
In the Matter of TOWN OF MARBLEHEAD
and
MARBLEHEAD PUBLIC SAFETY AND
COMMUNICATIONS ASSOCIATION
and
LOCAL 1776, INTERNATIONAL UNION OF
ELECTRONIC, ELECTRICAL, SALARIED, MACHINE &
FURNITURE WORKERS, AFL-CIO

Case No. MCR-4799

32	<i>Binding Effect of a Unit Determination</i>
34.5	<i>established practice (history)</i>
35.825	<i>police dispatchers</i>
91.1	<i>dismissal</i>
92.33	<i>rules of evidence</i>
92.411	<i>motion to sever</i>

May 11, 2001

Helen A. Moreschi, Chairwoman
Mark A. Preble, Commissioner

Marc Miller, Esq.	<i>Representing the Town of Marblehead</i>
Neil Rossman, Esq.	<i>Representing the Marblehead Public Safety and Communications Association</i>
Wendy Bittner, Esq.	<i>Representing Local 1776, International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers, AFL-CIO</i>

DECISION¹

Statement of the Case

On January 31, 2000, the Marblehead Public Safety and Communications Association (Association) filed a petition with the Labor Relations Commission (Commission) seeking to represent all civilian E-911 dispatchers (E-911 dispatchers) employed by the Town of Marblehead (Town). The E-911 dispatchers are currently part of a larger bargaining unit that is represented by Local 1776, International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers, AFL-CIO (Local 1776). On February 16, 2000, Local 1776 filed a Motion to Intervene in these proceedings. On March 1, 2000, the Commission approved Local 1776's Motion to Intervene.

On March 23, 2000, Karen Fabiszewski, a Commission agent, conducted a hearing at which all parties had an opportunity to present testimonial and documentary evidence. In lieu of post-hearing briefs, all parties argued orally on the record at the close of the hearing. On December 29, 2000, the Commission agent issued her Recommended Findings of Facts. On January 10,

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.

2001, the Association timely filed challenges to the Commission agent's findings of facts pursuant to 456 CMR 13.02(2). Based on our review of the facts² and the parties' arguments, we make the following findings of fact and conclusions of law.

FINDINGS OF FACT

The Town of Marblehead is a public employer within the meaning of Section 1 of M.G.L. c. 150E (the Law). Local 1776 is an employee organization within the meaning of Section 1 of M.G.L. c. 150E. The Town employs approximately seven (7) civilian E-911 dispatchers. The Association was formed by seven (7) civilian E-911 dispatchers employed by the Town.

The E-911 dispatchers work in the Civilian Emergency Communications Center located off the main lobby in the Town's police station. The E-911 dispatchers are responsible for answering emergency calls from the public and dispatching emergency assistance, if necessary. The E-911 dispatchers receive emergency calls on seven (7) in-coming E-911 lines. In addition, the E-911 dispatchers answer calls on fourteen (14) additional phone lines, including eight (8) phone lines to the police department front desk, one (1) elevator phone line and five (5) phone lines that ring down from various departments when no one is available in those departments to answer the calls, including the fire department, the ambulance company, the police DARE office, the police detectives' office and the Police Chief's (Chief's) office. The E-911 dispatchers also monitor twelve (12) on-air radio channels, including all police frequencies and channels for the harbormaster, the electric light department, the park and recreation department and the highway department.

The E-911 dispatchers answer emergency calls requiring police, fire and/or medical assistance. When an emergency call is received by the E-911 dispatchers, the E-911 dispatchers determine the nature of the call, ascertain the location and identity of the caller and the location of the emergency. If possible, the E-911 dispatchers maintain an open line with the caller. For calls involving medical emergencies, the E-911 dispatchers may perform Emergency Medical Dispatch (EMD), which involves reading from cards containing emergency medical treatment information and instructing the caller on how to assist the victim until the emergency responders arrive.

The E-911 dispatchers answer all calls regarding fire emergencies. If an individual calls the fire department business line, the individual is instructed to hang up and call 911. When an E-911 dispatcher receives a call regarding a fire emergency, the E-911 dispatcher activates the fire notification system, which notifies the fire station of the emergency. Each piece of fire apparatus has a different alert tone. The E-911 dispatcher presses the proper alert tone and the necessary apparatus responds to the call. At the same time, the E-911 dispatcher sends the fire department a computer print-out detailing the five (5) nearest fire hydrants, a brief overview

of the building, and the location of water and gas line shut-offs. The responding apparatus takes this computer print-out with it when it responds to the call. The E-911 dispatcher contacts the fire chief, the fire captain and fire prevention to inform them of the situation.

The Town participates in a mutual aid fire network comprised of fire departments located in surrounding communities. When the Town's fire apparatus is sent out to an emergency scene, the E-911 dispatcher contacts a member of the network and that community sends its fire apparatus to the Town to provide coverage in the event that there is an additional emergency or that the Town's fire department needs additional assistance at the fire scene. The E-911 dispatcher also contacts the electric company and the gas company and notifies them of the emergency.

The E-911 dispatchers answer emergency calls for the harbormaster. The E-911 dispatchers also monitor a marine frequency channel. If the E-911 dispatchers receive an emergency call or hear a distress call on the marine frequency channel, the E-911 dispatchers notify the harbormaster by calling him on his cell phone. There is a secretary who works in the harbormaster's office during the day. However, the E-911 dispatchers notify the harbormaster directly via his cellular phone in the event of a marine emergency. The E-911 dispatchers also dispatch the Coast Guard to the scene, if appropriate.

In the event of an emergency, the E-911 dispatchers may also contact certain state and federal agencies, like the Federal Emergency Management Agency (FEMA), the Massachusetts Emergency Management Agency (MEMA), the Department of Environmental Protection (DEP) and the Occupational Safety and Health Administration (OSHA), if appropriate. If necessary, the E-911 dispatchers contact the Medical Examiner's Office. In cases of serious injury, the E-911 dispatchers may also coordinate a medical flight to transport the victims to the appropriate medical facility.

In addition to emergency calls for police, fire and medical assistance, the E-911 dispatchers receive calls from Town residents requiring assistance from various Town departments, including the tree department, the electric light department, the highway department, the water and sewer department, the Board of Health, and the animal control officer. If calls requiring assistance from the highway department, the water and sewer department or the animal control officer are received after the Town's regular business hours, the E-911 dispatchers initiate a response to the call by contacting individuals from those departments via a beeper.

In addition to their dispatching duties, the E-911 dispatchers assist the police officers by monitoring prisoners who are brought to the police station. When an arrest is made, the prisoner is brought to the back of the police station. The E-911 dispatchers view a video monitor that shows the officer and the prisoner to ensure that the

2. The Association challenged four of the Commission agent's findings of facts. Commission Rule and Regulation 456 CMR 13.02(2) requires that a party challenging a finding of fact identify the specific recommended findings alleged to be erroneous and must clearly identify all record evidence that supports a contrary

factual finding. Although the Association identified those findings that it believes are erroneous, it has failed to identify any documentary or testimonial evidence that supports a contrary factual finding. Therefore, the challenged findings will remain unchanged.

officer safely escorts the prisoner to the holding area. After the prisoner enters the holding area, he or she is escorted to the booking area. On several occasions, E-911 dispatchers have been called to the booking area to be present when a female prisoner is being processed. E-911 dispatchers have also monitored female prisoners in their holding cell via a video monitor if a matron is not present.

The Civilian Emergency Communications Center is staffed twenty-four (24) hours a day, seven (7) days a week, including holidays. The E-911 dispatchers work five (5) eight (8) hour shifts per week. Each E-911 dispatcher has his or her own schedule. Some E-911 dispatchers work two (2) consecutive shifts as part of their regular work schedule. The E-911 dispatchers provide coverage for each other on an overtime basis for vacations and sick days. This overtime is offered on a voluntary basis. However, if no coverage can be found, the E-911 dispatcher on duty is required to stay at work to cover the open shift. E-911 dispatchers do not receive shift differentials or premium pay for working holidays and weekends.³

The E-911 dispatchers log approximately 15,000 calls per year. The logged calls include calls for emergency assistance and calls for requests for Town services. The E-911 dispatchers use a computer to log the calls and coordinate a response. The E-911 dispatchers log all calls in which they initiate a response, including emergency calls and calls for Town services. In addition to the 15,000 logged calls per year, the E-911 dispatchers receive other calls that are not logged in the computer, such as calls for directions or questions regarding the winter parking ban. No paper records are kept. The E-911 dispatchers are also responsible for maintaining the Person to Notify (PTN) data bank. Every year, the fire department conducts inspections of commercial properties. During the course of the inspection, the fire department receives information on whom to notify in case of an emergency regarding the property. The PTN contains approximately 12,000 different businesses and residences that each have at least three persons to notify in the event of an emergency. The E-911 dispatchers update the PTN to ensure that the most recent information is available.

E-911 dispatchers are required to be certified by the Commonwealth of Massachusetts (Commonwealth). E-911 dispatchers are required to complete a sixteen (16) hour course and successfully complete a written and practical examination. No continuing education is required but it is suggested that E-911 dispatchers complete a refresher course every two (2) years. All E-911 dispatchers are required to be certified in cardiopulmonary resuscitation (CPR).

In their role as emergency dispatchers, the E-911 dispatchers have access to various computer data banks, including the Criminal Justice Information System (CJIS). Through CJIS, E-911 dispatchers have access to information from the Registry of Motor Vehicles (RMV) and individuals' criminal histories from the Federal Bureau of Investigation (FBI). To access the CJIS, E-911 dispatchers must be certified and successfully complete a written examination.

In or around July 1995, the Town created the position of E-911 dispatcher. By agreement with Local 1776, the E-911 dispatchers were placed in an existing bargaining unit represented by Local 1776. Besides the E-911 dispatchers, the bargaining unit represented by Local 1776 contains other Town employees, including an administrative assistant in the police department, custodians, secretaries and clerks in the Board of Selectmen's Office, library employees and employees in the highway, cemetery, water and sewer, and park and recreation departments. During the winter months, bargaining unit members in the highway department are required to be available twenty-four (24) hours a day to perform duties like plowing, salting or sanding, if necessary due to inclement weather. The bargaining unit represented by Local 1776 contains some employees who are required as a condition of their employment to hold college degrees. These positions include librarians. Other positions in the bargaining unit represented by Local 1776 are required to hold certifications as a condition of employment. These positions include welders and waste water treatment employees in the water and sewer department.

In 1999, an E-911 dispatcher ran as a candidate for president of Local 1776 but did not win the election. The current president of Local 1776 (the president) is an employee in the highway department. Bargaining unit members who wish to contact the president may do so via a cellular telephone assigned to the president. The cellular telephone number is printed on Local 1776's stationery letterhead. The president routinely receives calls from bargaining unit members on the cellular phone both during and after work hours.⁴ In determining its bargaining agenda, Local 1776 places issues on the bargaining table that are either suggested orally at general membership meetings or issues communicated in writing to Local 1776's president. In October 1999, a union meeting was held to discuss bargaining issues in preparing for upcoming negotiations with the Employer. At least one E-911 dispatcher attended this meeting. After the meeting, Local 1776's president suggested that he meet with the E-911 dispatchers separately to discuss their concerns because the E-911 dispatchers were relatively new members of the bargaining unit.⁵ The record

3. The record contains no information regarding whether other bargaining unit members receive shift differentials or premium pay for holidays and weekends.

4. E-911 dispatcher Amy Gilliland (Gilliland) testified that there have been occasions when the E-911 dispatchers have called Local 1776 for assistance and requested that a representative from Local 1776 meet with the E-911 dispatchers. According to Gilliland, no one from Local 1776 responded to the requests. However, the record does not indicate specifically when these requests were made and to whom they were directed. However, on one occasion, the E-911 dispatchers wanted to contact Local 1776's president regarding an issue but the E-911

dispatchers did not contact him because it was a holiday and they did not wish to call him at home.

5. Gilliland testified that the E-911 dispatchers were unhappy with the representation provided by Local 1776. She testified that her dissatisfaction was based on her impression that most of Local 1776's officials were unfamiliar with the job responsibilities of the E-911 dispatchers. She further testified that prior to October 1999, the E-911 dispatchers did not submit any written proposals to Local 1776 regarding bargaining proposals.

does not indicate whether the proposed meeting between the union president and the E-911 dispatchers ever occurred.

At the time the petition was filed, Local 1776 and the Employer were engaged in negotiations for a successor collective bargaining agreement. The parties had agreed that neither party would discuss the content of the negotiations away from the bargaining table until a memorandum of understanding was reached. The E-911 dispatchers requested that Local 1776 provide the E-911 dispatchers with a copy of the bargaining agenda, but Local 1776 denied the request.

At some point prior to March 2000, Local 1776 hired a consultant to prepare a salary survey. As part of the survey, eleven (11) bargaining unit positions were targeted and the consultant conducted a salary survey of similar positions in eleven (11) other communities. The E-911 dispatchers were one of the eleven (11) positions included in the study. A committee consisting of bargaining unit members was formed to communicate with the consultant regarding the preparation of the report. An E-911 dispatcher served as chairwoman of the committee. The record does not indicate what action, if any, resulted from the report generated by the consultant.

OPINION

The Commission does not favor severance petitions, and has declined to use them to fix imperfectly constructed bargaining units. *City of Fall River*, 26 MLC 13, 17 (1999); *City of Boston*, 25 MLC 105 (1999). The Commission has articulated the criteria that petitioners must satisfy to sever positions from an existing bargaining unit:

[p]etitioners must demonstrate that the petitioned-for employees constitute a functionally distinct appropriate unit with special interests sufficiently distinguishable from those of other unit employees, and that special negotiating concerns resulting from those differences have caused or are likely to cause conflicts and divisions within the bargaining unit.

City of Boston, 25 MLC at 119. Absent evidence of serious divisions and conflicts within the bargaining unit, the Commission has consistently applied this standard in deciding to maintain historical bargaining unit structures. *City of Fall River*, 26 MLC 13 (1999); *City of Boston*, 25 MLC 105 (1999); *New Bedford School Committee*, 12 MLC 1058 (1985). The first prong of the Commission's severance analysis requires the petitioner to demonstrate that the proposed bargaining unit consists of employees who comprise a functionally distinct appropriate unit with special interests sufficiently distinguishable from those of the existing unit of employees. *City of Fall River*, 26 MLC at 17, citing *City of Lawrence*, 25 MLC 1, 5 (1998). The Commission considers many factors in determining whether the petitioned-for employees constitute a functionally distinct unit from the existing bargaining unit, including whether: 1) the petitioned-for unit of employees have specialized skills that are acquired through a required course of study; 2) the petitioned-for unit of employees maintain and enhance their skills through continuing education; 3) the petitioned-for unit of employees perform significantly different job functions compared with the existing unit of employees; 4) the

petitioned-for unit of employees and the existing unit of employees share work locations or common supervision; and 5) the petitioned-for unit of employees either interact with or share duties with any other bargaining unit member. *Id.*

Here, we find that the E-911 dispatchers constitute a functionally distinct group from the other employees in the existing Town-wide bargaining unit that includes clerical, custodial, and maintenance employees. The E-911 dispatchers work in only one location, the Civilian Emergency Communications Center at the police station, and do not interact with other bargaining unit employees in other work locations. They perform a specialized function of answering emergency calls for several departments, including police, fire, ambulance, and harbor master. They exercise independent judgment in determining how to respond to an emergency call and may, in a medical emergency, read medical treatment information from a card to instruct the caller on how to assist a victim until medical personnel arrive at the scene. In an emergency, they may also contact certain state and Federal agencies. They also assist police officers by monitoring prisoners brought to the police station. In addition, the E-911 dispatchers are required to be certified by the Commonwealth and are required to complete a 16-hour course and successfully complete a written and practical examination. Although no continuing education courses are required, it is suggested that the dispatchers complete a refresher course every 2 years. All E-911 dispatchers are required to have CPR certification. For all these reasons, we find that the Association has satisfied the first prong of the severance analysis.

The second prong of the severance analysis requires a finding that special negotiating concerns of the E-911 dispatchers have caused or are likely to cause serious conflicts or divisions within the bargaining unit that will effectively interfere with collective bargaining. *City of Boston*, 25 MLC at 120. Here, there is insufficient evidence to conclude that the Association's negotiating concerns warrant the severance of the E-911 dispatchers from the existing Town-wide bargaining unit. The record demonstrates that Local 1776 holds general membership meetings to discuss potential bargaining proposals and E-911 dispatchers have had an opportunity to participate in those meetings. Moreover, at a meeting in October 1999 to discuss bargaining proposals, Local 1776's president offered to have a separate meeting with the E-911 dispatchers to discuss their specific bargaining concerns. Although in subsequent contract negotiations, Local 1776 denied the E-911 dispatchers' request that they receive a copy of the bargaining agenda, that denial was based on an agreement between the Town and Local 1776 that neither party would discuss the content of the negotiations outside of the bargaining table until the termination of negotiations. Therefore, pursuant to that agreement, the E-911 dispatchers were treated the same as any other employees in the unit represented by Local 1776. In addition, Local 1776 hired a consultant to conduct a salary survey and an E-911 dispatcher served as the committee chairwoman for the survey that included the position of E-911 dispatcher.

In *City of Boston*, 20 MLC 1431 (1994), the Commission determined that, not only did advances in medical science give emergency medical technicians (EMT's) a separate identity with special interests and concerns, but that the employer and the union

had recognized those special interests and concerns. In that case the employer and the union had allowed the EMT's to address their specific bargaining goals by negotiating separate supplemental agreements. Here, the record does not reflect that the E-911 dispatchers have identified any specific bargaining goals or that the E-911 dispatchers sought to have Local 1776 address any specific goals in negotiations. Even if the E-911 dispatchers had identified separate bargaining goals, the Commission has declined to sever a group of employees from a larger bargaining unit merely because the employees do not achieve their bargaining goals or the employees are dissatisfied with their bargaining representative's

accomplishments. *See, City of Fall River*, 26 MCL at 18 and cases cited.

For all of the above reasons, we conclude that severance of the E-911 dispatchers from the existing Town-wide unit is not warranted and we dismiss the Association's petition.

SO ORDERED.

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