
In the Matter of NEWTON POLICE ASSOCIATION

and

CITY OF NEWTON

Case No. MUP-02-3634

54.31 *impact of management rights decisions*
54.589 *bargaining unit work*
67.14 *management rights*
67.15 *union waiver of bargaining rights*
92.335 *credibility determination by hearing officer*

December 31, 2008

Marjorie F. Wittner, Chair

Elizabeth Neumeier, Board Member

Mark Hickernell, Esq.

Representing the Newton Police
Association

Joseph P. McConnell, Esq.

Representing the City of
Newton

DECISION¹

Statement of the Case

On December 3, 2002, the Newton Police Association (Association) filed a charge with the Labor Relations Commission (Commission) against the City of Newton (City or Newton). The charge alleges that the City had engaged in a prohibited practice within the meaning of Sections 10(a)(5) and 10(a)(1) of MGL c. 150E (the Law).

Following an investigation, the Commission issued a complaint on August 21, 2003. The complaint alleges that the City had failed to bargain in good faith with the Association by unilaterally assigning bargaining unit work to non-unit personnel in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. On September 2, 2003, the City filed an answer to the complaint.

On November 10, 2003, Hugh L. Reilly, a duly-designated Board Hearing Officer (Hearing Officer) conducted a hearing at which both parties had the opportunity to be heard, examine witnesses, and introduce evidence. By agreement, both the Association and

1. Pursuant to 456 CMR 13.02(1) of the former Labor Relations Commission's (Commission) regulations in effect prior to November 15, 2007, this case was designated as one in which the Commission would issue a decision in the first instance. Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission." The Commonwealth Employment Relations Board (Board) is the body within the Division charged with deciding adjudicatory matters. References to the Board include the Commission.

Newton submitted proposed findings of fact and conclusions of law. The Association filed its initial brief on January 13, 2004, the City on January 12, 2004, and the Association filed a reply on January 20, 2004.

The Hearing Officer issued recommended findings on August 24, 2007. On September 27, 2007, the Association submitted challenges to the Hearing Officer's recommended findings of fact. The City did not challenge the Hearing Officer's recommended findings of fact, nor did the City respond to those challenges submitted by the Association.

Findings of Fact²

The City is an employer as defined in Section 1 of the Law. The Association is an employee organization as defined in Section 1 of the Law and is recognized by the City as the exclusive bargaining representative for patrol officers employed by the Newton Police Department (Department).

The Department is divided into separate bureaus: Patrol, Traffic, Community Services, "IT", Special Services, Detective, and Research. The separate bureaus employ both patrol officers and non-police (civilian) employees. Patrol officers are covered by successive collective bargaining agreements between the Association and the City. Non-police clerical employees employed by the Department are covered by collective bargaining agreement between the City and the American Federation of State, County, and Municipal Employees (AFSCME), also an employee organization under the Law. The non-police clerical employees have primary responsibility for taking information by phone, entering information in computers, answering phones, and some duties specific to the bureau to which they are assigned. Police officers also compile data, enter information in computers, and answer phones when working inside.³

Newton and the Association are parties to a collective bargaining agreement effective on its face from July 1, 2000 through June 30, 2003 (CBA). Under Article 34.01, the CBA remains in effect unless one party gives notice to the other 120 days prior to the expiration date of a desire to terminate or amend specific provisions of the CBA. There is no evidence that notice was given pursuant to this provision, and the CBA was in effect at all times relevant to the issues in this case.

Article XII of the CBA, "*Management Rights*" states:

12.01 Except where such rights, powers, and authority, are specifically relinquished, abridged, or limited by the provisions of this Contract, the CITY has and will continue to retain, whether exercised or not, all of the rights, powers, and authority heretofore had by it, and except where such rights, powers and authority are specifically relinquished, abridged or limited by the provisions of this Contract, it shall have the sole and unquestioned right, responsibility and

prerogative of management of the affairs of the CITY and direction of the working forces, including but not limited to the following:

- A. To determine the care, maintenance and operation of the equipment and property used for and on behalf of the purposes of the CITY.
- B. To establish or continue policies, practices and procedures for the conduct of the CITY business and, from time to time, to change or abolish such policies, practices or procedures.
- C. To discontinue processes or operations or to discontinue their performance by employees.
- D. To select and to determine the number and types of employees required to perform the CITY's operations.
- E. To employ, transfer, promote or demote employees, or to lay-off, terminate or otherwise relieve employees from duty for lack of work or other legitimate reasons when it shall be in the best interests of the CITY or the Department.
- F. To prescribe and enforce reasonable rules and regulations for the maintenance of discipline and for the performance of work in accordance with the requirements of the CITY, provided such rules and regulations are made known in a reasonable manner to the employees affected by them.
- G. To insure that related duties connected with Department operations, whether enumerated in job description[s] or not, shall be performed by employees.
- H. To establish contracts or sub-contracts for municipal operations, provided that this right shall not be used for the purpose or intention of undermining the UNION or of discrimination against its members.

12.02 All work customarily performed by the employees of the bargaining unit shall be continued to be so performed unless in the sole judgment of the CITY, it can be done more economically or expeditiously otherwise.

12.03 The above rights, responsibilities and prerogatives are inherent in the Mayor and by virtue of statutory and charter provisions are not subject to review or determination in any grievance or arbitration proceeding, but the manner of exercise of such rights may be subject to the Grievance Procedure described in this contract.

Bianchi's Employment Background

Paul Bianchi (Bianchi) has been employed with the Department, approximately 23 years. He first started as a night officer. Bianchi had been working inside the Traffic Bureau for approximately 14 years when the Department made the below-described changes in 2002. Throughout his tenure, whether he was doing inside work or work on the street, Bianchi held the title of Traffic Officer, and maintained the physical ability to perform the outside duties of a Traffic Officer.⁴

Regardless of whether he worked inside or outside, Bianchi also kept up with the training required of a Traffic Officer. During relevant times, he was the only Traffic Officer assigned inside the Traffic Bureau. When Traffic Officer Tony Penzo (Penzo) retired,

2. The Board's jurisdiction is uncontested.

3. The term "inside" refers to the kinds of duties performed by bureau offices; "outside" refers to the work police officers perform while "on the street".

4. Employees covered by the City/Association CBA are "patrol officers". Patrol officers are informally referred to by the bureau to which they are assigned. For example, patrol officers assigned to the Traffic Bureau are referred to as Traffic Officers. For the sake of clarity, this decision refers to the officers by bureau assignment. This finding has been clarified at the Association's request, which was supported for the record.

Bianchi assumed Penzo's full-time position inside the Traffic Bureau.⁵

2002 Traffic Bureau Changes

Police Chief Jose Cordero (Cordero) was appointed in February of 2002. In the spring of that year, he began evaluating personnel, job descriptions, and assignments in all bureaus in the Department, including the Traffic Bureau. Chief Cordero in association with Superintendent Robert McDonald (McDonald) decided that changes needed to be made in the Community Service Bureau and the Traffic Bureau. The changes resulted in the transfer of one civilian clerk, Debbie Gentile (Gentile), from the Community Services Bureau to the Traffic Bureau.⁶ After the transfer, clerical work formerly done by Gentile for the Community Service Bureau was divided among the Police Officers in that Bureau. After the transfer, Gentile did clerical work in the Traffic Bureau that, in part, had been done by Bianchi. The Parking Control Officers, who had been part of the Traffic Bureau since 1999, continued to do the same work following the transfer.⁷ Their paper work was handled in the Traffic Bureau both before and after the transfer. After the transfer, the Traffic Bureau did their performance evaluations. At the time these changes were made, Bianchi was employed inside the Traffic Bureau, and not on the street. The functions performed by personnel inside the Traffic Bureau are listed⁸ as:

- Enter all moving citations on sheet by each Officer.
- Assign (according to complaint streets and areas) and schedule all of the Parking Control Officers.
- Monitor the Parking Control Officers productivity.
- Do the daily attendance for the Parking Control Officers and coordinate vacation and sick time etc.
- Separate parking tickets.
- Count parking tickets and send to Data Processing.
- Type out sheets on total citations and parking tickets for Chief, Patrol Captain and Community Services.
- Enter parking tickets in computer.
- Enter Civil and Criminal moving citations in computer.
- Process Civil and Criminal citations to Registry and Court.
- Enter all moving citations (warnings) in computer.
- Run a computer check for any mistakes on all moving citations entered in computer each day.
- Enter citation books signed out by Officer in computer.
- Run a computer check in total citation field daily for bad citations entered (meaning not enough numbers or letters in field to print an audit sheet).
- Print audit sheets from computer.
- Stamp and cross-reference audit sheets with signed out books to make sure books are complete.
- Separate all moving citations.
- Order moving and parking citation books.
- Investigate all pending hit and run accident reports.

- Process all insurance requests for accident reports.
- Make copies of reports and mail to insurance companies.
- Record in book all checks received from insurance companies.
- Process all taxi applications including doing license and background checks.
- Type taxi cards and file when approved.
- Check files for expirations on all drivers.
- Investigate all complaints on taxi drivers.
- Investigate all complaints on motor vehicle operators.
- Record all checks and money on sheets for Chief's Office and City Hall.
- Inspect all [taxi, private autos and limos]. Prepare reports for the Public Safety Transportation Committee.
- Order and issue all taxi medallions.
- Order all resident and municipal parking permits.
- Process and file all parking permit applications.
- Coordinate all City ordinances with City Clerks Office pertaining to Traffic and Police Duties.
- Assist citizens at the counter and on the phone.
- Check with Chief's Office to confirm the status of the Public Safety Account before ordering parking permits, taxi medallions, mouth pieces for intoxilyzer, test cards etc.

Most of the listed activities do not require training as a patrol officer.

With respect to the above-listed functions, Bianchi generally did the clerical work concerning moving violations, taxi licensing, accident investigation, and medallions, and the civilian clerical employees did work related to parking violations. Other duties, such as assisting citizens at the counter and on the phone, were shared. Although Bianchi primarily monitored Parking Control Officers' productivity, entered civil and criminal moving citations in the computer, and typed taxi cards and filed them after approval, civilian personnel performed these duties when he was not present in the office. Bianchi and civilian personnel both processed all insurance requests for accident reports, made copies of reports and mailed them to insurance companies, recorded all checks received from insurance companies, recorded all checks and money on sheets for the Chief's Office and City Hall, and processed and filed all parking permit applications.

Traffic Officers assigned "outside" are sent to areas of Newton where there are high levels of traffic violations, accident rates, citizen complaints or other enforcement issues. In general, they are responsible for investigating motor vehicle accidents, issuing citations for ordinance violations, taxi medallions, and ordinance changes related to traffic. Their specific duties include selective enforcement of motor vehicle violations arising from citizen complaints and traffic accident analysis investigations; investigation of fatal accident, other serious motor vehicle accidents, and hit and run accidents when the alleged violator resides outside the City of

5. This finding has been modified at the Association's request, which is supported by the record evidence.

6. This finding has been modified at the Association's request, which is supported by the record.

7. The Board has added this finding about the date the Parking Control Officers were assigned to the Traffic Bureau for the sake of clarity.

8. The list is an attachment to a memorandum from Captain Alexander Sbordone to Chief Jose M. Cordero, dated August 16, 2002 (Exhibit CP-1).

Newton; photographing serious accident scenes, serious crimes and accidents involving city vehicles and incidents of injuries on city property; assisting in traffic control at special events; and generally being alert to traffic safety conditions which may endanger or inconvenience the public and report such conditions to the Traffic Bureau Commander.

About early September 2002, Captain Alexander Sbordone (Sbordone) told Bianchi that Cordero had decided that he (Bianchi) would be assigned to the street in order to have more officers there. A short time after that, John J. Babcock (Babcock), Association President, raised the transfer issue with Superintendent Robert McDonald (McDonald), and asked that it be placed on the agenda for a meeting to be held with Cordero about a number of issues the Association had with the Department.⁹

In mid-September, 2002, Cordero, McDonald, and Babcock, with Bianchi in attendance, met to address a number of different issues. Babcock raised Bianchi's assignment to the outside at the meeting. Cordero, in response, said that the decision had already been made, and "that was it".¹⁰

As a result, Bianchi's assignment to outside work for the Traffic Bureau remained in place. However, he continued to perform some functions inside the Traffic Bureau. As a Traffic Officer on the street, Bianchi had the functions listed above. In addition, he continued to perform on a daily basis the duties he had while inside: inspection of all taxis, private automobiles, and limousines; preparation of reports for the Public Safety Transportation Committee; and ordering and issuing all taxi medallions. He no longer investigates all reports of hit and run accidents. The remaining duties in the Traffic Bureau are performed by Gentile and another civilian part-time employee.

Generally, Traffic Officers work four days on, and two days off, and begin their shift at 7:30 a.m. or 3:30 p.m. While he was inside, Bianchi had worked a five days on two days off schedule and began his shift at 7:00 a.m. At the time he was assigned to outside duty, Bianchi consulted with Babcock about his work schedule. Following that conversation, Bianchi initially asked Sbordone if he could work 6:30 a.m. to 2:30 p.m. That request was denied. He then asked that he retain his inside schedule. That request was granted. As a result, his outside schedule is five days on and two days off, beginning his shift at 7:00 a.m. Some time later, starting the day shift at 7:00 a.m. and working five days on and two days

off became regular for other officers in the Traffic Bureau, as well as Bianchi.

When Bianchi was inside, he had opportunities to work and receive compensation for overtime. When available, he would stay about 2 hours following the end of his shift. Bianchi "is not sure", but thinks that since his assignment to the outside he has less than half the overtime opportunities available to him while working on the inside. He no longer has overtime opportunities for "Cops and Kids", but does get "safety seat belt" overtime. He also does fill in for the Safety Officer when she is not available. Bianchi worked 139 overtime hours in calendar year 2002, and 139 hours from January through October 25, 2003.¹¹

Opinion

Unilateral Change and Calculated Displacement of Bargaining Unit Work

The issue to be decided by the Board in this case is whether the City unlawfully transferred bargaining unit work outside of the bargaining unit. The City does not dispute that it transferred certain duties performed by Bianchi inside the Traffic Bureau to non-unit personnel without bargaining with the Association but argues that the work could lawfully be transferred to non-unit personnel because: 1) the work had been previously shared between unit members and non-unit personnel; and 2) the management rights clause contained within the parties' CBA empowered the City with the exclusive authority to do so without bargaining with the Association.

A public employer violates Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it unilaterally changes an existing condition of employment or implements a new condition of employment involving a mandatory subject of bargaining without first giving its employees' exclusive collective bargaining representative notice and an opportunity to bargain to resolution or impasse. *Commonwealth of Massachusetts v. Labor Relations Commission*, 404 Mass. 124, 127 (1989); *School Committee of Newton v. Labor Relations Commission*, 388 Mass. 557, 572 (1983); *Town of Andover*, 28 MLC 264, 268 (2002); *City of Newton*, 27 MLC 74, 81 (2000). The obligation to bargain extends to working conditions established through custom and practice as well as to working conditions contained in a collective bargaining agreement. *Town of Andover*, 28 MLC at 268 (citing *City of Gloucester*, 26 MLC 128, 129 (2000)); *Town of Wilmington*, 9 MLC 1694, 1699 (1983). To establish a unilateral change violation, the charging

9. McDonald did not recall that Babcock asked to make the transfer issue an agenda item for the meeting with Cordero. However, Babcock testified clearly and forthrightly that he had made that request. It is not disputed that Bianchi's transfer was a subject of discussion at the meeting. The Hearing Officer therefore credited Babcock's testimony.

10. McDonald testified that the issue of Bianchi's transfer came up obliquely, when Bianchi mentioned that changes being discussed would affect him. Babcock testified that the Bianchi transfer was specifically discussed, that Cordero stated that the decision to put Bianchi on the street had been made, and "that was it". And that, when Babcock stated he would consult Association counsel and file a charge with the Commission, Cordero said, "do what you have to do." Because of Babcock's more detailed recollection of the conversation, the Hearing Officer credited his version of events at the meeting.

11. Newton Exhibit R-1 is a computer printout showing the overtime Bianchi worked in calendar year 2002 and in January through October 23, 2003. Superintendent McDonald testified that this record was maintained in the regular course of business, and was the type of printout he would expect to see in response to an inquiry concerning Bianchi's overtime for the years in question. After reviewing these records for the two years, Bianchi testified that the descriptions in the "Justification" column of each printout show the kinds of overtime he worked. He stated, however, that the line item on page 2 of the 2003 printout of 5.0 hours for "B & E Squad" is improper, as he never worked B & E Squad. Based upon this testimony, the Hearing Officer found that the overtime printouts on R-1 for 2002 and 2003 accurately report overtime that Bianchi worked for Newton, except for the B & E Squad line item.

party must establish the following: (1) the employer changed an existing practice or instituted a new one; (2) the change affected a mandatory subject of bargaining; and (3) the change was implemented without prior notice or an opportunity to bargain. *Town of Andover*, 28 MLC at 268 (citing *Commonwealth of Massachusetts*, 27 MLC 70, 72 (2000); *City of Boston*, 26 MLC 177, 181 (2000); *Massachusetts Port Authority*, 26 MLC 100, 101 (2000)).

Where job duties have traditionally been shared by bargaining unit members and non-unit employees, the Board has held that the work in question will not be recognized as bargaining unit work. *City of Quincy/Quincy City Hospital*, 15 MLC 1239 (1988). In shared-work situations, bargaining must occur where there is a “calculated displacement” of bargaining unit work, *City of Boston*, 10 MLC 1539, 1541 (1984), or where the employer unilaterally changed a previously existing pattern of shared work. *City of Quincy*, 15 MLC at 1241. The Board may also examine whether non-unit employees subsequently constitute a greater percentage of the work force performing the disputed duties than they had previously. *City of New Bedford*, 15 MLC 1732, 1737 (1989). In determining whether there has been a calculated displacement of unit work, the Board “considers whether unit members have traditionally performed an ascertainable percentage of the work and whether the employer has taken action that results in a significant reduction in that percentage, with a corresponding increase in the percentage of the work performed by non-unit personnel.” *Town of Bridgewater*, 25 MLC 103, 104 (1998) (citing *City of Somerville*, 23 MLC 256, 259 (1997); *City of Boston*, 6 MLC 1117, 1126 (1979)).

Here, the uncontroverted evidence demonstrates that, in the spring of 2002, Chief Cordero began evaluating personnel, job descriptions, and assignments in all bureaus in the Department, including the Traffic Bureau. Thereafter, Cordero, in association with McDonald, determined that changes needed to be made in the Community Services Bureau and the Traffic Bureau. The changes resulted in the transfer of Gentile, a non-unit clerical employee, from the Community Services Bureau to the Traffic Bureau. After the transfer, Gentile performed clerical work in the Traffic Bureau that, in part, had been done by Bianchi. Then, in September 2002, Cordero decided that more Traffic Officers were needed on the street and assigned Bianchi “outside” on the street to help fulfill that need. Bianchi continued to perform some functions “inside” the Traffic Bureau, as well: inspecting all taxis, private automobiles and limousines; preparing of reports for the Public Safety Transportation Committee; and ordering and issuing all taxi medallions.

The record reflects that the City has employed non-unit civilian personnel to perform administrative duties within the Department and that unit members sometimes performed these administrative duties attendant to their police work. While “inside” the Traffic Bureau, Bianchi generally did the clerical work concerning moving violations, taxi licensing, accident investigation, and medallions, and the civilian clerical employees did work related to parking violations. Other duties, such as assisting citizens at the counter and on the phone, were shared. Although Bianchi primarily monitored Parking Control Officers’ productivity, entered civil

and criminal moving citations in the computer, and typed taxi cards and filed them after approval, civilian personnel performed these duties when he was not present in the office. Bianchi and civilian personnel both processed all insurance requests for accident reports, made copies of reports and mailed them to insurance companies, recorded all checks received from insurance companies, recorded all checks and money on sheets for the Chief’s Office and City Hall, and processed and filed all parking permit applications. Following Bianchi’s reassignment to the “outside”, Bianchi no longer investigated reports of hit and run accidents, and the remaining duties inside the Traffic Bureau were performed by non-unit civilian employees.

Although some tasks were more often performed by Bianchi and some tasks were more often performed by non-unit clerical staff inside the Traffic Bureau, the clerical nature of the majority of the work Bianchi performed when he worked “inside” was shared with non-unit clerical staff. When Bianchi was transferred to the “outside,” a greater percentage of clerical duties were then performed by non-unit civilian personnel inside the Traffic Bureau. Accordingly, there was a calculated displacement of bargaining unit work to non-unit civilian personnel following Cordero’s decision to transfer Bianchi “outside.”

Opportunity To Bargain

The Association argues that the City should have provided the Association with notice and an opportunity to bargain prior to reassigning Bianchi to the “outside” and transferring certain “inside” duties to non-unit personnel. The City defends its actions by arguing that the Association had waived its right to bargain over these matters by virtue of the management rights clause of the parties’ CBA, which explicitly provides that the City has the “sole and unquestioned right to transfer work outside of the unit if ‘in the sole judgment of the CITY, it can be done more economically or expeditiously otherwise.’” (emphasis in original). Further, the City argues that the Association failed to adequately make a demand for bargaining over the subject of Bianchi’s partial reassignment of duties. In rebuttal to the City’s argument, the Association maintains that, even if the City were not obligated to bargain over its decision to transfer bargaining unit work to non-unit personnel, the City should have bargained over the impacts of that decision.

Contrary to the City’s argument, the Hearing Officer noted in his recommended findings that he credited the testimony of Babcock over McDonald, finding that Babcock had asked for the Bianchi transfer issue to be included on the agenda for the Association’s meeting with Cordero. See n. 6 & 7, *supra*. The Board will not disturb a hearing officer’s credibility determination absent a clear preponderance of all relevant evidence that the determination is incorrect. *City of Somerville*, 23, MLC 11, 12 (1996). If the reason for the hearing officer’s determination is clearly stated and the evidence does not require a contrary finding, we will not disturb the determination. *Vinal v. Contributory Retirement Appeal Board*, 13 Mass. App. Ct. 85 (1982); *Greater New Bedford Infant Toddler Center and District 65. United Auto Workers*, 13 MLC 1620, 1622 (1987).

Here, the record reflects that the Association, through Babcock, raised the issues of Bianchi's reassignment and transfer of duties with McDonald and requested that the parties discuss the issues at a meeting with Cordero. During the Association's meeting with Cordero, Cordero indicated that his decision had already been made regarding Bianchi's reassignment, and "that was it." The Hearing Officer explained that he did not credit McDonald's testimony because he found that Babcock's recollections were more persuasive. There is no evidence in the record that requires a contrary finding and thus we will not disturb the Hearing Officer's credibility determination. Based on the foregoing, we find that the Association made an adequate demand to bargain over the transfer of Bianchi's duties, but the City refused to negotiate the issue.

Management Rights Clause

Notwithstanding the Association having demanded to bargain over the decision to transfer Bianchi's duties, the City is correct in asserting that the management rights clause contained in the CBA gave the City the right to reassign Bianchi to the "outside" and transfer certain of his "inside" duties to non-unit personnel without first having to bargain to resolution or impasse over that decision. Where an employer raises the affirmative defense of contract waiver, it must show that the union knowingly and unmistakably waived its right. *Town of Andover*, 28 MLC at 270 (citing *Town of Mansfield*, 25 MLC 14, 15 (1998)). The employee bears the burden of proving that the contract clearly, unequivocally and specifically authorizes its actions. *Town of Andover*, 28 MLC at 270 (citing *City of Boston v. Labor Relations Commission*, 48 Mass. App. Ct. 169, 174 (1999)); see *School Committee of Newton v. Labor Relations Commission*, 388 Mass. 557, 569 (1983) (a waiver must be shown clearly, unmistakably, and unequivocally and cannot be found on the basis of a broad, but general, management rights clause). Where the parties' agreement is silent on an issue, it must be shown that the matter allegedly waived was fully explored and consciously yielded. *Commonwealth of Massachusetts*, 5 MLC 1097, 1099 (1978) (citing *City of Everett*, 2 MLC 1471, 1475 (1976)); *Press Co., Inc.*, 121 NLRB 976, 42 LRRM 1493 (1958). Where contract language exists but is ambiguous, bargaining history or the manner in which the parties have implemented the disputed contract provision are helpful. *Commonwealth of Massachusetts*, 5 MLC 1097, 1099 (1978) (citing *City of Boston*, 3 MLC 1450, 1461, n.13 (1977)). However, where contract language contained in a management rights clause is not ambiguous, it is necessary only to examine the specificity of the clause and to determine whether the disputed action is within its scope. *Commonwealth of Massachusetts*, 5 MLC 1097, 1099 (1978); see *Ador Corp.*, 150 NLRB 1658, 58 LRRM 1280 (1965).

Here, the management rights clause in the CBA is more than a broad or general clause. The contract is not silent with respect to the City's authority to have bargaining unit work performed outside the bargaining unit.

Section 12.02 of the management rights clause clearly identifies the work subject to and within the scope of that Section as that work done by members of the bargaining unit. Section 12.02 unequivocally states that such work shall continue to be performed by the bargaining unit unless in the *sole judgment* of the City it can

be done more economically or expeditiously otherwise. (Emphasis added.) Section 12.02 thus specifically permits the City to exercise its sole judgment, as Chief Cordero did in September 2002 when he determined that more Traffic officers were needed "outside" and reassigned Bianchi and some of the clerical duties he previously performed to the non-unit clerical employees.

The Association contends that the language of Section 12.02 is ambiguous and does not explicitly deal with the transfer of bargaining unit work to non-unit civilian personnel. That language, however, does explicitly permit the City to have the work done "otherwise" than by the bargaining unit.

Further, the Association contends that the City must present evidence to establish that this transfer of work actually permitted the City to conduct its affairs more economically or expeditiously. That is, in the Association's view, the City must justify its judgment. The Association has not pointed to any ambiguity in the language, explained by bargaining history, to indicate that the parties intended to apply the words "sole judgment" in that manner. To the contrary, the parties have agreed in this CBA provision that the City may exercise its "sole judgment." In sum, the management rights clause, as negotiated by the Association and the City, grants to the City the exclusive right to determine the number and types of employees required to perform the City's operations in an economical and expeditious manner without first having to bargain to resolution or impasse. Accordingly, the City did not violate Sections 10(a)(5) or (1) of the Law when it refused to bargain over its decision to transfer Bianchi's duties to non-unit personnel.

Impact Bargaining

The Association next offers the argument that, even if the Board finds that the City was not obligated to bargain over the decision to transfer Bianchi's duties, the City was still obligated—but failed—to bargain over the impacts of that decision. We agree. Although Article 12.02 permitted the City to transfer certain duties outside of the bargaining unit without bargaining first with the Union over the decision to do so, that clause does not eliminate the City's duty to bargain the impacts of that decision, which had an adverse and calculable impact on the bargaining unit, as described above. See *City of Worcester v. Labor Relations Commission*, 438 Mass. 177, 185 (2002); *Burlington v. Labor Relations Commission*, 390 Mass. 157, 164-167 (1983); *School Committee of Newton v. Labor Relations Commission*, 557, 564 (1983). The impacts in this case also include loss of "inside" work in the Traffic Department, possible loss of overtime opportunities and an increase in the workload of police officers in the Community Services Bureau.

Conclusion

For the reasons set forth above, we conclude that the City violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by failing to bargain over the impacts of its decision to transfer inside work in the Traffic Bureau to a civilian employee, who is not a bargaining unit member.

Remedy

The Union requests an order to restore the *status quo ante*, pending bargaining for the bargaining unit members affected by the City's decision to transfer inside work in the Traffic Bureau to non-bargaining unit employees. In cases where an employer's refusal to negotiate is limited to the impacts of a managerial decision, the Board traditionally orders restoration of the *status quo ante* applicable to the affected mandatory subjects rather than to the decision itself. *Town of Plymouth*, 26 MLC 220, 224 (2000) citing *Commonwealth of Massachusetts*, 26 MLC 118, 121-122 (2000) further citing, *Town of Dennis*, 12 MLC 1027, 1033 (1985). This remedy attempts to place the parties in the position they would have been in absent the employer's unlawful conduct. *Town of Plymouth*, 26 MLC at 224, citing *City of Malden*, 20 MLC 1400, 1406-1407 (1994). Accordingly, we order the City to bargain with the Association over the impacts of its decision to transfer inside work in the Traffic Bureau to non-bargaining unit employees and to make whole any bargaining member who lost wages or other benefits as a result of the transfer of bargaining unit work.

Order

WHEREFORE, based on the foregoing IT IS HEREBY ORDERED that the City of Newton shall:

1. Cease and desist from:

- a. Refusing to bargain collectively in good faith with the Association by not providing the Association with prior notice and an opportunity to bargain to resolution or impasse over the impacts of its decision to transfer bargaining unit work to non-bargaining unit employees.
- b. In any like manner, interfering with, restraining and coercing its employees in any right guaranteed under the Law.

2. Take the following affirmative action which will effectuate the purposes of the Law:

- a. Upon request, bargain in good faith to resolution or impasse with the Association over the impacts of its decision to transfer inside work in the Traffic Department to non-bargaining unit employees.
- b. Make whole any bargaining unit members who lost wages or other benefits as a result of the transfer of inside work in the Traffic Department to non-bargaining unit employees, plus interest on any sums owing at the rate specific in MGL c. 231, §61, compounded quarterly.
- c. Post in conspicuous places where employees represented by the Association usually congregate, or where notices are usually posted, and display for a period of thirty (30) days thereafter, the attached Notice to Employees.
- d. Notify the Division in writing within thirty (30) days of service of this Order of the steps taken to comply herewith.

SO ORDERED

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE MASSACHUSETTS DIVISION
OF LABOR RELATIONS

AN AGENCY OF THE COMMONWEALTH OF
MASSACHUSETTS

The Commonwealth Employment Relations Board has determined that the City of Newton (City) has violated Sections 10(a)(5) and, derivatively, 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by not providing the Newton Police Association (Association) with prior notice and an opportunity to bargain to resolution or impasse over the impacts of a decision to transfer bargaining unit work to non-unit employees.

WE WILL NOT transfer bargaining unit work to non-bargaining unit employees without first giving the Association prior notice and an opportunity to bargain to resolution or impasse about the impacts of that decision

WE WILL NOT refuse to bargain in good faith with the Association over the impacts of a decision to transfer bargaining unit work in the Traffic Department unit work to non-bargaining unit personnel.

WE WILL NOT, in any like manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Law.

WE WILL, upon request, bargain in good faith to resolution or impasse with the Association over the impacts of a decision to transfer bargaining unit work in the Traffic Department to non-bargaining unit employees.

WE WILL make whole any employees represented by the Association for any loss of earnings suffered as of the decision to transfer bargaining unit work in the Traffic Department to non bargaining unit employees, plus interest at the rate specified in MGL c. 231, §61, compounded quarterly.

[signed]
City of Newton

* * * * *

In the Matter of BRISTOL COUNTY SHERIFF'S OFFICE
and

NATIONAL CORRECTIONAL EMPLOYEES UNION

Case No. SCR-08-2270

12.3 *appointed official*
35.7 *supervisory and managerial employees*
35.8 *uniformed services—general*

January 7, 2009

Marjorie F. Wittner, Chair

Elizabeth Neumeier, Board Member

John Connor, Esq. *Representing the National
Correctional Employees Union*
Robert Novak, Esq. *Representing the Bristol County
Sheriff's Office*

DECISION AND DIRECTION OF ELECTION

Statement of the Case

On January 31, 2008, the National Correctional Employees Union (Union) filed a petition in Case No. SCR-08-2270 seeking to represent the canine officers employed by the Bristol County Sheriff's Office (Employer or BCSO). The petitioned-for canine officers are not currently represented by any union, and the BCSO opposes the Union's petition. The Employer contends that the canine officers should be excluded from any bargaining unit either as appointed officials within the meaning of Section 1 of MGL c. 150E (the Law) or in the exercise of the Board's discretion to exclude certain categories of employees from collective bargaining. If the Board determines that the canine officers are employees within the meaning of the Law, the BCSO asks the Board to place the canine captain and canine lieutenant in a separate, supervisory bargaining unit.

The Union and the Employer agreed to a stipulated record and waived their right to an evidentiary hearing in this case. Both parties filed post-hearing briefs on or about August 28, 2008.

Stipulations of Fact¹

1. The present make-up of the Canine Division is as follows: one captain, one lieutenant, two sergeants and six officers.
2. The Canine Captain acts as the Commander for the day shift (7-3) and the Canine Lieutenant as the commander for the second shift (3-11).
3. The general responsibilities of the Canine Captain and Canine Lieutenant are:

- a. Ensure that members of the Canine Unit and their dogs are on-call 24-hours a day to assist the Bristol County Sheriff's Office as so ordered;
- b. Ensure that all administrative and operational policies and procedures of the Canine Unit are being followed;
- c. Coordinate all activities of the Canine Unit with the Chief/Law Enforcement;
- d. Ensure that canine handlers provide for the routine care, cleaning and maintenance of their respective canines (dogs);
- e. Ensure that all BCSO Canine Unit vehicles and equipment are properly cleaned and maintained;
- f. Establish Canine Unit training programs;
- g. Ensure that all BCSO canine handlers and dogs are competent, certified and properly used;
- h. Reports, etc. are completed in a timely manner;
- i. Report directly to the Chief/Law Enforcement regarding administrative matters that directly affect the operation of the Canine Unit.

4. The Canine Captain and Canine Lieutenant have the following supervisory responsibilities:

- a. They both sit on the interview panel (along with the Chief of Law Enforcement) and recommend new hires to the Sheriff;
- b. They both are authorized to administer verbal and written warnings to canine sergeants and officers as well as letters of counseling;
- c. They both have the authority to authorize days off, overtime, comp time and call in an officer from home;
- d. They both assign sergeants and officers to specific work tasks.

5. Due to being on the day shift, the Captain spends about 70% of his time on administrative and supervisory matters where the Lieutenant spends about 40% of his time on these matters.

6. Unlike captains in the captains and majors [bargaining] unit, the Canine Captain undergoes none of the same training as the other captains do, and their equipment and uniform needs are different.

7. Both the Canine Captain and the Canine Lieutenant are involved in the supervision and discipline of the canine sergeants and canine officers.

8. Although there is only one Canine Captain and one Canine Lieutenant at present, there is the potential for others to be promoted to canine lieutenant in the future.

9. The regulations of the BCSO Canine Unit marked as Joint Exhibit No. 1 are applicable to all canine officers.

10. A "call out" refers to requests for assistance from other law enforcement agencies. For example: a local police department may need a "drug-sniffing" dog to assist on a case, or may have a fugitive hiding in the woods.

11. BCSO Canine Unit officers shall be selected and appointed by the Sheriff on the recommendation of the Chief/Law Enforcement.

1. The Board's jurisdiction in this matter is uncontested.

ment. Any openings in the unit are posted at the BCSO but are not limited to current employees.

12. BCSO Canine Officers are required to be Law Enforcement Deputy Sheriffs and must attend all required annual law enforcement training in compliance with the Municipal Police Training Council and the BCSO Law Enforcement Training Standards.

13. The following are requirements that all canine officers must agree to:

- a. A willingness to remain with the BCSO Canine Unit for the work life of an assigned canine (dog);
- b. A willingness (together with family members) to care for and house the canine at the officer's residence with a secure outdoor area that conforms to BCSO guidelines;
- c. A willingness to work with, to care for and to train with their assigned dog;
- d. A satisfactory work performance;
- e. A willingness to accept orders as given and carry them out;
- f. A willingness to accept assignments that promote the most useful coverage of the Canine Unit and the Sheriff's Office;
- g. The ability to successfully complete BCSO firearms qualification training and successfully meet all other requirements necessary to become a sworn BCSO Law Enforcement Deputy Sheriff;
- h. The ability to achieve and maintain the applicable Handler/Dog Certification;
- i. The willingness to immediately withdraw from the Canine Unit without prejudice if requested to do so by the Sheriff or his designee.

14. A Canine Officer is a BCSO staff member who is a Bristol County Deputy Sheriff, has met the established training requirements set forth by the Sheriff, and has been provided a trained and qualified dog for correction/security, law enforcement and crime prevention purposes.

15. The Primary Responsibilities of the BCSO Canine Unit shall be:

- a. Secure and protect the BCSO correction facilities, as well as other BCSO properties;
- b. Respond to correction facility disturbances and emergencies (such as perimeter alarms, suspicious persons and/or vehicles, escapes) as directed;
- c. Locate suspects, victims, missing persons, escapees, missing articles or evidence, as requested by the BCSO or other public safety agencies;
- d. Provide support and security to local, county, state and/or federal law enforcement agencies, when so authorized;
- e. Conduct random vehicle searches;
- f. Conduct random searches at BCSO community work release sites;
- g. Conduct searches for concealed narcotics and/or other contraband within the BCSO Correction Facilities and Regional Lockups;
- h. Protect the general public and/or the BCSO staff members from death or serious injury;

- i. Provide support to BCSO Correction Facilities or divisions attempting to effect an arrest or serve a warrant;
- j. Promote the public safety through seminars and demonstrations.

The Primary Responsibilities of a BCSO Canine Officer shall be to:

- a. Ensure that their assigned canine, vehicle, and equipment are ready to work before each tour of duty.
- b. Ensure that they are prepared to work, as assigned by the Canine Unit Commander (Captain/Lieutenant) in a manner that will promote the most useful coverage of the Canine Unit for the Bristol County Sheriff's Office.
- c. Ensure that their assigned canine, vehicle and equipment are on-call 24-hours a day to assist the BCSO as so ordered;
- d. Ensure for the routine care, cleaning and maintenance of their assigned dog;
- e. Ensure that they have reported to work in full BCSO canine uniform, with working equipment and firearm;
- f. Ensure that they and their canine have been properly trained and have completed assigned in-service training activities as so ordered;
- g. Ensure that all reports and documentation regarding their tour of duty is properly completed and submitted to the Canine Unit Commander (Captain/Lieutenant) in a timely manner.

16. Should a BCSO canine officer become detached or re-assigned to another BCSO division, unit or facility, the officer shall no longer be a member of the Canine Unit.

17. A BCSO canine officer, as a Bristol County Deputy Sheriff, shall gain their authority to make arrests from Massachusetts General Laws Chapter 37, §3 and Chapter 37, §13. All arrests initiated by BCSO canine officers shall be consistent with BCSO policy, procedures and training guidelines.

18. The canine officers do not share a community of interest with any other BCSO employees, because the canine officers perform different duties, have different work schedules, work in unique locations, receive different training, have a distinct supervisory hierarchy, and possess law enforcement powers, including powers of arrest.

19. Canine officers are not confidential or managerial employees within the meaning of Section 1 of MGL c. 150E.

20. At the BCSO, the canine deputies, with and without their dogs, perform law enforcement security functions outside of the facilities and on occasion, for other law enforcement departments.

21. The canine officers do not supervise inmates as corrections officers [do].

22. The BCSO employs canine officers in the Law Enforcement Division under the direction of the Chief of Staff. The Law Enforcement Division is a separate division that is not encompassed within the BCSO's security operations.

Opinion

Where issues raised by a representation petition are resolved by the parties' stipulation, the Board will adopt the stipulation, if it does not conflict with the Law or established Board policy. *Town of Hopedale*, 20 MLC 1059, 1063 (1993). Here, the BSCO and the Union have stipulated that: 1) the canine officers at issue in this petition are not confidential or managerial employees; and, 2) they do not share a community of interest with any other BCSO employee. Because these stipulations do not appear to conflict with the Law or with established Board policy, we adopt them.

Collective Bargaining Rights of Canine Officers

The primary issue in this case is whether the petitioned-for canine officers are employees within the meaning of Section 1 of the Law. The Employer argues that these employees are excluded from collective bargaining because, as deputy sheriffs appointed by the Sheriff, they are "appointed officials" within the meaning of Section 1. More specifically, the Employer contends that Section 1 excludes appointed officials who serve at the pleasure of an elected official. Conversely, the Union argues that, because the canine officers are not managerial employees, they cannot be excluded from collective bargaining as appointed officials under existing case precedent. In the alternative, the Employer urges the Board to exercise its discretion to exclude these employees from collective bargaining due to the operational conflicts that the Employer suggests would inevitably arise if the canine officers were permitted to bargain collectively.

Section 1 of Law defines an employee or public employee as:

Any person in the executive or judicial branch of a government unit employed by a public employer except elected officials, appointed officials, members of any board or commission, representatives of any public employer, including the heads, directors and executive and administrative officers of departments and agencies of any public employer, and other managerial employees or confidential employees...

The question of whether appointed officials should be excluded from collective bargaining is not a novel issue before the Board. In *Town of Dartmouth*, 1 MLC 1257 (1975), the Board observed that, since most non-elective municipal positions are filled by appointment, Section 1 of the Law must have intended to exclude only some appointed positions from collective bargaining. The Board also noted that the language of Section 1 demonstrated that "appointed officials" are a subcategory of managerial employees. *Town of Dartmouth*, 1 MLC at 1259. The Board reaffirmed this interpretation of Section 1 in *City of Chicopee*, 19 MLC 1765, 1767-1768 (1993), *aff'd sub nom.*, *City of Chicopee v. Labor Relations Commission*, 38 Mass. App. Ct. 1106 (1995), expressly declining to create a new category of excluded employees. *City of Chicopee*, 19 MLC at 1768, n.4. The Board has consistently fol-

lowed this interpretation of the Law in subsequent cases; e.g., *Town of Tisbury*, 30 MLC 77, 82 (2003); *Commonwealth of Massachusetts*, 30 MLC 67, 69 (2003); *Town of Millbury*, 33 MLC 47, 52 (2006).

We decline to revisit this area of settled law. Neither the historical underpinnings of the Sheriff's office, nor the current powers and duties of deputy sheriffs persuade us that the petitioned-for canine officers, who hold appointed deputy sheriff positions, should be excluded from collective bargaining. The Employer details the deputy sheriffs' historical and current status as peace officers and role in law enforcement, but offers no reason why these responsibilities would impede their ability to bargain collectively, particularly where Sections 1 and 3 of the Law explicitly reference collective bargaining for certain state and municipal police officers.² The Employer distinguishes between appointed officials who enjoy statutory protection against arbitrary removal and appointed officials who serve at the discretion of an elected official, and argues that Section 1 excludes appointed officials who have no statutory good cause protection. However, the Employer offers no case law or legislative history to inform this novel distinction. The Board has previously determined not to create an additional category of excluded appointed officials, *see City of Chicopee, supra*, and we decline to do so here.

Further, the cases that the Employer cites do not support the Employer's position. *Sheriff of Middlesex County v. International Brotherhood of Correctional Officers, Local R1-193*, 62 Mass. App. Ct. 830 (2005) upheld a sheriff's exclusive authority, pursuant to G.L. c. 37, s.3, to appoint individuals to deputy sheriff positions, but the Appeals Court did not hold that the sheriff's statutory powers of appointment excluded the employee at issue from the Law's ambit. Indeed, *Sheriff of Middlesex County* noted that the sheriff could have agreed, presumably with the employee's exclusive representative, to follow specific appointment procedures. *Id.* at 834. Compare, *City of Somerville*, 451 Mass. 493 (2008). Similarly, *Massachusetts Coalition of Police, Local 165 v. Town of Northborough*, 416 Mass. 252 (1993) affirms an employer's non-delegable right to appoint police officers pursuant to G.L. c. 41, §97A, but did not conclude that a position filled through a statutory power of appointment must be excluded from collective bargaining.

We recognize that the appointment powers that the Sheriff holds pursuant to G.L. c. 37, §3 will impact collective bargaining over appointments to deputy sheriff positions. However, the Employer cites no statutory impediment to bargaining over wages, hours or other working conditions and no persuasive reason why statutory hiring procedures should preclude bargaining over other mandatory subjects of bargaining.³ In *City of Somerville*, 451 Mass. 493 (2008), the Supreme Judicial Court held that the city's mayor had the exclusive authority pursuant to G.L. c.115, §10 to appoint an individual to the position of director of veteran's services, and that

2. Section 1 of the Law indicates that a professional employee shall include a detective, member of a detective bureau or police officer who is primarily engaged in investigative work in any city or town police department which employs more than four hundred people. Section 3 of the Law describes the appropriate bargaining unit for uniformed members of the state police.

3. We express no opinion on the Employer's argument that the Sheriff's power to appoint deputy sheriffs includes the non-delegable power to remove them. Even if that were true, it would not preclude bargaining over the myriad of other subjects of bargaining.

an arbitrator could not usurp that authority. However, the Court noted that the position at issue was within a bargaining unit and did not exclude the position from collective bargaining. Consequently, we see no incongruity between a deputy sheriff's method of appointment and right to bargain collectively.

Finally, we note that the Board has previously placed deputy sheriff positions in a collective bargaining unit. In *Plymouth County Sheriff's Department*, 30 MLC 85 (2003), the Board accreted a front gate checkpoint officer position into a bargaining unit comprised of correctional officers, noting that the employees who held the checkpoint positions were deputy sheriffs appointed pursuant to G.L. c.37, §3. Although the employer in *Plymouth County* did not raise the arguments that the BCSO raises here, upon examination, we find no statutory basis for excluding deputy sheriffs from the ambit of collective bargaining. Accordingly, we hold that the petitioned-for canine officers, who are deputy sheriffs appointed pursuant to G.L. c. 37 §3. are employees within the meaning of the Law.

We next consider the Employer's argument that the Board should exercise its discretion to deny collective bargaining rights to these employees because: 1) the employees' exercise of bargaining rights will conflict with the BCSO's operations; and 2) these employees would not enjoy the full panoply of traditional union rights and benefits, like the ability to contest terminations or challenge unlawful discrimination before the Board. The Employer suggests that the petitioned-for employees would be unlikely to rely on any negotiated discipline/termination procedures where the Employer could terminate the employees at will at any time for any reason, and it would be unfair to give employees rights that they would be afraid to exercise.

The record contains no evidence of an operational conflict that would defeat the collective bargaining rights of the canine officers, and we decline to determine the value of collective bargaining for the employees at issue. Employee free choice is a hallmark of the Law. Thus, the petitioned-for canine officers should be free to choose whether or not to avail themselves of the benefits and responsibilities of collective bargaining.

Separate Supervisory Unit

We next consider whether the supervisory responsibilities of the canine captain and canine lieutenant preclude their inclusion in a bargaining unit with their subordinates. The Board generally establishes separate bargaining units for supervisory employees and the employees whom they supervise. This well-established policy is rooted in the belief that individuals who possess significant supervisory authority owe their allegiance to their employer, particularly in the areas of discipline and productivity. *City of Westfield*, 7 MLC 1245, 1250 (1980).

Individuals are considered supervisory employees if they have either: 1) independent authority to make personnel decisions like hiring, transfers, promotion, discipline and discharge; 2) effective ability to recommend such personnel decisions; or 3) independent authority to assign and direct the work of their subordinates. The presence of all three criteria is not required, and any one criterion is

sufficient for the Board to find that an employee exercises supervisory authority. *Town of Holden*, 25 MLC 175, 176 (1999). The Board also considers factors like the authority to adjust grievances, *Eastham School Committee*, 22 MLC 1190, 1197 (1995), the authority to take charge in emergency situations, *Town of North Attleboro*, 5 MLC 1145, 1146 (1978), the authority to assign off-duty officers to work overtime, *Town of Holden*, 25 MLC at 176, and the responsibility to command a department in the absence of higher ranking supervisory authority. *Id.*

Here, the parties have stipulated that the canine captain and lieutenant are involved in the discipline of the canine sergeants and canine officers and are authorized to administer verbal and written warnings to these subordinate employees. The canine captain and lieutenant assign canine sergeants and canine officers to specific work tasks and can authorize days off, overtime, and compensatory time off. The superior officers can also require an off-duty sergeant or officer to report for duty. These supervisory duties are sufficient to place the canine captain and canine lieutenant in a separate bargaining unit from the canine sergeants and canine officers whom they supervise.

Conclusion and Direction of Election

For the foregoing reasons, we conclude that: 1) the canine officers employed by the Bristol County Sheriff's Office are employees within the meaning of the Law; and, 2) the canine captain and canine lieutenant are supervisory employees who should be placed in a separate bargaining unit from the canine sergeants and canine officers whom they supervise.

Further, based on the record, we find that a question of representation has arisen among the canine officers employed by the Bristol County Sheriff's Office, and that the following units constitute appropriate bargaining units within the meaning of Section 3 of the Law:

Unit A:

All full-time and regular part-time canine officers and canine sergeants employed by the Bristol County Sheriff's Office excluding all lieutenants, captains, members of Unit B and all confidential, managerial, casual and other employees.

Unit B:

All full-time and regular part-time canine lieutenants and canine captains employed by the Bristol County Sheriff's Office excluding all canine officers, canine sergeants, members of Unit A and all confidential, managerial, casual and other employees.

IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted to determine whether a majority of employees in each of the above-described separate bargaining units desire to be represented by the National Correctional Employees Union or by no employee organization. The eligible voters shall include all those persons within the above-described bargaining unit whose names appear on the Bristol County Sheriff's Office's payroll for the payroll period for the week ending the Saturday preceding the date of this decision and who have not since quit or been discharged for cause.

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To ensure that all eligible voters shall have the opportunity to be informed of the issues and their statutory right to vote, all parties to this election shall have access to a list of voters in each unit and their addresses that may be used to communicate with them. The list of eligible voters must be provided either electronically (*e.g.* Microsoft Access or Excel) or in the form of mailing labels.

Accordingly, IT IS HEREBY FURTHER DIRECTED that two (2) copies of election eligibility lists containing the names and addresses of all eligible voters must be filed by the Bristol County Sheriff's Office with the Executive Secretary of the Division, Charles F. Hurley Building, 19 Staniford Street, 1st Floor, Boston, MA 02114 no later than fourteen (14) days from the date of this decision.

The Executive Secretary shall make the lists available to all parties to the election. Failure to submit the lists in a timely manner may result in substantial prejudice to the rights of employees and the parties; therefore, no extension of time for filing the lists 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.

* * * * *

1. Pursuant to 456 CMR 13.02(1) of the former Labor Relations Commission's regulations, this case was designated as one in which the former Labor Relations Commission would issue a decision in the first instance. Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission." The Commonwealth Employment