

In the Matter of TOWN OF BERKLEY

and

NEW ENGLAND POLICE BENEVOLENT ASSOCIATION,
INC.

and

MASSACHUSETTS LABORERS' DISTRICT COUNCIL on
behalf of PUBLIC LOCAL 1144, LABORERS'
INTERNATIONAL UNION OF NORTH AMERICA,
AFL-CIO

Case No. MCR-09-5361

34.2 *community of interest*
35.11 *regular, part-time employees*
35.825 *police dispatchers*
36. *One Person Units*

May 7, 2009

Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member

Paul Modlowski	<i>Representing the Town of Berkley</i>
Diane Byrnes, Esq.	<i>Representing the New England Police Benevolent Association</i>
Anthony Pini	<i>Representing the Laborers' International, Local 1144</i>

DECISION AND DIRECTION OF ELECTION¹

Statement of the Case

On January 29, 2009, the New England Police Benevolent Association (Petitioner) filed a petition with the Division seeking to certify a bargaining unit of all permanent full-time police officers in the Town of Berkley (Town). These employees are currently represented by the Massachusetts Laborers' District Council on behalf of Public Employees' Local 1144, Laborers' International Union of North America, AFL-CIO (Incumbent). The Incumbent intervened in this matter on February 20, 2009 without objection.

A Division agent investigated the issues raised in the petition. The Petitioner seeks to represent all permanent full-time patrolmen, excluding the Chief of Police, sergeants, all reserve, special or part-time police personnel, and all other employees of the Town of Berkley. The Incumbent and the Town assert that the position of sergeant should remain in the unit. The Incumbent and the Town also contend the position of full-time reserve police officer/dispatcher should be included in the unit. Consequently, the parties are unable to agree on a unit description. Pursuant to the Division's

Regulations, 456 CMR 14.08, the Investigator required each party to provide a written statement concerning its position on the following issues: 1) whether the position of sergeant is managerial and confidential; 2) whether a unit of all full-time and regular part time police officers is the appropriate unit placement for the position of reserve police officer/dispatcher; and 3) any other issues raised by the petition. Because all material facts necessary to the Board's decision in this case are not in dispute, it is appropriate for the Board to decide the case based on the information that is set out below.

Statement of Facts²

The Town and the Incumbent are parties to a collective bargaining agreement for the period July 1, 2006 through June 30, 2009 (Agreement). Prior to July of 2006, the Town voluntarily recognized the Incumbent as the exclusive bargaining representative for certain police officers. The Agreement's recognition clause states:

The Employer recognizes the Union as the sole and exclusive collective bargaining agent with respect to rates of pay, wages, hours of work and other conditions of employment for all permanent full time police officers, excluding the Chief of Police and all reserve, special or part time police personnel.

The unit currently represented by the Incumbent consists of approximately three full-time patrolmen and one full-time sergeant.

The job description for patrolmen specifies, in part, that they are responsible for responding, as dispatched, to calls concerning traffic accidents, crimes, disorder and emergency situations. The job description for sergeants specifies, in part, that they are responsible for responding to emergencies, incidents, or dispatches as required. The job description for the reserve officer/dispatcher demonstrates that he/she is responsible for receiving all oral communications from the public, fire and law enforcement personnel and for the initial deployment of law enforcement and/or fire personnel and equipment. Additionally, the reserve officer/dispatcher has the duties and responsibilities of a reserve police officer on patrol if so requested and designated by the police chief.

Opinion

This case presents three issues: 1) whether the position of sergeant should be included in the unit; 2) whether the position of reserve officer/dispatcher should be included in the unit; and 3) whether part-time police officers should be included in the unit.

Section 3 of the Law requires the Board to determine appropriate bargaining units consistent with the fundamental purpose of providing for stable and continuing labor relations, while giving due regard to the following statutory criteria: 1) community of interest; 2) efficiency of operations and effective dealings; and, 3) safeguarding the rights of employees to effective representation.

1. Pursuant to the Notice of Hearing, the Division of Labor Relations (Division) designated this case as one in which the Division shall issue a decision in the first instance. Pursuant to Chapter 145 of the Acts of 2007, the Division "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission." The Commonwealth Employ-

ment Relations Board (Board) is the Division agency charged with deciding adjudicatory matters. References to the Division and the Board include the former Labor Relations Commission.

2. The Board's jurisdiction is uncontested.

To determine whether employees share a community of interest, the Board considers such factors as similarity of skills and functions, similarity of pay and working conditions, common supervision, work contact and similarity of training and experience. *Town of Bolton*, 25 MLC 62, 65 (1998). The Board traditionally favors broad, comprehensive units over small, fragmented units. *Higher Education Coordinating Council*, 23 MLC 194, 197 (1997). No single factor is outcome determinative. *City of Worcester*, 5 MLC 1018, 1111 (1978). The Law requires that employees share only a community of interest rather than an identity of interest. *Springfield Water and Sewer Commission*, 24 MLC 55, 59 (1998). The Board has consistently found a community of interest among employees who share similar interests and working conditions based upon common supervision and similar work environment. *Id.*

To satisfy the second and third statutory criteria, the Board considers the impact of the proposed bargaining unit structure upon the employer's ability to effectively and efficiently deliver public services, while safeguarding the rights of employees to effective representation. *Town of Bolton*, 25 MLC at 66. The Board satisfies these obligations by placing employees with common interests in the same bargaining unit, thus avoiding the proliferation of units that place an unnecessary burden on the employer, while maximizing the collective strength of employees in the bargaining relationship. *Id.*

Here, the Petitioner argues that the positions of sergeant and reserve officer/dispatcher should be excluded from the unit because they do not share a community of interest with patrolmen. However, the sergeant performs functions that are similar to those of the patrolmen. Both respond to emergencies, incidents and dispatches. Additionally, the sergeant and the patrolmen share similar interests and working conditions based on common supervision by the police chief. Therefore, we find that the sergeant shares a community of interest with the patrolmen.

In contrast, the primary functions of the reserve officer/dispatcher differ significantly from that of the patrolmen. We note that the primary duties and responsibilities of the reserve officer/dispatcher are those of a dispatcher and that the reserve officer/dispatcher only has the duties and responsibilities of a police officer if so requested and designated by the police chief. Moreover, the Town has an existing bargaining unit of 911 dispatchers and we decline to speculate about whether or when the police chief will assign police officer duties to this position in the future. Therefore, even if the reserve officer/dispatcher were to share some community of interest with the patrol officers, we find that the reserve officer/dispatcher shares a greater community of interest with dispatchers, and we therefore decline to place the reserve officer/dispatcher in the petitioned-for unit of police officers. See *City of Boston*, 35 MLC 137, 142 (2008) (after reviewing the commonality of duties, skills and supervision between the disputed position and positions in the two competing bargaining units, the Board determined that the position at issue belonged in the unit in which it shared the greater community of interest).

The Petitioner also argues that the position of sergeant should be excluded from the unit because the sergeant is managerial and

confidential based on his supervisory responsibilities. The Board generally establishes separate bargaining units for supervisory employees and the employees they supervise. *West Boylston Water District of West Boylston*, 25 MLC 150, 152 (1999). However, where an employee may be placed in another bargaining unit, the Board has traditionally rejected the creation of a one-person unit, noting that a one unit-person is contrary to the Board's policy favoring broad, comprehensive units. *Id.*

Assuming without deciding that the sergeant is supervisory, we find that our policy rejecting one-person units outweighs our concern about placing an individual with supervisory authority in a unit with the employees they supervise. In this case, there is only one sergeant in the existing unit. Creating a one-person supervisory unit does not safeguard the rights of the sergeant to effective representation where there exists a larger bargaining unit in which the sergeant may be placed. Therefore, because he shares a community of interest with patrol officers, we include the sergeant in the petitioned-for unit.

Finally, the Petitioner argues that the unit should be restricted to full-time patrolmen. However, it is the Board's well-established policy to include all regular part-time employees in the same bargaining unit as full-time employees with whom they share a community of interest. *Town of Lee*, 34 MLC 39, 45 (2007). Thus, we decline to exclude regular part-time employees from this 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 among the police officers employed by the Town and that the following unit constitutes an appropriate bargaining unit within the meaning of Section 3 of the Law:

All full-time and regular part-time police officers employed by the Town of Berkley, including patrolmen and sergeants but excluding the Chief of Police, and all managerial, confidential and casual employees, and all other employees.

IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted to determine whether a majority of employees in the above-described bargaining unit desire to be represented by the New England Police Benevolent Association, Inc. or by the Massachusetts Laborers' District Council on behalf of Public Local 1144, Laborers' International Union of North America, AFL-CIO.

The eligible voters shall include all those persons within the above-described bargaining unit whose names appear on the Town'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.

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 which 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.

CITE AS 35 MLC 268

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 Town with the Executive Secretary of the Division of Labor Relations, 19 Staniford Street, First Floor, Boston, Massachusetts, 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.

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