

In the Matter of TOWN OF PROVINCETOWN
and
PROVINCETOWN POLICE LABOR FEDERATION

Case No. CAS-03-3553 and CAS-03-3555

27.31	<i>clarification</i>
34.2	<i>community of interest</i>
34.5	<i>established practice (history)</i>
34.8	<i>similarity of work (interchangeability)</i>
34.93	<i>severance</i>
35.2	<i>confidential</i>
35.7	<i>supervisory and managerial employees</i>
35.82	<i>police</i>

September 24, 2004

Allan W. Drachman, Chairman
Helen A. Moreschi, Commissioner
Hugh L. Reilly, Commissioner

Theresa Dowdy, Esq.	Representing the Town of Provincetown
Joseph McParland	Provincetown Police Labor Federation

DECISION¹

Statement of the Case

The Town of Provincetown (Town) filed a petition in Case No. CAS-03-3553, on May 9, 2003, seeking to remove the position of police Secretary/Dispatcher from the bargaining unit represented by the Provincetown Police Labor Federation (Union). On July 17, 2003, the Town filed a petition in Case No. CAS-03-3555, seeking to remove Sergeants from the Union's bargaining unit. The Commission held an informal conference with the parties on August 26, 2003 as part of its investigation of this matter and, on November 14, 2003, sent a letter to the parties requesting additional information regarding the duties of the Police Secretary. Both parties responded to that request.

On February 11, 2004, the Commission sent the parties a letter asking them to show cause why the Commission should not resolve the unit placement issue based on the information contained in that letter. That letter reflects information the parties provided in response to the November 14, 2003 letter. On March 4, 2004, both the Union and the Town filed responses to the show cause letter.

Statement of Facts

After reviewing the parties' responses to the show cause letter, the Commission has corrected and modified the facts where appropriate.

ate. Because none of the material facts necessary to the Commission's decision in this case are in dispute, it is appropriate for the Commission to decide the case based on the information provided by the parties that is set out below.

MCR-4299

Since in or around 1969, the Town has recognized a bargaining unit consisting of both sworn and non-sworn police personnel. In January 1994, in Commission Case No. MCR-4299, the Union filed a representation petition seeking to represent the following bargaining unit:²

All regular full-time employees in the position of Police Officer, Sergeant, Staff Sergeant, Prosecutor, Detective, Police Clerk/Dispatcher, Civilian Dispatcher, Police Records Clerk, Dog Officer, Janitor/Jailer of the Provincetown Police Brotherhood [sic].

On March 8, 1994, the Union and the Town entered into a Consent Election Agreement (Consent Agreement) in which they agreed that the following unit was appropriate for collective bargaining:

All full-time and regular part-time employees in the positions of police officer, sergeant, staff sergeant, prosecutor, detective, dog officer, administrative clerk/dispatcher, civilian dispatcher and janitor/jailer, excluding the Chief of Police, all managerial, confidential and casual employees and all other employees of the Town of Provincetown.

The Commission conducted an election on March 28, 1994, and, based on the results of that election, on April 6, 1994, certified the Union as the exclusive representative of the bargaining unit set forth in the Consent Agreement.

The bargaining unit is presently comprised of approximately twenty-one employees.

CAS-03-3553 - Unit Placement of Police Secretary/Dispatcher

As set forth above, the Union's petition in Case No. MCR-4299 sought to represent the Police Clerk Dispatcher and Police Records Clerk. However, the bargaining unit described in the 1994 Consent Agreement excluded the Records Clerk position and included a position titled "Administrative Clerk/Dispatcher."³ In or around 1995, the parties negotiated and agreed that the Administrative Clerk/Dispatcher would become two separate positions: one, Police Clerk/Dispatcher and the other, Police Secretary. The parties agreed that the Police Secretary would be cross-trained as a Dispatcher and the Police Secretary would serve as a Dispatcher from time to time. The recognition clause of the parties' collective bargaining agreement was modified to include the two new titles and to delete the Administrative Clerk/Dispatcher position, previously employed.

A job description for the position "Police Secretary/Dispatcher" was created sometime after 1995. That job description appears to be based almost entirely on the description of duties that the

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. At the time MCR-4299 was filed, AFSCME Council 93 represented the petitioned-for employees.

3. It would appear that by the time the Union filed its petition in 1994, those two titles had been consolidated into one title, "Administrative Clerk/Dispatcher," a position held by Jodi Rapose from 1986 until 1995.

Town's first Police Secretary Jodi Rapose (Rapose) prepared when she was appointed in 1995.⁴ The description states in pertinent part:

Definition:

Technical and administrative work in performing secretarial duties to support the activities and operations of the police department and dispatching and monitoring the station communications center; all other related work as required.

Distinguishing Characteristics:

Works under the general direction of the Chief of Police.

Performs a variety of very responsible administrative, clerical, and dispatching duties... .

Has frequent contact with other town departments, insurance agencies; ...has constant daily contact with the general public.

* * *

Has access to department-related confidential information such as personnel records and information concerning on-going police activities including criminal investigation, all of which are sensitive in nature, requiring the utmost discretion.

* * *

Examples of Work

Prepares and types a variety of departmental correspondence, reports and memoranda from rough draft copy or oral instructions which may include specialized terminology; composes routine correspondence from supervisor's brief instructions; distributes correspondence reports and memoranda to appropriate individual(s).

Monitors telephone and radio; answers and refers calls; dispatches vehicles and personnel; dispatches fire and rescue units; enters calls on computer; keeps supervisory personnel aware of priority calls and equipment status; maintains accurate detailed records, logs and other pertinent information on computer; runs criminal identification checks; runs motor vehicle and boat listings.

Receives and answers inquiries from public, other town departments, agencies, and companies; supplies information relating to policies, rules and regulations of the police department.

Assists in compiling information for preparation of annual budget; collects and compiles statistical data; files forms and correspondence; ...opens and screens incoming departmental correspondence; distributes mail to appropriate parties.

* * *

Schedules appointments for the Chief; types Chief's correspondence; maintains personnel files for department including confidential data pertaining to individual employees.

Maintains records of all hours worked by officers; schedules and bills officer details; prepares payroll for all police personnel; processes department accounts payable; prepares deposit for the Town

Treasurer; oversees petty cash account; prepares bills for false alarms; monitors department budget.

Maintains accurate, detailed records, logs and other pertinent information; files reports and statistics as required; retypes police reports when necessary; fills out paperwork on warrant recalls; completes insurance, accident, and personnel requests; types officer accident reports... .

* * *

Recommended Minimum Qualifications

Education and Experience

High school graduation including or supplemented by secretarial or business courses; two years experience in a responsible clerical position involving working with the public; dispatching experience preferred; or any equivalent combination of education and experience.

Knowledge, Ability and Skill:

Thorough knowledge of the basis principles of office management. Working knowledge of department operations and functions. Basic knowledge of bookkeeping. Ability to maintain detailed and confidential records and to prepare reports from same. Ability to meet and deal with people appropriately and patiently. * * * Ability to work with confidential information. * * *

Schuyler M. Meyer became Chief of Police on January 14, 2002. In or around March 2003, Chief Meyer perceived the need to have a full-time Administrative Assistant who reported directly to him, rather than a departmental Secretary. He developed a new job description in March 2003 titled "Administrative Assistant to the Police Chief."⁵ The Department posted a vacancy for this title in March 2003. It differs from the job description for Police "Secretary/Dispatcher" as follows:⁶

(1) It eliminates dispatching duties.

(2) In the category "Distinguishing Characteristics", states:

Works under general direction of Chief of Police and acts as his/her Administrative Assistant/Secretary handling daily mail, memos, reports, confidential documents such as union contractual issues and other items as required.

Performs a variety of very responsible administrative and clerical duties in accordance with established standard operating procedures requiring judgment, initiative and confidentiality.

Has access to Department related confidential information such as personnel records and information concerning on-going police activities including criminal investigations, all of which are sensitive in nature, requiring the utmost discretion. Also assists with confidential matters pertaining to union contract negotiations;

(3) Contains the following "Examples of Work:"

4. There appears to be some confusion as to Rapose's official title after 1995. The job description provided by the Town refers to it as "Police Secretary/Dispatcher." However, the Town's Certificate of Appointment refers to it as "Police Secretary." The job description that Rapose prepared also refers to the position as "Police Secretary."

5. The Town provided a job description for Police "Secretary/Dispatcher" dated December 20, 2002. However, there is no evidence that this job description was ever posted or otherwise utilized.

6. Additions and/or other changes to the Secretary/Dispatcher job description are set forth in bold typeface.

- Assists management with preparing both contractual information, preparing for negotiations and other highly confidential issues closely related to the union contract.
- May transcribe dictation, either via shorthand methods or through dictating office equipment and programs.
- Checks criminal identification listings including boat, property and motor vehicles.
- **Assists in preparing the Annual Report and budget.** Collects and compiles statistical data; creates spreadsheets; files forms and correspondence; purchases office supplies, uniforms, equipment and building supplies. Opens and screens incoming departmental correspondence, not personal mail, and distributes to appropriate parties.
- **Acts as the Chief's secretary, scheduling appointments, typing correspondence, preparing official reports and policies.** Maintains personnel files for Department including confidential data relating to individual employees.

* * *

- Maintains records of hours worked by all personnel, prepares payroll for all personnel, processes accounts payable; prepares deposit for the Town Treasurer... . Monitors budget and keeps **Chief apprised of all related issues. Provides monthly report for Chief and Supervisors.**

(4) Modifies the paragraph under the heading "Knowledge, Ability and Skills" as follows:

[A]bility to work with confidential information pertaining to union contracts and related business.

Since becoming Chief of Police, Chief Meyer has prepared contract proposals for successor contract negotiations. The current Administrative Assistant to the Chief of Police has typed those proposals. ⁷ Chief Meyer's proposals have been reviewed by the Town Manager and Town Counsel, who have adopted some of those proposals in the course of bargaining for a successor contract.

The previous Police Secretary was a member of the Union's bargaining team. Prior to filing the instant petition, the Town had not asserted under the prior job description that the Police Secretary/Dispatcher was a confidential position that should be excluded from the bargaining unit.

CAS-03-3555 - Unit Placement of Police Sergeants

On or about March 24, 1994, after signing the Consent Agreement described above, the parties entered into a side agreement (1994 Side Agreement) pertaining to the Consent Agreement. The Side Agreement, which was signed by representatives of both parties, reiterates the unit description contained in the Consent Agreement, and states in pertinent part:

[When the Union filed MCR-4299], [t]he Town raised issues relating to the appropriateness of the bargaining unit, specifically (a) the severance of the above-described unit into two units, one supervisory and the other non-supervisory; and (b) the exclusion of the posi-

tion of Staff Sergeant from both units. The parties agreed to preserve these issues to be resolved at a later date.

* * *

As part of this [Consent Agreement], the Town expressly reserved the right to challenge the inclusion of the position of Sergeant and the position of Staff Sergeant in the unit either during the collective bargaining negotiations and/or by filing a unit clarification petition.

The Provincetown Police Labor Federation acknowledges and understands that by executing the Agreement for Consent Election, the Town of Provincetown does not waive its right to assert and argue that the positions of Sergeant and Staff Sergeant are inappropriately included in the bargaining unit. The Federation explicitly agrees not to raise the issue of contract bar or any other procedural objections to the filing of a unit clarification petition by the Town that raises these issues.

In or around 1996, the parties negotiated the removal of the position of Staff Sergeant from the bargaining unit. Accordingly, the recognition clause of the parties' most recent collective bargaining agreement, dated July 1, 2000 - June 30, 2003, (the Agreement) does not include that title.

There are three police Sergeant positions in the bargaining unit, all of which are presently filled. ⁸ The Sergeant's job duties have not changed since the position was created. As of August 26, 2003, the date of the Commission's informal conference, the Town had not offered to bargain with the Union over excluding the Sergeants from the bargaining unit and no bargaining over this issue has occurred.

SERGEANT JOB DESCRIPTION

The Police Sergeant job description states in pertinent part:

Definition:

Supervisory, investigatory, and patrol work in the operation of the police department, the protection of life and property, and the prevention and suppression of crime; all other related work as required.

Distinguishing Characteristics:

Works under the general direction of the Chief of Police or the staff sergeant. . . .

Work requires considerable judgment in the supervision of subordinate officers and in conducting investigations and patrol operations, while working in accordance with established guidelines and procedures.

Supervises approximately four to five full-time employees during a normal shift.

* * *

Has access to confidential information related to criminal investigations.

* * *

Examples of Work:

7. In its reply to the Commission's Show Cause letter, the Union denies that the Police Secretary edits contract proposals, and states, that, "at most, she types these matters." We have modified the facts accordingly.

8. On October 28, 2003, Chief Meyer appointed Officer James Golden to the position of Patrol Sergeant effective November 3, 2003. Prior to that date, only two of the three Sergeant positions were filled.

Instructs, assists and supervises police officers in the performance of their duties; assume command of serious crimes or incidents during assigned tour of duty; authorizes overtime on shift supervised as deemed necessary.

Perform patrol and investigative functions of a police officer; assist officers in investigations and advises personnel in proper procedures.

Makes arrests for violation of laws; conducts criminal and accident investigations as directed; gathers evidence and prepares reports for court cases; appears in court to present evidence.

* * *

Assists the Chief of Police in carrying out the public safety policies of the department; reviewing performance of subordinates; maintaining discipline and encouraging professionalism in the department.

Completes and maintains all required reports and records for activities; reviews the reports of patrol officers; confers with colleagues concerning previous incidents or conditions requiring continued attention; prepares and approves press releases and talks to press at crime scenes.

Performs other similar or related duties as required or as situation dictates.

RECOMMENDED MINIMUM QUALIFICATIONS

Education and Experience:

High school graduation; advanced training in criminal justice or related field required; attainment of necessary years of experience to be eligible for Civil Service examination and receipt of passing grade; or any equivalent combination of education and experience.

Knowledge, Ability and Skill;

Thorough knowledge of the principles and practices of law enforcement and police administration. Thorough knowledge of pertinent statutes, local laws, and departmental regulations. Ability to communicate concisely and clearly, orally and in writing, and to establish and maintain harmonious relationships with town officials, subordinates, the general public and other law enforcement officials. Ability to lead and supervise subordinates and to delegate tasks effectively.

* * *

Compensation and Hours

The parties' collective bargaining agreement reflects that police Sergeants are classified within a higher pay-grade than police officers and are subject to a different shift bidding system.

Article XV, Classification and Compensation, Section 10 of the Agreement, subtitled "Officer-in-Charge" states:

The designated Officer-in-Charge shall receive an additional \$1.00 per hour for every hour worked as Officer-in-Charge. The Officer-in-Charge shall be the senior patrolman on duty unless a less senior patrolman is otherwise designated by the Chief, during a shift when no Sergeant is on duty, unless the Chief designates himself as

Officer-in-Charge, in which event the Chief shall perform the duties of Officer-in-Charge.

Performance Appraisals⁹

Article XVA of the parties' collective bargaining agreement, Performance Appraisal System, sets forth the performance appraisal system. Under that system, "supervisors" appraise each employee whom they supervise on a six-month basis and annually. The Town asserts, and the Union does not dispute, that with respect to performance appraisals of police officers, the supervisors referred to in Article XVA are Sergeants.

Article XVA, Section 4, states:

Initial Meeting: A Department meeting will be held at the beginning of the appraisal year to review the criteria to be used in the rating instrument.

Article XVA, Section 5, states:

A mid-year review will be conducted to assess each employee's progress for the first six months against the criteria used in the rating instrument. All supervisors will individually appraise each employee whom they had supervised during the first six months. The supervisors will meet and discuss their appraisals and the Staff Sergeant will assemble a single appraisal for each employee showing the distribution of ratings for each criteria. The Staff Sergeant will meet with each employee to discuss the appraisal. The Chief of Police shall appraise the performance of all sergeants.

Article XVA, Section 6, states:

An annual review will be conducted to appraise the employee's overall performance for the full year and to plan for any future professional development needs. All supervisors will individually appraise each employee whom they had supervised during the previous twelve months. The supervisors will meet and discuss their appraisals and come to a consensus on a composite rating for each employee. If the supervisors are unable to arrive at a consensus, the matter will be referred to the Chief of Police. The Chief will decide on an overall appraisal after hearing the conflicting views of the supervisors. The Staff Sergeant will meet with each employee to discuss the appraisal. The Chief of Police shall appraise the performance of all sergeants.

Article XVA, Section 7, states:

Performance Bonus: Employees who achieve an overall rating of "Exceeds Expectations" shall receive a performance bonus of \$500, which shall not be added to the employee's rate of pay.

Article XVA, Section 9, states:

Second Level Review: The mid-year and annual appraisals by each supervisor will be reviewed by the next level of management to insure consistency and proper use of the criteria.

Collective Bargaining

The Sergeants do not participate in any aspect of collective bargaining negotiations on behalf of the Town. However, Sergeants

9. We have added information regarding performance appraisals at the request of the Town.

have been active in the Union. Sergeant Warren Tobias was Union President before becoming the current Staff Sergeant. The current Union President, Sergeant James Golden, was promoted from patrol officer to Sergeant in or around October 2003. *See* footnote 8, *supra*.

Opinion

CAS-03-3553 - Police Secretary

Section 1 of Chapter 150E (the Law) defines confidential employees as those who “directly assist and act in a confidential capacity to a person or persons otherwise excluded from coverage” under the Law. To be regarded as confidential, an employee must have a substantial relationship with a managerial employee “so that there is a legitimate expectation of confidentiality in their routine and recurrent dealings.” *Framingham Public Schools*, 17 MLC 1233, 1236 (1990), *citing Littleton School Committee*, 4 MLC 1405, 1414 (1977). Employees who have “significant access or exposure to confidential information concerning labor relations matters, management’s position on personnel matters, or advance knowledge of the employer’s collective bargaining proposals are excluded as confidential.” *City of Everett*, 27 MLC 147, 150 (2001). The Commission has construed exceptions to the definition of employee narrowly to preclude as few employees as possible from collective bargaining while not unduly hampering an employer’s ability to manage the operation of the enterprise. *Framingham Public Schools*, 17 MLC 1233, 1236 (1990), *citing Silver Lake Regional School District*, 1 MLC 1240, 1243 (1975).

To decide this case, we must first determine whether the Police Secretary reports to an employee who is otherwise excluded from coverage under the Law. We conclude that she does. The Police Secretary reports directly to the Chief of Police, who is a managerial employee¹⁰ within the meaning of Section 1 of the Law, and therefore excluded from coverage under the Law.

We next examine whether the Police Secretary has significant access or exposure to confidential information. The undisputed facts show that she does. The current Police Secretary types bargaining unit proposals and therefore has access to those proposals before other employees. This is a change from the duties of the Police Secretary position as described and performed prior to March 2003 and establishes that this individual should be excluded from the existing unit as a confidential employee based on the addition of those confidential duties made in 2003. *See Fall River School Committee*, 27 MLC 37, 40 (2004) *citing Silver Lake Regional School Committee*, 1 MLC 1240, 1243 (1975) (employees who type bargaining unit proposals should be excluded from unit as confidential).

10. M.G.L. c. 150E, § 1 states that:

[E]mployees shall be designated as managerial employees only if they (a) participate to a substantial degree in formulating or determining policy, or (b) assist to a substantial degree in the preparation for or the conduct of col-

CAS-03-3555 - Sergeants

As a general rule, a unit clarification petition is the appropriate vehicle to determine whether newly-created positions should be included or excluded from a bargaining unit, and to determine whether substantial changes in the job duties of existing position warrant either their inclusion or exclusion from a bargaining unit. *Sheriff of Worcester County*, 30 MLC 132, 136 (2004), *citing North Andover School Committee*, 10 MLC 1226, 1230 (1983). Further, a unit clarification petition is appropriate if the outcome sought by the petition is “[c]learly supported by an apparent deficiency in the scope of the existing unit and must be, at least arguably, within the realm of what the... parties intended when the unit was first formulated.” *Sheriff of Worcester County*, *id.* at 136-137. A “unit clarification petition is not the appropriate vehicle to change the composition of an existing bargaining unit by severing positions thereby creating a new bargaining unit. Severance petitions inherently involve questions of representation that are not properly resolved in a unit clarification petition.” *Id.* at 137, *citing City of Quincy*, 10 MLC 1027, 1031 (1983).

On the other hand, the Commission is statutorily obligated to fashion units that are consistent with stable and continuing labor relations, pursuant to Section 3 of the Law. Thus, in certain rare situations, the Commission has treated a CAS petition on its merits, even where, as here, the duties of the positions at issue have not changed since recognition or certification. *See, e.g., Silver Lake Regional School District*, 1 MLC 1240 (1975) (acknowledging that severance question was improperly raised in a unit clarification petition, but addressing issue nonetheless); *City of Boston*, 2 MLC 1353, 1356-1357 (1976) (Commission uses general authority under the law to address unit problems arising post-certification). In each of those cases, and others like them, the Commission concluded that its statutory mission of determining units that foster stable and continuing labor relations would be not served by the perpetuation of an inappropriate bargaining unit. *See, e.g. Town of Burlington*, 5 MLC 1234, 1238 (1978) (excluding dog officer was error, and continuation of error after timely protest by affected employee is not in accordance with Commission’s statutory responsibility).

In this case, the 1994 Side Agreement that the parties entered into in conjunction with the Consent Agreement clearly and unambiguously demonstrates the parties’ intent to allow the Town to preserve the issue of the unit placement of the Sergeants and the Staff Sergeant for resolution either through subsequent collective bargaining or by filing a unit clarification petition. In that respect, this case is clearly distinguishable from *Sheriff of Worcester County*, *supra*, where the Sheriff of Worcester County filed a CAS petition seeking to exclude Sergeants from a bargaining unit of correction officers on the grounds that the Sergeants supervised the correction officers. The Commission dismissed the Sheriff’s petition for a number of reasons, including the fact that the duties of the super-

lective bargaining on behalf of a public employer, or (c) have a substantial responsibility involving the exercise of independent judgment of an appellate responsibility not initially in effect in the administration of a collective bargaining agreement or in personnel administration.

visors had not changed since the Commission's certification and the Sheriff had previously had the opportunity to raise the supervisory status of the Sergeants in a Commission proceeding, but failed to do so. *Id.* at 137. *Sheriff of Worcester County* was notably devoid of evidence that either party raised, or preserved the right to raise, the unit placement of the Sergeants to the Commission when the unit was first formulated. Here, however, no evidence has been presented that the 1994 Side Agreement is invalid or otherwise non-binding on the parties. It does not violate any specific Commission rule or regulation. Therefore, it would be more conducive to stable and continuing labor relations to give effect to 1994 Side Agreement and address the issues raised by the Town's CAS petition.¹¹ Doing so will provide the parties with finality regarding the status of the Sergeants and give effect to the intent of the parties when the unit was first formulated.¹² *Somerville School Committee*, 6 MLC 2092, 2093 (1980).

Because there is no question concerning representation, the issue before us is whether the existing bargaining unit remains appropriate. *City of Quincy*, 10 MLC 1027, 1031 (1983). Section 3 of the Law requires the Commission to determine appropriate bargaining units that are consistent with the purpose of providing for stable and continuing labor relations while giving due regard to the following statutory considerations: 1) community of interest; 2) efficiency of operations and effective dealings; and 3) safeguarding the rights of employees to effective representation. *City of Everett*, 27 MLC 147, 150-151 (2001). Applying the criteria set forth in Section 3 of the Law, the Commission generally establishes separate bargaining units for supervisory employees and the employees they supervise. *Sheriff of Worcester County*, 30 MLC 132, 137 (2004). (citations omitted). This policy is rooted in the judgment that individuals who possess significant supervisory authority owe their allegiance to their employer, particularly in the areas of employee discipline and productivity. *Town of Bolton*, 25 MLC 62, 67 (1998). Supervisors and the employees they direct have different obligations to the employer in personnel and policy matters, therefore to retain them in the same bargaining unit would likely lead to a conflict of interest within the bargaining unit in a school setting. *City of Chicopee*, 1 MLC 1195, 1197-1198 (1974). This rule applies with no less force to unit determinations involving police departments, where the Commission has stated that its concern is not whether to create a separate supervisory unit, but where the division should be made. *Cambridge Police Department*, 2 MLC 1027, 1030-1031 (1975).

The Union does not dispute that Sergeants supervise police officers under their command. The Union argues however, that by operation of Article XV, Section 10 of the contract, patrol officers who are "officers-in-charge" assume the same supervisory duties as Sergeants on a regular basis, including directing and assigning officers on their shift. Therefore, the Union claims that the Ser-

geants and patrol officers share a community of interest. However, the record shows that the Sergeants have those duties on a regular routine basis. Patrol officers have them only on assignment from the Chief.

The Union further argues that it would not facilitate stable and continuing labor relations to create a small, fragmented unit of Sergeants in an isolated geographic community like Provincetown, particularly where police officers and Sergeants have belonged to the same bargaining unit for approximately thirty years.

On the other hand, the Town argues that the police officers consistently receive annual bonuses and step increases based on the scores they receive on the performance appraisals conducted by the Sergeants. The Town attributes this to the fact that the Sergeants and police officers belong to the same bargaining unit and contends that this is an unworkable situation.

After considering the parties' arguments and evidence, we find that the Sergeants possess significant supervisory authority over the police officers. The Sergeants supervise the officers on their shifts and transmit directives regarding overtime and assignments to them. The Sergeants also appraise the police officers' work performance twice a year, and the scores that the police officers receive on those appraisals determine whether they will receive a step increase in the upcoming year and/or receive an annual bonus.

Having found that the sergeant possess considerable supervisory authority over the police officers, we must now decide whether the existing unit nevertheless remains appropriate. In so doing, we acknowledge there are only three Sergeants, whose shared duties occasionally overlap with those of the police officers. However, those considerations though valid but infrequent do not overcome the concern in favor of excluding supervisors from the unit of those whom they supervise, particularly in the case of police departments. *North Attleborough*, 5 MLC 1145, 1146 (1978). Nor does the fact that the Sergeants and patrol officers have functioned in the same bargaining unit for a number of years require us to reach a contrary conclusion, for there is plausible argument that the Sergeants may be subordinating their supervisory responsibility to their membership in the collective bargaining unit with non-supervisory patrol officers. *Town of North Attleborough*, 4 MLC 1827, 1828 (H.O. 1978), *affirmed* 5 MLC 1145 (1978).

Conclusion

CAS-03-3553

For the foregoing reasons, we conclude that the position of Police Secretary in the Town of Provincetown is a confidential position and should be excluded from the existing bargaining unit represented by the Union.

11. Noting that the parties bargained over the unit placement of the Staff Sergeant, the Union argues that the Town should have also bargained about the unit placement of the Sergeants prior to filing the instant petition. However, the 1994 Side Agreement imposes no such requirement, stating instead that the "Town expressly reserved the right to challenge the inclusion of the position of Sergeant and the position of Staff Sergeant in the unit either during the collective bargaining negotiations

and/or by filing a unit clarification petition." (Emphasis added). Thus, the Union waived any right to demand bargaining it otherwise may have had.

12. In so deciding, we note that the Town's petition satisfies the requirements set forth in 456 CMR 14.02(2) and was timely filed pursuant to 456 CMR 14.06(1)(b).

CAS-03-3555

For the foregoing reasons, the Commission concludes that the Sergeants are supervisory employees and should be excluded from the existing bargaining unit.

SO ORDERED.
