
TOWN OF NEWBURY AND NEWBURY POLICE ASSOCIATION, MCR-3669 (4/8/88). DECISION ON
 APPEAL OF HEARING OFFICER'S DECISION

- 34.1 appropriate unit
- 34.2 community of interest
- 34.4 efficiency of operation (fragmentation)
- 34.71 departmental unit
- 35.1 casual and temporary employees
- 35.11 regular part-time employees
- 35.7 supervisory and managerial employees
- 35.812 dispatchers
- 35.82 police
- 92.51 appeals to full commission

Commissioners Participating:

Paul T. Edgar
 Maria C. Walsh
 Elizabeth K. Boyer

Appearances:

- Stephen Collela, Esq. - Representing the Newbury Police Association
- Daniel B. Kulak, Esq. - Representing the Town of Newbury

DECISION ON APPEAL OF A
 HEARING OFFICER'S DECISION

Statement of the Case

On May 19, 1987, Hearing Officer Amy Laura Davidson issued her decision in this matter. In it, she ruled that sergeants, part-time reserve police officers, and dispatchers employed by the Newbury Police Department should be included in a collective bargaining unit of full-time police officers and full-time reserve police officers. The Town of Newbury (Town) has appealed that ruling.

Findings of Fact

The Town asserts that the Hearing Officer failed to make findings of fact in nine areas. We have reviewed the evidence of record, and now treat the assertions seriatim:

- 1) Proposed finding: The staff sergeants are in charge of each shift to which they are assigned. We note that the evidence warrants such a finding, and that the Hearing Officer did so find. See 13 MLC at 1678.

¹ See 13 MLC 1676.



Town of Newbury and Newbury Police Association, 14 MLC 1660

2) Proposed findings: The staff sergeants have authority to impose discipline. The Hearing Officer noted on page 1678 that the staff sergeants have had, both before and after July 1986, limited authority to reprimand police officers, but the record does not disclose the extent of that authority because neither sergeant has ever exercise it. Independent review of the evidence indicates that the Hearing Officer's finding is consistent with the evidence and is the most that may be said of the sergeants' authority to discipline.

3) Proposed finding: The staff sergeants are the first level to which employees file grievances or complaints. We note that a Selectman testified that a patrolman might take a personal complaint to a sergeant when the latter is serving as shift commander. We assume the Town's reference to "grievances" is synonymous with "complaints," since no grievance procedure currently exists. We find that the Selectman's testimony is too speculative to permit a conclusion that the staff sergeants are the first step of a grievance procedure. We find, however, that patrol officers may present complaints to staff sergeants.

4) Proposed finding: The staff sergeants take corrective actions to ensure correct police procedures are followed. The evidence in this respect is limited to the proper tagging, safekeeping, and transportation of evidence in court matters. The Hearing Officer's finding at Page 1678 is appropriate without more.

5) Proposed finding: All of the part-time reserve officers hold full-time employment with employers other than the Town of Newbury. The evidence of record warrants this finding. However, such a finding is not dispositive of the issue of the exclusion of these employees from the bargaining unit, and such a finding does not require reversal of the Hearing Officer's rulings.

6) Proposed finding: Dispatchers Perley and Scholtz, when called to assist in drug raids, do so separate and apart from their dispatcher duties. We agree that this is so. When Perley and Scholtz assist in drug raids they are acting in their capacities as reserve police officers, and are not acting in their additional capacities as dispatchers. In other words, dispatchers do not assist in drug raids unless they are also reserve police officers, as only Perley and Scholtz are. The Hearing Officer made this distinction sufficiently clear in the last two paragraphs of her findings of fact.²

7) Proposed finding: Perley and Scholtz serve as rape investigators on occasion, separate and apart from their dispatcher duties. The same may be said of this proposed finding as was said about the previous one. Rape investigations are part of their duties as reserve police officers and are not part of their dispatching duties.

8) Proposed finding: Perley has conducted ten to twelve rape investigations since 1982. The record supports such a finding.

9) Proposed finding: There are presently no collective bargaining units

²See 13 MLC 1680.



Town of Newbury and Newbury Police Association, 14 MLC 1660

under the jurisdiction of the Board of Selectmen. The record also supports this finding.

DECISION

The Town contends that the Hearing Officer erred in her ruling that sergeants are not supervisory personnel. We disagree, and affirm her ruling for the reasons stated in her opinion. The cases cited by the Hearing Officer constitute appropriate authority.³ The Town directs our attention to Town of Winchester, 12 MLC 1427 (1985). That case may be properly differentiated. The sergeants in the case sub judice have no power to hire, transfer, suspend, lay off, recall, promote, discharge, or reward a patrolman. Nor do they adjust their grievances. As the hearing officer points out, their assignment duties are predominantly administrative in nature and do not demonstrate supervisory authority. They do direct patrolmen, but at most they can be considered comparable to "working foremen." In Winchester, sergeants made effective recommendations in regard to vacation time and paid details. The Winchester sergeants could and did relieve patrolmen from duty for insubordination, thereby exercising true supervisory authority.

We affirm the Hearing Officer's rulings that the part-time reserve police officers are not casual employees, and that they should be included in the bargaining unit. The cases cited by the Hearing Officer⁴ are appropriate and dispositive of these issues. The Town relies upon Town of Lincoln, 1 MLC 1422 (1975), which excluded call firefighters as casual employees. The ruling was appropriate there, as the Lincoln call firefighter force consisted principally of casual employees who lacked sufficient community of interest with the regular firefighters to be included in the same unit with the regulars. The call firefighters in Lincoln voluntarily appeared to extinguish fires, and were not compelled to respond to alarms. This is in sharp contrast to the case sub judice, where the part-time reserve officers have regularly scheduled hours. For these reasons discussed in the Hearing Officer's decision, we agree that the part-time reserve officers share a sufficient community of interest with the full-time employees to warrant inclusion in the same unit.

Lastly, we decline to create a separate unit for the six dispatchers. We have frequently held that units which are limited to departments or other administrative units of a large employer are inappropriately underinclusive. City of Worcester, 5 MLC 1332, 1337 (1978). We are mindful that Newbury is a small community, and until now its employees have been unorganized. There is no clerical unit in existence which could absorb these dispatchers, and the Commission has long encouraged the formation of broad, comprehensive units rather than small, fragmented ones. E.g., Board of Regents of Higher Education, University of Massachusetts Medical Center, 12 MLC 1643, 1648 (1986). The evidence establishes sufficient community of

³ See Board of Trustees, University of Massachusetts, 3 MLC 1179, 1205 (1976); Boston School Committee, 11 MLC 1352, 1360 (1985); Boston School Committee, 12 MLC 1175, 1200 (1975); and Town of Hadley, 12 MLC 1457 (1975).

⁴ See 13 MLC 1680-81.



Town of Newbury and Newbury Police Association, 14 MLC 1660

interest between the dispatchers and the rest of the petitioned-for unit to warrant inclusion of the dispatchers in the unit.

For the foregoing reasons, the Hearing Officer's opinion is affirmed in its entirety. The appropriate bargaining unit consists of all full-time and regular part-time patrol officers, reserve officers, sergeants and dispatchers in the Newbury Police Department, excluding the Chief of Police.

DIRECTION OF ELECTION

We conclude that a question of representation has arisen concerning the representation of employees in the bargaining unit described above.

IT IS HEREBY DIRECTED that an election shall be held for the purpose of determining whether a majority of employees in the above-described unit desires to be represented by the Newbury Police Association, or by no employee organization. The eligible voters shall include all those persons within the above-described unit whose names appear on the payroll of the Town of Newbury for the payroll period immediately preceding the date of this decision, and who have not since quit or been discharged for cause.

In order to ensure that all eligible voters shall have the opportunity to be informed of the issues and their 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 three 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, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, MA 02202, not later than fourteen (14) days from the day of this decision.

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

So ordered.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN

MARIA C. WALSH, COMMISSIONER

ELIZABETH K. BOYER, COMMISSIONER

