

TOWN OF MILLVILLE AND MASSACHUSETTS COALITION OF POLICE, AFL-CIO, MCR-3459 (6/3/85).
RULING ON CHALLENGED BALLOT AND CERTIFICATION OF RESULTS OF ELECTION.

35.11 regular part-time employees
43.31 challenged ballot

Commissioners participating:

Gary D. Altman, Commissioner
Maria C. Walsh, Commissioner

Appearances:

Joseph C. Cove	- Representing the Town of Millville
Susan F. Horwitz	- Representing the Massachusetts Coalition of Police, AFL-CIO

RULING ON CHALLENGED BALLOT
AND CERTIFICATION OF RESULTS OF ELECTION

On March 19, 1984, the Massachusetts Coalition of Police, AFL-CIO (Union) filed a representative petition with the Massachusetts Labor Relations Commission (Commission) seeking certification as the exclusive collective bargaining representative of all full-time and part-time police officers in the Millville Police Department, excluding the Chief of Police. The Town of Millville (Town) opposed the petition, alleging that the part-time officers are casual employees and so not entitled to organize, and that the department's single sergeant is a supervisor. On July 27, 1984, Hearing Officers Sarah P. Garraty and Charles J. Maguire, Jr. issued a decision, finding that the regular part-time officers are not casuals and so are entitled to organize, and that the sergeant is not a supervisor.¹ The hearing officers directed an election and described the appropriate bargaining unit as consisting of, "[a]ll full-time and regular part-time police officers of the Town of Millville, including the Sergeant and excluding the Chief of Police and all managerial and confidential employees as defined by G.L. c.150E." They also identified the eligible voters as "all persons within the unit described above whose names appear on the payroll of the Millville Police Department on July 27, 1984 and who do not subsequently resign, retire or become discharged for cause," and directed the employer to submit a list of eligible voters, which was done on September 10, 1984.

On September 19, 1984, the election was conducted by the Commission. All nine individuals included by the Town on the eligibility list appeared to vote, including Ralph Chambers. When Chambers voted, his ballot was challenged by the Town. No other ballots were challenged by any party. Subsequently, the ballots were counted and the result was four ballots cast for the Union, four ballots cast for no employee organization, and one challenged ballot. Because the challenged

¹ The hearing officer's decision is reprinted at 11 MLC 1077 (1984).



ballot is dispositive of the election, the Commission proceeded to investigate the challenge to determine the results of the election.² Following the investigation, a hearing was scheduled, and rescheduled to February 26, 1985, at the parties' request. At that hearing both parties appeared, through counsel, and had the opportunity to present evidence and to examine and cross-examine witnesses. At the close of the hearing, the parties elected to submit briefs rather than making closing statements and the Union has done so.

The Town contends that Chambers's ballot should not be counted because he lacked sufficient community of interest with "his fellow officers" to be included in the bargaining unit and because he had insufficient employment contact with the Town during the year preceding the election to be considered a Town employee. The Town also contends that Chambers was not included on the Town's payroll on July 27, 1984, the eligibility date for the election in this case. The Town argues that Chambers's name had been placed on the eligibility list through clerical error and that Chambers should not be permitted to obtain voting rights he would not otherwise have, simply by that error.

The Union contends that Chambers was a member of the bargaining unit established in the hearing officers' decision and was therefore eligible to vote. It contends that Chambers became a part-time Millville police officer in May 1983, was given a three-year appointment in April 1984, and that no change occurred in his employment status between May 1983 and the eligibility date of July 27, 1984. The Union also argues that the Town is estopped from challenging Chambers's vote after having included his name on the eligibility list and that the Union would be prejudiced if the Town is permitted to disclaim the list it prepared.

Findings of Fact⁴

The Millville Police Department consists of one part-time Chief of Police, one full-time sergeant, two full-time patrolmen, six part-time patrolmen, and at least two part-time matrons.⁵ The sergeant and all the patrolmen are regular employees and make up the unit appropriate for collective bargaining. The matrons are casual employees and are not members of the bargaining unit.

Richard Baker has been the police chief in Millville since December 1983. Under Chief Baker, patrolmen are required to participate in firearms and first aid training. They are also encouraged, but not required, to attend periodic departmental staff meetings.⁶

²402 CMR 14.12.

³(No footnote numbered "3" appeared in the original draft of this decision.)

⁴Neither party contests the Commission's jurisdiction in this case and we find that the Commission has jurisdiction to decide this matter.

⁵We take administrative notice of the hearing officers' decision in this case and have considered facts found in that proceeding as well as the facts proven in the challenged ballot hearing.

⁶- (see page 1643)



Chief Baker schedules the police officers in the same way as did his predecessor. The full-time officers work the same shifts every month. The part-time officers' schedules vary. Towards the end of each month the Chief, or one of the full-time officers, calls the part-time officers to determine their availability to work during the next month, and schedules the part-time officers into appropriate open shifts. Most of the part-time officers average thirty to forty hours of work each month.

Chambers began working as a part-time officer in Millville in May of 1983 and worked each month from May through October 1983. During this time he worked an average of eighteen hours a month. Chambers did not work for the department again from November 1983 until August 1984, although the department continued to offer him work, at least through March 1984.⁷ Chambers's availability for Millville police work is restricted by his regular full-time job and by the fact that he also works as a part-time officer in the Town of Upton.

In April 1984, Chief Baker made a recommendation to the Selectmen that they appoint six individuals, including Chambers, to the position of part-time patrolman. On April 16, 1984, the Selectmen unanimously approved the Chief's recommendation. Chambers's appointment has not been rescinded, nor has Chambers resigned or been discharged from the department.

The Town includes on its monthly payroll the names of individual officers who received pay during the month. If an officer did not receive pay, her/his name is not listed on the records for that month.⁸ Chambers's name appears on the Town's payroll records for the months of June 1983 through October 1983.⁹ Chambers does not appear on the records between November 1983 and July 1984. All of the other part-time officers' names appear in the records for each month from June 1983 through July 1984. It appears that the Town includes on its monthly payroll record only the names of police officers who have received pay during the month. Since Chambers did not work during those months, he received no pay and is not listed in the payroll records.

⁶ (from page 1642)

Chambers has completed the requisite firearms and first aid training to the Town's satisfaction. He has not attended any staff meetings due to his schedule at a full-time job with another employer.

⁷ The testimony at hearing was confusing on this point. Chief Baker contradicted himself, testifying that he attempted to reach Chambers monthly from December through March; that a full-time officer tried Chambers monthly during that same period; and that he, Baker, tried monthly from December through June. The attempts to reach Chambers were all unsuccessful. Only once was a message left for Chambers, which Chambers said he never received. Chambers made a couple of unsuccessful attempts to communicate with the department about scheduling during this period.

⁸ There was no testimony directly on this point; however, Chambers's name does not appear for any months he did not actually work. Chief Baker testified that he believed Chambers ceased to be an employee around June 1984, so apparently the Town's practice is not to list those who do not actually work.

⁹ - (see page 1644)



Pursuant to the direction of election, Chief Baker prepared an election eligibility list for the Commission. He copied the eligibility list from the department telephone list, which is the same list that is used for scheduling, and intentionally included Chambers on the eligibility list.¹⁰

Opinion

The question presented by this challenge is whether Chambers was a regular part-time police officer for the Town as of July 27, 1984. Based upon the evidence presented at the challenged ballot hearing, we find that he was not. Therefore, Chambers was not eligible to vote and his ballot will not be counted.

Initially, we note that, by including Chambers on the eligibility list, the Town is not estopped from contesting his eligibility. Whether done by clerical error or, as here, intentionally, the mere fact of inclusion on the list is not determinative of voter eligibility. See O.E. Szekely & Associates, 117 NLRB 42 (1957). To hold otherwise would permit the parties to decide an issue which is the prerogative of the Commission.

The Commission has long held that part-time employees are eligible to vote if they work a regular schedule. Determination of the regularity of a part-time employee's schedule is based on consideration of several factors including how much time the part-time employee works, how often the part-time employee works and how the part-time employee's schedule is established. See County of Plymouth, 2 MLC 1106, 1109-1110 (1975).

In this case the hearing officers determined that the Town employed regular part-time police officers who were eligible for inclusion in the unit. The hearing officers did not consider whether Chambers was such a regular part-time employee. The hearing officers' decision does not specify the number of hours a part-time police officer must work to qualify as a regular part-timer. Generally, the number of hours that a part-time employee must work to be considered "regular" will vary from industry to industry and workplace to workplace. Compare Town of Braintree, 5 MLC 1133, 1136 (1978) (library employees are regular part-time if they work 14 hours per week) with Boston School Committee, 7 MLC 1947, 1951 (1981) (substitute teachers who work 60 days per school year are regular part-timers).

The National Labor Relations Board generally determines the regularity of employment through reference to the schedule worked during the thirteen-week period preceding the eligibility date. E.g. Davison-Paxon Company, 185 NLRB 21 (1970);

⁹ (from page 1643)

Payroll records were submitted, at our request, for the period of June 1983 through July 1984. Although the parties agree that Chambers worked in the department prior to June 1983, no payroll records for that time were submitted.

¹⁰ Baker testified that he included Chambers on the list specifically to avoid problems with the Commission.



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Manncraft Exhibitors Services, Inc., 212 NLRB 923 (1974). By imposing this prerequisite on voter eligibility, the Board seeks to ensure that all voters have performed a sufficient amount of work, with sufficient regularity and currency to develop the community of interest that is the basis of the bargaining unit. Manncraft Exhibitors Services, Inc., supra; May Department Stores Company, 181 NLRB 710 (1970).

We share the Board's concern that employees possess a work history which is both regular and current and which includes sufficient time on the job for them to have developed a community of interest with their colleagues. We also agree with and adopt the Board's general rule that an employee's work history for the thirteen weeks preceding the eligibility date offers the most helpful evidence of the quantity, regularity and currency of employment.

Applying this standard to Chambers, we find that he was not a current, regular part-time employee of the Town as of July 27, 1984; therefore, he lacked the necessary community of interest for inclusion in the bargaining unit. It is undisputed that during the thirteen weeks prior to the eligibility date, Chambers did not work a single hour for the Town. That the Town considered him for work or that he was willing to work is irrelevant. Where he did not work at all during the relevant period, such contact suggests the lack of community between his interests and those of the other Millville police officers. In sum, we conclude that Chambers was not a "regular" part-time police officer as of the eligibility date in this case. Accordingly, Chambers was not an eligible voter and his ballot will be voided.

CONCLUSION

The results of the secret ballot election are as follows:

Total ballots cast by eligible voters.....	8
Ballots cast for the Massachusetts Coalition of Police, AFL-CIO.....	4
Ballots cast for no employee organization.....	4
Challenged ballots.....	0
Ballots cast by ineligible voter.....	1

Therefore, by virtue of and pursuant to the power vested in the Commission by Section 4 of Chapter 150E of the General Laws, IT IS HEREBY CERTIFIED that a majority of the eligible voters have not selected the Massachusetts Coalition of Police, AFL-CIO as their representative for the purposes of collective bargaining. Accordingly, the Union's petition is hereby DISMISSED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

GARY D. ALTMAN, Commissioner
MARIA C. WALSH, Commissioner



