

In the Matter of TOWN OF LEE
and
MASSACHUSETTS COALITION OF POLICE, IUPA,
AFL-CIO
and
TEAMSTERS, LOCAL UNION NO. 404
Case No. MCR-06-5218

35.1 *casual and temporary employees*
35.82 *police*

October 12, 2007
Michael A. Byrnes, Chairman
John F. Jesensky, Commissioner

Robert L. Nason, Esq. *Representing the Town of Lee*
Patrick N. Bryant, Esq. *Representing the Massachusetts
Coalition of Police, IUPA,
AFL-CIO*
Frank A. Rossi, Esq. *Representing the Teamsters, Local
Union No. 404*

DECISION AND DIRECTION OF ELECTION¹

Statement of the Case

On July 3, 2006, the Massachusetts Coalition of Police, IUPA, AFL-CIO (MassCOPS) filed a petition with the Labor Relations Commission (Commission) seeking to represent a bargaining unit of all full-time and regular part-time police officers who are employed by the Town of Lee (Town) and who are currently represented by the Teamsters, Local Union No. 404 (Teamsters). The Teamsters filed a motion to intervene on August 4, 2006. The Commission allowed that motion on August 21, 2006.

In lieu of an evidentiary hearing, the parties agreed to a stipulated record. The Teamsters and MassCOPS filed their written position statements with the Commission on or before November 27, 2006.

Parties' Stipulations

The Town of Lee, the Massachusetts Coalition of Police, IUPA, AFL-CIO, and the Teamsters, Local Union No. 404 stipulate to the following facts:

1. The Town is a public employer within the meaning of Section 1 of M.G.L. c. 150E (the Law).
2. MassCOPS is an employee organization within the meaning of Section 1 of the Law.

3. The Teamsters is an employee organization within the meaning of Section 1 of the Law.

4. Pursuant to an Agreement for Consent Election in Case No. MCR-4456, *Town of Lee*, approved by the Commission on February 9, 1996, an election by secret ballot was conducted on March 6, 1996, to determine whether a majority of employees in a bargaining unit described as follows:

All full-time and regular part-time police officers employed by the Town of Lee, excluding managerial and confidential employees and all other employees of the Town

desired to be represented by the Teamsters for the purposes of collective bargaining.

The election eligibility list submitted by the Town in accordance with the provisions of the Agreement for Consent Election contained the names and addresses of eighteen eligible voters, including five special officers. Of the five special officers whose names appeared on the Town's list as eligible to vote in the March 6, 1996 secret ballot election, three have retired from the position of special officer and are now traffic officers and two continue to be employed by the Town as special officers. Fourteen eligible voters appeared and voted in the March 6, 1996 election and cast valid ballots for the Teamsters.

On March 25, 1996, the Commission certified the Teamsters as the exclusive representative for the purposes of collective bargaining for employees in the above-described bargaining unit.

5. The Town and the Teamsters are parties to a collective bargaining agreement that is effective from July 1, 2003 through June 30, 2006 (Agreement). The Agreement is attached to this stipulation and its terms are incorporated into this factual stipulation.

Article 1, Recognition, of the Agreement provides, in part, as follows:

Pursuant to the Certification of Representatives by the Massachusetts Labor Relations Commission, the Employer hereby acknowledges the Union as the sole and exclusive bargaining agent with respect to wages, hours, and other terms and conditions of employment for all full-time and regular part-time police officers ("officers" or "employees") of the town of Lee, including sergeants, but excluding the Chief of Police, all casual and temporary employees, and all other employees of the town of Lee.

The official job titles and the number of employees in each position that the Town and the Teamsters have historically treated as included in the bargaining unit certified by the Commission and described in Article 1 of the Agreement are as follows:

Job Title	No. of Employees
Sergeant	1
Patrolman	9
Special Officers	6

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.

The below listed positions in the Town's police department are not currently represented for the purposes of collective bargaining:

Job Title	No. of Employees
Chief of Police	1
Police Secretary	1
Seasonal Officers	2
Traffic Officers	8

An organization chart of the Town's police department is attached and incorporated into this stipulation of fact.

The Town's staffing schedule in its police department over the past ten years and continuing to date has included only one sergeant. The Town has no current plans to add a sergeant's position to its staffing schedule.

6. On July 3, 2006, the MassCOPS filed a petition with the Commission seeking to represent all full-time and regular part-time police officers employed by the Town, excluding all confidential and managerial police department employees and all other Town employees.

7. MassCOPS' petition is timely filed under the Commission's rules and regulations and Commission case law.

8. On August 21, 2006, the Commission allowed the Teamster's motion to intervene in this case.

9. The Town employs eleven full-time police officers, including the Chief, one sergeant and nine patrol officers. (Patrol officers and the sergeant are referred to collectively as "Regular Officers").

- a. All scheduled shifts are filled by Regular Officers.
- b. Regular Officers are Civil Service positions. They are appointed in accordance with civil service law by the Town Administrator (the Appointing Authority) with majority approval of the Board of Selectmen. They obtain permanent or tenured status following completion of a qualified police academy and a probationary period of nine months. Following permanent status, Regular Officers are not re-appointed.
- c. Regular Officers must graduate from a Full-Time Municipal Police Training Committee ("MPTC") Police Academy that consists of approximately 800 hours of training.

10. The Town also employs fourteen non-Regular Officers, including six special officers, two seasonal officers, and eight traffic officers.

- a. All non-Regular Officers are appointed by the Town Administrator upon recommendation of the Chief, and with the majority approval of the Board of Selectmen.
- b. Some of these officers work additional part or full-time jobs elsewhere.
- c. Special officers must graduate from an MPTC Basic Reserve Academy that consists of approximately 120 hours of training.
- d. Two seasonal officers are appointed on an annual basis for a period from June 1 to September 1. Seasonal officers must be gradu-

ates of an MPTC Basic Reserve Academy. Seasonal officers are assigned to work foot patrol full-time during this period.

11. All police officers wear the same uniform with different badges.

- a. Regular Officers receive all necessary uniforms and equipment from the Town, with an annual allotment of funds to replenish these items.
- b. Special officers must purchase their initial issue of uniforms and equipment and reimbursed for replenishment of these items.
- c. The badge for special and seasonal officers states "Special Police."
- d. The badge for traffic officers states "Traffic Officer."

12. The Chief works Monday through Friday during the day.

13. Regular Officers are assigned to a "four and two" schedule on one of three shifts: 11 p.m. to 7 a.m.; 7a.m. to 3 p.m.; or, 3 p.m. to 11 p.m.

14. Regular Officers are scheduled to work the same shift for every work day.

15. Regular Officers are subject to mandatory call-in by the Chief.

16. The police department normally operates with two Regular Officers per shift. A shift may not be completely staffed by special and/or seasonal officers. In other words, at least one Regular Officer must work every shift.

17. All shifts are staffed by Regular Officers, assuming no officer is on leave that week. Regular Officers must work their scheduled shifts, except by permission of the Chief and/or pursuant to earned leave.

18. In the absence of the Chief, the senior Regular Officer assigned to a shift serves as Officer in Charge (OIC) of that shift and receives an OIC pay differential. Special, seasonal, and traffic officers may not serve as OIC.

19. Generally, when a vacancy occurs and is to be filled, the shift first is offered to all Regular Officers.

20. Except as provided for in Article 8.5 and Article 8.8 of the Agreement, special officers may work a vacancy only if all Regular Officers refused the shift and a Regular Officer already is working the shift. Shifts are offered to special officers in order of seniority.

21. The vacancy then is offered to seasonal officers only if all Regular Officers and all special officers refuse the shift, a Regular Officer already is working said shift, and the seasonal officer has training identical to that of a special officer.

22. Article 8.5 and Article 8.8 of the Agreement provide as follows:

- 8.5 Special Officers shall be offered shifts vacated due to compensatory time being granted when those shifts would otherwise not normally be filled on an overtime basis. The Chief of Police or his designee shall contact the Special Officers when a shift becomes available as a result of compensatory time,

and offer the available shift to the Special Officers on a rotational basis. Any vacant shift refused by all Special Officers may be offered to a full-time officer on an overtime basis providing the Chief chooses to fill said shift on an overtime basis.

- 8.8 When the monthly schedule is first posted and includes a shift with two pre-approved vacancies, and the Chief approves filling the second vacancy, Special Officers shall be offered the second vacancy before full-time officers provided that at least one full-time officer works the shift on an overtime basis. If the second vacant shift is refused by Special Officers, it may then be offered to full-time officers on an overtime basis.

23. Traffic officers may not fill any vacancies of Regular Officers.

24. Special officers are not required to work any shift without their agreement. If a special officer agrees to work a shift and fails to report to a scheduled shift, they may be disciplined.

25. Special officers may decline to work a shift without being disciplined.

26. During a fill-in shift, seasonal or special officers may be assigned to work a cruiser.

27. Seasonal and traffic officers are not considered to be "regular part-time officers" for purposes of the recognition clause of the Agreement and the Commission's bargaining unit certification.

28. Seasonal officers may, at the Chief's discretion, be required to carry firearms. This year's seasonal officers carried firearms.

29. Traffic officers work only "outside work" or "detail assignments" paid by third-party contractors. They receive no pay or benefits from the Town.

30. Special officers receive the same hourly rate (\$11.36) as each other, regardless of years of service. They receive no paid leave or holiday pay.

31. Seasonal officers receive the same hourly rate (\$11.46 effective July 1, 2006) as each other regardless of years of service. They receive no paid leave or holiday pay.

32. Regular Officers are paid a salary that increases according to a fixed schedule based upon years of service and annual cost of living increases.

33. Regular Officers (with at least two years of service) receive anywhere from \$18.98 to \$22.53 an hour based upon years of service. They also receive paid time off benefits such as sick leave, vacation leave, paid holidays, personal leave, and recourse to a legal defense fund.

34. Regular Officers must pay dues or an agency fee as a condition of employment.

35. Seasonal and traffic officers are not required to pay dues or an agency fee as a condition of employment.

Article 24.1 of the Agreement provides as follows:

- 24.1 The Town of Lee shall deduct bi-weekly, the Union dues from the earned wages of each employee within the bargaining unit who is a member of the Union in compliance with the terms of

General Laws Chapter 150E Section 12. It shall be a condition of employment that on or after the thirtieth (30) day following employment in the bargaining unit or the effective date of this agreement, whichever is later, each member of the bargaining unit shall pay the Union an agency service fee, and such fee shall be paid bi-weekly from the earned wages of the bargaining unit member.

However, no such fee has been charged to special officers because there normally is no bi-weekly pay from which to deduct dues or fees.

36. No special officer has ever filed a grievance, served on the bargaining committee, or served as Union Steward or Assistant Union Steward.

37. Regular Officers must live in a municipality within 15 miles of the Town. Special officers are not subject to a residential requirement.

38. Special officers are not eligible for mutual leave/swap shifts with Regular Officers.

39. Special officers do not receive any shift differentials.

40. Only Regular Officers are eligible for education incentive pay.

41. A patrolman works under the general supervision of a superior officer in accordance with departmental rules and regulations. The essential functions of a patrolman are as follows:

- Patrols by radio patrol car and on foot; investigates unusual conditions; assists motorists in distress; supervises activities at scenes of accidents, aids victims, and directs traffic; enforces traffic regulations by issuing warnings or fines.
- Responds to calls through dispatch such as disturbances, domestic problems, disabled motor vehicle calls, and the like.
- Makes arrests for violations of the law; gathers evidence and prepares reports for court cases; compiles witnesses for prosecution purposes; appears in court to present evidence; completes reports and maintains appropriate records of activities.
- Conducts criminal and accident investigations as needed; may investigate reports of child abuse, child neglect, and rape; determines whether or not investigation is warranted; interviews and interrogates witnesses and suspects.
- Serves subpoenas, arrest warrants, and transports prisoners. Maintains equipment, vehicles and weapons as necessary.
- Responds to public emergencies such as medical emergencies, motor vehicle accidents, fires, and the like; assists in the search for lost or missing people.
- May assist other law enforcement agencies in apprehending fugitives or other duties; may be assigned to special projects and perform other duties as necessary.
- Performs other similar or related duties as required or as situation dictates.

42. A sergeant works under the general direction of the Chief of Police in accordance with departmental rules and regulations and supervises two full-time employees during a normal shift. A sergeant's 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.

The essential functions of a sergeant are as follows:

- Instructs, assists and supervises police officers in the performance of their duties; assumes command of serious crime or incidents during assigned tour of duty; checks performance of personnel to ensure compliance with instructions.
- Performs patrol and investigative functions of a police officer; assists officers in investigations and advises personnel in proper procedures.
- Makes arrests for violations of law; conducts criminal and accident investigations as directed; gathers evidence and prepares reports for court cases; appears in court to present evidence.
- Addresses citizen complaints, and discusses police procedures and practices with citizens.
- 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.
- Performs other similar or related duties as required or as situation dictates.

43. Article 31.2, Reserve Officers, of the Agreement provides as follows:

31.2 Reserve Officers:

The term reserve officer shall include the following:

Special Officer - A duly appointed officer in a non-civil service position, who has completed a minimum amount of training as prescribed by the Chief of Police, and is available on a part-time year round basis when additional temporary manpower is needed.

Seasonal Officer - A duly appointed officer in a non-civil service position who may be employed for specific duties in accordance with Article 6, Section 6 of this agreement, on a full-time basis from the months of June through September.

Traffic Officer - A duly appointed officer in a non-civil service position, whose duties are limited to outside third party details. Training requirements and other duty limitations shall be set by the Chief of Police.

44. Article 6.6, Work Schedule, of the Agreement provides as follows:

6.6 The Police Department shall retain its current practice of employing Reserve Officers as defined in this agreement to fill designated Reserve Officer shifts, which shall be limited to 8:00 a.m. to 4:00 p.m. and 4:00 p.m. to 12:00 a.m. foot patrols, or any four hour increment thereof. Such shifts for Seasonal Officers as defined in this agreement shall be limited to the months of June through September. Reserve officers on foot patrol may be assigned additional temporary duties by the Chief or his designee during their shift. These duties include the booking and transportation of prisoners, and the picking up or delivery of items for court. Such officers may not be assigned to patrol duties in a cruiser unless all full-time officers have first been offered the opportunity to fill said shift.

45. The primary function of the special officer is to provide the police department with trained, sworn personnel at such times when additional manpower resources are deemed appropriate by the Chief of Police. Special officers have arrest powers and are responsible for the policies and procedures and rules and regulations of the police department whenever they are engaged in official duties. Their responsibilities shall be the same as those of regular full-time officers except as outlined below in this numbered paragraph, or as otherwise specified by either the shift OIC, or the Chief of Police.

- Special officers also provide the police department with additional temporary manpower for outside details, community events, and other special circumstances.
- Special officers are expected to routinely fill vacant shifts that are offered to them. Shifts available to reserve officers may include either regular open shifts, or specially designated reserve shifts.
- Special officers who fill vacant regular officer shifts are under the immediate direction of the OIC of the shift. The OIC makes a determination based on the reserve officer's qualifications and experience whether the special officer will be assigned to drive a cruiser, or ride along with a regular full-time police officer.
- Special officers who fill the summer "Main Street" shift remain on foot patrol in the Main Street area to assist citizens, and prevent crime through high visibility. The officers may be used by the OIC to temporarily assist on a call, after which they return to their foot patrol duties.
- Special officers are certified to use firearms and are trained as first responders and CPR providers. Special officers also receive on-the-job training in department operations such as the department computer system, cruiser operation, and radio communications.

The wages, hours, and other terms and conditions of employment for special officers are governed by various provisions of the Agreement including Article 2, Wages, Article 6, Work Schedule, Article 8, Overtime, Article 20, Clothing Allowance, and Article 27, Seniority.

During fiscal year 2006, July 1, 2005 through June 30, 2006, the six special officers employed by the Town worked the following hours while performing the duties of a special officer on one of the three shifts:

Special Officer	Appointment Date	Shift Hourly Rate	Shift Hours Worked-FY06
James Toomey	8-1-1978	\$11.36	56
Robert Giarolo	9-7-1995	\$11.36	4
Robert Wood	1-19-1996	\$11.36	239
Daniel Martin	1-17-1998	\$11.36	12
Frank Murphy	1-17-1998	\$11.36	36
Michael Smith	3-18-2003	\$11.36	70

During fiscal year 2006, July 1, 2005 through June 30, 2006, the six special officers employed by the Town also worked outside third party details and were paid the outside third party detail hourly rate provided for in Article 4.3 of the Agreement. Below is a chart listing the total number of hours each officer worked outside third party details during fiscal year 2006.

Third Party Details	Outside Third Party Detail -Hourly Rate	Outside Third Party Detail Hours Worked FY 06
James Toomey	\$33.00	8
Robert Giarolo	\$33.00	145
Robert Wood	\$33.00	178
Daniel Martin	\$33.00	272
Frank Murphy	\$33.00	179
Michael Smith	\$33.00	207

46. The primary function of seasonal officers is to provide the police department with trained, sworn personnel during the summer months. Seasonal officers have arrest powers and work full time, forty hours each week, during the period of June 1 to September 1. Seasonal officers are assigned primarily to foot patrols on Main Street or in the surrounding areas.

- Seasonal officers remain on foot patrol in the Main Street area to assist citizens and to prevent crime through high visibility. Seasonal officers may be used by the OIC to temporarily assist on a call, after which they return to their foot patrol duties.
- Seasonal officers may assist with duties in the police station which are of a temporary nature. When the temporary station duty is complete, the seasonal officer shall return to his foot patrol duties.
- Seasonal officers may work only from June 1 to September 1 of each year and receive training as first responders and CPR providers.

Each year a person seeking employment or re-employment with the Town as a seasonal officer must file the appropriate application. The Town often re-appoints seasonal officers, but there is no formal recall procedure. Five individuals have served as seasonal officers over the most recent five years as follows:

Season	Seasonal Officers
2006	Jason Hopkins Benjamin Towne
2005	Jason Hopkins Benjamin Towne
2004	Jason Hopkins Michael Smith
2003	Jason Hopkins Michael Smith
2002	Brian Contenta William DeSantis

During fiscal year 2006, July 1, 2005 through June 30, 2006, the two seasonal officers, Jason Hopkins and Benjamin Towne, each worked a total of 520 hours performing the duties of seasonal officers, at an hourly rate of \$11.02

During fiscal year 2006, July 1, 2005 through June 30, 2006, Jason Hopkins and Benjamin Towne also worked outside third party details and were paid the outside third party detail hourly rate provided for in Article 4.3 of the Agreement. Below is a chart listing the total number of hours each spent performing outside third party details during fiscal year 2006.

Third Party Details	Outside Third Party Detail -Hourly Rate	Outside Third Party Detail Hours Worked FY 06
Jason Hopkins	\$33.00	593
Benjamin Towne	\$33.00	347

47. The primary function of traffic officers is to provide the department with personnel who have received some police training, normally through the reserve intermittent academy, and who are available to perform outside third party details.

- Traffic officers are normally not armed unless they are also police officers in another jurisdiction or retired full-time police officers.
- Traffic officers have no arrest powers.
- Traffic officers must comply with the policies and procedures of the police department while wearing the department uniform.
- Traffic officers may not perform shift work.

During fiscal year 2006, July 1, 2005 through June 30, 2006, the eight traffic officers worked the following hours performing outside third party details:

Traffic Officer	Outside Third Party Detail -Hourly Rate	Outside Third Party Detail Hours Worked FY 06
Henry Smachetti*	\$33.00	780
John Winters*	\$33.00	905
John Farina*	\$33.00	116
Ronald Tatro#	\$33.00	507
Paul Pomini#	\$33.00	147
Stan Daoust#	\$33.00	12
Richard Celli	\$33.00	394
Jessica Mooney	\$33.00	100

* Denotes retired full-time officers

#Denotes retired special officers-During FY 06 Ronald Tatro worked 40 shift hours as a special officer before he retired.

48. Article 4, Outside Details of the Agreement, describes the procedure to fill outside details, the rate of pay and the payment method, among other things. Article 4.1 and 4.2 of the Agreement provide as follows:

- 4.1 Outside Third Party Details shall be defined as any assignment requiring the services of a police officer in which said services are requested by, and paid for by a third party other than the Town of Lee or the Lee Police Department. Priority on all third party details shall be offered to regular full-time police officers. All third party details shall be posted.
- 4.2 No third party detail assignments authorized by the Chief in the Town of Lee shall be offered to or accepted by anyone other than a regular full-time police officer of the Lee Police Department, unless and until the same has been offered to all members of the Union. After all such full-time officers refuse said third party detail, priority shall next be given to reserve officers of the Lee Police Department before any outside agency is contacted regarding the detail availability.

The number of outside third party details fluctuates from fiscal year to fiscal year. During fiscal year 2006, July 1, 2005 through June 30, 2006, there was a major state highway construction project in the Town that increased the number of outside third party details. About 98% of the outside third party details are performed in the Town's geographic limits. Generally, the full-time patrol officers and the full-time sergeant perform fewer outside third party details than the traffic officers, the seasonal officers, and the special officers because the full-time officers are working their regu-

larly assigned shift schedule and they are not available to work an outside third party detail.

Article 4.12 and 4.13 of the Agreement provide as follows:

4.12 The Town shall assist the Union in the billing of details. The Town will not be responsible for detail vouchers lost by the officer performing the detail or for detail vouchers that are incomplete. Incomplete detail vouchers shall not be billed.

4.13 The Town shall establish a twenty thousand dollar (\$20,000) special account to pay, up to the limits of the account, full-time and regular part-time officers for details in the regular bi-weekly payroll schedule.

The full-time patrol officers, the full-time sergeant, and the special officers are paid for an outside third party detail in their next bi-weekly pay check after they perform the detail work and after they submit the detail voucher to the police secretary to bill the third party vendor. If a traffic officer performs an outside third party detail, they are paid after the third party vendor pays the bill for the detail that is submitted to them for payment by the Town's police secretary.

49. There are two other existing bargaining units that include Town employees. The Teamsters is the exclusive collective bargaining representative for the employees in both of the units—a bargaining unit of public works employees and a bargaining unit of dispatchers.

50. The position descriptions for the Chief of Police, sergeant, patrolman, special officer, seasonal officer, and traffic officer are attached to this stipulation [not published] and incorporated into the facts. All the attached position descriptions are the most recently published descriptions and constitute a fair and accurate description of the incumbent's job duties and responsibilities.

51. The positions of full-time patrol officer and full-time sergeant, which have been historically included in the existing bargaining unit of police officers, are not managerial or confidential employees as those terms are defined in Section 1 of the Law and are appropriately included in a bargaining unit of all full-time and regular part-time police officers employed by the Town.

52. The positions of seasonal officer and traffic officer, which have been historically excluded from the existing bargaining unit of police officers, are appropriately excluded from a bargaining unit of all full-time and regular part-time police officers employed by the Town because the seasonal officers and the traffic officers do not share a community of interest with all full-time and regular part-time police officers.

53. The position of chief of police is appropriately excluded from a bargaining unit of all full-time and regular part-time police officers employed by the Town.

54. The sole issue in dispute is whether all the special officers are appropriately included or excluded from a bargaining unit of all full-time and regular part-time patrol officers and sergeants, but excluding the Chief of Police, all seasonal officers, all traffic officers, and further excluding all managerial, confidential, and casual employees, and all other employees of the Town.

55. The Town, MassCOPS and the Teamsters acknowledge and agree that this Stipulation of Fact, with the specified exhibits attached, constitutes the entire record in this case and all parties agree to waive a hearing.

OPINION

When issues raised by a representation petition are resolved by the parties' stipulations, the Commission will adopt those stipulations if they do not conflict with the Law or established Commission policy. *North Attleborough Electric Department*, 32 MLC 66, 71 (2005), further citations omitted. Here, the parties stipulated that a bargaining unit consisting of all full-time and regular part-time police officers appropriately includes patrol officers and the one full-time sergeant. The facts establish that: 1) the staffing schedule in the police department over the past ten years and continuing has included only one sergeant; and, 2) the Town has no plans to add a sergeant's position to its staffing schedule. *See, Town of Bolton*, 25 MLC 62, 68 (1998) (Commission declines to create a one-person supervisory bargaining unit of superior officers and includes the one police sergeant in a bargaining unit of all full-time and regular part-time police officers). The parties also stipulated that the Chief of Police, all seasonal officers and all traffic officers are appropriately excluded from that bargaining unit. Because the parties' stipulations do not appear to conflict with the Law or established Commission precedent or policy, we adopt them.

Special Police Officers

The issue for decision is whether the special police officers should be included in the bargaining unit of all full-time and regular part-time police officers. The Town takes no position on the appropriateness of the petitioned-for bargaining unit. MassCOPS argues that the special officers are casual employees who are appropriately excluded from the bargaining unit. MassCOPS argues further that, even if the special officers are regular part-time police officers, they should be excluded from the bargaining unit, because they do not share a community of interest with the other police officers. Alternatively, MassCOPS asserts that one special officer, at most, qualifies as a regular part-time employee who shares a community of interest with other police officers in the bargaining unit.

In contrast, the Teamsters argue that the appropriate bargaining unit is the existing unit that includes all the special officers. The special officers' names appeared on the voter eligibility list for the 1996 secret ballot election and the collective bargaining agreement between the Town and the Teamsters contains provisions that cover the terms and conditions of employment for the special officers. Due to these facts, the Teamsters argue that, if the employees desire to change the identity of their exclusive bargaining representative, all the employees covered by the collective bargaining agreement should be provided with the opportunity to vote in a secret ballot election.

The Commission uses a two-step analysis to resolve the dispute. First, the Commission determines whether the employees are casual employees not accorded collective bargaining rights. *See, e.g., Town of Sturbridge*, 18 MLC 1416, 1420-1422 (1992) (part-time fire fighters are casual employees because of their spo-

radic and variable hours) and cases cited. Casual employees are excluded from coverage under the Law, because they lack a sufficient interest in their wages, hours, and other terms and conditions of employment to warrant collective bargaining. *Board of Trustees/University of Massachusetts*, 20 MLC 1453, 1464 (1994). If the Commission decides that the employees at issue are not casual employees, but regular part-time employees, the Commission next determines if they share a sufficient community of interest with other bargaining unit members to warrant their inclusion in the unit. *Town of Sturbridge*, 29 MLC 156, 160 (2003), citing, *Worcester County*, 17 MLC 1352, 1358 (1990). For the reasons stated below, we conclude that the special officers are appropriately excluded from the bargaining unit as casual employees.

It is well established that employees other than regular full-time employees are entitled to coverage under the Law. *Town of Sturbridge*, 29 MLC at 160; *City of Malden*, 28 MLC 130, 134 (2001); *Boston School Committee*, 7 MLC 1947, 1949 (1981) and cases cited. The existence of rights under the Law is not conditioned on an arbitrary number of hours worked. *Town of Dartmouth*, 22 MLC 1618, 1622 (1996), citing, *Town of Leicester*, 9 MLC 1014, 1018 (1982); *Town of Saugus*, 4 MLC 1361, 1362 (1977). Rather, to determine whether a part-time employee's employment relationship is too casual to warrant inclusion in a bargaining unit, the Commission examines factors like continuity of employment, regularity of work, the relationship of the work performed to the needs of the employer, and the amount of work performed by the employee. *Town of Wenham*, 22 MLC 1237, 1244-1245 (1995), *aff'd sub nom.*, *Town of Wenham v. Labor Relations Commission*, 44 Mass. App. Ct. 195 (1998), and cases cited. No one factor is dispositive. Rather, the Commission examines the function, nature, and character of the employees' work in relation to the needs of the employer. *Worcester County*, 17 MLC at 1358.

Applying these factors, the Commission has accorded collective bargaining rights to part-time employees who work infrequently, but who are regularly scheduled, and included them in a bargaining unit of full-time employees with whom they shared a community of interest. *See, e.g., City of Malden*, 28 MLC at 134 (clerks who attend regular monthly board meetings to compile the official record are regular part-time employees); *Town of Dartmouth*, 22 MLC at 1623 (dispatchers who are regularly scheduled to work at least once every twelve days and may work more frequently if called to cover for absent full-time employees are regular part-time employees). Where the part-time employees' work hours are not regularly scheduled, but rather are dependent in substantial part on the demand for their services, like substitute teachers and call fire fighters who are not also assigned a regular shift, the Commission has crafted workable solutions that grant collective bargaining rights to those part-time employees who have a substantial employment relationship with their employer. *See, Town of Wenham*, 22 MLC at 1245 (call fire fighters who respond to at least thirty-three percent of all alarms sounded in a year have a sufficient continuity of employment to entitle them to collective bargaining rights), *aff'd sub nom.*, *Town of Wenham v. Labor Relations Commission*, 44 Mass. App. Ct. at 198-199 (Commission's thirty-three percent solution is reasonable and susceptible of consistent application); *Boston School Committee*, 7 MLC at 1951

(substitute teachers who work sixty days in a 180-day school year, whether or not consecutive and regardless of location, have a substantial continuity of employment to enjoy collective bargaining rights).

In the law enforcement area, the Commission has extended collective bargaining rights to reserve police officers who are regularly scheduled to work an average of two or more shifts each month, *Town of Newbury*, 13 MLC 1676, 1680-1681 (H.O. 1987), *aff'd*, 14 MLC 1660, 1662 (1988), and to police patrol officers who work between eight and twenty hours each week, *Town of Sterling*, 4 MLC 1473, 1475-1476 (H.O. 1977), *aff'd*, 4 MLC 1704 (1978). To assess continuity of employment and regularity of work, the Commission examines the employees' work schedules. *Town of Wenham v. Labor Relations Commission*, 44 Mass. App. Ct. at 198; *Board of Trustees of the University of Massachusetts*, 28 MLC 225, 233 (2002).

Here, the facts demonstrate that the special officers are not regularly assigned to work a scheduled shift. Rather, the shifts are routinely assigned to the full-time regular officers. Generally, if a shift vacancy occurs, that vacancy is first offered to all the regular officers before it is offered to the special officers. In addition, a special officer may work a vacant shift only if a regular officer is already working that shift. Special officers are first offered a vacant shift only if certain narrow conditions set forth in Articles 8.5 and 8.8 of the Agreement are met. The facts also establish that special officers are not required to work a vacant shift if offered. Further, the special officers are not subject to discipline if they decline to work a shift. A special officer may be disciplined, however, if he or she agrees to work a shift and then fails to report to work that shift.

The record also establishes that five of the six special officers worked under seventy-five total shift hours over a twelve-month period, with two of those officers working four and twelve total shift hours each. The facts also demonstrate that the special officers worked substantially more outside detail hours over a twelve-month period than regular shift hours. Based on this record, the availability of the outside detail work is dependent on a third party's request, and the amount of outside detail work fluctuates from fiscal year to fiscal year. Further, during fiscal year 2006, a major state highway construction project in the Town increased the number of outside third party details that are reflected in this record. Therefore, although outside details serve an important public safety function, outside detail hours are appropriately excluded from the special officers' work schedules for the purposes of determining whether the special officers are regular part-time employees or casual employees. Access to collective bargaining rights under the Law does not depend directly on the requests of a third party for the services of a police officer that fluctuate from year to year.

The absence of any regular assignment to shift work, coupled with the minimal number of total shift hours worked by the special officers over a twelve-month period, requires a finding that the special officers lack both a sufficient regularity of employment and continuity of employment necessary to be treated as regular part-time employees. Moreover, the voluntary nature of the working relationship between the Town and the special officers regarding shift work, although not outcome determinative standing alone, addi-

CITE AS 34 MLC 46

tionally supports our conclusion that the special officers are casual employees appropriately excluded from the petitioned-for bargaining unit.

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 Town of Lee and that the following constitutes an appropriate unit for collective bargaining within the meaning of Section 3 of the Law:

All full-time and regular part-time police officers including patrol officers and the sergeant employed by the Town of Lee, excluding the chief of police, all seasonal officers and all traffic officers, and further excluding all managerial, confidential and casual employees, and all other employees of the Town of Lee

IT IS HEREBY DIRECTED that an election by secret ballot shall be held for the purpose of determining whether a majority of the employees in the above-described bargaining unit desire to be represented by the Massachusetts Coalition of Police, IUPAF/AFL-CIO or by Teamsters Local Union No. 404 or by no employee organization.

The eligible voters shall include all those persons within the above-described unit whose names appear on the Town of Lee payroll for the payroll period ending October 6, 2007, and who have not since quit or been discharged for cause. This list must be either electronic (e.g. Microsoft Access or Excel) or in the form of mailing labels.

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 three (3) copies of an election eligibility list containing the names and addresses of all eligible voters must be filed by the Town of Lee with the Executive Secretary of the Commission, Charles F. Hurley Building, 19 Staniford Street, 1st Floor, Boston, MA 02114 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 the 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.

* * * * *

2. Because we have determined that the special officers are casual employees, it is unnecessary to decide whether they share a community of interest with the full-time police officers.