
In the Matter of CITY OF SPRINGFIELD

and

SPRINGFIELD ASSOCIATION OF HIGHWAY AND
BRIDGE WORKERS (Petitioner)

and

AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, COUNCIL 93, AFL-CIO
(Intervenor)

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES (Intervenor)

and

UNITED STEELWORKERS OF AMERICA (Intervenor)

Case No. MCR-4602

32.	<i>Binding Effect of a Unit Determination</i>
34.2	<i>community of interest</i>
34.4	<i>efficiency of operation (fragmentation)</i>
34.71	<i>departmental unit</i>
34.8	<i>similarity of work (interchangeability)</i>
34.9	<i>unit modification</i>
35.4	<i>other non-professionals</i>
93.3	<i>petition for certification</i>

January 15, 1998

Robert C. Dumont, Chairman
Claudia T. Centomini, Commissioner
Helen A. Moreschi, Commissioner

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DECISION AND DIRECTION OF ELECTION¹

STATEMENT OF THE CASE

On July 1, 1997, the Springfield Association of Highway and Bridge Workers (Association) filed a petition with the Labor Relations Commission (Commission) seeking to represent a bargaining unit of all full-time and regular part-time blue collar,

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.

non-professional employees in the highway and bridge department of the City of Springfield (City). On September 15, 1997, the Commission allowed the Association's motion to amend the petition to correct the proposed bargaining unit description by substituting the "department of public works" for the "highway and bridge department." Further, the Commission allowed the American Federation of State, County and Municipal Employees, Council 93, AFL-CIO (AFSCME) to intervene to participate in the hearing and to appear on the ballot if the Commission decides to direct an election. The Commission also allowed the National Association of Government Employees (NAGE) and the United Steelworkers of America (USWA) to intervene to participate in the hearing.

On September 22, 1997, Administrative Law Judge Ann T. Moriarty, Esq. (ALJ) conducted a hearing at which all parties had an opportunity to present testimonial and documentary evidence. All parties filed post-hearing briefs that were received or postmarked on or before October 22, 1997.

During the hearing, the Association requested to further amend its description of the petitioned-for bargaining unit to include all full-time and regular part-time blue collar, non-professional employees of the City, excluding employees currently represented by NAGE, employees of the civic center and symphony hall, building department inspectors, civil engineers, ushers and ticket takers at the civic center, and all casual employees, clerical and white collar administrative employees, supervisors, foremen, timekeepers, and managerial, confidential and professional employees. No party to the petition objected to the Association's request to further amend the petition, and the ALJ allowed the amendment.

It is the position of AFSCME, the certified exclusive collective bargaining representative of employees in the petitioned-for unit, NAGE, and USWA that the petitioned-for bargaining unit is appropriate for the purposes of collective bargaining. It is the City's position that the appropriate bargaining unit consists of the blue collar employees sought by the petitioner and the blue collar employees in the City's department of public works for whom NAGE is the certified exclusive collective bargaining representative. If the Commission determines that the bargaining unit proffered by the City is appropriate, the Association desires to represent those employees for collective bargaining, and requests that the Commission direct an election.

In accordance with Commission rule 13.02(2), 456 CMR 13.02(2), the ALJ issued recommended findings of fact on November 26, 1997. The City filed challenges to the recommended findings of fact. After reviewing the City's challenges and the record, we adopt the ALJ's findings of fact.²

FINDINGS OF FACT³

On August 5, 1987, the Commission certified AFSCME as the exclusive collective bargaining representative of City employees in a bargaining unit described as:

all full-time and regular part-time blue collar, nonprofessional employees in all city departments including the Civic Center and Symphony Hall, and Municipal Hospital, *excluding* all registered nurses, licensed practical nurses, building department inspectors, civil engineers, bath attendants, ushers and ticket takers at the civic center, and all casual employees, clerical and white collar administrative employees, supervisors, foremen, timekeepers and managerial and confidential employees.

Historically, employees in this so-called Unit "A" have been represented by AFSCME since at least 1978.⁴ Since the 1987 certification, the City sold the municipal hospital in late 1996, and employees of both the civic center and symphony hall are no longer included in this bargaining unit.

On March 30, 1981, the Commission certified NAGE as the exclusive collective bargaining representative of employees in a bargaining unit described as:

all employees of the Municipal Water Works excluding the Board of Water Commissioners, the Manager, the Registrar, the Water Distribution Supervisor and Assistant Water Distribution Supervisor, the Supervising Water Engineer, all water Supply Supervisors, Assistant Water Supply Supervisor, all Foremen, all Working Maintenance Foremen, the Principal Water Inspector, the Water Chemist, the Assistant Water Chemist, the Laboratory Assistants, all Engineers and all office clerical employees

Historically, these employees at the municipal water works have been represented in a non-supervisory, blue collar bargaining unit separate from other City employees since late 1967.⁵

By a March 25, 1996 vote of the city council, approved by the mayor on March 28, 1996, the City accepted the provisions of M.G.L. c. 40N, sections 1 through 27 to form a water and sewer commission. With this acceptance, all the employees in NAGE's bargaining unit, described above, became employees of the newly-created Springfield Water and Sewer Commission (SWSC).

2. The City requests three minor modifications to the recommended findings of fact, but its requests are not accompanied by specific references to record evidence. See, Commission rule 13.02(2), 456 CMR 13.02(2). Further, the requested modifications are not material to our decision. Therefore, we decline to modify the findings as requested by the City.

3. Commission's jurisdiction is uncontested.

4. The Commission takes administrative notice of its decisions in *City of Springfield*, 5 MLC 1170 (1978) and *City of Springfield*, 2 MLC 1022 (1975). AFSCME represented non-professional employees in the park, street, traffic, purchasing, engineering and building department in 1968. *City of Springfield*, 2 MLC at 1023.

5. The Commission takes administrative notice of its decision in Case No. MCR-38, *Springfield Municipal Water Works*, October 9, 1967. In this representation case, the Commission adopted the parties's stipulation that created two bargaining units in the municipal water works, a unit of non-supervisory blue collar employees, and a unit of supervisory blue collar employees.

Further, certain blue collar employees who worked in the City's sewer department represented by AFSCME became employees of the SWSC.

AFSCME Unit "A" bargaining unit are employees in the following classifications:

- custodial worker
- electrical technician
- gardener
- heavy motor equipment operator
- hostler (stableman)
- irrigation repair man
- laborer
- laborer/MEO
- laborer/refuse collection laborer
- maintenance craftsman
- motor equipment maintenanceman
- motor equipment operator
- motor equipment repairman
- preventive maintenance technician
- recycling collector
- rick maintenance man
- skilled laborer
- skilled laborer/MEO
- special heavy motor equipment operator
- tire repairman
- tree climber & surgeon
- watchman
- welder
- working foreman
- working foreman/motor equipment repairman
- working foreman/skilled laborer
- zoo attendant

By two orders of the city council on March 27, 1997, approved by the mayor on March 31, 1997, these same former municipal water works employees, among others, were transferred to the City's public works department, water and sewer division. One ordinance reads, in part:

ORDERED, that the following positions and rates of pay be and hereby are established the DEPARTMENT OF PUBLIC WORKS effective March 29, 1997:

...		
1 Storekeeper		@ \$385.27 per week
11 Laborers		@ \$10.21 per hour
4 Skilled Laborers		@ \$10.59 per hour
10 Water Systems Maintenance man		@ \$10.19 per hour
1 Motor Equipment Repairman		@ \$10.87 per hour
...		

The other ordinance established classifications and pay schedules in the City including, among others,:

D) by adding to Schedule 05, NAGE, RI-117*

0140	Storekeeper (1 pos.)			
7.9	385.27	401.00	416.42	437.95
6005	Laborer (11 pos.)			
10.21	0.00	10.21	10.61	11.20
6010	Skilled Laborer (4 pos.)			
8.8	0.00	10.59	11.03	11.64
6140	Water Systems Maintenance man (10 pos.)			
9.1	10.19	10.57	11.17	11.93
6450	Motor Equipment Repairman (1 pos.)			
10.5	10.87	11.27	11.80	12.54

* positions in these unions prior to creation of Water/Sewer Commission will remain in the same union in the Department of Public Works.

Further, the former City sewer department employees represented by AFSCME were transferred from SWSC back to the City's department of public works, water and sewer division, effective in or about March 31, 1997.

The City's department of public works has five main divisions, administrative, highway, engineering and traffic, solid waste, and water and sewer. About 210 of the about 260 employees currently represented by AFSCME in Unit "A" work in the highway division, engineering and traffic division, solid waste division, and the sewer section of the water and sewer division of the department of public works. The remaining 50 employees work in the park department (38 employees), facilities management (10 employees), and in the police department (10 employees). Included in the current

About thirty-one (31) employees represented by AFSCME in Unit "A" work in the sewer section of the water and sewer division of the City's department of public works. These employees are in the classifications of: heavy motor equipment operator, motor equipment operator, skilled laborer, skilled laborer/motor equipment operator, special heavy motor equipment operator, and working foreman. About twenty-seven (27) former municipal water works employees represented by NAGE work in the water section of the water and sewer division of the City's department of public works. These employees are in the classifications of: storekeeper, laborer, laborer/motor equipment operator, skilled laborer, water systems maintenance man and motor equipment repairman. Since the March 31, 1997 transfer of these fifty-eight (58) SWSC employees into the water and sewer division of the department of public works, the AFSCME sewer section employees and the NAGE water section employees work out of one location, Colton Street,⁶ under the common supervision of John Rooney, Jr., Assistant Deputy Director of the Department of Public Works.

The most recent published job descriptions, last updated in the late 1950's or early 1960's for storekeeper, laborer, laborer/motor equipment operator, skilled laborer, and motor equipment repairman are identical for employees represented by NAGE and AFSCME in all work locations and departments in the City. For example, the published job duties of the NAGE represented laborer/motor equipment operator, skilled laborers and moter

6. At all times the NAGE employees were physically located at the Colton Street location. Prior to late March 1997, the AFSCME employees worked out of the

Taylor Street location. In late March 1997, the AFSCME employees were transferred to the Colton Street location.

equipment repairman who work in the water and sewer division of the department of public works are identical to AFSCME represented employees in these same classifications who also work in the water and sewer division, as well as the highway division and solid waste division of the department of public works. No specialized training or license, other than a commercial driver's license, is required to perform the job functions of the classifications in common to both bargaining units.⁷ Employees represented by both NAGE and AFSCME are covered by the applicable civil service statute.

In or about March 1997, the City assigned John Rooney, Jr., Assistant Deputy Director of the Department of Public Works to oversee the merger and operation of the water and sewer division of the department. Contemporaneously, the SWSC and the City entered into a three-month contract (March 29, 1997 - June 30, 1997), and a three-year contract (July 1, 1997 - June 30, 2000) under which the SWSC retained the City "to perform the services for the operations and maintenance of the Commission's wastewater collection and water distribution systems." The description of the scope of work under the contract applicable here is as follows.⁸

WASTEWATER Operation and maintenance of the wastewater collection system within the geographical boundaries of the City of Springfield; said system includes, but is not necessarily limited to, sanitary and combined sewer piping appurtenances and outfalls, and services as specifically designated.

STORM DRAIN Operation and maintenance of the storm drain collection system within the geographical boundaries of the City of Springfield; said system includes, but is not necessarily limited to, catch basins, piping, appurtenances and outfalls.

WATER Operation and maintenance of the drinking and fire protection water distribution system within the geographical boundaries of the City of Springfield and the Town of Ludlow; said system includes, but is not necessarily limited to, distribution piping, valves, hydrants, services as specifically designated, and other appurtenances.

The work described under the heading "water" is performed by employees represented by NAGE in the water and sewer division of the department of public works. This is the same work the employees performed when they were in the municipal water works department. The City would not have had the requisite expertise to perform the full scope of services under this contract without the transfer of NAGE represented employees. The work described under the headings "wastewater" and "storm drain" is performed by employees represented by AFSCME in the water and sewer division of the department of public works. This is the same work these employees have always performed.

The City and AFSCME are parties to a collective bargaining agreement for the Unit "A" employees covering the period July 1, 1994 to June 30, 1997. The City and NAGE are parties to a collective bargaining agreement for the former municipal water

works department employees currently assigned to the department of public works covering the period July 1, 1994 to June 30, 1997. The contractual pay schedules are different for job titles in common like laborer, laborer/motor equipment operator, skilled laborer, storekeeper and motor equipment repairman. For example, NAGE represented employees are compensated at a rate of \$.60 more per hour than AFSCME represented employees in one classification, and NAGE represented employees receive premium pay for possession of a commercial driver's license, a benefit not provided under the AFSCME collective bargaining agreement.

The job duties of AFSCME represented employees in the sewer section and the NAGE represented employees in the water section are similar. For example, there are no major differences between the job duties of a skilled laborer represented by AFSCME and a skilled laborer represented by NAGE. Rather, the difference in their jobs lies in the lines they work on: one distributes clean water, the other collects discharged water. The lines are similar in size, but there are different techniques and different materials used in installation and maintenance.⁹ As the City's supervisor of the water and sewer division and in the course of administering the contract with the SWSC, Mr. Rooney oversees and staffs crews to perform the work.¹⁰ From April 1997 through mid-September 1997, Mr. Rooney has mixed personnel that normally dig sewer lines with personnel that normally dig water lines on three or four occasions due to vacation schedules and shortage of personnel. He has, on occasion, interchanged water and sewer personnel, but he explained that his hesitancy to do so is because the employees are represented by two different employee organizations. Employees are paid their contractual rate of pay for their classification whether they are performing water work or wastewater, storm drain work.

As of December 1, 1997, all department of public works employees in all divisions will be located in a new facility on Tapley Street.

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 tripartite 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 such factors as similarity of skills and functions, similarity of pay and working conditions, common supervision, work contact and similarity of training and experience." *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. *Mass. Board of Regional Community Colleges*, 1 MLC

7. One employee represented by NAGE has a water distribution license, but this is not a job requirement.

8. The scope of work also includes support services like engineering services, general administrative support services and supervision.

9. The ALJ credited Mr. Rooney's testimony that the employees performed similar job duties, and the Commission adopts this unchallenged determination.

10. The work performed by the water and sewer division is almost totally performed under the terms of the SWSC contract.

1426, 1435 (1975) (citations omitted). No single factor is outcome determinative. *City of Worcester*, 5 MLC 1108, 1111 (1978).

The Law requires that members of a bargaining unit share only a community of interest, not an identity of interest. *Id.* Minimal differences do not mandate separate bargaining units where employees perform similar job duties under similar working conditions and share common interests amenable to the collective bargaining process. *Higher Education Coordinating Council*, 23 MLC 194, 197 (1997). Further, differences in funding sources for employees' compensation does not destroy an existing community of interest. *Id.*, citing *Framingham School Committee*, 18 MLC 1212, 1214 (1991). See also, *Commonwealth of Massachusetts*, 23 MLC 117, 120 (1996).

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. *Mass. Board of Regional Community Colleges*, 1 MLC at 1440.

Neither lawful recognition nor stipulations by the parties as to an appropriate bargaining unit structure binds the Commission or other parties in future cases where the existing unit structure is disputed, and the issues are litigated for Commission determination. *City of Worcester*, 5 MLC 1332, 1336 (1978); citing *Town of Braintree*, 5 MLC 1133 (1978). The Commission has modified previously-determined bargaining unit structures to best effectuate the purposes of the Law where the existing bargaining units are no longer appropriate, *State Bargaining Unit Rules*, 1 MLC 1318 (1975), or where the proposed unit is more appropriate, *Boston School Committee*, 2 MLC 1557 (1975). To preserve an existing bargaining unit structure, it must first be appropriate under the statutory criteria. If it is, the existence of stable labor relations and bargaining history may preserve it from challenge by a party seeking a more appropriate unit. If the existing unit is inappropriate, the Commission will establish an appropriate unit. *City of Worcester*, 5 MLC at 1336.

Guided by the statutory criteria for creating and maintaining appropriate bargaining units, community of interest, efficiency of operations and effective dealings, and safeguarding the rights of employees, we are persuaded that the appropriate bargaining unit consists of all non-supervisory blue collar employees of the City currently represented by AFSCME, about 260 employees, and NAGE, about twenty-seven employees. Although the City would normally be prohibited from challenging a bargaining unit structure to which it is a party, the City's acceptance of M.G.L. c.40N, the elimination of the separate municipal water works department, and the transfer of certain of these employees to the City's department of public works constitutes a significant and substantial change that requires the Commission to re-examine an almost thirty-year history of a separate non-supervisory blue collar unit for former water department employees.

The Commission has held that bargaining units limited to departments or other administrative units of a large employer are inappropriately underinclusive if there exists a community of interest among a larger group of employees sufficient to create a broad, comprehensive bargaining unit. *Town of Newbury*, 14 MLC 1660, 1662 (1988). Here, the facts establish that there exists a community of interest among all non-supervisory blue collar employees employed by the City. They now all work out of one common work location and perform similar duties under a common supervisory structure. All employees hold similar, if not identical, job titles, and all are covered by civil service. Further, no specialized training or license, other than a commercial driver's license, is required to perform the job functions of the blue collar position classifications in common within the City's non-supervisory blue collar workforce, whether they are currently represented by AFSCME or NAGE. Although existing contractual wage rates are not identical, they are sufficiently similar to satisfy the community of interest analysis. Further, although there is minimal contact between water division employees and other City blue collar employees, as well as an insignificant interchange of these employees with other City employees, these factors are outweighed by all other community of interest indicia.

The USWA suggests that the notation in the March 1997 classification ordinance preserving the union placement of former municipal water works positions constitutes evidence that the City intended to perpetuate the existing bargaining unit structure. Even assuming that the record evidence fully supports this fact, it is the duty of the Commission to establish appropriate bargaining units under the Law. Equally important, the Law gives public employees the right to organize and select a bargaining agent of their own choosing. Local action cannot be allowed to conflict with the Commission's authority to determine appropriate bargaining units. See, e.g., *Massachusetts Bay Transportation Authority v. Labor Relations Commission*, 425 Mass. 253 (1997); *Labor Relations Commission v. University Hospital, Inc.*, 359 Mass. 516 (1971).

Stable and continuing labor relations will not be served by the continued existence of a separate, fragmented bargaining unit of approximately twenty-seven employees in the City's water division. Rather, a non-supervisory blue collar bargaining unit that includes all City employees who share common interests amenable to the collective bargaining process maximizes their collective strength, while not burdening the employer with an unnecessary and unwarranted separate bargaining unit. *Mass. Board of Regional Community Colleges*, 1 MLC at 1440.

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 City of Springfield and that the following unit is an appropriate unit for collective bargaining within the meaning of Section 3 of the Law:

All full-time and regular part-time blue collar, non-professional employees in all City of Springfield departments, excluding all registered nurses and licensed practical nurses, all employees of the civic center and symphony hall, all building department inspectors, civil engineers, bath attendants, all clerical and white collar

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administrative employees, all supervisors, foremen, timekeepers, and all managerial, confidential and casual employees, and all other employees of the City of Springfield

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 desire to be represented by the Springfield Association of Highway and Bridge Workers or by the American Federation of State, County and Municipal Employees, Council 93, AFL-CIO or by no employee organization. Any other employee organization shall have fourteen (14) days from the date of this decision to inform the Commission in writing that it desires to appear on the ballot, and, to file with this request an adequate showing of interest for this purpose.

The eligible voters shall include all those persons within the above-described unit whose names appear on the City's payroll for the payroll period for the week ending Saturday, January 10, 1998, and who have not yet 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 four (4) copies of an election eligibility list containing the names and addresses of all eligible voters must be filed by the City 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 date of this decision.

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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