

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

In the Matter of

TOWN OF MIDDLEBOROUGH

and

NEW ENGLAND POLICE
BENEVOLENT ASSOCIATION

Case No. MCR-21-8734

Date Issued: April 1, 2022

CERB Members Participating:

Marjorie F. Wittner, Chair
Joan Ackerstein, CERB Member
Kelly Strong, CERB Member

Appearances:

Antoine Fares, Esq. - Representing the Town of Middleborough
Thomas E. Horgan, Esq. - Representing the New England Police
Benevolent Association

DECISION

Summary

1 The New England Police Benevolent Association (NEPBA) filed a petition and an
2 amended petition to sever the positions of civilian police dispatcher and dispatcher/E-911
3 coordinator in the Town of Middleborough (Town) from a bargaining unit with thirty-two
4 other job titles that is currently represented by the General Municipal Employees Group
5 (GMEG). The NEPBA seeks to represent these positions in a separate bargaining unit.

1 For the reasons described below, the Commonwealth Employment Relations Board
2 (CERB) dismisses the petition.

3 Statement of the Case

4 On July 7, 2021, the NEPBA filed a representation petition in Case No. MCR-21-
5 8734 seeking to sever the Town's civilian police dispatchers from a town-wide bargaining
6 unit currently represented by the GMEG. This unit consists of department heads,
7 assistant department heads, and other municipal employees providing technical,
8 administrative, skilled and support services. The Department of Labor Relations (DLR)
9 sent out a notice of hearing on August 9, 2021, scheduling a pre-hearing conference for
10 September 21, 2021, and a hearing for October 22, 2021.¹ On August 10, 2021, the DLR
11 sent out a notice to the GMEG that, pursuant to 456 CMR 14.18, it had thirty days in which
12 to file a motion to intervene in the case to appear on a ballot for an election. The GMEG
13 did not file a motion to intervene in the case.

14 On October 15, 2021, the NEPBA filed an amended petition seeking also to sever
15 the vacant position of dispatcher/E-911 coordinator, commonly referred to as the dispatch
16 coordinator, and to represent that position in a bargaining unit with the civilian police
17 dispatchers.

18 On October 22, 2021, a DLR agent conducted a hearing remotely via the WebEx
19 videoconference platform at which all parties had the opportunity to be heard, to examine
20 witnesses, and to introduce evidence.²

¹ On August 16, 2021, the DLR rescheduled the pre-hearing conference to September.

² The GMEG did not participate in that hearing.

- 1 dispatchers in the Middleborough Police Department. ("MPD Dispatchers") (Exhibit
2 No. 7).
3
- 4 5. At all times, Middleborough Police Officers have performed dispatching when MPD
5 dispatchers were not employed and, when employed, were not scheduled or
6 available to work.
7
- 8 6. On or about 1991, the Town laid off all MPD Dispatchers due to lack of funds.
9
- 10 7. In the late 1990s, the Town filled four (4) of the MPD Dispatcher positions.
11
- 12 8. On or about 2004, again due to lack of funding, the Town laid off all the MPD
13 Dispatchers.
14
- 15 9. It is not clear whether any [u]nion represented the MPD Dispatchers employed by
16 the Town between the late 1990's and 2004.
17
- 18 10. In 2007, the Town voluntarily recognized GMEG as a residual bargaining unit
19 representing a group of non-unionized municipal employees as described in
20 paragraph 3. There were no MPD Dispatchers employed by the Town at that time
21 and Article 1 Recognition Clause of the CBA did not include the MPD position. The
22 Recognition Clause excluded the E-911 Coordinator position "as long as the E-
23 911 position is regularly scheduled for less than 20 hours a week".
24
- 25 11. The most recent Collective Bargaining Agreement between th[e] Town and GMEG
26 is the integrated 2015-2018 CBA, as amended by a memorandum of agreement
27 extending it for the period July 1, 2018 to June 30, 2021. The Town and the GMEG
28 are bargaining a successor CBA.
29
- 30 12. Amy Dowler ("Ms. Dowler") was hired as the E-911 Coordinator in 2012 and was
31 scheduled to work approximately fifteen hours (15) hours in that position. Prior to
32 Ms. Dowler being hired, the E-911 Coordinator position was also a 15-hour
33 position.
34
- 35 13. Ms. Dowler's hours as the E-911 Coordinator had increased by February 2015. In
36 addition to serving as E-911 Coordinator for 24-hours a week, Ms. Dowler also
37 started working as a MPD Dispatcher for sixteen (16) hours a week. This resulted
38 in the Town and GMEG adding the "Police Dispatcher E-911 Coordinator" position
39 and Police Dispatcher position to the GMEG CBA (See Exhibit No. 12, Addendum
40 A, pages 17-18 of GMEG CBA).
41
- 42 14. Dan Newton ("Newton") was hired as a MPD Dispatcher in 2016 and Kendra Perry
43 ("Ms. Perry") was hired as a MPD Dispatcher in January 2018.
44
- 45 15. Newton and Ms. Perry expressly acknowledge that they were "at all times fairly
46 represented by the Union." (Exhibit No. 5).

- 1
2 16. GMEG will continue to represent Newton and M. Perry fairly even if the DLR
3 determines that the MPD Dispatcher position should remain in GMEG rather than
4 be severed from GMEG to become a separate bargaining unit. (See Exhibit No. 6
5 stating, "You agree that during the course of your employment while a member of
6 the Union's bargaining unit, you were at all times fairly represented by the Union.")
7
- 8 17. As Administrative Assistant to Police Chief (for 25 years), Irene Hudson ("Ms.
9 Hudson") was administratively in charge of Police Department Civilian Staff,
10 including any MPD Dispatcher. The Administrative Assistant position is excluded
11 from any bargaining unit in the Town, including GMEG, because the position holder
12 serves in a confidential capacity to the Police Chief as defined under c.150E.
13
- 14 18. Ms. Hudson retired, and Ms. Dowler was appointed to the position of
15 Administrative Assistant on or about April 2017. As Ms. Hudson had done, Ms.
16 Dowler supervised the Police Department Civilian Staff, including the MPD
17 Dispatcher and the Police Dispatcher/E-911 Coordinator position.
18
- 19 19. Even after she was appointed the Chief's Administrative Assistant, Ms. Dowler
20 continued to perform the duties of the E-911 Coordinator until on or about
21 December 3, 2017.
22
- 23 20. On December 3, 2017, Jessica Priestly ("Ms. Priestly") assumed Ms. Dowler's
24 duties as Police Dispatcher/E-911 Coordinator.
25
- 26 21. Ms. Priestly stopped performing the Police Dispatcher/E-911 Coordinator position
27 in January 2020 when the MPD sent her [to] the Police Academy to complete the
28 training to become a sworn Middleborough Police Officer. She was sworn in as a
29 Middleborough Police Officer in June 2020.
30
- 31 22. Starting January 2020, Ms. Dowler re-assumed the administrative duties of the
32 Police Dispatcher/E-911 Coordinator. The two full-time Dispatchers-Newton and
33 Ms. Perry-currently perform some of the Police Dispatcher/E-911 Coordinator
34 administrative duties and all Dispatch duties previously required of that position.
35
- 36 23. The job description for position of MPD Dispatcher is attached as Joint Exhibit No.
37 9 and accurately reflects the duties and requirements of that position.
38
- 39 24. The dispatching function at the Middleborough Police Department is performed 24
40 hours per day, seven (7) days per week.
41
- 42 25. The GMEG unit currently consists of thirty-four (34) positions. There are thirty-
43 eight (38) employees in the positions, including MPD Dispatchers Newton and
44 Perry.
45

- 1 26. The job description that was entered into the record for position of Police
2 Dispatcher/E-911 Coordinator as Joint Exhibit No. 10 accurately reflects the duties
3 and requirements for that position.
4
- 5 27. Currently, Newton and Ms. Perry work forty hours per week. Other than them, the
6 MPD recently hired two (2) per diem dispatchers work on an on-call basis. They
7 have no regular schedule but are anticipated to work a couple of shifts (16 hours)
8 per week. Per diem dispatchers are not part of any Town bargaining unit.
9
- 10 28. A Police Officer is always scheduled to work the desk—next to a MPD Dispatcher
11 and serves as the supervisor of the MPD Dispatcher. A Police Officer performs
12 the dispatching on the midnight to 8:00 a.m. shift each day. A Police Officer does
13 the dispatching on any shift that a MPD dispatcher is not scheduled or otherwise
14 available to work. The Police Officer could be a Patrol Officer, Sergeant or
15 Lieutenant. A Police Officer, who is required to monitor the cell block, is always
16 present with the Dispatchers unless there is a need to check the cell block or assist
17 someone who comes into the station, etc. The MPD Dispatchers are also required
18 to monitor the cell block at all times.
19
- 20 29. The Police Custodian, Police Dispatcher/ E-911 Coordinator and Dispatchers all
21 work in the MPD which is located approximately three (3) miles away from Town
22 Hall. Until December 2018, the MPD was located approximately 528 feet away
23 from Town Hall.
24
- 25 30. The MPD Dispatchers only dispatch Police Officers. For medical calls, the
26 Dispatcher[s] dispatch the calls to a private ambulance service. Firefighting
27 dispatch duties are done by fire fighters after MPD Dispatchers forward the calls.
28 DPW dispatch duties are handled by the DPW during business hours. After regular
29 hour DPW calls-tree down, flooding, etc.-come into MPD Dispatchers who contact
30 DPW employees from an on-call list. Middleborough Gas and Electric (“MGED”)
31 dispatch duties are handled by MGED.
32
- 33 31. The Town intends to fill the Police Dispatcher/E-911 Coordinator position because
34 the E-911 Coordinator position is required by state law given that the MPD is the
35 primary point of contact for the Town. But COVID-19 has interceded for the past
36 eighteen (18) months because the required live training for an E-911 Coordinator
37 provided by the state has not been available.
- 38 32. The parties are not invoking managerial, confidential, or supervisory status under
39 the Law for the position of police dispatcher.

40 Findings of Fact

41 History of the Petitioned-for Positions

1 On September 9, 1988, the former Labor Relations Commission certified AFSCME
2 Council 93, Local 1700, AFL-CIO (AFSCME) as the exclusive bargaining representative
3 for a unit of: “all full-time and regular part-time dispatchers employed by the
4 Middleborough Police Department.”³ On or about 1991, the Town laid off all the civilian
5 police dispatchers due to a lack of funds. In the late 1990’s, the Town hired four civilian
6 police dispatchers. On or about 2004, the Town again laid off all the civilian police
7 dispatchers due to a lack of funds.

8 It is unclear whether any bargaining representative represented the civilian police
9 dispatchers employed by the Town in the period between the late 1990’s and 2004. In
10 2007, the Town voluntarily recognized the GMEG as the exclusive bargaining
11 representative for a unit of non-unionized Town employees, including department heads,
12 assistant department heads, and other employees providing technical, administrative,
13 skilled, and support services.⁴ At that time, the Town did not employ any civilian police
14 dispatchers. The first collective bargaining agreement⁵ between the Town and the GMEG
15 did not reference the position of civilian police dispatcher in the recognition clause as it
16 did with other bargaining unit positions. The recognition clause of that contract
17 specifically excluded the E-911 coordinator position if the E-911 coordinator was regularly
18 scheduled to work fewer than twenty hours per week. In 2012, the Town hired Amy
19 Dowler (Dowler) as the E-911 coordinator for fifteen hours per week.

³AFSCME and the Town executed a consent to election agreement.

⁴ As of the date of the hearing, the GMEG bargaining unit included thirty-four positions with a total of thirty-eight employees in those positions.

⁵ The record does not indicate the operative dates of the first collective bargaining agreement between the Town and the GMEG.

1 In February 2015, the Town increased Dowler's hours of work as the E-911
2 coordinator to twenty-four hours per week. She also began to work as a civilian police
3 dispatcher for sixteen hours per week. In March 2015, Dowler began to work as a full-
4 time civilian police dispatcher, although she continued to perform certain E-911
5 coordinator functions as well. In June 2015, Dowler was appointed to the new position of
6 police dispatcher/E-911 coordinator, colloquially referred to as the dispatch coordinator,
7 which incorporated the former functions of the E-911 coordinator as well as dispatch
8 duties. The dispatch coordinator position was included in the GMEG bargaining unit.
9 Dowler worked twenty-five hours performing dispatch duties and the remaining fifteen
10 hours performing E-911 coordinator functions.

11 In 2016, the Town hired Daniel Newton (Newton) as a forty-hour per week civilian
12 police dispatcher, and his position was included in the GMEG unit. On November 19,
13 2016, the Town and the GMEG executed a collective bargaining agreement that was in
14 effect from July 1, 2015 through June 30, 2018 (2015-2018 CBA). Addendum A of the
15 2015-2018 CBA contains a list of bargaining unit titles that includes civilian police
16 dispatcher and the dispatch coordinator. During negotiations for the 2015-2018 CBA, the
17 GMEG made no proposals specifically on behalf of the civilian police dispatchers or on
18 behalf of the dispatch coordinator. Dowler or Newton also did not request that the GMEG
19 make any proposals on their behalf.

20 On December 3, 2017, the Town hired Jessica Priestly (Priestly) as the dispatch
21 coordinator to succeed Dowler, whom the Town had promoted eight months earlier to the
22 position of administrative assistant to the police chief. In 2018, the Town hired a second
23 forty-hour per week civilian dispatcher Kendra Perry (Perry).

1 In June 2019, the GMEG and the Town executed a memorandum of agreement
2 for the period July 1, 2018 through June 30, 2021 (2018-2021 MOA). During the
3 successor contract negotiations that resulted in the 2018-2021 MOA, the GMEG did not
4 make any proposals specifically on behalf of the civilian police dispatchers or the dispatch
5 coordinator. Also, the civilian police dispatchers did not request that the GMEG make
6 any contract proposals on their behalf. Newton also indicated at hearing that he was not
7 notified when the GMEG conducted its ratification votes on the two applicable successor
8 collective bargaining agreements. The record does not reflect how other GMEG unit
9 members were notified about the ratification votes, including whether they were
10 personally notified about the upcoming ratification votes or when the ratification votes
11 took place. There is also no evidence that Newton protested his lack of notification to the
12 GMEG.

13 In December 2018, the Town opened a new police station approximately three
14 miles from Town Hall.⁶ The new police station had a dispatch center where the civilian
15 police dispatchers performed their duties. The dispatch coordinator also worked there
16 when she performed dispatch duties. The civilian police dispatchers and the dispatch
17 coordinator (when performing dispatch functions), were responsible for maintaining,
18 observing, and operating access control for the security system that the Town installed in
19 the new police station.

20 In January 2020, the Town sent Priestly to the police academy, and the dispatch
21 coordinator position has remained vacant since that time. Also, beginning in January

⁶ The former police station was 1/10th of a mile from Town Hall.

1 2020, Newton and Perry assumed the dispatch duties from the dispatch coordinator
2 position.⁷ Perry also took over certain administrative duties from the dispatch coordinator,
3 including inputting information about addresses and site locations in the police
4 department's computer-aided dispatch system, IMC."⁸ Dowler resumed responsibility for
5 scheduling the dispatchers, which she had previously performed as the dispatch
6 coordinator. The Town intends to fill the dispatch coordinator position in the future but is
7 waiting for the state to offer the live training required for the position, which has been
8 delayed due to the COVID-19 pandemic.

9 On or about May 5, 2021, Robert Whalen (Whalen), the president of the GMEG,
10 sent a letter to Newton and Perry stating in pertinent part:

11 This will confirm receipt by the [GMEG] of your request to be released
12 from its collective bargaining unit so that you can join a bargaining unit of
13 public safety dispatchers. The Union is willing to grant your request under
14 the following terms and conditions:

15
16 You agree that during the course of your employment while a member of
17 the Union's bargaining unit, you were at all times fairly represented by the
18 Union.⁹

19
20 That you fully and completely release the Union of any and all liabilities,
21 obligations, complaints, damages, responsibilities and all other claims of
22 any name or nature under law that you have, had, or may have had
23 against the Union at any and all times for the entire period that you have
24 been employed in the Union's bargaining unit, and with respect to the
25 Union's agreement to, and acts of, disclaiming interest in further

⁷ All of the civilian police dispatchers are regularly scheduled to work five days per week, but currently are working more overtime because the dispatch coordinator position remains unfilled.

⁸ IMC allows the dispatcher to look up the history of prior incidents at an address, including police calls, medical calls, etc.

⁹ At the hearing, Newton confirmed that he had never requested that the GMEG file a grievance on his behalf. Perry did not testify at the hearing although she was present.

1 representing you and releasing you from its bargaining unit.

2

3 That you have consulted with counsel of your own choosing, and after such
4 consultation you continue to request of your own free will a release by the
5 Union from its bargaining unit under the terms and conditions of this letter.

6

7 That you will remain in the Union's bargaining unit until if and when you are
8 accepted into a lawfully approved bargaining unit consisting exclusively of
9 public safety dispatchers employed by the Town of Middleborough or the
10 Middleborough Police Patrolmen's Union, NEPBA local #76.

11

12 My signature below reflects the agreement of the Union to the terms
13 contained herein. Please sign in the space proved below to reflect your
14 assent to terms and conditions of this letter.

15 Whalen, Newton, and Perry executed the agreement. On July 7, 2021, the NEPBA filed
16 its original petition in this matter.

17 On October 7, 2021, Whalen executed the following statement:

18 The General Municipal Employees Group (GMEG or Union) has no
19 objection to the position of E-911 Coordinator being released from its
20 collective bargaining unit so they can join a bargaining unit of public safety
21 dispatchers.¹⁰

22 On October 15, 2021, the NEPBA amended its petition.

23 Overview

24 The Town has a land mass of sixty-two square miles and a population of
25 approximately 25,000 residents. The Town's police department responds to emergency
26 and non-emergency calls for services seven days per week, twenty-four hours per day.

27 The Town currently employs Newton and Perry as its two civilian police
28 dispatchers. Perry works from 8:00 a.m. to 4:00 p.m., and Newton works from 4:00 p.m.
29 to midnight. As civilian police dispatchers, Newton and Perry are not sworn police

¹⁰ At the hearing, Dowler confirmed that she had never requested that the GMEG file a grievance on her behalf while she was a member of its bargaining unit.

1 officers, do not have powers of arrest, and do not have department-issued firearms.¹¹
2 Police officers of any rank, except the police chief, handle dispatch functions from
3 1midnight. to 8:00 a.m. as a regular duty assignment and do not earn overtime for that
4 assignment. When the civilian police dispatchers work their shifts, a police officer, who
5 is assigned to the front desk (a desk officer),¹² works next to them in the dispatch area.
6 The police officer also performs dispatch functions and supervises the civilian police
7 dispatcher.¹³

8 The civilian police dispatchers only perform dispatch functions for calls involving a
9 need for police services. Any calls regarding possible fires are transferred to the Fire
10 Department,¹⁴ and any calls for medical services are transferred to a private ambulance
11 service. However, when a caller is seeking assistance for a suspected overdose, the
12 civilian police dispatchers will remain on the line until police officers arrive at the incident
13 scene. The civilian police dispatchers also send police officers to motor vehicle accidents
14 and contact the ambulance service.

15 The Municipal Light Plant has its own dispatcher, as does the Department of Public
16 Works (DPW) during the day. For late night calls concerning flooding, downed trees, etc.,
17 the police department takes the calls and contacts a DPW employee from an on-call list.

¹¹ Newton and Perry are also employed in other communities as sworn police officers.

¹² The desk officer can be of any rank except police chief.

¹³ At hearing, Police Chief Joseph Perkins (Chief Perkins) indicated that when working a shift, both the desk officer and the civilian police dispatchers are equally responsible for responding to calls.

¹⁴ The civilian police dispatchers also transfer calls regarding motor vehicle accidents that require medical aid as well as an immediate medical response to the Fire Department as well as to the private ambulance service.

1 Police officers do not fill in for civilian police dispatchers on overtime, except in an
2 emergency such as a blizzard. Newton and Perry will rearrange their shifts or work an
3 overtime shift to cover the other's absence on the 8:00 a.m. to 4:00 p.m. or 4:00 p.m. to
4 midnight shifts. If coverage cannot be arranged on those shifts, the desk officer alone will
5 perform the dispatching duties.

6 The civilian police dispatchers wear polo shirts with the Town's emblem. Newton
7 has not seen any other GMEG unit members wearing similar attire. As dispatch
8 coordinator, Dowler wore a polo shirt with the Town's emblem and the title "Dispatch
9 Coordinator" on it.

10 The civilian police dispatchers typically have no contact during their work shifts
11 with other GMEG unit members, except for the police custodian. The police custodian
12 worked Monday through Friday from 8:00 a.m. to 4:00 p.m. When Dowler was the
13 dispatch coordinator, she also interacted with certain GMEG unit members who worked
14 in the Town's Assessors, Planning, and Building Departments to ensure that street
15 addresses and new construction had street numbers in compliance with the state's E-911
16 regulations.

17 Most GMEG unit positions work a Monday through Friday day schedule.¹⁵
18 However, the Town's Everett Street water treatment plant and the West Grove Street
19 wastewater plant operate twenty-four hours, seven days per week, and GMEG unit
20 members, who work in those plants, work schedules other than the day shift Monday
21 through Friday.

¹⁵ There are also certain GMEG unit positions, including the building commissioner, the inspectors, and the animal control officer, who are on-call after their regular work hours.

1 Duties of the Civilian Police Dispatcher

2 The civilian police dispatchers perform dispatching and technical work supporting
3 the Town's public safety operations. They must be thoroughly familiar with the police
4 department's procedures relating to the use of the radio and other equipment located in
5 the dispatch center, including the phone system, E-911, CCTV¹⁶, access control, and Go
6 to Blue.¹⁷ The civilian police dispatchers constantly and diligently monitor the radio
7 system in order to dispatch police officers and to keep those police officers fully informed
8 of all facts affecting the safety or efficacy of their responses to calls.¹⁸ They also
9 coordinate back up support activities via radio.¹⁹ The civilian police dispatchers receive
10 and record telephone calls and requests for service or information, and prioritize calls for
11 service in IMC, the police department's computer-aided dispatch system. Guided by the
12 police department's standard operating procedures, the civilian police dispatchers
13 exercise independent judgment to determine the correct response to calls and in
14 dispatching police officers and equipment in response to E-911 calls and regular calls²⁰

¹⁶ CCTV is an acronym for the closed-circuit television monitors located in and around the police station.

¹⁷ Go to Blue is a computer program that allows the Town's high school to immediately contact the dispatch center in case of an emergency.

¹⁸ The civilian police dispatchers inform the responding police officers whether the caller or the subject of the call previously has expressed suicidal thoughts, experienced issues with mental health, or has been issued a gun permit.

¹⁹ The civilian police dispatchers make radio contact with police officers, who have responded to a call, to verify officer safety.

²⁰ If needed, the civilian police dispatchers use a computer program known as IP Police, which enables them to ascertain information about a phone's owner based on the phone's number.

1 to the police department.²¹ They immediately report any deployment of police officers or
2 calls for service over the radio and any unusual circumstances to the shift supervisor or
3 the officer in charge. They must be familiar with emergency procedures that relate to
4 matters requiring urgent police attention to be capable of activating them immediately.

5 The civilian police dispatchers use the Criminal Justice Information System (CJIS)
6 as a web-based portal to access a variety of law enforcement computer databases. They
7 provide any information requested by officers on patrol, and communicate information to
8 others as requested, including “be on the lookout” (BOLO) bulletins (from other police
9 departments.²² They inform the shift supervisor or officer in charge when they are unable
10 to contact an officer on patrol. Civilian police dispatchers maintain equipment, especially
11 emergency call lines, in working order and immediately report any malfunction to the shift
12 supervisor or the officer in charge

13 Additionally, civilian police dispatchers record and document all significant
14 communications as required by the police department’s policies and procedures, which
15 includes recording and documenting all calls for service, inputting the responding police
16 officer’s summation of the call in the IMC, and noting any actions they or others have
17 taken, if requested to do so. They enter relevant information into the Law Enforcement
18 Agencies Processing System (LEAPS), which includes information about missing

²¹ The Town is divided into sectors for policing purposes. On the 4:00 p.m. to midnight shift, there are typically five police officers on duty, including the shift supervisor and/or the desk officer.

²² Open Fox is a computer program that allows the civilian police dispatchers to review the BOLOs that other police departments have entered regarding missing persons, and stolen vehicles and property and allows the Town to enter its own BOLOs.

1 persons, articles, vehicles, etc. and retrieves information for police officers from LEAPS
2 as requested.²³

3 The civilian police dispatchers answer inquiries from and provide information to the
4 public concerning such things as directions, special events, municipal services, etc.²⁴ and
5 direct the public to appropriate sources of information and personnel. The desk officer
6 handles all initial inquiries from members of the public who walk into the police station.
7 Civilian police dispatchers may only handle inquiries from “walk-ins” if the desk officer is
8 occupied on another police related manner.

9 Additionally, the civilian police dispatchers observe the video monitors in the police
10 department’s booking area when a police officer is booking a detainee to ensure the police
11 officer’s safety. If Perry is on duty and no female police officers are on duty, she will
12 check a female detainee for contraband before the detainee undergoes the booking
13 process and then place the detainee in a cell if necessary. The civilian police dispatchers
14 also monitor the lockup area via the in-house cell monitoring system. They record
15 information in a log about the care and custody of detainees held at the station and
16 monitor the detainees via audio and visual recording devices. Also, if the desk officer is
17 busy with another police-related matter, the civilian police dispatchers walk to the lockup

²³ LEAPS is a web-based portal that allows police departments to access various computer databases, including the National Criminal Information Center (NCIC). The NCIC provides information about missing persons, stolen property, stolen guns, etc. LEAPS also provides access to the Registry of Motor Vehicles database, which provides information about driving history, and the Board of Probation, which provides information about an individual’s previous criminal history and the status of any sentences received.

²⁴ Chief Perkins noted at the hearing that the civilian dispatchers should not answer inquiries from the public seeking legal advice.

1 area ²⁵ every fifteen minutes and check on the health and well-being of any detainees in
2 the cells. When they enter the lockup area, they use a swipe card to record that they
3 have carried out the visual check.

4 The qualifications for the position include a high school degree and a clean criminal
5 record. The civilian police dispatchers must earn an E-911 certification by taking classes
6 and passing an exam and retain that certification by participating in sixteen hours of
7 continuing education classes each year. The civilian police dispatchers also must earn
8 bi-annual CJIS certification.

9 Duties of the Dispatch Coordinator

10 When working shifts as a dispatcher, the dispatch coordinator is responsible for all
11 the civilian police dispatcher functions described above. In addition, the incumbent in the
12 position maintains all databases and systems with regards to police first responders. The
13 dispatch coordinator works in conjunction with municipal departments to ensure all state
14 E-911 requirements are met. The incumbent in the position serves as the primary contact
15 with the telephone company with regards to changes in E-911 services. The incumbent
16 in the position maintains all facets of the E-911 system including, but not limited to,
17 address issues, call issues, equipment maintenance and updates. The dispatch
18 coordinator interfaces directly with the public and other municipal and state officials with
19 regards to E-911 maintenance. The dispatch coordinator participates in studies of
20 proposed enhancements to the E-911 system and attends seminars to further advance
21 system knowledge.

²⁵ The lockup area is on the same floor in the police station as the dispatch center.

1 Also, the dispatch coordinator reviews plans for proposed subdivisions and future
2 buildings for compliance with municipal and state laws relative to street naming and
3 building numbering as they apply to emergency services. The dispatch coordinator
4 travels within the emergency service zone to resolve numbering and address questions.
5 The dispatch coordinator updates the Town map, which includes assisting GIS personnel
6 in doing so, and maintains the Town's street listings.

7 Additionally, the dispatch coordinator maintains the IMC to provide the most up to
8 date accurate information for first responders, including: a) maintaining sites with proper
9 contact information, b) updating business contacts for all businesses in Town, c) inputting
10 critical street information, i.e., road closures, and d) creating cautionary notes within the
11 IMC for officer safety or the wellbeing of residents. The incumbent in the position updates
12 the Master Names files as needed to assure consistency. The incumbent enters no
13 trespass orders into IMC and maintains hard copies of the orders for prosecuting
14 purposes.

15 Also, the dispatch coordinator maintains the civilian police dispatchers' schedules.
16 The incumbent in the position tracks and schedules required dispatcher training.²⁶ The
17 dispatch coordinator exercises direct administrative supervision over the civilian
18 dispatchers, which includes giving feedback to them about how they are performing their

²⁶ The dispatch coordinator is on a higher pay scale in the GMEG contract than the civilian police dispatchers.

1 duties.²⁷ The dispatch coordinator supervises the police department's matron²⁸ and
2 provides access to continuing education classes. Dowler, as the administrative assistant
3 to the police chief, is administratively in charge of the dispatch coordinator and the civilian
4 police dispatchers.

5 The qualifications for the dispatch coordinator position are a high school degree or
6 GED, a valid Massachusetts driver's license and a clean criminal record. The dispatch
7 coordinator must become E-911 certified by taking classes and a written exam and must
8 take sixteen hours of continuing education each year as well as earn certification and bi-
9 annual recertification in CJIS.²⁹

10 Chapter 253

11 On December 31, 2020, the Legislature enacted Chapter 253, An Act Relative to
12 Justice, Equity and Accountability in Law Enforcement. This legislation established the
13 Peace Officer Standards and Training (POST) Commission, which is statutorily
14 authorized to create processes for police officers' mandatory certifications,
15 decertifications, suspensions of certifications and reprimands. At hearing, Newton

²⁷ The Town does not complete performance evaluations for the civilian police dispatchers or the dispatch coordinator.

²⁸ Joint Exhibit #10, the dispatch coordinator job description, references this duty. However, the hearing record is silent as to whether the Town currently employs a police department matron.

²⁹ The dispatch coordinator's job description states that the incumbent in the position must hold certifications in CPR, first aid, and the use of automated external defibrillators (AED). However, Dowler, as a prior holder of the position, indicated at hearing that the position only required the E-911 and CJIS certifications. Priestly, the successor dispatch coordinator, did not testify at the hearing. Thus, we make no findings as to whether certifications other than E-911 and CJIS are required.

1 expressed concerns that Chapter 253 could expose him to personal liability or cause his
2 name to be released as part of internal affairs investigations. He acknowledged on cross-
3 examination, however, that those concerns potentially existed even before the enactment
4 of the new law.

5 Opinion³⁰

6 Unit Composition

7 We first address the NEPBA's argument that the civilian police dispatchers need
8 not be severed from the GMEG unit because they were certified as a separate bargaining
9 unit in 1988, and retained their separate status. This argument fails for several reasons.

10 Preliminarily, we note that the 1988 certification was the result of a consent election
11 agreement between the Town and AFSCME. Accordingly, in deciding this case, the
12 CERB is not bound by the parties' earlier stipulation. See City of Springfield, 24 MLC 50,
13 54, MCR-4602 (January 15, 1998)(neither lawful recognition nor stipulations by the
14 parties as to an appropriate bargaining unit binds the CERB or other parties in future
15 cases where the existing structure is disputed, and the issues are litigated for
16 determination by the CERB).

17 Second, approximately thirty-three years have passed since the civilian
18 dispatchers were certified as a separate bargaining unit and there have been significant
19 and substantial changes to the dispatchers' employment history during that time,
20 including that the Town laid off the civilian police dispatchers in 1991, hired them back in
21 the late 1990's, then laid them off again in 2004. It was not until 2016, twelve years later,
22 that the Town hired Newton as a full-time civilian dispatcher.

³⁰ The CERB's jurisdiction is uncontested.

1 Third, the record does not reveal whether the civilian police dispatchers were
2 represented for purposes of collective bargaining from the late 1990's to 2004, which was
3 before the Town voluntarily recognized the GMEG as the exclusive representative of a
4 Town-wide unit. After the Town hired Newton in 2016, however, the Town included the
5 civilian dispatcher position in the GMEG unit and listed civilian dispatcher as a bargaining
6 unit position in their 2015-2018 CBA.

7 Based on these significant and substantial changes in the civilian dispatchers'
8 employment history and the composition of the Town's bargaining units since 1988, we
9 disagree with the NEPBA that the civilian police dispatchers retain separate bargaining
10 unit status solely because of the 1988 certification. See id. (significant and substantial
11 changes to city's department of public works warranted re-examination of an almost thirty-
12 year history of a separate, non-supervisory unit for water department employees); City of
13 Worcester, 36 MLC 151, 154, MCR-09-5360 (April 5, 2010) (prior certification of a
14 separate unit of dispatchers does not prevent union and employer from merging
15 dispatchers into a city-wide unit); See generally, City of Quincy, 26 MLC 190, MUP-9928
16 (April 3, 2000) (Chapter 150E permits employers and unions to structure bargaining units
17 in a manner that is mutually beneficial). We therefore treat the NEPBA's petition as a
18 severance petition that raises a question concerning representation and will apply the
19 CERB's traditional severance standard to this case.

20 Severance Standard

21 The CERB does not favor severance petitions and has declined to use them to fix
22 imperfectly constructed bargaining units. City of Fall River, 26 MLC 13, 17, MCR-4693
23 (July 15, 1999). To sever the civilian police dispatchers and the dispatch coordinator

1 position from the existing GMEG unit, the NEPBA must demonstrate that: a) the
2 petitioned-for employees constitute a functionally distinct appropriate unit with special
3 interests sufficiently distinguishable from those of other unit employees; and b) special
4 negotiating concerns resulting from those differences have caused or are likely to cause
5 conflicts and divisions within the bargaining unit. City of Lawrence, 25 MLC 1, 5, MCR-
6 4590 (July 2, 1998). The CERB has dismissed numerous severance petitions for failing
7 to meet either one or both criteria.

8 To determine whether the petitioned-for employees constitute a functionally
9 distinct unit, the CERB considers many factors, including whether the petitioned-for unit
10 of employees: 1) have specialized skills that are acquired through a course of study; 2)
11 maintain and enhance their skills through continuing education; 3) perform significantly
12 different job functions compared with the existing unit of employees, 4) share work
13 location or common supervision with other employees in the existing unit; and 5) interact
14 with or share duties with other bargaining unit members. Mass. Board of Higher
15 Education, 35 MLC 81, 88, SCR-04-2256 (December 8, 2008). We conclude that the
16 civilian police dispatchers and the dispatch coordinator position are functionally distinct
17 from the existing bargaining unit based on each of these factors.

18 First, they have specialized skills acquired through study that they must maintain
19 through continuing education. Civilian police dispatchers and the dispatch coordinator
20 must hold certifications in the E-911 system and the CJIS. To attain the E-911
21 certification, the civilian police dispatchers and the dispatch coordinator must undergo
22 sixteen hours of training and pass a written exam as well as taking continuing education
23 classes each year. The CJIS certification must be renewed biannually.

1 Second, the civilian police dispatchers and the dispatch coordinator perform
2 significantly different job functions from other GMEG unit members. They are the only
3 members of the GMEG unit who: respond to emergency and non-emergency calls for
4 police services; dispatch police officers in response to E-911 calls and regular calls using
5 the IMC; enter information into LEAPs and retrieve information from police officers as
6 requested; monitor the police station's booking area and the lockup area via camera; and
7 conduct regularly scheduled in-person observations of detainees in the lockup area.
8 Additionally, the dispatch coordinator is responsible for maintaining all facets of the E-911
9 system, including address issues, call issues, equipment maintenance and updates. The
10 dispatch coordinator is also the only GMEG unit member responsible for maintaining the
11 IMC with the most up to date accurate information for first responders as well as the
12 master names file.

13 Third, because the police station is three miles from Town Hall, the civilian police
14 dispatchers do not have regular contact with any GMEG unit members, except the police
15 custodian and the dispatch coordinator. Moreover, unlike the majority of the GMEG unit
16 members, at the time of the hearing, the civilian police dispatchers did not work a regular
17 Monday through Friday schedule. Although the dispatch coordinator has some additional
18 with GMEG unit members employed in the Town's Assessors, Planning, and Building
19 Departments, the civilian police dispatchers' and the dispatcher coordinator's distinct
20 duties and skills lead us to conclude that they constitute a functionally distinct group with
21 some collective interests distinguishable from other GMEG unit positions.

1 We therefore turn to the second prong of the severance analysis to determine
2 whether special negotiating concerns resulting from those differences have caused or are
3 likely to cause conflicts and divisions within the bargaining unit.

4 The CERB previously has decided that separate units are required only when the
5 differences among the different groups in the bargaining unit are so significant as to
6 produce conflicts in the collective bargaining process. Town of Barnstable, 28 MLC 165,
7 170, MCR-01-4885 (November 13, 2001). Here, the NEPBA argues that civilian police
8 dispatchers and the dispatch coordinator are public safety personnel and that a
9 bargaining unit of mostly non-public safety personnel cannot properly address their
10 bargaining concerns. However, a general claim that the incumbent representative does
11 not recognize the petitioned-for employees' bargaining concerns is not sufficient to satisfy
12 the second prong of the severance test. City of Boston, 25 MLC at 120 (satisfying the
13 second prong of the test ensures that severance will not be granted based upon merely
14 transient disputes, discontent, or personality conflicts). Rather, to establish the requisite
15 degree of conflict necessary for severance, the petitioner must show that the petitioned-
16 for employees play no role in the representation process, cannot participate on the
17 negotiating team, and have had their interests subordinated by the incumbent union to
18 the interests of other employees in the unit. City of Somerville, 27 MLC 62, 66, MCR-4784
19 (December 1, 2000)(citing Saugus School Committee, 2 MLC 1421, MCR-2263 (February
20 10, 1976)).

21 Here, there is no evidence that the dispatch coordinator or dispatchers were
22 restricted from participating in the representation process, were prohibited in any manner
23 from participating on the negotiating team, or had their interests subordinated to the

1 interests of other bargaining unit members. Specifically, the NEPBA has not shown that
2 after being requested to do so, the GMEG failed to present specific dispatcher or dispatch
3 coordinator proposals during successor or mid-term collective bargaining negotiations.
4 Also, there is no evidence that the GMEG advised any of the incumbents in the petitioned-
5 for titles that could not join the GMEG's bargaining teams for successor contract
6 negotiations. Additionally, Newton and Dowler acknowledged that they never asked the
7 GMEG to file grievances on their behalf. Although Newton indicated at hearing that he
8 was not notified when the GMEG conducted its ratification votes on the two applicable
9 successor collective bargaining agreements, the record does not show how other GMEG
10 unit members were notified about the ratification votes, including whether they were
11 personally notified about the upcoming ratification votes, when the ratification votes took
12 place or that Newton protested his lack of notification to the GMEG. Further, although
13 Newton indicated that he had contacted the GMEG president about releasing the civilian
14 police dispatchers from the bargaining unit, the facts before us do not show that Newton,
15 Perry, or Dowler raised any other concerns to the GMEG about the terms and conditions
16 of employment of the civilian police dispatchers and the dispatch coordinator respectively.
17 Accordingly, the record is devoid of any information showing that the GMEG somehow
18 subordinated the interests of the civilian police dispatchers or the dispatch coordinator to
19 the interests of other GMEG unit members.

20 The NEBPA nevertheless contends that the civilian police dispatchers and the
21 dispatch coordinator have or will have in the future special negotiating concerns because
22 of the Legislature's enactment of Chapter 253, which established the POST Commission.
23 The NEPBA posits that because the civilian police dispatchers and the dispatch

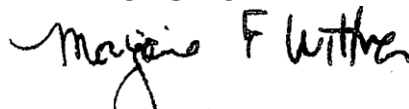
1 coordinator work closely with the Town's police officers, they will be highly impacted by
2 Chapter 253 because they may need to testify in POST Commission investigations or
3 adhere to new policies that will be implemented within the police department. However,
4 as Newton acknowledged on cross-examination, these same concerns existed even
5 before the enactment of Chapter 253. Further, the facts before us do not show that the
6 civilian police dispatchers requested that the GMEG take any action in response to
7 Chapter 253 or that the GMEG failed to respond to those requests. The record is also
8 devoid of any persuasive evidence that the GMEG will be ill-equipped to adequately
9 represent the dispatchers and dispatch coordinator in the event that issues impacting the
10 petitioned-for employees' wages, hours, or terms and conditions of employment arise
11 from the implementation of Chapter 253. Thus, at this time it would be premature to
12 affirmatively conclude that Chapter 253 would pose special bargaining concerns to the
13 civilian police dispatchers or that the GMEG would be unable to address those concerns.

14 CONCLUSION

15 For the reasons stated above, we decline to sever the positions of civilian police
16 dispatcher and dispatch coordinator from the existing GMEG unit and dismiss the
17 NEPBA's petition.

18 SO ORDERED

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT
RELATIONS BOARD



MARJORIE F. WITTNER, CHAIR



JOAN ACKERSTEIN, CERB MEMBER



KELLY STRONG, CERB MEMBER