

investigation within fifteen (15) days of the filing date of a General Order 95 complaint.

WE WILL NOT fail to bargain in good faith with the International Brotherhood of Police Officers, Local 388 by repeatedly failing either to complete an investigation and dispose of a General Order 95 complaint or to file a progress report of the investigation within fifteen (15) days of the filing date of the General Order 95 complaint;

WE WILL NOT in any like or similar manner, interfere with, restrain, or coerce employees in the exercise of their rights under the Law.

WE WILL immediately adhere to the time limits in General Order 95 either by completing an investigation and disposing of a General Order 95 complaint or by filing a progress report of the investigation within fifteen (15) days of the filing date of the General Order 95 complaint.

[signed]  
CITY OF HOLYOKE

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In the Matter of TOWN OF GRAFTON  
and  
GRAFTON POLICE ALLIANCE  
Case No. MCR-02-4942

- 33. *Consent Agreements and Stipulations*
- 35.11 *regular part-time employees*
- 35.82 *police*

May 23, 2002

*Helen A. Moreschi, Chairwoman*  
*Mark A. Preble, Commissioner*  
*Peter G. Torkildsen, Commissioner*

*Marc L. Terry, Esq. Representing the Town of Grafton*  
*Joseph G. Donnellan, Esq. Representing the Grafton Police Alliance*

**DIRECTION OF ELECTION<sup>1</sup>**

Statement of the Case

On January 16, 2002, the Grafton Police Alliance (Alliance) filed a petition with the Labor Relations Commission (Commission) pursuant to Section 4 of M.G.L.c.150E (the Law) seeking to represent "All regular police sergeants and regular patrolmen of the Town of Grafton." On January 28, 2002, the Commission notified the Town of Grafton (Town) and the Alliance

that a hearing would be held on March 5, 2002. The Massachusetts Coalition of Police, AFL-CIO, Local 152 (MassCOP) currently represents the petitioned-for bargaining unit. On January 29, 2002, Commissioner Peter G. Torkildsen, the duly designated hearing officer, notified MassCOP of the Alliance's petition and the scheduled hearing. MassCOP did not file a Motion to Intervene within thirty (30) days of the Notice of Hearing as required by Commission Rule and Regulation 456 CMR 14.18. Subsequently, the Town and the Alliance agreed to reschedule the hearing to April 19, 2002. In lieu of a hearing, on April 19, 2002, the Town and the Alliance filed a "Joint Motion in Opposition to Proposed Bargaining Unit."

Bargaining Unit History

On April 27, 1982, the Commission certified MassCOP as the exclusive bargaining representative of a bargaining unit comprised of:

All regular police sergeants and regular patrolmen of the Town of Grafton, excluding the Chief of Police, special police officers, casual employees and all other employees.

On February 2, 1999, the Commission received a petition from MassCOP seeking to add sergeants to the existing bargaining unit. It is unclear why the sergeants were no longer included in the bargaining unit that the Commission certified in 1982. The Town and MassCOP signed a consent election agreement on March 20, 1999 establishing a separate bargaining unit for sergeants as follows:

All full-time and regular part-time sergeants employed by the Town of Grafton but excluding all managerial, confidential and casual employees and all other employees.

On June 21, 1999, the Commission certified MassCOP as the exclusive bargaining representative of the above-described bargaining unit.

According to the recognition clause of the current collective bargaining agreement (agreement) between the Town and MassCOP, executed on September 21, 1999, the agreement covers "...all full-time patrol officers employed by the Town Police Department and in the service of the Town Police Department." While the recognition clause does not include sergeants, there are specific references to the terms and conditions of employment of sergeants within other articles of the agreement.

Decision

The Town and the Alliance propose that all full-time patrol officers and sergeants should be included in one bargaining unit, but jointly oppose the inclusion of regular part-time police officers and regular part-time sergeants in the proposed bargaining unit. The parties' motion states, in relevant part:

The parties, therefore, oppose and object to the inclusion of regular part-time patrol officers and sergeants in the Town of Grafton in the proposed bargaining unit because no such positions exist, and it is

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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.

inconsistent with law to include in a proposed bargaining unit positions that do not exist....

The parties further stipulated that there were no part-time sergeants or patrol officers currently employed by the Town.

When the issues raised by a representation petition are resolved by the parties' stipulation, the Commission will adopt the stipulation, if it does not conflict with either the Law or established Commission policy. *Town of Manchester-by-the-Sea*, 24 MLC 76, 80 (1998); *Town of Hopedale*, 20 MLC 1059, 1067 (1993), citing *Board of Trustees, State Colleges*, 4 MLC 1427, 1428 (1977). Here, the parties' stipulation to exclude regular part-time patrol officers and sergeants on the ground that they do not exist conflicts with the Commission's well-established case law and policy to include in the same bargaining unit regular part-time employees who share a community of interest with full-time employees.

The Commission has traditionally placed regularly scheduled part-time employees who share a community of interest with full-time employees in the same unit as their full-time counterparts. *Worcester County*, 17 MLC 1352, 1362 (1990), citing *City of Worcester*, 8 MLC 1350A, 1352 (1981); *Town of Newbury*, 13 MLC 1676, 1680, (H.O. 1987), *aff'd* 14 MLC 1660, 1663 (1988); *Board of Regents (DCE)*, 13 MLC 1173 (1986); *Board of Regents (SMU)*, 11 MLC 1486 (1985); *Boston School Committee*, 7 MLC 1947 (1981); *Town of Sterling*, 4 MLC 1704 (1978). Collective bargaining rights are not conditioned upon an arbitrary number of hours worked per week, much less on a full-time employment standard. *Town of Newbury*, *supra*; *Board of Regents (DCE)*, *supra*; *Town of Leicester*, 9 MLC 1014, 1018 (1982); *Town of Saugus*, 4 MLC 1361, 1362 (1977). In rejecting stipulations that excluded certain non-existent regular part-time employees from the proposed bargaining unit, the Commission has held that:

...the bargaining unit description should read "all full-time and regular part-time employees" and we decline specifically to limit inclusion in the unit only to those employees who work twenty or more hours per week. It is often appropriate to define 'regular part-time' employees as those working a specified number of hours per week. Such a minimum must, however, take into consideration the employees in question, include those employees who share a community of interest with the full-time employees, and exclude those employees whose relationship with the Employer is so casual as to warrant exclusion.... Necessary to establishment of such a minimum is the existence of employees who fail to meet the standard, for only then can it be said that they do not share a community of interest with the other employees...

*City of Worcester*, 8 MLC at 1352.

Accordingly, the parties' claim that there are no current part-time sergeants or patrol officers<sup>2</sup> does not warrant the exclusion of "regular part-time" language from the bargaining unit description.

2. Although the parties claim that there are no part-time positions or part-time employees, the current collective bargaining agreement contains the following:

Article X, Section 3. Shift Assignments

(c) In the event that any full-time employee is unable to work the shift to which he has been assigned, and the town chooses to fill his position on that shift, such shift shall be offered to the remaining full-time employees who

Therefore, we decline to adopt the parties' stipulation that would arbitrarily exclude regular part-time employees.

We further note that neither party claims, nor is there any evidence, that the sergeants are supervisory and, therefore, should have a separate bargaining unit. Accordingly, we conclude that a bargaining unit of all full-time and regular part-time patrol officers and sergeants is an appropriate bargaining unit.

CONCLUSION AND DIRECTION OF ELECTION

We, therefore, conclude that a question of representation has arisen concerning certain employees of the Town of Grafton and that the following employees constitute an appropriate bargaining unit for collective bargaining within the meaning of Section 3 of the Law.

All full-time and regular part-time patrol officers and sergeants employed by the Town of Grafton, excluding the police chief, the police lieutenants, all managerial, confidential, casual, reserve, and all other employees of the Town of Grafton.

IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted to determine whether a majority of the employees in the above-described bargaining unit desires to be represented by the Grafton Police Alliance or by no employee organization. The eligible voters shall include all those persons within the above-described unit whose names appear on the Employer's payroll for the payroll period for the week ending April 20, 2002 and who have not since quit or been discharged for cause. To ensure 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 two (2) copies of an election eligibility list containing the names and addresses of all eligible voters must be filed by the Town of Grafton with the Executive Secretary of the Commission, 399 Washington Street, 4<sup>th</sup> floor, Boston, MA 02108 not later than fourteen (14) days from the date of this direction of election.

The Executive Secretary shall make the list available to all parties to the election. Failure to submit this list in a timely manner may result in substantial prejudice to the rights of the employees and the parties, therefore, no extension of time for filing the list will be granted except under extraordinary circumstances. Failure to comply with this direction may be grounds for setting aside the election, should proper and timely objections be filed.

SO ORDERED.

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are off duty on a voluntary basis, and on a rotating, seniority basis. If no full-time employee is available and willing to work such shift, or if an emergency exists, then it may be offered to available part-time employees or special police officers meeting current legal requirements.

Notwithstanding the above, during the first week covered by the term of this contract and in alternating weeks thereafter, the Chief of Police may first offer such shift to part-time employees or special police officers.