

In the Matter of TOWN OF SAUGUS
and
SPECIAL OPERATIONS UNIT
and
LOCAL 413, INTERNATIONAL BROTHERHOOD OF
POLICE OFFICERS
and
LOCAL 366, INTERNATIONAL BROTHERHOOD OF
POLICE OFFICERS
and
SAUGUS POLICE UNION
Case No. MCR-4627

34.93 *severance*
35.82 *police*
45.1 *contract bar*
45.42 *open period*
92.411 *motion to sever*
92.47 *motion to dismiss*

July 18, 2001

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

Thomas J. Marcoline, Esq. *Representing the Town of Saugus*
Richard M. Callahan, Esq. *Representing the Special
Operations Unit*
Joseph G. Donnellan, Esq. *Representing the International
Brotherhood of Police Officers,
Local 413 and Local 366*
Harold Lichten, Esq. *Representing the Saugus Police Union*

DECISION¹

Statement of the Case

On October 7, 1997, the Special Operations Unit (the Petitioner) filed a petition seeking to represent a bargaining unit of certain police officers employed by the Town of Saugus (the Town or the Employer). On December 17, 1997, Local 413, International Brotherhood of Police Officers (Local 413) and Local 366, International Brotherhood of Police Officers (Local 366) each filed a Motion to Intervene on the grounds that they are the certified bargaining representatives of the superior officers and the patrol officers employed by the Town, respectively. The Commission allowed these motions on December 18, 1997.² On December 17, 1997, Local 413 and Local 366 filed a Motion to Dismiss on the

ground that the petition was inappropriate under 456 CMR 14.06 because it was not filed during the open period of contract between Local 413 and the Town. On December 18, 1997, Hearing Officer Stephanie B. Carey (the Hearing Officer) conducted a hearing at which all parties had an opportunity to be heard, to examine and cross examine witnesses and to introduce evidence. All of the parties filed timely post-hearing briefs.

On February 19, 1998, Chief Counsel John B. Cochran informed the parties by letter that the Hearing Officer had left the employment of the Labor Relations Commission (the Commission) prior to issuing Recommended Findings of Fact. The Town, Local 413 and Local 366 assented in writing to waive the right to challenge any credibility determinations and to allow another member of the Commission's legal staff to generate the facts. The Petitioner did not file an objection to this procedure.

The Petitioner seeks to represent a bargaining unit of police officers employed in full-time specialty positions, regardless of rank. The Petitioner does not seek to include those full-time officers who perform specialty duties on a part-time basis.

Local 366 and Local 413 each represent some members of the proposed unit. They object to the Petitioner's request to sever the officers employed in specialty positions from the existing bargaining units. At the hearing, the Town did not take a position regarding the petition. However, in its post-hearing brief, the Town argued that the Petitioner has not met its burden in requesting to sever certain members of the two bargaining units to create a third bargaining unit. In particular, the Town believes the Petitioner has not shown sufficient evidence that the petitioned-for unit constitutes a functionally distinct group with special interests that are significantly distinguishable from those of the other employees in the existing bargaining unit to warrant severance and/or the formation of an additional bargaining unit.

Findings of Fact³

With the exception of the Chief of Police (the Chief), all employees of the Town's police department are represented in one of two bargaining units. The Saugus Police Union is the exclusive bargaining representative for all superior officers, including all sergeants, lieutenants and captains. Local 366 is the exclusive bargaining representative for all patrol officers. The Town employs approximately twelve (12) police officers in the following full-time specialty positions: one (1) computer systems officer; one (1) juvenile officer; one (1) prosecutor; one (1) mechanic; one (1) sergeant of Community Policing; two (2) domestic violence officers; and the entire Bureau of Criminal Investigations, which consists of two (2) sergeants and three (3) detectives.

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.

2. Subsequent to the hearing, on August 4, 1999, the Saugus Police Union (the Saugus Police Union) filed a Motion to Intervene on the ground that it had succeeded Local 413 as the exclusive bargaining representative of the superior

officers employed by the Town. The Commission allowed the Saugus Police Union's Motion on December 22, 1999. Therefore, Local 413 and the Saugus Police Union will be referred to interchangeably throughout this decision.

3. The Commission's jurisdiction is uncontested.

Some patrol officers represented by Local 366 perform traditional patrol activities, while others are employed in specialty positions. The juvenile officer, the mechanic, the domestic violence officers, the computer systems/records officer and some members of the Bureau of Criminal Investigations are part of the bargaining unit represented by Local 366. The juvenile officer investigates all crimes involving juveniles. The juvenile officer is responsible for coordinating the processing of juveniles through the local court system. The juvenile officer formulates a juvenile crime prevention program for schools and civic groups and maintains a list of appropriate social agencies for referral purposes. Officers assigned to the Community Policing Program report to the juvenile officer, who then reports to the Assistant to the Chief.

The police prosecutor is represented by the Saugus Police Union. The police prosecutor is responsible for preparing and presenting cases at the District Court level. The police prosecutor coordinates the scheduling of cases for the police department, including ensuring that witnesses are notified and evidence is available. The police prosecutor attempts to minimize the amount of time police officers spend in court and maintains a log of such time. The police prosecutor is responsible for ensuring the punctual attendance of all departmental members and their preparation and presentation of cases before the court.

Detectives are represented by either the Saugus Police Union or Local 366; the deciding factor is whether the detective is a superior officer or a patrol officer. Detectives are assigned to the Bureau of Criminal Investigations. Detectives are responsible for the investigation and prosecution of crimes. Detectives assist other agencies and departments, as well as other units within the police department. During the investigation of crimes, detectives interview all parties involved. Detectives follow cases from the investigation stage through final disposition. Detectives are required to keep the Officer-in-Charge informed regarding the progress of case investigations. Detectives must complete such daily and monthly reports as required and submit additional information to the Officer-in-Charge when requested. Detectives are responsible for preparing cases for court. Their responsibilities include preparing the presentation of facts and ensuring the appearance of witnesses. Detectives also have other various responsibilities with respect to licensed establishments, establishments containing automatic amusement machines and the investigation of auto thefts and crimes involving fraudulent bank checks.

Detectives investigate all complaints of controlled substance violations. They have control and custody over controlled substances which come into the possession of individual officers or units of the Police Department. Detectives are responsible for marking for identification purposes and securing all drugs and related paraphernalia. They apply for search warrants and, whenever possible, are personally present at the execution of the warrant. Detectives keep records on all individuals arrested for or charged with controlled substance act violations and ensure that photographs and fingerprints are taken of such individuals. When requested, detectives

participate in community drug education. They also prepare training programs on narcotic enforcement issues.

The record contains no additional evidence on the job responsibilities of the computer systems operator, the mechanic, the sergeant in charge of Community Policing and the domestic violence officers. Each officer employed in a specialty position has received training specific to the performance of the necessary duties of that position. The patrol force may attend specialized training, but that training is not required by the Town.

The specific duties of patrol officers are divided into three main categories: preventive patrol; traffic patrol; and desk officer.⁴ Officers assigned to preventive patrol (preventive patrol officers) are required to apprehend criminals and prepare detailed reports on all crimes, traffic accidents and other incidents requiring police involvement. When an arrest is made, preventive patrol officers must submit an arrest report along with any required crime reports. When property is recovered or additional information is discovered pertaining to any previously reported offense, the preventive patrol officer must complete an investigation report. Preventive patrol officers preserve crime scenes until an Officer-in-Charge or a detective arrives on the scene. Preventive patrol officers also perform checks on public assemblies, building security, schools, parks and playgrounds. This includes observing and interrogating any suspicious persons. Preventive patrol officers also issue traffic citations.

Preventive patrol officers are accountable for securing, receipting and transferring all evidence and property taken into police custody. Preventive patrol officers must also answer questions and counsel juveniles when necessary. Such counseling includes referral to an appropriate agency, if necessary.

Officers assigned to traffic patrol (traffic patrol officers) are responsible for directing traffic at assigned intersections and ensuring the prevention of accidents by assisting in the free flow of traffic. Traffic patrol officers enforce parking ordinances and motor vehicle laws in the patrol areas. They are responsible for the identification of traffic safety conditions which may endanger or inconvenience the public. Traffic patrol officers report such conditions to the safety officer, which is a specialty position. Traffic patrol officers are required to wear the prescribed traffic safety clothing and equipment.

Officers assigned to desk duty (desk officers) are required to perform general office duties such as answering telephones, supplying information to the public and data entry. Desk officers are also responsible for dispatching cruisers, booking, finger printing and checking on prisoners. Desk officers are not restricted to a single work space when performing their duties. Instead, they are allowed to move about to different work stations to accomplish their duties.

Generally, when a crime is committed, a patrol officer responds to the scene. The patrol officer takes an initial report and then refers

4. During the hearing, job descriptions were admitted as exhibits for the following positions: patrol officer; detective; safety officer; juvenile officer; and prosecutor.

the case to a detective for investigation. Detectives are in charge of investigations. If a crime occurs during the evening when the detectives are off-duty, the case is left for the detectives to investigate the next day. During the evening, if a serious situation arises requiring immediate investigation, then the investigation may be initiated by the sergeant in charge of drug investigations.

Both patrol officers and detectives have similar responsibilities with regard to the assignment of automobiles, although, unlike the patrol force, detectives use unmarked vehicles. Both are responsible for ensuring that their assigned automobiles are kept clean and maintained. Both are required to report any damage to the vehicle to the proper authority and to fill out the necessary paperwork. Both are required to observe applicable FCC and Police Department regulations regarding police radio use.

Prior to January 5, 1997, almost all officers employed by the Town worked a schedule consisting of four days on and two days off (4/2 schedule). On January 5, 1997, per request of the Chief, many positions in the proposed unit changed to a Monday through Friday schedule, with weekends off (5/2 schedule). Some specialty positions were already working a 5/2 schedule prior to January 5, 1997.⁵ Since January 5, 1997, at least one member of the proposed unit has continued to work a 4/2 schedule.⁶ All patrol officers continue to work a 4/2 schedule.

The Police Department maintains an overtime list from which overtime is distributed. Detectives can perform overtime as patrolmen, although officers from the patrol force cannot perform overtime for special operations positions. Detectives who work overtime in their capacity as detectives do not receive wages for their overtime. Instead, they are compensated for overtime by receiving compensatory time at the rate of time and one-half. There is no special budget for overtime for performing detective duties. In the past, when it has been necessary for detectives to perform overtime, the detectives were told prior to the assignment that any overtime would be paid in compensatory time. All overtime worked by detectives, including overtime compensated by compensatory time, is credited against the detective as overtime worked for the determination of paid departmental overtime. In the past, there have been rare occasions where detectives have received monetary compensation for performing detective duties on an overtime basis. The patrol force has the option to receive either wages or compensatory time for any overtime worked. This option is not available to the detectives.

Each year, the Town provides all officers with a uniform allowance. This allowance, which varies in amount by rank, is to be used for the purchase and maintenance of uniforms. All police officers employed by the Town are required to maintain a uniform, regardless of whether they are required to wear the uniform while on duty.⁷ Officers employed in the patrol force all wear the same type of uniform. Detectives do not wear uniforms during the perform-

ance of their duties. Instead, they wear civilian clothing. The Chief sets specific clothing standards for detectives. Those standards require that detectives wear blazers and button-down shirts. Occasionally, detectives do wear uniforms, such as when detectives perform overtime as patrolmen. The mechanic is required to wear a uniform, although it is different from those uniforms worn by patrol officers. Those officers in specialty positions receive the same clothing allowance as the patrolmen. The clothing allowance can be used to buy and maintain either uniforms or civilian clothing worn during the performance of the officers' duties.

Officers in specialty positions have separate work areas than those assigned to the patrol force. There is limited interaction between members of the patrol force and officers assigned to specialty positions. Patrol officers responding to a crime scene interact with detectives assigned to investigate the crime. However, if a detective has a question during the subsequent investigation of a crime, the detective will ask the superior officer involved in the investigation. Patrol officers may also have limited interaction with the safety officer.

Similarly, there is limited interaction among those officers assigned to the specialty positions. For example, the domestic violence officers may interact with the prosecutor regarding complaints of domestic violence. Detectives discuss questions about investigations with the prosecutor. However, because of the specialized nature of the positions in the proposed unit, the duties of one officer may not require him to interact with another. For example, there is no indication of any interaction between the domestic violence officers and the juvenile officer. Similarly, there is no established link between the domestic violence officers and the mechanic.

The Petitioner does not seek to include part-time specialty positions in the bargaining unit. Officers who perform specialty duties part-time receive a stipend for performing those duties. Some officers receive stipends weekly, while others receive such stipends monthly. Often, the part-time specialty duties are incidental to the performance of the officer's other duties and may require attention for only a short time each week.

At the time of the hearing, the Town and Local 413 were parties to a collective bargaining agreement effective from July 1, 1996 to June 30, 1999. The Town and Local 366 were parties to a collective bargaining agreement that expired on June 30, 1996.

Decision

Under Section 14.06 of the Commission's Rules and Regulations, except for good cause shown, the Commission will not entertain a representation petition filed during the term of an existing valid collective bargaining agreement unless the petition is filed no more than 180 days and no fewer than 150 days prior to the termination date of the contract. 456 CMR 14.06. The purpose of the contract bar rule is the establishment and continuation of stable labor

5. According to Officer Peter Cicolini (Cicolini), both the prosecutor and the computer systems officer worked a 5/2 schedule prior to January 5, 1997.

6. According to Cicolini, the night sergeant investigating narcotics crimes continues to work a 4/2 schedule.

7. Cicolini testified regarding the clothing worn by patrol officers, detectives and the mechanic. No other testimony was offered regarding the clothing worn by other officers in specialty positions.

relations and the avoidance of instability of agreements. *Boston Water and Sewer Commission*, 6 MLC 1601, 1603 (1979) (citation omitted). The contract bar doctrine ensures stable bargaining relationships by guaranteeing that the contracts that have been negotiated by the parties are not subject to disruption by the representation challenges of rival employee organizations, except for the thirty day period during which such challenges are timely. *Id.*

Local 413 and Local 366 filed a Motion to Dismiss the petition on the ground that it was untimely because the Petitioner did not file it during the open period of the contract between Local 413 and the Town. The Petitioner opposes that motion, arguing that Commission Rule 456 CMR 14.06 contains an exception to the contract bar for good cause and that the petition should be allowed under this exception. However, our application of the “good cause” exception to the contract bar rule is discretionary. *Reading School Committee*, 23 MLC 42, 43 (1996). Exceptions to the contract bar rule are rarely found. *Boston Water and Sewer Commission*, 6 MLC at 1603. Generally, exceptions must be based on evidence of substantial disruption in bargaining relationships and threats to labor stability. See *Quincy School Committee*, 23 MLC 173 (1997) (mere dissatisfaction of unit employees with bargaining representative is insufficient to waive contract bar).

Here, there was a valid collective bargaining agreement between the Town and Local 413 when the petition was filed on October 7, 1997. At that time, Local 366 did not have a contract with the employer. Therefore, we find that the Petitioner is barred from seeking to represent those employees covered by Local 413’s contract. Although the Petitioner argues that there may never be a coinciding open period between Local 413 and Local 366’s contracts, we do not find this argument persuasive. Local 366’s contract expired on June 30, 1996. We find that the Petitioner’s mere speculation that there may never be coinciding open periods between the two contracts does not warrant waiver of the contract bar rule. Additionally, we find no evidence that the bargaining relationship between the parties has been substantially disrupted by including the specialty positions in the respective bargaining units or threatens to labor stability. See, *Quincy School Committee*. Therefore, because the Petitioner has failed to show good cause for waiving the contract bar, we decline to waive the contract bar for those employees represented by Local 413.

Next, we consider whether to sever the remaining specialty members of the bargaining unit represented by Local 366. From the evidence introduced at the hearing, it appears that the juvenile officer, the mechanic, the domestic violence officers, the computer systems/records officer and some members of Bureau of Criminal Investigations are part of the bargaining unit represented by Local 366.

Historically, the Commission has not looked favorably upon severance petitions. *City of Fall River*, 26 MLC 13, 17 (1999); *City of Lawrence*, 25 MLC 1, 5 (1996). To successfully sever a group of employees from an existing bargaining unit, the petitioner “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 105, 119 (1999). (quoting *Northeast Regional Metropolitan Regional Vocational School District*, 7 MLC 1743, 1744 (1981).

Under our severance analysis, a petitioner must 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 and that special negotiating concerns resulting from those differences have caused or are likely to cause conflicts and divisions within the existing bargaining unit. *City of Lawrence*, 25 MLC at 5 (citing *City of Boston*, 20 MLC 1431, 1448 (1994)). We consider 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. *City of Lawrence*, 25 MLC at 5; *City of Boston*, 20 MLC at 1449-50.

Here, the Petitioner fails to demonstrate that the petitioned-for employees constitute a functionally distinct group. We find no evidence that the petitioned-for employees have specialized skills that are acquired through a required course of study. Although officers in specialty positions do receive specific training, there is no evidence that this training is markedly different from the training given to the other police officers. We note that there are no additional education requirements for specialty positions nor is there any indication that officers in specialty positions must participate in continuing education activities. Although some officers in specialty positions perform different job functions than the other bargaining unit members, these differences do not warrant severance from the existing unit. Rather, the evidence demonstrates that some members of the petitioned-for unit perform functions complementary to those employees in the existing bargaining unit. For example, although the detectives are responsible for investigating crimes, the patrol officers are often the first officers to arrive at the crime scene. Like the juvenile officer, patrol officers also counsel juveniles on occasion. Therefore, the petitioned-for employees and the other bargaining unit members are all Town police officers, performing overlapping law enforcement functions. Finally, although officers in specialty positions may work in different areas than patrol officers, we find this evidence is insufficient to warrant severance of the specialty officers. The officers in specialty positions also work in different areas than each other, as well. Interaction among patrol officers and specialty officers is limited, this is also true about interaction among specialty officers. Therefore the mere fact that patrol officers and specialty officers may have limited interaction in their daily job functions does not demonstrate that specialty officers are a functionally distinct group requiring severance from the existing bargaining unit. Accordingly, because the

Petitioner has failed to demonstrate that the petitioned-for employees are a functionally distinct group, we dismiss the petition.

unit within the meaning of the Law. Therefore, the petition is DISMISSED.

Conclusion

SO ORDERED.

Based on the record for the reasons stated above, we conclude that the petitioned-for bargaining unit is not an appropriate bargaining

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