

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

In the Matter of:

TOWN OF BRAINTREE

NEW ENGLAND POLICE BENEVOLENT
ASSOCIATION

and

AFSCME COUNCIL 93, AFL-CIO

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Case No. MCR-19-7086
Date Issued: July 19, 2019

CERB Members Participating:

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

Appearances:

Nicole I. Taub, Esq.	-	Representing the Town of Braintree
Thomas E. Horgan, Esq.	-	Representing New England Police Benevolent Association
Ashley Peel, Esq.	-	Representing AFSCME, Council 93

DECISION

1 SUMMARY AND STATEMENT OF THE CASE

2 On January 1, 2019, the New England Police Benevolent Association (NEPBA)
3 filed a petition with the Department of Labor Relations (DLR) seeking to represent a
4 bargaining unit of "all full-time and regular part-time Civilian Dispatchers in the police
5 department and the Animal Control Officer" employed by the Town of Braintree (Town
6 or Employer). The petition indicated that these employees were already represented for

1 purposes of collective bargaining by AFSCME Council 93 (AFSCME). On January 31,
2 2019, AFSCME filed a motion to intervene in the case and the DLR allowed the motion.

3 On April 4, 2019, a duly-designated DLR hearing officer (Hearing Officer)
4 conducted a hearing at which all parties had the opportunity to be heard, to examine
5 witnesses and to introduce evidence regarding two main issues: 1) whether AFSCME
6 represents the Civilian Dispatchers in a stand-alone bargaining unit or as part of a
7 larger, merged bargaining unit that includes three other groups of employees; and 2) if
8 the Civilian Dispatchers were not a stand-alone unit, whether severing them was
9 appropriate under the severance standard traditionally applied by the Commonwealth
10 Employment Relations Board (CERB).

11 Based on the facts and reasons set forth below, the CERB dismisses the petition
12 based on its conclusion that AFSCME represents a single bargaining unit that includes
13 Civilian Dispatchers and other Town employees, and that the NEPBA has failed to
14 establish the second prong of the severance standard.

15 STIPULATIONS OF FACT

- 16 1. The Town is a public employer within the meaning of Section 1 of the Law.
17
18 2. The Petitioner, the New England Police Benevolent Association, is an employee
19 organization within the meaning of Section 1 of the Law.
20
3. The incumbent, AFSCME Council 93, is an employee organization within the
meaning of Section 1 of the Law and is the certified and recognized exclusive
representative for various members within a non-professional unit within the
Town of Braintree.

FINDINGS OF FACTAFSCME Bargaining Unit History

AFSCME, Local 1395 is one of thirteen unions with whom the Town negotiates. Other unions include the Braintree Police Officers Association (BPOA), the Braintree Police Superior Officers Association (BPSOA), and the Braintree Professional Management Association (BPMA).

AFSCME first filed a petition with the DLR¹ seeking to represent certain Town employees in 1970 in Case No. MCR-730. After hearing, the CERB ruled that the following four units were appropriate for collective bargaining:

- Unit A – Clerical Administrative Unit;
- Unit B – Engineering Department Unit;
- Unit C: Health Inspectors Unit; and
- Unit D: Thayer Library Employees Unit.

After conducting separate elections in each of those units, on August 18, 1970, the DLR certified AFSCME as the exclusive representative of all four units.

In 1975, an individual filed a petition seeking to decertify AFSCME as the exclusive representative of the clerical unit, Unit A. In a Decision and Order issued on November 14, 1975 in Case No. MCR-2526, the CERB found that Unit A remained an appropriate unit for bargaining, and that no question of representation had been raised in the other three units. It thus ordered a decertification election in Unit A only. AFSCME prevailed and has continued to represent the Town's clerical employees since then.

¹ References to the DLR and the CERB include references to the former Labor Relations Commission.

1 In 1978, the Braintree Library Staff Association, H.L.P.E. (BLSA) filed a petition in
2 Case No. MCR-2659 seeking to represent a bargaining unit of all full-time and regular
3 part-time Library employees whom AFSCME represented in "Unit C."² In a decision
4 published at 5 MLC 1133, MCR-2659 (July 6, 1978), the CERB addressed AFSCME's
5 contention that the petition should be dismissed because Unit C was not a stand-alone
6 unit but part of a larger unit comprised of Units A, B and C³ for whom it negotiated a
7 single collective bargaining agreement (CBA). The CERB rejected this argument based
8 upon "the clear delineation in the contract of three separate units and the absence of
9 evidence of bargaining history tending to show that the Employer and the incumbent
10 have agreed to merge the three units into one." Id. at 1135.⁴ After a secret ballot
11 election, the CERB certified the BLSA as the exclusive representative of all full-time and
12 regular part-time Library employees. AFSCME has not represented a separate unit of
13 Library employees since that date.

14 Unit Description and Composition Between 2005 and 2010

15 AFSCME and the Town have entered into a series of CBAs since 1978. At
16 hearing, the parties jointly submitted copies of their 2005-2008, 2010-2013, 2013-2016

² There is no information in the record as to when or why the library unit became Unit C.

³ For reasons unexplained in either decision, by 1975, there was no longer a separate Health Inspectors unit. The more recent CBAs do not list "Health Inspector" in their list of job titles covered by the CBA.

⁴ The CERB also rejected the BLSA's efforts to expand the existing Library unit by including a clerk currently included in Unit A, and the custodians included in a public works unit. 5 MLC at 1136.

1 and 2016-2019 CBAs. The title pages of all four CBAs state that it is the "Agreement"
2 for the "Highway, Park, Cemetery, Clerical and Engineering Units."

3 The 2005-2008 CBA was negotiated before the Town hired Civilian Dispatchers.
4 Article I, the recognition clause, states in pertinent part:

5 Recognition

6 A. Composition of the Unit
7

8 The bargaining unit shall consist of all full-time employees of the
9 Highway, Cemetery and Park Departments and the custodians(s) in the
10 Library, Town Hall and the Police Department, except the following
11 employees: the Highway, Cemetery and Park Department
12 Superintendents, the Assistant Superintendent, Highway, the General
13 Supervisor for Grounds and Maintenance and the Greenskeeper.
14 [hereinafter "DPW" or "Highway and Grounds" employees].
15

16 All full-time employees in office, clerical or administrative positions
17 and part-time employees who regularly work twenty (20) hours or more
18 per week. Excluded are executive, professional and casual employees, all
19 elected officials, all department heads, executive secretary/administrator
20 to the Board of Selectmen, appraiser for the Board of Assessors, two (2)
21 secretaries to the Board of Selectmen, secretary of Legal Department,
22 secretary of Personnel Department and secretary of Police Department.
23 [hereinafter "Clerical" employees].
24

25 All full-time employees of the Engineering Department and part-
26 time employees working regularly twenty (20) hours or more per week.
27 This unit shall also include engineers in the Sewer Department and the
28 Animal Control Officer. Excluded are executive, professional, casual or
29 temporary employees, the Town Engineer, Assistant Town Engineer, and
30 part-time employees working less than twenty (20) hours per week.
31 [hereinafter "Engineers"].
32

33 B. New Positions Added
34

35 Should any new position be added to the Town after the effective
36 date of this Agreement, the Town shall determine whether said position is
37 included or not included within the above-mentioned bargaining unit and
38 shall notify the President of the [U]nion of its decision within five (5) days.
39 If the Union disagrees with the decision of the Town, it may appeal the
40 decision within ten (10) days of receipt of same to the Massachusetts

1 Labor Relations Commission with a request that the Commission make a
2 determination on this matter in accordance with its rules.

3
4 C. Definitions

5
6 * * *

7 Department: The term "department" as used in this Agreement shall mean
8 such organizational unit or units as defined in the Recognition Clause or
9 that may be established from time to time by the town or its agents.

10 * * *

11 Employee: The term "employee" as used in this Agreement shall mean
12 any employee of the bargaining unit.

13
14 Appendix A-1

15 Appendix A-1 of the 2005-2008 CBA contained a list of "Job Titles and
16 Classifications." There are two classifications: "S," ranging from S1 to S20, and "W,"
17 ranging from W1 - W7. The job titles listed in the S classification included a variety of
18 engineering and clerical job titles including Principal Clerk (S5), Senior Engineering Aide
19 (S14) and Civil Engineer (S20). Although no Civilian Dispatchers were hired until 2010,
20 the job title "Civilian Dispatcher/Police" was included in the list as the sole title in the S4
21 Classification.⁵

22 The W classification included the job titles of laborer, custodian, foreman, and
23 mechanic and an "Assistant Animal Control Officer," classified as W1, along with the
24 titles of Laborer and Junior Building Custodian. No Animal Control Officer was listed.

⁵ The final page of the 2005-2008 CBA that was submitted as a joint exhibit is a "revised" list of classifications dated October 26, 1998. That list also included "Civilian Dispatchers/Police" in the S4 classification.

1 The record contains no bargaining history as to when the Civilian Dispatchers or
2 the Animal Control Officer (ACO) at issue in this proceeding were initially included in
3 Appendix A-1 or why.⁶

4 Unit Description and Composition after 2010

5 Civilian Dispatchers, Generally

6 The Town first hired Civilian Dispatchers in 2010. Prior to that, the Town's
7 police officers performed dispatch work. Because the job title of Civilian Dispatchers
8 was already included in Appendix A-1 of the CBA, the Town believed that AFSCME
9 already represented them and did not negotiate with AFSCME about its decision to use
10 civilians to perform dispatch duties instead of sworn personnel. The only union that the
11 Town bargained with over this decision was the police union whose members had been
12 performing these duties. After those negotiations concluded, the Town bargained with
13 AFSCME over the new Civilian Dispatcher job description.

14 As of the date of the hearing, the Town employed nine Civilian Dispatchers, all of
15 whom are represented by AFSCME. They work under the immediate direction of the
16 Shift Commander, who is a uniformed officer, typically a lieutenant. Requisite
17 qualifications include high school graduation; E911 certification from the Statewide
18 Emergency Telecommunications Board; Healthcare Provider Certification from the
19 American Heart Association; and passing the Dispatcher Selection test. Civilian
20 Dispatchers are not required to have any police training. They wear a uniform consisting
21 of khaki pants and a polo shirt with a Police Department patch.

⁶ The 2005-2008 CBA was the earliest CBA that the parties provided.

1 The Civilian Dispatchers work inside the Communications Center that is located
2 inside the Town's police station. They work alongside other uniformed police officers, a
3 station officer and a lieutenant. Although no other AFSCME bargaining unit members
4 work inside the Communications Center, Civilian Dispatchers come into contact almost
5 daily with the ACO. They also have regular contact with AFSCME members in the
6 DPW and with the AFSCME clericals who work in the Police Department's Records
7 Department.

8 The Communications Center is always in operation, and the Civilian Dispatchers
9 work three shifts: 6:15 a.m. to 2:15 p.m., 2:15 p.m. to 10:15 p.m. and 10:15 pm to 6:15
10 a.m. There are two Civilian Dispatchers on duty per shift. All Civilian Dispatchers work
11 a "4-2" schedule, i.e., four days on and two days off. They are the only civilian Town
12 employees with this schedule. They have regular opportunities to work overtime and
13 can also be directed to extend their shift up to a maximum of eight hours. The
14 dispatchers maintain their own overtime list.

15 According to job descriptions that AFSCME that approved in 2010 and 2014,⁷
16 Civilian Dispatchers:

17 [R]eceive all oral communications from the public and public safety
18 personnel coming into the Braintree Police Station. By following
19 established policies and procedures, he/she dispatches appropriate
20 personnel and resources when requested for service.
21

22 Their specific duties include answering emergency and non-emergency
23 telephone calls for assistance from the public and directing them to the appropriate

⁷ The job descriptions were identical except for the pay classification, which was S8 in the 2010 job description and S10 in the 2014 job description.

1 agency or agencies as required; monitoring all equipment; keeping a computerized daily
2 log for all incidents along with Station Officers; and monitoring cameras inside the
3 Communications Center that show the cell block, high school and other areas around
4 Town.

5 Civilian Dispatchers work with several different computer systems, software,
6 equipment and databases, including Computer-Aided Dispatch (CAD); E911, Coplink,
7 which is a police data search software program, and the Criminal Justice Information
8 System (CJIS). The training and duties associated with these systems, particularly
9 CAD, have increased over the past few years. Civilian Dispatchers must complete
10 sixteen hours of mandatory training annually.

11 The Town employs no other Civilian Dispatchers, and no other collective
12 bargaining agreement with the Town contains any reference to them.⁸

13 Animal Control Officer

14 The Town has employed an ACO since at least 1987. David Littlewood
15 (Littlewood) has been employed as the Town's ACO since November 1999 and has
16 been a part of AFSCME's bargaining unit since then.

17 A 2016 job description describes the nature of the ACO's work as:

18 Investigative and enforcement work in performing the duties of Dog
19 Officer, Animal Inspector and Dead Animal Officer in compliance with
20 controlling statutes, bylaws and rules and regulations; related work as
21 required.
22

⁸ Around 2014/2015, the Town spoke with the Civilian Dispatchers about creating civilian fire dispatch positions, but this did not come to fruition because the Town's negotiations with the Fire Department did not result in an agreement.

1 The ACO handles all animal-related calls, including animal bite reports,
2 unlicensed dogs, and stray animals. The required qualifications are: high school
3 graduation supplemented by courses in animal husbandry, veterinary science or a
4 related field; and three years of experience in the handling and care of animals or an
5 equivalent combination. The ACO is also required to attend, complete and pass the
6 State mandated Animal Control Academy; attend Animal Control in-service training
7 courses and seminars; and complete firearms qualifications on a yearly basis. The
8 ACO carries a firearm. The ACO is not a Civil Service position, but the person holding it
9 can choose to be a Special Police Officer. Littlewood is a Special Police Officer and
10 has completed an intermittent reserve academy, which is separate from the training he
11 must complete as the ACO.

12 Littlewood works in an office that is located next to the Department of Public
13 Works (DPW) building and across the street from the Police Department. He reports to
14 Karen MacAleese (MacAleese), who is the Deputy Chief of Administration in the Police
15 Department. MacAleese reports to the Police Chief. Littlewood works five days a week
16 from 9:00 a.m. to 5:00 p.m., with Wednesdays and Sundays off. He has occasional
17 overtime opportunities.

18 Littlewood has regular contact with the Civilian Dispatchers, but little or no
19 contact with the Engineers in AFSCME's bargaining unit. He has never been involved
20 with AFSCME negotiations.

21 Other Civilian Titles in Police Department

22 AFSCME also represents a few clericals who work in the Police Department,
23 including records clerks and the S6 Principal Clerk Police, which is listed in Appendix A-

1 1 of the 2016-2019 CBA. The 2011 Principal Clerk Police job description describes its
2 function as "Clerical and typing/computer work requiring technical knowledge of the
3 operations of the department or office, typing skills, record keeping skills and a high
4 school diploma." This title works under the general supervision of the
5 Supervisor/Department head.

6 The Town also employs a "Police Budget and Administration Manager" who is
7 part of the BPMA's bargaining unit. That position is described on a 2015 job description
8 as a "professional position . . . reporting directly to the Chief of Police, undertaking
9 budgetary and administrative duties." This position also provides training and work
10 assignments to civilian personnel. It requires a bachelor's degree in Business
11 Administration or a related field.

12 Engineering Job Titles

13 There are two Engineering job titles listed in Appendix A-1 of the 2010-2013,
14 2013-2016 and 2016-2019 CBAs: an S14 Senior Engineering Aide and an S17 Junior
15 Civil Engineer.⁹ A 2013 job description for the Senior Engineering Aide describes this
16 position as performing "[v]aried administrative and technical work in the Engineering
17 Division at the sub-professional level in connection with the location and planning of
18 engineering projects."¹⁰ This title reports to the Town Engineer or his or her designee,
19 assisting in the preparation of plans for construction projects, performing inspection
20 work on construction projects, and occasional' drafting. The required qualifications

⁹ In FY 19, the annual salary range for an S14 was \$49,218 to \$55,809. The S17 range was \$54,444 to \$61,737.

¹⁰ The parties did not provide a job description for the Junior Civil Engineer job title.

1 include skill in the use of engineering instruments, ability to perform precise survey
2 work, and two years of college in the Civil Engineering field, plus two years of relevant
3 experience.

4 Mandatory Training

5 In addition to the Civilian Dispatchers and the ACO, AFSCME plumbers and
6 electricians are required to undergo mandatory annual training.

7 Collective Bargaining Generally

8 AFSCME's bargaining team is generally comprised of the AFSCME Chapter
9 Chair and one or two employee representatives, usually a shop steward, from each of
10 the groups of employees set forth in the Recognition Clause. Before negotiating with the
11 Town, AFSCME's negotiating committee meets with the employees to solicit
12 suggestions for bargaining proposals.

13 Each of the four groups listed in the CBA's recognition clause except the
14 Engineers separately elect their own shop steward. If the Engineers need assistance,
15 they go to the Clerical shop steward.

16 Most, but not all, of the provisions in the three CBAs apply to all the employees
17 covered by the CBA. Common provisions in the 2016-2019 CBA include Article II,
18 "Relationship Between the Town and the Union;"¹¹ Article III, the management rights
19 clause; Article VII, Vacations (with one exception for Vacation Pay averaging for the
20 "Highway Division"); Article VIII, "Authorized Leaves with Pay;" and Article IX, "Union-

¹¹ This article includes a subsection on "Fair Practices," which states among other things that, "The Union shall represent equally all persons in the collective bargaining unit without regard to membership or participation in the activities of the Union."

1 Management Committees;" comprised of eight members, four from the Union and four
2 from the Employer; Article X, Grievance Procedure; Article XII, Classification and
3 Reclassification; Article XIII, Longevity; Article XVIII, Health and Welfare; and Article
4 XXV, Wage Increases.

5 The CBA also contains provisions that are exclusive to different groups of
6 employees. In addition to the provisions that are exclusive to Civilian Dispatchers,
7 discussed below, some of the provisions that are exclusive to other job titles include
8 Article IV, "Hours of Work," setting out the different schedules from employees for the
9 Highway and Grounds, Engineering, Town Hall and Golf Course "Divisions;"¹² Article IV
10 (C), Meal Periods (granting half-hour lunch period to the "Highway and Grounds
11 Division," and one hour to "Custodians, Town Hall and Engineering Divisions"); Article
12 XI, "Safety and Clothing," discussing the different uniform requirements for "the Labor
13 Force," (defined as those employees with a "W" classification in Appendix A-1 as well as
14 the Civilian Dispatchers and Engineers).

15 Composition and Description of Unit and Proposals and Provisions Relating to the
16 Civilian Dispatchers and ACO Since 2010

17 2010-2013 Negotiations

18 There were no Civilian Dispatchers on AFSCME's bargaining team during
19 negotiations for the 2010-2013 CBA because those negotiations took place before any
20 Civilian Dispatchers were hired. Civilian Dispatchers were nevertheless referenced in

¹² Article IV (A) of the 2016-2019 CBA, lists the regular schedule of the four Divisions as follows: Highway and Ground - 7 a.m. to 3 p.m. with a 20-minute working lunch; Engineering - 8 a.m. to 4:30 p.m.; Town Hall - 8:30 a.m. to 4:30 p.m. and the Golf Course - 7 a.m. to 3 p.m. seasonally.

three places in the CBA – in the Recognition Clause, set forth below, in Appendix A-1, where their pay classification increased from S4 – S8,¹³ and in Article XI(A)(2), the clothing allowance provision described above.

The ACO was classified as a W3. There was no longer an “Assistant Animal Control Officer” title.

Unit Description

The recognition clause of the 2010-2013 CBA stated in pertinent part:

Recognition

A. Composition of the Unit

The bargaining unit shall consist of:

1. [A]ll full-time employees of the Highway and Grounds Division (which includes Cemetery) and the custodians(s) in the Library, Town Hall, and the Police Department . . .
2. All full-time employees in office, clerical or administrative positions and part-time employees who regularly work twenty (20) hours or more per week . . .
3. All full-time employees of the Engineering Division and part-time employees working regularly twenty (20) hours or more per week. This unit shall also include engineers in the Sewer Division and the Animal Control Officer . . .
4. All full-time Civilian Dispatchers within the Police Department.

The language in Part B, “New Positions added” was unchanged from the 2005-2008 CBA.

¹³ The other titles classified as S8's at that time were: Principal Cash Clerk/Treasurer Collector; Principal Cash Clerk/Water & Sewer; Outreach Coordinator/DEA, Scheduling Coordinator/Building, Administrative Secretary/Health.

Part C, "Definitions," contained a few changes. The definition of "Department" was changed to state:

The term "department" as used in this Agreement shall mean departments as established under the Town's Charter, namely the Department of Public Works, Department of Municipal Finance, Department of Human Resources, Department of Planning and Community Development and Department of Municipal Licenses and Inspections.

A new definition for "Division" was added:

The term "division" . . . shall mean such organizational unit or units as defined in the Recognition Clause or that may be established from time to time by the Town or its agents.

The definition of "Seniority" was modified slightly. In the 2005-2008 CBA, it was defined as an "employee's length of continuous full-time service in the employ of the Town, unless otherwise specified." In the 2010-2013 CBA, it was defined as the length of continuous service "in a position *covered by the AFSCME bargaining unit.*"

2013-2016 CBA Negotiations

There were two Civilian Dispatchers on AFSCME's team during these negotiations: Nicholas Canelli (Canelli), who was then the Civilian Dispatcher shop steward and Gloria Holstein (Holstein), another Civilian Dispatcher, who replaced Canelli as Civilian Dispatcher steward around 2016. Before negotiations began, Canelli and Holstein met separately with AFSCME Staff Representative Michael Downey (Downey) to discuss Civilian Dispatchers' issues.¹⁴

¹⁴ Representatives from the DPW group were present during the first session, but they stopped participating because they did not know much about what the Civilian Dispatchers did.

1 During actual negotiations, the Town's bargaining team met separately with
2 Holstein and Canelli and Downey on a few occasions to discuss the proposals that were
3 specific to the Civilian Dispatchers. These negotiations resulted in the addition of a
4 Dispatch Unit differential in Article IV (H), which provided for a \$1.50/hour increase to
5 the regular rate of pay for dispatchers working the 2 p.m. - 10 p.m. and the 10 p.m. to 6
6 a.m. shift, and holiday pay for dispatchers on Christmas Eve and New Year's Eve.

7 As reflected in Appendix A-1, Civilian Dispatchers also received a step increase
8 from S8 to S10. They were now the only job title in the S10 classification. The ACO
9 remained in the W3 classification.

10 Recognition Clause

11 The recognition clause of 2013-2016 CBA was identical to the 2010-2013 CBA
12 with two exceptions. The first sentence of Part A, which stated that, "The bargaining
13 unit shall consist of" was moved to the beginning of the first sentence of the first
14 numbered paragraph, instead of standing alone i.e., "1) The bargaining unit shall consist
15 of all full-time employees of the Highway and Grounds Division . . ."

16 In Part C, the following two sentences were added to the end of the definition of
17 "Seniority:"

18 Effective July 1, 2013, in the event that two employees are hired into the
19 bargaining unit on the same day, their seniority shall be ordered
20 alphabetically by last name. The seniority list shall be adjusted for
21 dispatchers only to reflect this agreement..."

22 At hearing, AFSCME witnesses confirmed that seniority is calculated separately within
23 each of the Engineering, Clerical, Highway and Grounds and Civilian Dispatchers
24 divisions.

1 2016-2019 Negotiations

2 Dispatchers

3 Canelli also sat on AFSCME's bargaining team during this round of negotiations.
4 He was the only Civilian Dispatcher on the team. Before negotiations began, Canelli
5 attended at least six preliminary meetings with AFSCME representatives and
6 representatives from the other groups. Canelli made three proposals on behalf of the
7 Civilian Dispatchers, which AFSCME incorporated into its list of thirty proposals that it
8 submitted to the Town on May 12, 2016. Canelli proposed increasing the Civilian
9 Dispatchers' shift differential from \$1.50 to \$2.50 an hour; conforming the CBA's jury
10 duty provision for Civilian Dispatchers who worked the second and third shifts to
11 Massachusetts law; and receiving four hours of compensatory time for all holidays
12 worked. The Town agreed to the jury duty proposal but made it applicable to all eligible
13 employees. It rejected the other two proposals, but agreed to give a \$1.50 shift
14 differential to any employee who was required to work outside of their normal shift.

15 In April 2018, Wayne Chiasson (Chiasson) started working as the AFSCME Staff
16 representative to Braintree. Around November/December 2018, Chiasson held two
17 meetings with the Civilian Dispatchers, including Canelli and Holstein, to discuss their
18 concerns and how to represent them going forward. Chiasson followed up with a
19 meeting with Holstein to discuss Civilian Dispatcher concerns going forward so that he
20 could make proposals on their behalf during the next round of bargaining with the Town.

21 Animal Control Officer

22 As noted above, in the 2010-2013 and 2013-2016 CBAs, the ACO was classified
23 as W3, along with the titles Senior Building Custodian, Heavy Motor Equipment

1 Operator and Gatekeeper/Compost Site. Sometime in 2016, Littlewood reached out to
2 Canelli and Holstein, and separately to Human Resources Director Karen Shanley
3 (Shanley) to ask for a reclassification. Item 25 on AFSCME's May 2016 proposals was a
4 request to reclassify the ACO from a W3 to W7. The Town agreed to the proposal. The
5 annual salary for a W7 in FY19 ranged from \$52,644.80 to \$58,260.80.¹⁵ Other W7
6 titles include Working Foreman, Master Mechanic, and Special Heavy Motor Equipment
7 Operator/Welder.

8 Littlewood has never filed a grievance, and his reclassification request marked
9 the only time that he had ever contacted anyone in AFSCME for any reason.

10 OPINION¹⁶

11 Unit Composition

12 We first address the question of whether AFSCME represents the Civilian
13 Dispatchers in a separate unit or as part of a large, diverse unit comprised of Clerical,
14 Engineering and DPW employees. As it did when faced with a rival union's petition to
15 represent its Library unit over forty years ago, AFSCME argues that it represents a
16 single unit comprised of different groups. NEPBA disagrees. Relying on Geriatric
17 Authority of Holyoke and Elinor Ranck (Holyoke), 15 MLC 1139, MCR-3711 (September
18 1, 1988), NEPBA argues that since 2010, the recognition clause in AFSCME's CBA has
19 designated the Civilian Dispatchers as "Unit 4" and establishes a clear intent of the

¹⁵ The 2010-2013, 2013-2016 and 2016-2019 CBAs contain no reference to an Assistant Animal Control Officer. The record does not reflect whether, when or why the job title was eliminated.

¹⁶ The CERB's jurisdiction is not contested

1 parties to recognize the Civilian Dispatchers in their own independent unit that was
2 never merged into a larger unit.¹⁷

3 We agree with AFSCME for several reasons. First, the Law permits employers
4 and unions to structure bargaining units in a manner that is mutually beneficial, City of
5 Quincy, 26 MLC 190, MUP-9928 (April 3, 2000) and thus, the initial certifications do not
6 prevent the Union and the Town from agreeing to merge some or all of these units.
7 Here, nearly fifty years have passed since the DLR first certified AFSCME as the
8 exclusive representative of four separate units, and the job titles that AFSCME
9 represents have changed significantly since that time. Although the DLR determined
10 that the severance of Library employees as a separate unit was appropriate in 1978,
11 even then, just eight years after the initial certification, the Health Inspectors no longer
12 existed. As evidenced by the 2005-2008 CBA, further key changes took place over the
13 next thirty years, including that AFSCME began representing most of the employees in
14 the Highway, Cemetery and Park Departments and the custodians in the Library, Town
15 Hall and Police Department.

16 Second, unlike the original certification, since at least 2005, the recognition
17 clause of the CBA does not list separate numbered units of Clerical, Engineering and
18 Highway Department, i.e., Unit 1, Unit 2, etc. Indeed, in in most places in the CBA,
19 including the Recognition Clause and the Fair Practices Clause, it refers to a single
20 “bargaining unit” of employees. In the few places in the CBA that do reference multiple
21 units, such as the CBA’s title page, Part C of the Recognition Clause, defining

¹⁷ From the outset of this proceeding, the Town has remained neutral on the merits of the petition.

1 "Department" in the 2005-2008 CBA, and "Division" in subsequent CBAs, clarifies that
2 this is a reference to an organizational unit or unit "as defined in the Recognition
3 Clause."

4 Third, even though shop stewards are elected separately by the DPW, Clericals
5 and Civilian Dispatchers, the facts show that the Engineers are served by the Clericals'
6 shop steward, and that Littlewood went to see Canelli and Holstein when seeking his
7 pay reclassification. The flexibility of the structure is consistent with a merged unit of
8 separate classifications, and not separate bargaining units of employees.

9 Finally, since at least 2005 (and possibly as early as 1998, see note 5 above),
10 the Civilian Dispatchers have been listed as a job title in AFSCME's unit. And, once
11 hired, Civilian Dispatchers have been members of AFSCME's bargaining team. In this
12 respect therefore, the facts in this matter are analogous to those in City of Worcester,
13 36 MLC 151, MCR-09-5360 (April 5, 2010), where the CERB found that a once-
14 separate unit of police dispatchers had merged into a larger unit.

15 In City of Worcester, the NEPBA sought to sever a unit of police dispatchers from
16 a larger bargaining unit of City employees represented by NAGE. The CERB first
17 addressed NAGE's argument that the existing unit was inappropriate because the
18 dispatchers did not share a community of interest with the rest of NAGE's unit. The
19 CERB rejected this argument, pointing out that the CERB consistently favors broad
20 comprehensive units over small, fragmented one and has previously declined to sever
21 employees who perform dispatching functions out of large, diverse units. Id. at 154
22 (citing City of Boston, 25 MLC 105, MCR-4537 (January 22, 1999); City of Lynn, 23
23 MLC 151, MCR-4436 (December 30, 1996)). The same analysis applies here.

1 Next, in determining that the police dispatchers had merged into NAGE's City-
2 wide unit, the CERB relied on several factors common to this case, including that the
3 pertinent CBA recognized the job classification of dispatcher and senior dispatcher as
4 part of the unit that NAGE represented, that prior contractual language differentiating
5 employee groups as Units I, II or III no longer existed, and the remaining contractual
6 references to "Units I, II and III" were based upon the organizational structure of City
7 departments. City of Worcester, 36 MLC at 154. The Worcester decision also relied on
8 the fact that there was a single negotiating team that included dispatchers and a single
9 collective bargaining agreement that included provisions pertaining only to dispatchers.
10 Id.

11 The Holyoke decision cited by NEPBA does not dictate a different result. In that
12 case, the CERB considered the appropriateness of a decertification petition for a unit of
13 licensed practical nurses (LPNs). 15 MLC at 1139. Eight years before the decertification
14 petition was filed, the incumbent had filed a petition with the DLR seeking certification of
15 three stipulated units, one of which included the LPNs. Id. at 1140. While the petition
16 was pending at the DLR, the incumbent and the employer arranged for a private
17 election in all three units. The incumbent won the elections. Id. When the
18 decertification petition was filed, the incumbent argued to the DLR that the three units
19 had since merged into a single unit and thus, the petition should be dismissed because
20 it did not seek the entire unit. Id. at 1141. Overturning the Hearing Officer's contrary
21 conclusion, the CERB disagreed. Based on the recognition clause of the incumbent's
22 most recent CBA with Holyoke, which described the three units in terms that were
23 "virtually identical to the units to those they had stipulated to before the [DLR]" Id. at

1 1140, and the lack of any other evidence demonstrating an agreement to merge, the
2 CERB concluded that the parties intended to preserve the tripartite unit structure and
3 ordered an election in the LPN unit only. Id. at 1141-1145.

4 Here, by contrast, the post-2005 recognition clauses do not perpetuate the four
5 separate units described in the 1970 certification. Indeed, the Civilian Dispatchers did
6 not even exist at the time of the original certification, and, thus, unlike in Holyoke, or
7 even the earlier Braintree decisions, the CERB has never separately certified, or even
8 entertained a petition that seeks certification of the Civilian Dispatchers in a separate
9 unit.

10 Moreover, in deciding Holyoke, the CERB found that there was a “significant”
11 distinction between petitions for new or changed representation versus petitions for
12 decertification. Id. at 1142. The CERB explained that petitions for new or changed
13 representation “implicate the full panoply of statutory purposes and policies which
14 govern the establishment of bargaining units and the designation of exclusive
15 representatives,” e.g., the appropriateness of the unit and bargaining history, whereas in
16 a decertification petition, it would “more narrowly focus on the scope and composition of
17 the existing certified or recognized unit.” Id.

18 For all these reasons, neither Holyoke nor the earlier Braintree decisions control
19 the outcome of this matter. Rather, based on the factors articulated in Worcester,
20 including the language of the recognition clause and bargaining history, we find that
21 AFSCME and the Town agreed to recognize the Civilian Dispatchers as members of a
22 single merged bargaining unit. We therefore view this petition as a severance petition

1 and consider whether severance is appropriate under the CERB's traditional severance
2 standard.

3 Severance Standard

4 The CERB does not favor severance petitions and has declined to use them to
5 fix imperfectly constructed bargaining units. City of Fall River, 26 MLC 13, 17, MCR-
6 4693 (July 15, 1999). To sever a group of employees from an existing bargaining unit,
7 the NEPBA must demonstrate that the petitioned-for employees constitute a functionally
8 distinct appropriate unit with special interests sufficient distinguishable from those of
9 other unit employees, and that special negotiating concerns resulting from those
10 differences have caused or are likely to cause conflicts and divisions within the
11 bargaining unit. Absent evidence of serious divisions and conflicts within the bargaining
12 unit, the CERB has consistently applied this standard in deciding to maintain historical
13 bargaining unit structures. Id.

14 The NEPBA argues that the job titles in the petitioned-for unit are functionally
15 distinct based on their unique duties, training and hours and because both job titles
16 report to uniformed personnel within the Police Department. The NEPBA also
17 emphasizes that the Civilian Dispatchers' job duties and responsibilities have increased
18 since 2011.

19 AFSCME disagrees, pointing out that most employees within Local 1385,
20 including, notably, the Civilian Dispatchers and the ACO, work different hours and are
21 scheduled to work on different days of the week, including weekends. It also points out
22 that, unlike in Town of Marblehead, 27 MLC 142, MCR-4799 (May 11, 2001), a
23 severance petition where the CERB found that the E-911 dispatchers constituted a

1 functionally distinct group based on their duties, location, unique training, and lack of
2 contact with other bargaining unit members, the Civilian Dispatchers interact with other
3 bargaining unit members and do not work in an isolated or unique work location.

4 Although we agree with the NEPBA that the Civilian Dispatchers and the ACO
5 have unique skills, duties, training requirements and schedules, the facts reflect that the
6 same can be said of other titles in the unit. Moreover, we agree with AFSCME that
7 including the Civilian Dispatchers in a unit with the ACO would itself result in a unit
8 comprised of employees with different duties and schedules. Similarly, although both
9 the Civilian Dispatchers and the ACO report to uniformed personnel in the Police
10 Department, the record shows that other AFSCME employees also work in the Police
11 Department and report either directly or indirectly to uniformed personnel. As the CERB
12 has previously stated, "a group cannot be functionally distinct if other employees outside
13 of the petitioned-for unit share the very qualities that purportedly make them distinct."¹⁸
14 Town of Barnstable, 28 MLC 165, MCR-01-4885 (November 13, 2001)(dismissing
15 severance petition filed by a group of police clericals seeking severance from a Town-
16 wide unit of professional and non-professional employees based on the petitioner's
17 failure to meet either prong of the severance standard).

18 Even if we were to find that the ACO and the Civilian Dispatchers were a
19 functionally distinct appropriate unit based on their unique duties and schedules, the
20 NEPBA has failed to demonstrate that the unique qualities have caused or are likely to

¹⁸ The parties in the Worcester case stipulated that the dispatchers were a functionally distinct group, 36 MLC at 153, and thus the Worcester decision does not address the first prong of the severance analysis.

1 cause conflicts in unit. The only evidence that the NEPBA relies upon in its post-
2 hearing brief to argue that their interests have not been sufficiently represented during
3 bargaining is that the Civilian Dispatchers failed to get an increase in their shift
4 differential in 2016 when other members of the unit received one. Standing alone, that
5 is insufficient to meet this prong of the severance standard.

6 It is well-established that the petitioning employees' inability to achieve their
7 bargaining goals within a larger unit, or dissatisfaction with their representatives'
8 accomplishments is insufficient to establish the irreconcilable conflict necessary to
9 warrant severance. City of Worcester, 36 MLC at 155 (citing City of Boston, 25 MLC at
10 120). Here, the evidence shows that even before Civilian Dispatchers became part of
11 the AFSCME bargaining team, AFSCME negotiated on their behalf, securing a change
12 in the job title's classification from S4-S8 in the 2010-2013 CBA and including them in
13 the clothing allowance provision. Since 2013, the Civilian Dispatchers have been
14 members of AFSCME's bargaining team since 2013 and have participated in at least
15 two bargaining sessions since then. On both occasions, AFSCME representatives met
16 with the Civilian Dispatchers before bargaining to ascertain their needs and in 2016,
17 AFSCME specifically included their three bargaining demands on its list of proposals.
18 The Civilian Dispatchers have achieved pay increases, a 4-2 schedule and other
19 benefits as a result. The fact that the Town did not agree to all of the Civilian
20 Dispatcher's proposals during this round of bargaining does not change this result. Id.
21 Indeed, although the Civilian Dispatchers may understandably be disappointed that their
22 request for an increase in shift differential was rejected, there is no guarantee that they
23 would have achieved a different outcome had they been bargaining on their own.

1 Finally, on the single occasion that the ACO requested assistance from the
2 Union, he received it in the form of a bargaining proposal to increase his pay
3 classification. Although we agree with the NEPBA that the ACO does not share a
4 strong community of interest with the Engineers due to the differences in duties and
5 training, we have found that the Engineers are not a stand-alone unit, but rather a group
6 that is part of a larger, merged unit that includes a variety of Town non-professional
7 employees, some of whom, like the ACO and the Civilian Dispatchers, require
8 specialized training and have unique duties. In the absence of evidence that the ACO's
9 long-standing inclusion in the bargaining unit has caused serious divisions or conflicts,
10 there is no basis to sever this title from the unit. See Town of Braintree, 5 MLC at 1136
11 (finding no basis to sever Clerk from Unit A, or Custodians from Unit C where no
12 evidence that their inclusion in their respective units posed any collective bargaining
13 difficulties for them).

14 CONCLUSION


15 For the reasons set forth above, we decline to sever the Civilian Dispatchers or
16 ACO from the existing AFSCME bargaining unit and dismiss NEPBA's petition.

17 **SO ORDERED.**

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD


MARJORIE F. WITTNER, CHAIR


KATHERINE G. LEV, CERB MEMBER


JOAN ACKERSTEIN, CERB MEMBER