

In the Matter of COMMONWEALTH OF  
MASSACHUSETTS, COMMISSIONER OF  
ADMINISTRATION AND FINANCE

and

MASSACHUSETTS STATE POLICE COMMISSIONED  
OFFICERS ASSOCIATION

Case No. SCR-08-2278

35.82 *police*  
38. *State Employee Unit*

*December 10, 2009*

*Marjorie F. Wittner, Chair*  
*Elizabeth Neumeier, Board Member*  
*Harris Freeman, Board Member*

*Michele M. Heffernan, Esq. Representing the  
Commonwealth of  
Massachusetts, Commissioner  
of Administration and Finance*

*Timothy M. Burke, Esq. Representing the Massachusetts  
State Police Commissioned  
Officers Association*

**RULING ON MOTION TO DISMISS**

Statement of the Case

On September 3, 2008, the Massachusetts State Police Commissioned Officers Association (Petitioner or Union) filed a petition with the Division of Labor Relations (Division) seeking to represent a bargaining unit of lieutenants and captains employed by the Commonwealth of Massachusetts Department of State Police.<sup>1</sup>

On October 17, 2008, the Commonwealth filed a motion to dismiss the petition on the grounds that the definition of appropriate bargaining unit for uniformed members of the state police contained in M.G.L. c. 150E, § 3 excludes lieutenants and captains. The motion included an affidavit from John Flynn, the Chief Administrative Officer of the Department of State Police. The Union filed an opposition to the motion on November 24, 2008. The Commonwealth filed a response to the opposition on December 9, 2008.

Statement of Facts<sup>2</sup>

The facts are not in dispute. The Massachusetts Department of State Police (Department) is the principal law enforcement agency for the Commonwealth. The Department consists of approximately 2,380 uniformed officers and 560 civilian personnel.

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1. On October 22, 2008, the Petitioner amended the Petition to include the ranks of Lieutenant, Detective Lieutenant, Captain and Detective Captain.

2. The Board's jurisdiction is not contested.

Once an individual has enlisted in the State Police, they are considered a uniformed member regardless of rank. The rank structure within the Department, in descending order, is: Colonel, Lieutenant Colonel, Major Detective Captain, Captain, Detective Lieutenant, Lieutenant, Sergeant and Trooper. The only ranks subordinate to Lieutenant are Sergeant and Trooper. The Troopers and Sergeants are represented by the State Police Association of Massachusetts, Statewide Bargaining unit 5A.

Discussion

The Petitioner seeks to represent a bargaining unit comprised of state police in the rank of lieutenant and higher. The Commonwealth argues that the petition should be dismissed based on Section 3 of the Law, which states in pertinent part:

The appropriate bargaining unit in the case of the uniformed members of the state police shall be all such uniformed members in titles below the rank of lieutenant.

We agree. In *Commonwealth of Massachusetts*, 31 MLC 115 (2005), the International Brotherhood of Police Officers filed a representation petition seeking to represent lieutenants and captains employed by the state police. After reviewing Section 3’s legislative history and applying general principles of statutory construction, the former Commission concluded that Section 3 precluded it from finding appropriate any bargaining unit consisting of uniformed members of the Department in the rank of lieutenant or higher. *Id.* at 116. The former Commission therefore dismissed the petition. Because the Petitioner seeks to represent the same group of employees, the *Commonwealth* decision controls the outcome of this case.

The Petitioner nevertheless argues that the Board should treat this case as one of first impression because the *Commonwealth* decision was issued in 2005, before the Legislature amended Section 4 of the Law in December of 2007 to provide for recognition or certification by written majority authorization, “when no other employee organization has been and currently is lawfully recognized as the exclusive representative of the employees in the appropriate bargaining unit.” The Union reasons that because the petitioned-for employees are not currently represented for purposes of collective bargaining, Section 4 requires the Department to recognize the petitioned for employees “upon the showing of their written majority authorization.”<sup>3</sup> The Union also asserts that superior officers are commonly organized in other public safety departments throughout the Commonwealth and claims that the Board cannot justifiably deny collective bargaining rights to similar, non-managerial uniformed members of the State Police. In response, the Commonwealth argues neither the recent amendments to Section 4 nor the bargaining structure in municipal police de-

partments have any bearing on the disposition of the instant petition.

We agree with the Commonwealth’s view that Section 4 is of no relevance to the issue of whether lieutenants and captains may constitute a unit appropriate for collective bargaining purposes. First, the Petitioner did not file a written majority authorization petition with the Division. Rather, the Petitioner filed a representation petition with the Division. The procedures and forms for processing the two types of petitions are distinct. *Compare* 456 CMR 14.03, 14.05, 14.08 (representation petition procedures) *with* 456 CMR 14.19 (certification by written majority authorization procedures). The Division has, without protest from the Petitioner, processed and investigated the Petitioner’s petition in accordance with the rules for representation, not written majority authorization, petitions.

More generally, a determination that state police officers in the ranks of lieutenant and captain should not be included in the state police bargaining units was expressly made by the General Court when it enacted the pertinent provision of Section 3. Contrary to the Union’s assertion, the limiting language that opens the paragraph of Section 4—“Notwithstanding any other provision of this section...”—setting out the standards for written majority authorization refers only to the other parts of Section 4, which describe the Division’s longstanding means of processing representation petitions. It is clear that other sections of c. 150E, including Section 3, are unaffected by the written authorization language in Section 4 and, more specifically, that this part of Section 4 does not modify or override Section 3’s express exclusion of lieutenants and captains from collective bargaining units.

Accordingly, because Section 3 excludes the petitioned-for employees from the appropriate bargaining unit in the case of the uniformed members of the state police, the petition must be dismissed. Moreover, where the Legislature has spoken so clearly, the fact that superior officers have been organized in municipal public safety departments has no bearing on our decision.

Conclusion

For the reasons discussed above, we DISMISS the Union’s petition.

SO ORDERED.

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3. Section 4 of the Law, as amended by Chapter 120 of the Acts of 2007, states in pertinent part:

Notwithstanding any other provision of this section, the commission shall certify and the public employer shall recognize as the exclusive representative for the purpose of collective bargaining...an employee organization which has received a written majority authorization, but this shall apply

only when no other employee organization has been and currently is recognized in the appropriate bargaining unit.

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The neutral shall verify the employee organization’s majority support within the appropriate bargaining unit and report the results of its inspection in writing to the parties....

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