COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

In the Matter of TOWN OF AUBURN and TEAMSTERS UNION, LOCAL 170	Case No. MCR-17-5712 Date Issued: December 5, 2017

Board Members Participating:

Marjorie F. Wittner, Chair
Katherine G. Lev, Board Member
Joan Ackerstein, Board Member

Appearances:

Sharon Siegel, Esq. - Representing the Town of Auburn

Sean Foley - Representing Teamsters Union, Local 170

DECISION AND DIRECTION OF ELECTION

Summary

The issue in this case is whether the petitioned-for unit of one full-time and two part-time custodians in the Town of Auburn (Town) is an appropriate bargaining unit. The Commonwealth Employment Relations Board (CERB) holds that the petitioned-for unit is an appropriate unit, and therefore, orders an election to be held so that the custodians may decide whether or not they wish to be represented by the petitioner.

Statement of the Case

On January 17, 2017, the Teamsters Union Local 170 (Petitioner or Union) filed a petition seeking to represent certain maintenance/custodians employed by the Town. On January 18, 2017, the Department of Labor Relations (DLR) sent out a Notice of Hearing scheduling a Pre-Hearing Conference on February 16, 2017 and a Hearing on March 21, 2017.[1] Also on January 18, 2017, the Town filed an objection to the proposed unit with the DLR.[2] On May 3, 2017, a duly-designated DLR hearing officer held a hearing at the DLR. Both parties submitted post-hearing briefs by May 24, 2017.[3]

Stipulations of Fact

1. The Town of Auburn (the Town) is a public employer and Teamsters Union, Local 170 (the Union) is an employee organization within the meaning of Section 1 of M.G.L. Chapter 150E (the Law).

2. The Town's organizational structure includes a Department of Public Works.

3. The Department of Public Works consists of four (4) divisions: (1) Parks, Recreation and Cemetery; (2) Highway; (3) Sewer; and (4) Engineering.

4. There is an existing bargaining unit of Highway Division employees. That bargaining unit consists of all full-time and regular part-time employees in the following classifications: laborer, light equipment operator, medium equipment operator, heavy equipment operator, mechanic, working foreman, fleet mechanic, skilled craftsman and construction foreman.

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[1] Pursuant to 456 CMR 14.08, the Town was required to "post the notice of hearing and a copy of the petition in all conspicuous places where employees directly affected by the filing of a petition under 456 CMR 14.00 usually congregate and where notices to these employees are usually posted."

[2] We take administrative notice of the fact that the Town copied the Laborers International Union of North America (LIUNA) representative Tim Mahoney on its Objection. A LIUNA representative came to the pre-hearing conference, but did not subsequently move to intervene in the proceeding.

[3] On March 21, 2017, the DLR sent the parties an Amended Notice of Hearing that changed the hearing date to May 3, 2017.

5. There are currently sixteen (16) employees in the Highway Division bargaining unit (referenced in Paragraph 4 above).

6. The employees in the Highway Division bargaining unit (referenced in Paragraph 4 above) report to, and are under the supervision of, the Highway Superintendent.

7. The employees in the Highway Division bargaining unit (referenced in Paragraph 4 above) work 7:00 a.m. to 3:00 p.m.

8. The Town currently employs three (3) Custodians; one full-time and two part-time.

9. Under the Town's organizational structure, the Custodians are included in the Facilities Management Unit of the Highway Division. (See Exhibit A)

10. The job description for the position of Custodian accurately reflects the job duties of the position.

11. The Custodians report to, and are under the supervision of, the Highway Superintendent.

12. The Custodians are assigned by the Highway Superintendent to provide services to other Town Departments.

13. The full-time custodian is assigned to provide custodial services in the Highway Division, at the Senior Center, and at the Public Library. The full-time Custodian works 7:00 a.m. to 3:30 p.m. Each part-time Custodian works approximately 19 hours per week with no set work schedule. One part-time Custodian is assigned to provide custodial services at the Police Department.

Findings of Fact

The Town currently has collective bargaining agreements (CBAs) with eight bargaining units: (1) the Highway Division workers represented by LIUNA, (2) the Call Firefighters and Call Fire Officers represented by Teamsters Local 170, (3) the Firefighters represented by the International Association of Firefighters Local 4157, (4) the Sewer Division workers represented by Teamsters Local 170, (5) the Police Dispatchers represented by Massachusetts Coalition of Police Local 388A, (6) the Police Sergeants and Lieutenants represented by Massachusetts Coalition of Police Local 388B, (7) the Library employees represented by United Steelworkers Local 2936,

1 and (8) the permanent and regularly-scheduled part-time employees of several
2 departments represented by the Government Employees Union Local 3.[4]

3 **The Custodians**

4 In 2012, as part of a reorganization of the Department of Public Works (DPW),
5 the Town ceased using private contractors for custodial services, and began hiring
6 custodians as Town employees in the Highway Division. The Town did not include the
7 custodians in any existing bargaining unit, nor did it seek to negotiate with any
8 bargaining unit about including them. Neither LIUNA nor the Town has ever filed a CAS
9 petition to accrete the custodians. At the time of hearing, the Town employs three
10 custodians: one full-time, and two part-time.

11 **Duties and Responsibilities**

12 The custodians' current job description requires that custodians perform the
13 following "essential functions:"

14 • Sweeps, mops, waxes, dusts
15 • Washes windows, walls, floors, furnishings
16 • Picks up paper and other debris, empties and cleans trash receptacles inside
17 and outside of buildings
18 • Arranges and moves furnishings, transports and delivers supplies
19 • Operates vacuums, floor machines, buffers and carpet cleaning equipment in
20 addition to any new equipment introduced to facility
21 • Shovels sidewalks
22 • Performs other duties as assigned or directed by the Department Head

23 On one occasion, the custodians helped the Highway Unit Carpenters/Skilled
24 Craftsmen clean up after a Library renovation project. When snow must be cleared from
25 the Town's roads, the full-time custodian works on a plow truck with a member of the
26 Highway Unit. Custodians are not required to possess a Commercial Driver's License

[4] We take administrative notice of these CBAs, which were provided to the DLR pursuant to M.G.L. c. 150E, §7(a) and 456 CMR 16.01.

1 (CDL) as a condition of employment.

2 **Supervision**

3 The Highway Division Superintendent supervises custodians. The Highway
4 Division Superintendent conducts performance evaluations for the full-time custodian.
5 The Highway Division Superintendent and DPW Director meet with custodians to
6 address performance and disciplinary matters.

7 Custodian leave requests are handled by the Highway Division Superintendent,
8 with the exception of leave requests for a period greater than one week or leave
9 requests in the snow season of November 1 through April 1. Those requests are
10 approved by the DPW Director.

11 **Compensation and Benefits**

12 The full-time custodian earns $15.16 per hour. The wages of the part-time
13 custodians are not in the record. Consistent with the Town's personnel policy granting
14 benefits only to employees who consistently work more than twenty hours per week, the
15 part-time custodians do not receive holidays, accrue vacation or sick leave, or group
16 insurance coverage.

17 The full-time custodian is eligible for eleven holidays, including New Year's Day,
18 Martin Luther King Day, Presidents' Day, Patriots' Day, Memorial Day, Independence
19 Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

20 The full-time custodian is eligible for vacation leave, and, as of July 1 of each
21 year, accrues one day of vacation for each month of service up to a maximum of five
22 days total in the first year of service; ten days of vacation after one year of service;
23 fifteen days of vacation after five years of service; twenty days of vacation after ten

1 years of service; and twenty-five days of vacation after fifteen years of service.
2 Additionally, when the full-time custodian completes his or her fifth and tenth years of
3 employment, he or she is eligible for an additional five days of vacation in that year.
4 The full-time custodian earns one and one-quarter sick days for each month
5 worked, and can accrue up to 120 sick days.
6 The full-time custodian is offered the group insurance plan that the Town offers to
7 its full-time employees.
8 **Work Schedules**
9 The full-time custodian works 7:00 a.m. to 3:30 p.m. Each part-time custodian
10 works approximately 19 hours per week with no set work schedule.
11 **Existing Highway Bargaining Unit**
12 The currently existing bargaining unit in the Highway Division (Highway Unit) was
13 certified by the former Labor Relations Commission[5] in 2007, after the Town voluntarily
14 recognized LIUNA as the exclusive representative of the full-time and part-time
15 employees of the Highway, Parks and Cemetery Department[6] in the following
16 classifications: laborer, light equipment operator, medium equipment operator, heavy
17 equipment operator, mechanic, working foreman, fleet mechanic, skilled craftsman and
18 construction foreman. All other employees were explicitly excluded from the Highway
19 unit.

[5] Pursuant to St. 2007, c. 145, §§5, 7, and 8, effective November 14, 2007, the CERB now stands in the shoes of the former Labor Relations Commission (LRC) for cases arising prior to the reorganization statute. References to the CERB are intended to include the former LRC.

[6] When the DPW was restructured in 2012, the Highway, Parks and Cemetery Department was reorganized into two separate Divisions within the DPW: the Highway Division and the Parks, Recreation and Cemetery Division. LIUNA remains the exclusive representative for the Highway Unit.

1 The Highway Unit has negotiated two CBAs in the years following the DPW's
2 2012 reorganization, when the Highway Division began directly employing custodians
3 rather than contracting out custodial work. Those CBAs, which ran from July 1, 2013 to
4 June 30, 2016,[7] and from July 1, 2016 to June 30, 2019, contained recognition clauses
5 identical to the 2007 voluntary recognition language. Those recognition clauses
6 included the same language that restricted unit composition to the named classifications
7 of laborer, light equipment operator, medium equipment operator, heavy equipment
8 operator, mechanic, working foreman, fleet mechanic, skilled craftsman and
9 construction foreman.

10 **Duties and Responsibilities**

11 Highway Unit employees maintain and repair the Town's roadways. They have
12 primary responsibility for plowing in the winter, and their Carpenter/Skilled Craftsmen
13 classification has worked renovating the Library and cleaning up afterward. Highway
14 Unit employees other than those in the "laborer" classification are required to possess a
15 CDL.

16 **Supervision**

17 The Highway Division Superintendent supervises the Highway Unit employees.
18 The Highway Division Superintendent conducts performance evaluations for the
19 Highway Unit employees. The Highway Division Superintendent and DPW Director
20 meet with Highway Unit employees to address performance and disciplinary matters.

21 Highway Unit employee leave requests are handled by the Highway Division

[7] We take administrative notice of this CBA, which was provided to the DLR pursuant to M.G.L. c. 150E, §7(a) and 456 CMR 16.01, but which was not offered as an exhibit at the DLR Hearing.

1 Superintendent, with the exception of leave requests for a period greater than one week
2 or leave requests in the snow season of November 1 through April 1. Those requests
3 are approved by the DPW Director.

4 **Compensation and Benefits**

5 Employees in the existing Highway Division unit have a starting wage ranging
6 from $18.25 to $26.47 per hour. Under a negotiated pay schedule, base pay increases
7 with longevity. The CBA calls for base rate increases of $.50 on July 1, 2017, April 1,
8 2018, July 1, 2018, and April 1, 2019. The CBA also calls for Highway Unit employees
9 to receive 1% increases on July 1, 2017, April 1, 2018, July 1, 2018, and April 1, 2019.

10 Highway Unit employees receive fourteen holidays: the eleven days provided to
11 the full-time custodian and other non-union town employees (New Year's Day, Martin
12 Luther King Day, Presidents' Day, Patriots' Day, Memorial Day, Independence Day,
13 Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day), plus
14 a half-day on Christmas Eve, a half-day on the day before Thanksgiving, and a full day
15 on the day after Thanksgiving.

16 Highway Unit employees have a similar vacation plan as non-union town
17 employees who work more than 20 hours a week, such as the full-time custodian, with
18 the vacation year beginning July 1, but with two differences: (1) the Highway Unit uses a
19 different formula for determining vacation leave for employees with less than one year
20 of service; and (2) Highway Unit employees do not receive the five-year and ten-year
21 one-time additional vacation grants received by the full-time Custodian.

22 Highway Unit employees receive one day of sick leave for every month worked,
23 and can accrue up to 130 days of sick leave.

1 Highway Unit employees receive the group insurance plan that the Town offers
2 to full-time employees. Highway Unit employees electing coverage under such plan pay
3 24% of the premium, and the Town pays the remaining 76%.

4 **Work Schedules**

5 Highway Unit employees work 7:00 a.m. to 3:00 p.m.

6 Opinion[8]

7 Under Section 3 of the Law, the CERB is responsible for determining appropriate
8 bargaining units that are consistent with the purposes of providing for stable and
9 continuing labor relations. In determining whether a bargaining unit is appropriate for the
10 purposes of collective bargaining, the CERB gives due regard to the following statutory
11 considerations: (1) community of interest; (2) efficiency of operations and effective
12 dealings; and (3) safeguarding the rights of employees to effective representation. Town
13 of Bolton, 25 MLC 62, 65, MCR-4562 (September 10, 1998).

14 In deciding whether employees share a community of interest, the CERB
15 examines factors like similarity of skills and functions, similarity of pay and working
16 conditions, common supervision, work contact and similarity of training and experience.
17 Waltham School Committee, 25 MLC 137, 139, CAS-3220, MCR-4541 (March 1, 1999).
18 Where applicable, the CERB also examines prior bargaining history, the centralization
19 of management, particularly labor relations, and the geographic location of the
20 employer's facilities in relation to one another. City of Springfield, 24 MLC 50, 53 – 54,
21 MCR-4602 (January 15, 1998). No single factor is outcome determinative. City of
22 Worcester, 5 MLC 1018, 1111, MCR-2632–2633, 2685–2688 (June 30, 1978). The Law

[8] The CERB's jurisdiction in this matter is uncontested.

1 requires that employees share only a community of interest rather than an identity of
2 interest. Id.

3 To satisfy the second and third statutory considerations, the CERB contemplates
4 the impact of the proposed unit structure upon the public employer's ability to effectively
5 and efficiently deliver public services, while safeguarding the rights of the public
6 employees to effective representation. Town of Bolton, 25 MLC at 66. The CERB fulfills
7 these obligations by placing employees with common interests in the same bargaining
8 unit, thus avoiding unnecessary burdens on the employer while maximizing the strength
9 of public employees in the bargaining relationship. Id. (citations omitted).

10 Although the CERB traditionally favors broad, comprehensive units over small,
11 fragmented units, Higher Education Coordinating Council, 23 MLC 194, 197, CAS-3058
12 (March 7, 1997), it will not disturb long-standing bargaining units merely because they
13 are not the most appropriate unit or because there is an alternative unit that is more
14 appropriate. Suffolk County Sherriff, 36 MLC 142, 145, CAS-08-3718 (March 30, 2010)
15 (citing City of Somerville, 24 MLC 69, 71, MCR-4517, CAS-3217 (February 18, 1998)).

16 **Positions of the Parties**

17 The Union seeks a bargaining unit comprised of the full-time custodian and the
18 two part-time custodians employed by the Town. In support of its petition, the Union
19 argues that the custodians are a distinct group, with interests not shared by the
20 Highway Unit workers.[9] The Union concedes that the custodians and Highway Unit

[9] The Union also urges us to adopt the National Labor Relations Board's (NLRB) reasoning in Specialty Healthcare & Rehabilitation Center of Mobile, 357 NLRB 934 (2011), enf'd sub nom. Kindred Nursing Centers East, LLC v. NLRB, 727 F.3d 552 (6th Cir. 2013), and Macy's, Inc., 361 NLRB No. 163 (2015), enf'd sub nom. Macy's, Inc. v. NLRB, 824 F.3d 557 (5th Cir. 2016), cert. denied sub nom. Macy's, Inc. v. NLRB, 137 S.

1 share supervision, and that the full-time custodian and the Highway Unit use the same
2 timeclock, but argues that other employment conditions shared by the two units apply
3 equally to a third group of employees, those in the Sewer Division, whom the Union
4 represents.[10]

5 The Town argues that the petition should be dismissed. Although the Town
6 agrees that the custodians share a community of interest amongst themselves, it
7 contends that the custodians also share a community of interest with the Highway Unit
8 and that the formation of another bargaining unit would impair the Town's efficiency of
9 operations and effective dealings. The Town further argues that the formation of a new
10 unit would impede the custodians' ability to negotiate effectively, and that public policy
11 demands larger, comprehensive bargaining units.

12 For reasons set forth below, we hold that the petitioned-for bargaining unit is an
13 appropriate bargaining unit because it satisfies all three of the statutory criteria.

14 **Community of Interest**

15 The three custodians have similar skills, duties, and working conditions. They
16 have a common supervisor, the Highway Division Superintendent. These factors weigh
17 heavily in favor of finding a community of interest. The difference in scheduled hours
18 between the full-time custodian and part-time custodians, which gives rise to disparate

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Ct. 2265 (2017). In those cases, the NLRB established a standard for employers that claim that a petitioned-for unit is underinclusive. If the petitioned-for unit is otherwise appropriate, the employer must demonstrate that the petitioned-for unit and the other employees in the employer's favored unit share an "overwhelming community of interest" in order for the NLRB to adopt the employer's larger unit. We do not consider the NLRB's approach in Specialty Healthcare or Macy's because M.G.L. c. 150E, §3 provides adequate guidance to address this petition.

[10] Because the parties failed to establish a sufficient factual record concerning the Sewer bargaining unit, we do not consider this contention.

1 compensation and benefits, does not undercut the strong community of interest shared
2 by the custodians. It is the CERB's well-established policy to include all regular part-
3 time employees in the same bargaining unit as full-time employees with whom they
4 share a community of interest. Town of Grafton, 28 MLC 399, 400, MCR-02-4942 (May
5 23, 2002). Thus, we concur with the parties that the three custodians share a
6 community of interest.

7 Although the Town agrees that the three custodians have a community of interest
8 amongst themselves, it urges us also to find a community of interest between the
9 petitioned-for custodians and the existing Highway Unit, because both groups perform
10 "manual labor or physical-type work," track their time in a similar way, are supervised by
11 the Highway Division Superintendent, occasionally work on the same projects, and
12 receive hourly wages, similar leave benefits, and identical health insurance plans.[11] We
13 agree that the petitioned-for custodians share some community of interest with the
14 petitioned-for unit based on those factors. We also note, however, that there are
15 significant differences between the Highway Unit employees and the custodians. The
16 full-time custodians earns a lower hourly wage than Highway Unit employees and the
17 custodians work mostly inside certain Town buildings while the Highway Department
18 work outside on Town roads. Further, except for the occasional, seasonal overlap of
19 snow plow duties, there is no job interchange, and the custodians are not required to
20 hold any specialized licenses or certifications.

[11] The Town does not contend, and we do not find, that the members of the Highway Unit and the custodians perform identical functions, such that creation of a separate unit would result in an inappropriate "dual-unit" situation. See, e.g., Town of Ipswich, 23 MLC 209, 210, MCR-4430 (March 27,1997).

1 Having determined that the custodians share a community of interest amongst
2 themselves, we proceed to consider the second and third criteria set out by M.G.L. c.
3 150E, §3 to determine the appropriateness of the petitioned-for bargaining unit.

4 **Efficient Operations and Effective Dealings**

5 There is nothing in the record to support the Town's contention that a three-
6 person bargaining unit of custodians would impede its efficient operations and effective
7 dealings. For the Highway Unit and the custodians, the Town already issues paychecks
8 using different pay scales, calculates vacation and sick leave using different accrual
9 measures, provides different holidays, and enforces different work schedules.

10 The Town provided no evidence that its practice of maintaining and tracking two
11 different sets of schedules, pay scales, and benefits for the two groups within the
12 Highway Division has harmed its operations. Consequently, the only factor for us to
13 consider with regard to the employer's efficient operations and effective dealings is the
14 one factor that will change should the custodians vote in favor of an exclusive
15 representative: the Town's duty to bargain with the custodians.

16 The Town offers no concrete evidence that its duty to bargain with an additional
17 bargaining unit would, on its own, impede the Town's efficient operations. See Peabody
18 School Committee, 27 MLC 7, 9, MCR-4757 (August 14, 2000). In Peabody School
19 Committee, the CERB held that "the mere fact that the Employer would have to bargain
20 with eight...bargaining units instead of seven...is insufficient to warrant a finding that the
21 creation of another bargaining unit would negatively impact the Employer's efficiency of
22 operation[s]". Id. But see Pittsfield School Committee, 3 MLC 1490, 1493, MCR-2172
23 (February 9, 1977)(holding that where employer already negotiated with eight

1 bargaining units comprised of over 1,000 employees, the creation of a ninth bargaining
2 unit of five employees would hinder the employer's "ability to negotiate contracts and
3 maintain efficiency of operations"). In Pittsfield School Committee, however, there was
4 no evidence that the petitioned-for employees shared a community of interest. Id. at
5 1493. Moreover, as discussed in the Public Policy section below, the petitioner in that
6 case alternatively sought to represent these employees in two of its existing units
7 through a self-determination election. Id. at 1490.

8 Here, the present petition is less likely to impede the operations of the Town than
9 the petition in Peabody School Committee, because the Union already represents two
10 Town bargaining units, and in Peabody School Committee, the petitioning union did not
11 represent any of the School Committee's existing bargaining units. 27 MLC at 7–8.
12 Consequently, should the custodians elect the Union as the exclusive representative,
13 the Town would negotiate with a labor organization with which it already bargains. We
14 therefore decline to find that, standing alone, the creation of one additional bargaining
15 unit, which would require the Town to negotiate with the same six unions with which it
16 already negotiates, will negatively impact the employer's efficient operations and
17 effective dealings. As discussed below in the Public Policy section, the cases upon
18 which the Town relies do not persuade us otherwise.

19 **Safeguarding Employee Rights to Effective Representation**

20 Consideration of the employees' rights to effective representation requires that
21 we find the full-time and part-time custodians to be an appropriate bargaining unit.
22 Because LIUNA is not a party to these proceedings, we are unable to modify the
23 existing Highway Department unit to include the custodians through this petition. Thus,

1 our options are either to determine that the three-person custodial bargaining unit is
2 appropriate, or to decline to find such a unit appropriate. Consequently, our failure to
3 find the three-person unit appropriate would preclude the custodians from having the
4 opportunity to vote on whether they wish to be represented for purposes of collective
5 bargaining.

6 Moreover, LIUNA has not shown any interest in representing the custodians.
7 Since 2012, when the Town ceased contracting out custodial services and reorganized
8 the DPW, LIUNA and the Town have negotiated two successor CBA's and there is
9 evidence that the Town or LIUNA have negotiated over including the custodians in the
10 Highway Department unit or modifying the existing recognition clause in any way. Nor
11 has LIUNA sought to represent the custodians by filing a representation petition for an
12 add-on election or a unit clarification petition seeking to accrete them into its unit.

13 Thus, where, as here, there is a community of interest between the custodians,
14 and there is no evidence that the employer's operations will be impeded by the creation
15 of an additional bargaining unit, the choice between a small bargaining unit and no
16 representation at all warrants the conclusion that the small unit will provide more
17 effective representation.

18 The Town points to Massachusetts Bay Transportation Authority, 6 MLC 1419,
19 CR-3532, et. seq. (August 31, 1979) (MBTA) to support its contention that appropriate
20 units must be of an effective size to negotiate with the employer. In MBTA, the CERB
21 considered the three statutory criteria of M.G.L. c. 150E, §3,[12] and determined that

[12] Our jurisdiction in MBTA arose under M.G.L. c. 150A, rather than M.G.L. c. 150E, the statute that governs the present petition. However, in MBTA, we determined that we should apply the statutory criteria for determining an appropriate bargaining unit set out

1 employees' rights to effective representation required that the MBTA foremen be placed
2 in a single bargaining unit, rather than four separate units corresponding to the four
3 rank-and-file bargaining units overseen by the foremen. The CERB reached this
4 conclusion because: (1) dividing the foremen into smaller groups would prevent them
5 from pooling the resources required to negotiate a contract; (2) given that the MBTA's
6 authorizing statute required arbitration of all employment disputes, smaller units might
7 be unable to pay the costs of such arbitrations; and (3) the prior bargaining unit
8 structure created inequity by permitting foremen to return to their former rank-and-file
9 bargaining units once they accrued enough seniority to earn overtime in those
10 bargaining units. 6 MLC at 1419, 1443–44 (1979).

11 Here, consistent with our decision in MBTA, we find that the three-person
12 bargaining unit will provide the employees with a greater ability to pool their resources
13 to negotiate a contract than if they were to have no representative at all. Indeed, we
14 have previously found a three-person bargaining unit to be appropriate, despite its size.
15 See, e.g., Peabody School Committee, 27 MLC at 7.

16 **Public Policy Considerations**

17 The Town argues that the DLR's policy is to prefer broad, comprehensive units
18 rather than small, fragmented units and offers four cases to support this claim: Mass
19 Board of Regents, 12 MLC 1643, SCR-2180 (March 4, 1986); Pittsfield School
20 Committee, 3 MLC 1490; University of Massachusetts, 3 MLC 1179, SCR-2079, 2082
21 (October 15, 1976); and City of Quincy, 3 MLC 1012, MCR-2345 (June 24, 1976). The

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in M.G.L. c. 150E, §3 because the MBTA was a public agency and its employees were public employees, so the public interest considerations of M.G.L. c. 150E, §3 attached. 6 MLC at 1437.

1 Town also cites four cases supporting its proposition that the CERB has favored larger
2 units, where there is a requisite showing of a community of interest: Town of Newbury,
3 14 MLC 1660, MCR-3669 (April 8, 1988); City of Worcester, 12 MLC 1342, MCR-3545
4 (October 30, 1985); Boston School Committee, 2 MLC 1557, MCR-2343 (June 11,
5 1976); and Town of Dartmouth, 1 MLC 1257, MCR-2012–2015, 2025, 2042–2043
6 (January 29, 1975).

7 With the exception of City of Quincy, however, none of the cases that the Town
8 cites address the public policy issues raised in the present case, where an employer
9 objects to a petitioned-for bargaining unit as underinclusive, but where the employer's
10 proposed bargaining unit includes employees represented by an exclusive
11 representative that is not a party to the case.[13] Instead, the CERB cases cited arise
12 either from a situation where the proposed larger unit is not represented, or where it is,
13 and the incumbent union timely intervenes in the case. As such, these cases do not
14 offer support for the proposition that the CERB should find the petitioned-for bargaining
15 unit inappropriate.

16 Ultimately, where LIUNA is not a party to these proceedings and has not
17 otherwise sought to include the custodians in its unit, the public policy interest of

[13] City of Quincy is the only case cited by the Town that addresses the issue at hand: whether we should refuse to find appropriate a small petitioned-for unit because the employer argues that a larger unit is more appropriate, but where employees in the larger unit are represented by a union that is not a party to the case. The Town cited only the Hearing Officer's decision in that case, which is not binding on the CERB. Although the CERB affirmed that decision, see 3 MLC 1233 (October 28, 1976), in so doing, it noted that the recognition clause of the larger union's collective bargaining agreement could be construed as including the petitioned-for employees and thus, the CERB indicated that it would entertain a clarification petition for the smaller unit. We note that the recognition clause of the Highway Unit neither expressly includes nor even describe the custodians.

1 ensuring effective representation for the three custodians outweighs any concern for
2 small, fragmented units. See City of Worcester, 12 MLC at 1345, n. 10 (noting that fact
3 that a union has disclaimed interest in seeking to add-on a group of unrepresented
4 employees is a factor that is sometimes considered in directing an election in an
5 unrepresented unit of similar employees). Consequently, we find that the petitioned-for
6 bargaining unit is an appropriate bargaining unit within the meaning of Section 3 of the
7 Law.

8 Conclusion

9 For the reasons noted above, we conclude that the unit appropriate for the
10 purpose of collective bargaining consists of all full-time and regular part-time custodians
11 employed by the Town of Auburn, excluding all other employees.

12 DIRECTION OF ELECTION

13 Based on the record, we conclude that a question of representation has arisen
14 concerning certain employees of the Town of Auburn. The unit appropriate for the
15 purpose of collective bargaining consists of the full-time and regular part-time
16 custodians, and excludes all other employees.

17 IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted to
18 determine whether a majority of the custodians desire to be represented by Teamsters
19 Local 170, or whether they wish to be represented by no employee organization. The
20 eligible voters shall include all custodians whose names appear on the Town's payroll
21 for the payroll period for the week ending the Saturday preceding the date of this
22 decision and who have not since quit or been discharged for cause. To ensure that all
23 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 with the Executive Secretary of the DLR, 19 Staniford Street, 1st Floor, Boston, MA 02114 no later than fourteen (14) days from the date of the decision.

The Executive Secretary shall make the list available to all parties to the election. Failure to submit this 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.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

Marjorie F. Wittner

MARJORIE F. WITTNER, CHAIR

KATHERINE G. LEV, BOARD MEMBER

Joan Ackerstein

JOAN ACKERSTEIN, BOARD MEMBER