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CITY OF WORCESTER AND TEAMSTERS, LOCAL 170 AND LOCAL 495, SEIU, MCR-3545 (10/30/85).

34.1 appropriate unit  
34.2 community of interest  
34.4 efficiency of operation (fragmentation)  
34.8 similarity of work  
34.91 accretion  
35.812 dispatchers  
34.901 timeliness of filing  
34.902 add-on election  
39. Residual Unit  
45.42 open period  
46.16 showing of interest  
92.35 stipulations

Commissioners participating:

Paul T. Edgar, Chairman  
Gary D. Altman, Commissioner

Appearances:

Janice M. Borg, Esq.	- Counsel for the City of Worcester
Thomas J. Flynn, Esq.	- Counsel for the International Brotherhood of Teamsters, Local 170
David B. Rome, Esq.	- Counsel for Local 495, Service Employees International Union

DECISION

The International Brotherhood of Teamsters, Local 170 (Teamsters) seeks to represent a unit of fire alarm operators employed by the City of Worcester (City). A petition for the identical unit was dismissed by a hearing officer of this agency on July 19, 1984 on the grounds that the unit was inappropriate.<sup>1</sup> The hearing officer's decision was affirmed on appeal,<sup>2</sup> but the Teamsters argue that additional facts and a reconsideration of certain legal arguments in this case now warrant the direction of an election.

Statement of the Case

On February 27, 1985, the Teamsters filed a representation petition with the Labor Relations Commission (Commission) seeking to represent a twelve-person unit of fire alarm operators employed by the City. The City filed a motion to dismiss on March 19, 1985 and Local 495, Service Employees International Union (SEIU) moved to intervene.<sup>3</sup> The Teamsters and the City agreed to waive a hearing and filed a joint stipulation of facts and briefs on May 2, 1985. Based upon the following findings of fact and legal analysis, we conclude that the Teamsters' petition must be dismissed.

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<sup>1</sup>The hearing officer's decision is reported at 11 MLC 1060 (1984).

<sup>2</sup>City of Worcester, 11 MLC 1363 (1985) (the earlier case).

<sup>3</sup>SEIU's motion is allowed.



Findings of Fact<sup>4</sup>

The City employs approximately 30 police dispatchers, who are represented by SEIU in a bargaining unit certified by the Commission in 1982,<sup>5</sup> and 12 fire alarm operators.<sup>6</sup> The fire alarm operators and police dispatchers work in adjacent offices on the first floor of Police Department headquarters and perform essentially the same function. They receive calls for help from the public, marshal responses and document their actions. Fire alarm operators deal mostly with fire fighters and police dispatchers deal mostly with police officers, but the two types of dispatchers often work together responding to the same emergency. When it is necessary that public utilities, ambulances, television stations, chaplains and the like be alerted about an emergency, the fire alarm operators and police dispatchers decide on a case-by-case basis about their respective responsibilities. Calls coming in to police dispatchers about fires through the 911 telephone emergency number are switched to the fire alarm operators.

To perform their dispatching functions, the police and fire departments use the same microwave radio system. The police department radios use three of the frequencies and the fire department uses four. Each frequency has its own separate antenna and back-up antenna.

The appointing authority for both the fire alarm operators and the police dispatchers is the City Manager. Both groups of employees are covered by Civil Service Law, are in the same pay grade and share the same health insurance, vacation and retirement benefits. The two groups differ in their supervision and their hours. Fire alarm operators are responsible to the Fire Chief and work eight-hour shifts on a three-days-on, one-day-off schedule, rotating to the next later shift after each day off. Police dispatchers are responsible to the Police Chief and regularly work one of three shifts on a six-days-on, two-days-off schedule.

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<sup>4</sup>The Teamsters and the City stipulated that the facts in City of Worcester, 11 MLC 1363 (1985) and four additional facts concerning the radio system used by the police and fire departments would constitute the facts in this case. In addition, the Teamsters, in answer to the City's motion to dismiss, presented three additional "facts" about the radio system. We need not consider any additional information presented by one party and not stipulated to by the other. See Town of Dracut, 9 MLC 1702, 1704-5 (1983). Even if true, however, the Teamsters' information that departments of the City other than police and fire use emergency radio frequencies does not demonstrate that the fire alarm operators and police dispatchers do not share a community of interest. To the contrary, the Teamsters' information would raise questions about the appropriateness of any unit excluding other dispatchers.

<sup>5</sup>At the time the police dispatcher unit was certified by the Commission, the position and present job duties of fire alarm operator existed, but neither the City nor SEIU sought to include them in the unit. SEIU and the City had a collective bargaining agreement covering the police dispatchers with a June 30, 1985 expiration date.

<sup>6</sup>None of the parties contest the Commission's jurisdiction.



Positions of the Parties

The Teamsters argue that the fire alarm operators and police dispatchers do not share a community of interest, that the Commission's dismissal of the prior representation petition inappropriately left the fire alarm operators without the right to union representation and that they are a residual unit, appropriate for separate representation. Alternatively, the Teamsters ask the Commission to direct an election in a combined unit of fire alarm operators and police dispatchers.

The City argues that the Commission's previous decision dismissing a petition for the identical unit of fire alarm operators is the law of the case. SEIU takes the same position. Further, the City contends that the additional stipulated facts about the radio system do not affect the conclusion reached on the earlier case. Were the Commission to reconsider all of the evidence, the City contends that the record demonstrates that the fire alarm operators share a substantial community of interest with the police dispatchers. Furthermore, the City asserts that the policy favoring broad, comprehensive units precludes the Commission from directing an election in this small departmental unit.

Opinion

The evidence in this case demonstrates that the fire alarm operators and police dispatchers share a community of interest. They perform essentially the same work, often work together responding to the same emergency, use the same radio system,<sup>7</sup> are subject to the same appointment process and salary schedule and receive the same benefits. As we said in the earlier case, "different shifts and supervision, when weighed against the extensive similarities between the two positions, do not produce such diversity of employment interests as would cause conflicts in the negotiation and administration of collective bargaining agreements." City of Worcester, 11 MLC at 1365. Our statutory obligation to determine appropriate bargaining units,<sup>8</sup> is not fulfilled by creating a small departmental unit of fire alarm operators in the circumstances of this case.

The Teamsters, however, urge us to consider two alternatives to dismissal of this

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<sup>7</sup>The Teamsters do not suggest how the additional facts about the radio system stipulated to by the parties in this case affect the job duties of the two groups of dispatchers. In their brief, the Teamsters admit that both groups use common types of equipment, but add "although it is not clear if they are identical." Absent information to the contrary, we cannot conclude that the use of different radio frequencies affects the dispatcher's job functions, which are to receive and respond to calls for assistance using a telephone and a radio.

<sup>8</sup>G.L. c.150E, Section 3 provides that bargaining units "shall be consistent with the purposes of providing for stable and continuing labor relations, giving due regard to such criteria as community of interest, efficiency of operations and effective dealings, and to safeguarding the rights of employees to effective representation."



petition: an election in a residual unit or an election in a combined fire alarm operators/police dispatcher unit. Neither alternative comports with the law or our procedures. A residual unit is generally composed of all of an employer's unrepresented employees who are not easily classified into a particular group. The Commission has not included employees in a residual unit where there are other units in which the employees more appropriately belong. See *Town of Scituate*, 7 MLC 2120, 2122 (1981). In this case, there is no evidence that the fire alarm operators are the only remaining unrepresented employees of the City, and as we have found, the fire alarm operators more appropriately belong in a unit with the other dispatchers. Therefore, the Teamsters' first alternative fails.

The remaining issue is whether we should now direct an election in a combined fire alarm operators/police dispatchers unit. There are two impediments to an election in that combined unit. First, Section 4 of G.L. c.150E provides that the Commission shall not direct an election in a unit in which a collective bargaining agreement is in effect. By regulation, we have established an "open period" of 180 to 150 days prior to the termination of a collective bargaining agreement during which we will entertain a representation petition. 402 CMR 14.06(1). The Teamsters filed the present petition on February 27, 1985, after the "open period" for the contract between the City and SEIU covering the police dispatchers.<sup>9</sup> Therefore, the Teamsters' petition for an election in a combined unit does not meet the "open period" requirement.

Second, our regulations require that a petition be accompanied by a thirty percent "showing of interest," i.e., thirty percent of the employees in the petitioned-for unit must designate the petitioner to act in their interest. 402 CMR 14.05. The Teamsters' "showing of interest" was filed to accompany their petition for a twelve-person fire alarm operators unit, not for the much larger approximately 42-person combined unit. Therefore the Teamsters' petition, even were it deemed timely for an election in the combined unit, does not presently meet the Commission's "showing of interest" requirement.

We are not unsympathetic to the Teamsters' argument that the fire alarm operators have the statutory right, under G.L. c.150E, Section 2, to organize and to form or join an employee organization to bargain collectively over wages, hours and terms and conditions of employment. That right may appropriately be exercised if a petition for an appropriate combined dispatcher unit, accompanied by the required showing of interest, is filed in the open period or if a petition for an election to "add on" the fire alarm operators to the police dispatchers unit is filed by the employee organization currently representing the police dispatchers.<sup>10</sup> An election in a small,

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<sup>9</sup>The record fails to disclose whether SEIU and the City have negotiated a successor to that agreement.

<sup>10</sup>We note that there is no evidence that SEIU has disclaimed interest in seeking to add on the fire alarm operators to the police dispatchers unit; a factor which is sometimes considered in directing an election in an unrepresented unit of similar employees.



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City of Worcester and Teamsters, Local 170 and Local 495, SEIU, 12 MLC 1342

departmental unit of fire alarm operators would not effectuate the purposes of G.L. c.150E. Therefore, the Teamsters' petition is DISMISSED.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman

GARY D. ALTMAN, Commissioner

