

Motor equipment operators operate certain Town vehicles of a lesser weight capacity than the vehicles operated by a heavy motor equipment operator and a special motor equipment operator. A motor equipment operator is required to have a CDL, but not a hoisting license at hire. Generally, the Town looks for an applicant with two (2) to three (3) years experience. Further training is provided on-the-job.

DPW-Water/Sewer Division

The Town's water and sewer divisions are staffed, in part, by about sixteen (16) non-supervisory employees currently represented by the Union in Unit A, including a water/sewer systems coordinator, a water/sewer jobs coordinator, a water/sewer systems operator, a working foreman, a pumping station operator, a utility/meter reader, and a few maintenance craftspeople, heavy motor equipment operators and motor equipment operators.

Water/Sewer Systems Coordinator - W-9 Pay Grade

3. The two (2) existing bargaining units are designated as Unit A and Unit B for purposes of this decision.

Water/Sewer Jobs Coordinator - W-8 Pay Grade

Working with the water/sewer jobs coordinator, the water/sewer systems coordinator assigns and coordinates the work of employees as needed in both the water and sewer division. Working mostly outside the water treatment plant, the water/sewer jobs coordinator schedules and oversees the work of division employees like the motor equipment operator, the maintenance craftsman, and the meter reader. The Town generally requires both coordinators to have three (3) to five (5) years experience at hire, and either possess at hire, or obtain, a water distribution license after hire.

Water Treatment Coordinator - W-8 Pay Grade

(Currently vacant). Reporting to the water/sewer supervisor, the water treatment coordinator assigns work, runs the treatment plant when it is operating, and performs all duties of lower rated division employees, like the pumping station operator. The Town provides on-the-job training and looks for a candidate with five (5) to seven (7) years experience. The Town requires this coordinator to possess both a water treatment license and a water distribution license.

Water/Sewer Systems Operator - W-7 Pay Grade

Working on the water side of this division, the water/sewer systems operator, repairs water mains. Working on the sewer side, the water/sewer systems operator repairs and maintains sewer lines. The water/sewer systems operator responds to water main breaks in emergency situations and works with other division employees like the jobs coordinator and the utility/meter reader. While working on water main breaks, the incumbent operates back hoes. Using certain testing equipment, the incumbent tests the performance of certain equipment in a facility, and uses locators to identify water breaks. Generally, the water/sewer systems operator has (3) to five (5) years experience at hire, and either possesses, or is required to obtain, a water distribution license.

Maintenance Craftsman - W-6 Pay Grade

A maintenance craftsman operates certain equipment like a pick-up truck and a back hoe. A maintenance craftsman is required to have a CDL at hire, and the Town looks for an applicant with two (2) to three (3) years experience. If assigned to the water division, the Town may require a water distribution or water treatment license.

Pumping Station Operator - W-4 Pay Grade

(Currently vacant) Reporting to the water treatment coordinator, and/or the water/sewer division supervisor, the pumping station operator ensures that the correct chemicals are added to the Town water, and repairs pumping equipment located in the Town's single plant that both treats and distributes water. In addition to working snow and ice emergencies, the pumping station operator also reports, as needed, to water breaks. Works with other Town employees in the water and sewer division, particularly with the water treatment coordinator.

Utility/Meter Reader - W-3 Pay Grade

Reporting to the water/sewer division supervisor, the utility/meter reader reads meters using an electronic meter reading gun, and works on a variety of projects as assigned. The Town requires the utility/meter reader to possess a CDL at hire with one (1) to two (2) years experience. The Town provides on-the-job training. The utility/meter reader may respond to water main breaks and could

respond to snow and ice emergencies. Other employees in the water/sewer division also read water meters.

The working foreman, heavy motor equipment operator(s) and motor equipment operator(s) assigned to the water/sewer division perform the same or substantially similar duties as the incumbents of these titles assigned to the highway and parks/forestry/cemetery divisions. In contrast, however, the Town may require these employees to obtain a water distribution and/or water treatment license.

DPW - Fleet Maintenance Division

The fleet maintenance division repairs all Town vehicles, including school department vehicles. A fleet maintenance supervisor heads the fleet maintenance division that is staffed by a working foreperson/mechanic and four (4) mechanics.

Working Foreperson/Mechanic - W-9 Pay Grade

Reporting directly to the fleet maintenance supervisor, the working foreperson/mechanic performs mechanical work, assigns and coordinates work, and inspects mechanical work completed by the mechanics in the fleet maintenance division. Vocational training is preferred at hire in addition to five (5) to seven (7) years mechanical experience. Automotive Service Excellence (ASE) certificates, like a welding certificate, are required to perform the requisite work.

Mechanic - W-7 and W-6 Pay Grades

The mechanics repair Town vehicles like trucks and sweepers and Town equipment like mowers. The mechanics report to the working foreperson/mechanic. In addition to working snow and ice emergencies like all other DPW employees, mechanics may also be called to work if there is a water break emergency. The Town hires mechanics with three (3) to five (5) years experience in repairing equipment. Mechanics take training provided by ASE that issues the requisite certificates for working on brakes and other areas of mechanical maintenance. Mechanics operate lifts, tire changers, welding equipment and other tools of their trade. In addition to a high school diploma, the Town requires certain training provided by ASE or by vocational schools.

Mechanics bring their own tools to work and keep them in their tool chest at their respective work site. Further, the Unit A collective bargaining agreement provides that "[e]ach mechanic shall have an annual tool allowance of up to \$200. All tools purchased with the allowance will be and remain the property of the Town."

DPW - Buildings Division

There are about thirty (30) buildings under the oversight of the DPW director. The buildings division is headed by a buildings manager who supervises a staff of about seven (7) employees including a carpenter, a heavy motor equipment operator, a motor equipment operator, the building custodian, a HVAC maintenance mechanic, a boiler/plumbing mechanic, and an electrician.

Building Custodian - W-2 Pay Grade

4. A water distribution license has four steps or levels, the higher the step the more duties the license holder may perform. Similarly a water treatment license has four steps, the higher the step the more duties the license holder may perform. Before obtaining a license, the applicant must complete certain courses and must pass a

standardized test. Both licenses are issued by the Commonwealth of Massachusetts, and both licenses require the holder to take certain courses annually. A higher level license requires a certain level of experience.

The Town employs one (1) building custodian assigned to the DPW buildings division. The building custodian reports directly to the division head, the buildings manager. Using standard cleaning equipment like floor cleaners and buffers, the building custodian cleans and performs minor repairs in Town buildings, like the town hall and the police station, but not school buildings. The Town does not require the building custodian to possess any special licenses, but looks for one (1) to two (2) years experience at hire. Unlike other DPW employees, the building custodian works from 2:00 p.m. to 10:00 p.m. The building custodian interacts with the carpenter who is also assigned to the buildings division and other employees in the buildings division like the special projects manager. Any further training is on-the-job training.

Carpenter - W-6 Pay Grade

In July 2001, the Town created the carpenter's position. Under the direction of the buildings manager, the carpenter is assigned duties like building and installing cabinets, installing ceilings, doors, and other projects like remodeling bathrooms. In addition to working snow and ice emergencies, the carpenter may respond to emergencies in buildings like a broken window. The carpenter may work with the building custodian on projects, and with the motor and heavy motor equipment operator. To perform the work, the carpenter uses the standard trade tools. The Town requires the carpenter to have three (3) to five (5) years experience at hire and to possess or qualify to obtain a construction supervisor's license or similar license to apply and receive building permits.

Although designated as a motor equipment operator and a heavy motor equipment operator, the incumbents of these two (2) positions in the building division perform duties similar to the duties performed by a maintenance craftsman.⁵

Electrician - MO-9 Pay Grade

Under the direction of the buildings manager, the electrician performs electrical maintenance and installation duties, identifies electrical needs, contributes to the development of an energy conservation program, and performs other duties as assigned by the buildings manager. At hire, the electrician must possess a license as an electrician, have knowledge of the state and local wiring codes, be available to work day and evening hours, and have a minimum of ten (10) years experience. Further, at hire, the electrician should possess the ability to wire telephone systems and have some familiarity with computer networking.

Boiler/Plumbing Mechanic - MO-9 Pay Grade

Under the direction of the buildings manager, the boiler/plumbing mechanic performs duties related to the maintenance, installation, and repair of boilers, oil burners and related systems. For example, the boiler/plumbing mechanic: 1) performs preventative maintenance on heating and plumbing equipment; 2) performs seasonal start up, shut down, and cleaning of boilers; 3) troubleshoots control systems, steam and hot water distribution systems, commercial oil and gas burners and ventilation equipment; and, 4) maintains maintenance records on all heating and plumbing systems and equipment. Further, the boiler/plumbing mechanic responds to emergencies as necessary, assists in energy conservation measures, supervises and works with related

contractors as necessary, and performs other maintenance tasks as directed. At hire, the boiler/plumbing mechanic must have an oil burner certificate or a journeyman plumber's license and ten (10) years experience in oil burner service or plumbing field. A technical high school degree or its equivalent is necessary at hire.

HVAC Maintenance Mechanic - MO-9 Pay Grade

Under the direction of the buildings manager, the HVAC maintenance mechanic performs duties related to the maintenance, installation, and repair of heating, ventilating and air conditioning equipment. For example, the HVAC maintenance mechanic: 1) performs preventative maintenance on HVAC equipment and on electric and pneumatic control systems; 2) performs seasonal start up and shut down of HVAC equipment; 3) troubleshoots control systems, steam and hot water distribution systems, commercial oil and gas burners, air conditioning and ventilating equipment, and; 4) maintains maintenance records on all equipment. Further, the HVAC maintenance mechanic responds to emergencies as necessary, assists in energy conservation measures, supervises and works with related contractors as necessary, and performs other maintenance tasks as directed. At hire, the HVAC maintenance mechanic must have an air conditioning or refrigeration mechanic's license or its equivalent, and five (5) years experience in the HVAC field. A technical high school degree or its equivalent is necessary at hire.

When performing their duties, the electrician, the boiler/plumbing mechanic, and the HVAC maintenance mechanic may interact with the buildings custodian, the carpenter, the motor equipment operator and the heavy motor equipment operator who are assigned to the buildings division. For example, the electrician is now working with the carpenter remodeling a bathroom. According to the electrician, he works alone performing electrical work about 75% of the time, interacts with other trades employees like the boiler/plumbing mechanic and the HVAC maintenance mechanic about 20% of the time,⁶ interacts with other DPW employees about 3% of his working time,⁷ and interacts with school department custodial staff about 2% of his working time. On very rare occasions the electrician works with Town outside contractors. Unlike all other DPW employees, the carpenter is permitted some flexibility in the standard work hours of all DPW employees, 7:00 am to 3:00 pm. For example, the electrician occasionally reports to work early to repair and/or install electrical equipment in areas that are otherwise in use during the regular school day.

At some point, the buildings division manager talked with the electrician, the boiler/plumbing mechanic, and the HVAC maintenance mechanic about their availability and their willingness to work during snow and ice emergencies. All three employees expressed their willingness to be placed at the end of the DPW call-in list in snow and ice emergencies. Although one incumbent does have a CDL, if there was a snow and ice emergency, the incumbents of these positions could drive a pick-up truck with a plow, shovel snow and/or check plow routes.

5. This finding is based on the un rebutted testimony of the director of public works.

6. The electrician is licensed to work on all electrical parts of an air-conditioning system and all electrical parts of a boiler/heating system. The licenses of the boiler/plumbing mechanic and the HVAC maintenance mechanic overlap in certain

areas, but neither is licensed to install or repair the electrical components of an air-conditioning or heating system.

7. For example, DPW employees from another division dug the trench where the electrician installed electrical pipe for a new sprinkler system.

Like certain Unit A employees, the electrician, the boiler/plumbing mechanic and the HVAC maintenance mechanic contact vendors to obtain prices on needed parts and supplies, and will personally pick-up parts and other supplies. Unlike Unit A DPW employees who are reimbursed for mileage if they use their own vehicle for Town business, the electrician, the boiler/plumbing mechanic, and the HVAC maintenance mechanic use their own vehicles or trucks in traveling from work to home, traveling to Town and school department buildings, and traveling in-town or out-of-town, if necessary, to pick-up needed parts and supplies. As negotiated by the Union first with the school department, these three (3) individuals receive a \$1,800 yearly stipend for the use of their vehicles. Further, the electrician, the boiler/plumbing mechanic, and the HVAC maintenance mechanic brought with them to their employment first with the school department and now transferred to the Town's DPW certain tools and equipment they use when working. It was the practice of the school department to purchase a new tool for these three (3) individuals if their own tool needed replacement. According to the electrician, the Town's buildings manager has agreed to replace his tools as needed.

Discussion

Section 3 of the Law requires the Commission to determine appropriate bargaining units consistent with the fundamental purpose of providing for stable and continuing labor relations, while giving due regard to the following statutory criteria: 1) community of interest; 2) efficiency of operations and effective dealings; and, 3) safeguarding the rights of employees to effective representation. To determine whether employees share a community of interest, the Commission considers factors like similarity of skills and functions, similarity of pay and working conditions, common supervision, work contact and similarity of training and experience. *Town of Bolton*, 25 MLC 62, 65 (1998), citing, *Boston School Committee*, 12 MLC 1175, 1196 (1985) (citations omitted). Where applicable, the Commission also examines prior bargaining history, the centralization of management, particularly labor relations, and the geographic location of the employer's facilities in relation to one another. *Springfield Water and Sewer Commission*, 24 MLC 55, 59 (1998), citing, *Mass. Board of Regional Community Colleges*, 1 MLC 1426, 1435 (1975) (citations omitted). No single factor is outcome determinative. *City of Worcester*, 5 MLC 1108, 1111 (1978).

Under the second and third statutory criteria, the Commission considers the impact of the proposed bargaining unit structure upon the employer's ability to effectively and efficiently deliver public services, while safeguarding the rights of employees to effective representation. The Commission complies with these directives by placing employees with common interests in the same bargaining unit, thus avoiding the proliferation of units that place an unnecessary burden on the employer, while maximizing the collective strength of employees in the bargaining relationship. *City of Springfield*, 24 MLC 50, 54 (1998), citing, *Mass. Board of Regional Community Colleges*, 1 MLC at 1440.

The petitioned-for bargaining unit combines two (2) existing Town bargaining units: 1) a unit of all non-supervisory, maintenance and custodial employees, excluding the electrician, boiler/plumbing

mechanic and HVAC maintenance mechanic; and, 2) a trades unit including the electrician, boiler/plumbing mechanic and HVAC maintenance mechanic. The Town and the Union seek to maintain the existing bargaining unit structure, arguing that it is inappropriate to include the electrician, the boiler/plumbing mechanic, and the HVAC maintenance mechanic in the larger bargaining unit of all other non-supervisory DPW employees. The Union argues that the electrician, the boiler/plumbing mechanic, and the HVAC maintenance mechanic do not share a sufficient community of interest with other DPW maintenance employees to warrant their inclusion in the overall DPW bargaining unit. To support its position, the Union points to the following factors: 1) minimal interaction with other DPW employees; 2) overtime earned by working within their respective skill area, not by working during snow and ice emergencies; 3) differences in licensing and experience required at hire; and, 4) differences in certain economic benefits like the vehicle stipend and tool replacement.

The Commission has broad discretion in determining appropriate bargaining units. If a petition describes an appropriate bargaining unit, the Commission will not reject it because it is not the most appropriate unit, or because there is an alternative unit that is more appropriate. *Lower Pioneer Valley Educational Collaborative*, 28 MLC 147, 155 and cases cited therein. Applying the statutory criteria for creating and maintaining appropriate bargaining units, we are persuaded that the petitioned-for bargaining unit that places all non-supervisory DPW employees in a single bargaining unit is appropriate under the Law.

The record establishes that all DPW employees, including the electrician, the boiler/plumbing mechanic, and the HVAC maintenance mechanic, perform manual labor using tools and equipment specific to their work assignments. All DPW employees, including the electrician, the boiler/plumbing maintenance mechanic, and the HVAC maintenance mechanic work Monday through Friday, 7:00 a.m. to 3:00 p.m., with certain flexibility accorded only to the electrician. All DPW employees are assigned to work within a specific division, report directly or indirectly to a division head who reports directly to the DPW director. The electrician, the boiler/plumbing mechanic, and the HVAC maintenance mechanic, like the buildings custodian, the carpenter, a motor equipment operator and a heavy motor equipment operator, work in the DPW's buildings division and all report directly to their division head, the buildings manager. Currently, the electrician and carpenter are working jointly remodeling a bathroom.

Although the positions of electrician and boiler/plumbing mechanic, and HVAC maintenance mechanic require certain licenses and experience, the Town requires applicants for other DPW positions to possess or to obtain shortly after being hired, certain licenses to perform their specific job duties. For example, the Town requires the carpenter to have a construction supervisor's license, the mechanics in the fleet maintenance division to have or obtain the requisite Automotive Service Excellence (ASE) certificates to, among other things, repair brakes and operate welding equipment, and the water treatment coordinator, who runs the Town's water treatment plant to have both a state-issued water treatment and state-issued water distribution license at the time of hire. Further, although applicants for the positions of electrician and

boiler/plumbing maintenance mechanic are required to have ten (10) years experience, the Town requires applicants for certain DPW positions to have substantially the same or more experience at hire than that required for the HVAC maintenance mechanic position that requires five (5) years of experience. For example, the Town looks for applicants for the positions of water treatment coordinator, working foreperson/mechanic, and working foreperson to have five (5) to seven (7) years experience at the time of hire.

The Town and the Union seek to maintain a three (3) person trades unit separate from a broader fifty-six (56) person non-supervisory DPW maintenance and custodial unit. Based on a history of separate bargaining, a strong concern with the preservation of craft lines, and the high level of skills possessed by craft employees, the Commission established a separate, statewide building trades and craft unit, including, among others, carpenters, electricians, plumbers, painters, pipe-fitters, and bricklayers. *State Bargaining Unit Rules*, 1 MLC 1318, 1337 (1975). Further, in *Lynn Hospital*, 1 MLC 1046 (1974), the Commission established a unit of licensed and unlicensed maintenance employees including, among others, general maintenance employees, maintenance mechanics, carpenters, plumber's helpers, painters, electricians, and air conditioning and refrigeration mechanics. Here, the evidence establishes that after the Town and the Union agreed to create a separate trades bargaining unit, they included a newly-created carpenter's position, historically recognized as a skilled craft position, in the broader non-supervisory bargaining unit, not in the separate trades unit. Using tools standard to the trade, the carpenter builds and installs cabinets, installs ceilings and doors, responds to emergencies within his/her particular skill area, and works on projects like remodeling bathrooms. The Town requires the carpenter to possess at hire a construction supervisor's license or similar license sufficient to apply and receive requisite building permits. Therefore, even if we were persuaded to preserve a small craft bargaining unit, the craft unit here is, by the Town and the Union's own conduct, underinclusive because it does not include, at minimum, the carpenter's position. Further, the broader DPW unit also includes skilled mechanics who use their own tools, work under the direct supervision of a more experienced, skilled mechanic in a DPW division consisting of mechanics only, and who, unlike other DPW employees, are provided an annual tool allowance.

There are differences in economic benefits between the two (2) existing bargaining units, like the vehicle stipend, tool ownership and tool replacement. These differences and the evidence of limited interchange with other DPW employees, however, does not outweigh the evidence that all DPW employees perform skilled and unskilled manual labor in an inside and outside work environment under the same organizational structure and common work schedules. A comprehensive non-supervisory maintenance and custodial unit that includes the electrician, the boiler/plumbing mechanic, and the HVAC maintenance mechanic in the same bargaining unit with other craft and skilled employees, like the carpenter and the mechanics, maximizes the collective strength of employees while not

burdening the employer with an unnecessary separate bargaining unit.⁸ *Id.*, citing, *Mass. Board of Regional Community Colleges*, 1 MLC at 1440. See also, *Jordan Marsh Company v. Labor Relations Commission*, 316 Mass. 748, 751 (1944), *MBTA*, 22 MLC 1111, 1144-1145 (1996).

Conclusion and Direction of Election

Based on the record and for the reasons stated above, we conclude that a question of representation has arisen concerning certain employees of the Town and that the following constitutes an appropriate unit for collective bargaining within the meaning of Section 3 of the Law:

All full-time and regular part-time non-supervisory maintenance and custodial employees employed by the Town of Wakefield in all divisions of the Department of Public Works including the Boiler/Plumbing Mechanic, Building Custodian, Carpenter, Dispatcher, Electrician, Equipment Lubricator, Heavy Motor Equipment Operator, HVAC Maintenance Mechanic, Laborer, Maintenance Craftsperson, Maintenance Employee, Mechanic, Motor Equipment Operator, Public Works Job Coordinator, Pumping Station Operator, Special Motor Equipment Operator, Stockroom Attendant, Tree Climber, Water Treatment Coordinator, Water/Sewer Jobs Coordinator, Water/Sewer Systems Coordinator, Water/Sewer Systems Operator, Working Foreman, Working Foreperson - Mechanics, and Utility/Meter Reader, but excluding the Director of Public Works, Business Manager, Town Engineer, Conservation/Environmental Engineer, Town Buildings Director, all supervisory employees, professional employees and office and clerical employees, all managerial, confidential and casual employees, and all other employees of the Town of Wakefield

IT IS HEREBY DIRECTED that an election by secret ballot shall be held for the purpose of determining whether a majority of the employees in the above-described bargaining unit desire to be represented by the Wakefield Independent Employees Association or by the American Federation of State, County and Municipal Employees, Council 93, Local 3117, AFL-CIO or by no employee organization.

The eligible voters shall include all those persons within the above-described unit whose names appear on the Town's payroll for the payroll period ending Saturday, March 23, 2002, and who have not since quit or been discharged for cause.

To insure that all eligible voters shall have the opportunity to be informed of the issues and the statutory right to vote, all parties to this election shall have access to a list of voters and their addresses which may be used to communicate with them.

Accordingly, IT IS HEREBY FURTHER DIRECTED that four (4) copies of an election eligibility list containing the names and addresses of all eligible voters must be filed by the Town with the Executive Secretary of the Commission, 399 Washington Street, 4th floor, Boston, MA 02108 not later than fourteen (14) days from the date of this decision.

8. The record contains no evidence that the merger of the two existing units would compromise the Town's ability to effectively manage its DPW.