

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

In the Matter of:

CITY OF SPRINGFIELD

and

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES

and

UNITED PUBLIC SERVICE EMPLOYEES UNION *

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* Case No. MCR-21-8905
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* Date Issued:
* February 14, 2022
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CERB Members Participating:

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

Appearances:

Maurice Cahillane, Esq - Representing the City of Springfield
Angel Alvarez - Representing the National Association of
Government Employees
John Connor, Esq. - Representing the United Public Service Employees
Union

DECISION

1 SUMMARY AND STATEMENT OF THE CASE

2 On November 1, 2021, the National Association of Government Employees
3 (NAGE) filed a petition (Petition) with the Department of Labor Relations (DLR) seeking,
4 as it subsequently clarified, to represent a bargaining unit of all full-time and regular part-

1 time Code Enforcement Inspectors,¹ Senior Code Enforcement Inspectors, and Zoning
2 Code Inspectors employed by the City of Springfield (City or Employer).² The petition
3 indicated that these employees were already represented for purposes of collective
4 bargaining by the United Public Service Employees Union (UPSEU). On November 8,
5 2021, the DLR issued a Notice of Hearing for a January 6, 2022 hearing. On November
6 9, 2021, UPSEU filed a motion to intervene in the proceeding. On November 10, 2021,
7 the DLR granted UPSEU's motion. The parties subsequently waived their right to a
8 hearing and agreed to submit evidence in the form of a stipulated record, comprised of
9 stipulated facts and numerous stipulated exhibits including job descriptions, memoranda
10 of understanding, grievances, and an organization chart.

11 On January 17 and 18, 2022, all three parties filed briefs.³ Based upon its review
12 of the record, as summarized below, and for the reasons set forth below, the
13 Commonwealth Employment Relations Board (CERB) concludes that NAGE has failed

¹ The Code Enforcement Inspectors are also referred to as the Inspectors Code Enforcement, the Enforcement Code Inspectors, Housing Inspectors, and Housing Code Inspectors.

² In its petition, NAGE indicated that it was seeking to represent twelve employees in the positions of Code Enforcement Inspector, Senior Code Enforcement Inspectors, and Zoning Code Inspector. Currently, there are only ten incumbents in those three positions. NAGE seeks to sever those ten employees from UPSEU's unit and hold an election to include those employees in its current unit consisting of Senior Plumbing and Gas Fitting Inspectors, Senior Wiring Inspectors, Senior Building Inspectors, Plumbing and Gas Fitting Inspectors, Wiring Inspectors, and Building Inspectors. NAGE is not seeking to sever any other positions within the Code Enforcement Building Division, such as the Deputy Sealer of Weights and Measures, or Sealer of Weights and Measures.

³ Although the City filed a brief, it takes no position on the appropriateness of the unit or whether severance is appropriate under the circumstances present here.

1 to establish that the petitioned-for employees constitute a functionally distinct appropriate
2 unit with special interests sufficiently distinguishable from those of the other employees
3 in the UPSEU unit, and that serious divisions and conflicts exist within the UPSEU unit.
4 The CERB therefore will not sever the petitioned-for employees from the UPSEU unit and
5 dismisses this petition.

6 STIPULATIONS OF FACT

- 7 1. The City of Springfield ("City") is a public employer within the meaning of
8 Section 1 of M.G.L. c. 150E (the "Law").
9
- 10 2. The United Public Service Employees Union (UPSEU) is an employee
11 organization within the meaning of Section 1 of the Law.
12
- 13 3. The National Association of Government Employees (NAGE) is an employee
14 organization within the meaning of Section 1 of the Law.
15
- 16 4. The City currently has twelve (12) bargaining units:
17
- 18 1) AFSCME 1596A: Library Professionals
 - 19 2) AFSCME 3065: DPW Foreman
 - 20 3) IAFF: Firefighters
 - 21 4) IBPO: Patrolmen
 - 22 5) NAGE: Building Inspectors
 - 23 6) Public Health Nurses: Nurses at the Health Department
 - 24 7) SEIU 888: Civil Engineers
 - 25 8) SFCA: Fire Chiefs
 - 26 9) SOLE: Library Employees
 - 27 10) SPSA: Police Supervisors
 - 28 11) UFCW 1459: DPW Workers
 - 29 12) UPSEU: White Collar, Clerical, Dispatch
30
- 31 5. On January 26, 2011, UPSEU filed a petition in Case No. MCR-11-5412, seeking to
32 represent a unit currently represented by AFSCME Council 93. On March 17, 2011, the
33 City, UPSEU and AFSCME Council 93 signed a consent election agreement. After a
34 secret ballot election, on June 22, 2011, the DLR certified the UPSEU as an exclusive
35 bargaining representative for the following unit:
36

1 All full-time and regular part-time non-professional clerical and
 2 administrative employees, all building custodians, and all dispatchers
 3 employed by the City of Springfield in all city departments, but excluding all
 4 employees in the library department, and further excluding registered
 5 nurses, licensed practical nurses, building department inspectors, civil
 6 engineers, all casual employees, supervisors, managerial and confidential
 7 employees of the City of Springfield.

8
 9 UPSEU's unit included the City's Code Enforcement Inspectors, Senior Code
 10 Enforcement Inspectors, and Zoning Code Inspectors.

11
 12 6. The parties voluntarily included Vital Records Clerks (upgrade from Principal Clerks)
 13 in the UPSEU bargaining unit by way of agreement dated March 2015. The parties further
 14 voluntarily included Internal Investigations Unit Analyst (upgrade from Principal Clerk) by
 15 way of agreement dated May 4, 2021.

16
 17 7. UPSEU's unit currently consists of approximately 168 distinctive titles including
 18 Inspector Code Enforcement, Senior Inspector Code Enforcement, and Zoning Code
 19 Inspector. There are approximately 175 employees in UPSEU's unit including the
 20 following 10 Inspectors:

21		
22	Christopher Bennett	Sr. Inspector Code Enforcement
23	Maurice Rowtham	Inspector Code Enforcement
24	Michael McNulty	Inspector Code Enforcement
25	Michael Tuckey	Inspector Code Enforcement
26	Marissa Rodriguez	Inspector Code Enforcement
27	Marcus Gabrieli	Inspector Code Enforcement
28	Michael Whiting	Inspector Code Enforcement
29	Jermaine Mitchell	Inspector Code Enforcement
30	Keith O'Connor	Zoning Code Inspector
31	Saverio Santaniello	Zoning Code Inspector

32 8. The job description for the position of Code Enforcement Inspector accurately reflects
 33 the duties and requirements of that position.

34
 35 9. The job description for the position of Code Enforcement Inspector - Senior accurately
 36 reflects the duties and requirements of that position.

37
 38 10. The job description for the position of Zoning Code Inspector accurately reflects the
 39 duties and requirements of that position.

40
 41 11. The job descriptions and responsibilities of the Inspectors have not changed since the
 42 June 22, 2011 certification of the UPSEU unit.

43

1 12. The most recent Collective Bargaining Agreement [CBA] between that City and
2 UPSEU is the July 1, 2017- June 30, 2020 CBA. The City and UPSEU were engaged in
3 successor negotiations at the time the petition in this matter was filed.
4

5 13. The City filed a petition in Case No. CAS-21-8727 on July 12, 2021, seeking
6 clarification of UPSEU's bargaining unit with respect to the Inspectors. The CERB
7 dismissed the petition in that matter on October 5, 2021.
8

9 14. The petitioned for inspectors share working conditions with other bargaining unit
10 employees in the UPSEU unit. They work closely with the Office Manager of Inspectional
11 Services, the Inspectional Services Clerk, and the Senior Inspectional Services Clerk in
12 the execution of their job duties because they share property data input functions. The
13 Inspectors work in the same building with the Office Manager of Inspectional Services,
14 the Inspectional Services Clerk, and the Senior Inspectional Services Clerk, and they all
15 report to the same director, Steve Desilets.
16

17 Certain other employees in the UPSEU Unit work in other locations and with other
18 supervisors. Dispatchers work under the supervision of the Springfield Fire Department,
19 Custodians work under the supervision of the Head or Senior Custodian, and other
20 workers work in City Hall under the supervision of an office manager or Department Head.
21

22 15. The Code Enforcement Inspectors have the authority to condemn residential buildings
23 under the sanitary code and summons code violators. Code Enforcement Inspectors
24 work independently while performing their daily duties with minimum supervision. The
25 Code Enforcement Inspectors require laptops, cell phones and City vehicles to perform
26 their daily duties. All employees in the UPSEU bargaining unit in the Code Enforcement
27 Department,⁴ including UPSEU bargaining unit employees who are not a part of the
28 petitioned for Unit, are also required to use laptops, cell phones and other mobile
29 electronic devices, with the exception of the Sealer of Weights and Measures. This
30 position, which is represented by UPSEU, is not required to use a laptop. Certain other
31 positions within the UPSEU bargaining unit also use laptops, cell phones and other mobile
32 electronic devices to perform residential home/site visits such as the Assistant Assessor
33 and Assistant Assessors II.
34

35 16. The Enforcement Code Inspectors (also referred to as Housing Inspectors) and
36 Zoning Code Inspectors conduct interior and exterior inspections of residential dwellings.
37 Housing and Zoning Code Enforcement Inspectors work alongside or make referrals to
38 the police and fire department and also the Massachusetts Health Department,
39 Department of Environmental Protection (DEP), Springfield Legal Department, Code
40 Enforcement Building Department, and Springfield Housing Court, among others.
41

⁴ References to the Code Enforcement Department are interchangeable with the references to the Code Enforcement Building Division

1 The Enforcement Code Inspectors are sworn-in city officials for the City of Springfield that
2 serve legal documents and warrants to the public. They are certified lead determinators
3 for the Commonwealth of Massachusetts. The Code Enforcement Inspectors partner with
4 the Code Enforcement Building Division, Springfield Fire Department, and Police
5 Department to respond to emergency complaints from tenants for no heat, no hot water,
6 water leaks, fires, and structural issues.

7
8 Housing and Zoning inspectors' duties consist of face-to-face contact with the public and
9 the hazardous nature of the job has increased by performing their duties through the
10 pandemic.

11
12 17. Juan Martinez, a Code Enforcement Inspector, previously served as the UPSEU Vice
13 President. He served on UPSEU's bargaining team for a successor contract. Martinez
14 was the acting President when he negotiated an upgrade in pay for the Inspectors as part
15 of the 2013-2016 collective bargaining agreement. Bruce Lincoln, a Senior Code
16 Enforcement Inspector, also served on the bargaining committee for the 2013-2016
17 collective bargaining agreement and signed the agreement. Both Martinez and Lincoln
18 have subsequently left their employment with the City.

19
20 18. Maurice Rowtham currently works as a Code Enforcement Inspector. He ran for the
21 position of Vice President of UPSEU in a recent election, but he lost and does not
22 currently hold any union position in UPSEU.

23
24 19. Both Maurice Rowtham and Michael Tuckey, a Code Enforcement Inspector, were
25 named to UPSEU's bargaining team for the current negotiations for a successor
26 agreement but both left the bargaining team, on their own initiative, prior to the start of
27 active negotiations.

28
29 20. In 2021, Maurice Rowtham requested UPSEU to file a grievance on his behalf. On
30 April 26, 2021, UPSEU's Business Agent Roger Stolen forwarded the drafted grievance
31 for Rowtham's review prior to filing the grievance. Rowtham decided for his own personal
32 reasons that he no longer wished to pursue the grievance. Rowtham informed Stolen
33 that he did not wish to pursue the grievance and for that reason UPSEU did not file the
34 grievance.

35
36 21. At some time in the past number of years, the housing inspectors had the opportunity
37 to become state certified housing inspectors. Only two inspectors at that time had the
38 opportunity to receive the training, Juan Martinez and Bruce Lincoln. Then those
39 inspectors were to train all the other housing inspectors in the Department. After receiving
40 the training, Martinez filed a grievance that was handled by UPSEU. Around the same
41 time, the State stopped offering the training for Massachusetts State certified housing
42 inspectors and no further training was given for state certification to any other inspector
43 in the department.

44

1 22. There is no continuing education requirement for the Senior Code Enforcement
2 Inspector, the Code Enforcement Inspector, or the Zoning Code Inspector. Building
3 Inspectors, represented by NAGE, require National Certification and do require continuing
4 education.

5
6 23. The Building Inspectors were represented by the Springfield Building Department
7 Inspectors Association prior to 2012. On January 30, 2012, in Case No. MCR-12-1[5]20,
8 NAGE sought an election to represent the Senior Plumbing and Gas Fitting Inspectors,
9 Senior Wiring Inspectors, Senior Building Inspectors, Plumbing and Gas Fitting
10 Inspectors, Wiring Inspectors, and Building Inspectors. NAGE did not seek to represent
11 the Code Enforcement Inspectors, the Senior Code Enforcement Inspectors, the Zoning
12 Code Inspectors, or any other inspector at that time. On February 7, 2012, the City
13 voluntarily recognized NAGE as the exclusive representative of a unit that consists of
14 Senior Plumbing and Gas Fitting Inspectors, Senior Wiring Inspectors, Senior Building
15 Inspectors, Plumbing and Gas Fitting Inspectors, Wiring Inspectors, and Building
16 Inspectors.

17
18 24. All positions in the Code Enforcement Department work out of the same campus at
19 70 Tapley Street in Springfield, Massachusetts. All positions within the Code Enforcement
20 Department report to the Code Enforcement Commissioner, Steve Desilets. This
21 includes positions represented by NAGE, such as the Building Inspectors, Wire
22 Inspectors, and Plumbing & Gas Inspectors, and positions represented by UPSEU, such
23 as the Code Enforcement Inspectors, Zoning Code Inspectors, and the Inspectional
24 Services Clerks.

25

26 Additional Findings

27 Education, Certification and Experience Requirements

28 NAGE Building Inspectors

29 According to the job description, NAGE Building Inspectors are required to have
30 an Associate's degree supplemented by courses in civil engineering, architecture building
31 construction or design, and a minimum of four years of experience at the journeyman or
32 supervisory level in the building construction industry. Under the heading "Special
33 Necessary Qualifications," the job description states:

- 1 • All candidates for Building Inspector shall meet or exceed the qualifications
2 outlined in the prior paragraphs in keeping with outlined in M.G.L. c. 143, §3 and
3 the Massachusetts State Building Code (780 CMR 110.R7).
4 • All candidates must be certified within 12 months of initial employment. In order
5 to receive certification in Massachusetts in the capacity of Local Inspector,
6 qualified individuals must attain passing scores in all examinations required for
7 either NCPCCI's⁵ Certified Building Inspector or NCPCCI's Certified Building, by
8 obtaining passing scores in all examinations required for either the NCPCCI's
9 Certified Building Inspector or NCPCCI's Certified Building Plans Examiner
10 category or ICC Exams required for this level of certification. (Emphasis added).
11

12 Other NAGE titles, such as the Plumbing and Gas Fitting Inspector and Wire
13 Inspector, also require an Associate's degree or high school diploma and "Special
14 Necessary Qualifications," such as possession of a master or journeyman plumber's or
15 electrician's license.

16 By contrast, as set forth on their respective job descriptions, UPSEU Code
17 Enforcement Inspectors and Senior Code Enforcement Inspectors are required to have a
18 Bachelor's degree supplemented by courses related to housing inspection and
19 environmental sanitation, but no "Special Necessary Qualifications." Zoning Code
20 Inspectors are similarly required to graduate from a four-year college or university,
21 including or supplemented by courses related to zoning law, environmental sanitation or
22 city planning, but no "Special Necessary Qualifications."

23 No other UPSEU job description in the record indicates that the incumbents in the
24 position must have or obtain any special licenses or certifications. One other UPSEU
25 position, the 311 Call Center Service Representative, is required to have a Bachelor's

⁵ NCPCCI is the National Certification Program for Construction Code Inspectors.

1 degree. Other titles require an Associate's degree or high school degree, or its
2 equivalent, but no "Special Necessary Qualifications" other than a driver's license.

3 Other UPSEU Inspectors

4 Other UPSEU titles also have inspection duties. For example, the Community
5 Health Advocate – Environmental is responsible for inspecting food establishments to
6 ensure compliance with state food regulations and food safety compliance. The
7 incumbent in the position also inspects festivals, summer camps, outdoor and indoor
8 pools and mobile food carts, and obtains water samples from area swimming ponds for
9 testing. This position requires a high school diploma or equivalent, training in public health
10 and safety issues, but no special necessary qualifications.

11 OPINION⁶

12 Severance Standard

13 The CERB does not favor severance petitions and has declined to use them to fix
14 imperfectly constructed bargaining units. City of Fall River, 26 MLC 13, 17, MCR-4693
15 (July 15, 1999). To sever a group of employees from an existing bargaining unit and
16 represent them in a separate unit, a union must demonstrate that the petitioned-for
17 employees constitute a functionally distinct appropriate unit with special interests
18 sufficiently distinguishable from those of other unit employees, and that special
19 negotiating concerns resulting from those differences have caused or are likely to cause
20 conflicts and divisions within the bargaining unit. Absent evidence of serious divisions

⁶ The CERB's jurisdiction is not contested.

1 and conflicts within the bargaining unit, the CERB has consistently applied this standard
2 in deciding to maintain historical bargaining unit structures. Id.

3 The CERB considers many factors in determining whether a unit of petitioned-for
4 employees constitute a functionally distinct unit from the existing bargaining unit, including
5 whether those employees: 1) have specialized skills that are acquired through a required
6 course of study; 2) maintain and enhance their skills through continuing education; 3)
7 perform significantly different job functions compared with the existing unit of employees;
8 4) share work locations or common supervision with the existing unit of employees; and
9 5) interact with or share duties with any other bargaining unit member. Town of
10 Barnstable, 28 MLC 165, MCR-01-4885 (November 13, 2001).

11 NAGE argues that the petitioned-for employees work closely with the Building
12 Inspectors and others in the Code Enforcement Building Division who are represented by
13 NAGE. NAGE further asserts that tensions arise because two different unions, NAGE
14 and UPSEU, represent different job titles within the Code Enforcement Building Division.
15 NAGE argues that it is appropriate for the Code Enforcement Inspectors and Zoning
16 Inspectors to join in NAGE's unit of Building Inspectors so that NAGE represents all the
17 inspectors employed by the City. Conversely, UPSEU argues that the petitioned-for
18 employees do not constitute a functionally distinct appropriate unit with special interests
19 sufficiently distinguishable from those of other unit employees in its current unit. UPSEU
20 notes that the petitioned-for employees do not have any special necessary qualifications
21 in order to qualify for or perform their jobs, and there is no continuing education
22 requirement for these employees. UPSEU further contends that even though its existing

1 bargaining unit is “anything but homogenous,” with employees performing a wide variety
2 of job functions, reporting to different supervisors, and working under varying working
3 conditions, the petitioned-for employees share working conditions and supervision and
4 work closely with certain other employees in the bargaining unit.

5 We concur with UPSEU that the current unit is anything but homogenous. The unit
6 consists of approximately 168 distinctive titles including Administrative Assistants,
7 Custodians, Dental Hygienists, Dispatchers, and Assessor Analysts. These employees
8 work across several departments and have varied working conditions. This has been true
9 since the unit was certified in 2011. Nevertheless, the petitioned-for employees are not
10 unique, sharing many characteristics with others within the UPSEU unit. The Code
11 Enforcement Inspectors, Senior Code Enforcement Inspectors, and Zoning Code
12 Inspectors are not required to have any special necessary qualifications to obtain or
13 perform their jobs, similar to many others in the UPSEU unit. The Code Enforcement
14 Inspectors must have a Bachelor’s degree supplemented by courses related to housing
15 inspection and environmental sanitation. The Zoning Code Inspectors must also have a
16 four-year degree, including or supplemented by courses related to zoning laws,
17 environmental sanitation, or city planning. At least one other position in UPSEU’s unit
18 requires a Bachelor’s degree in a related field. Like many other positions in UPSEU’s
19 unit, there is no requirement that the Code Enforcement Inspectors or the Zoning Code
20 Inspectors maintain and enhance their skills through continuing education. In contrast,
21 the Building Inspectors in the NAGE unit are required to have national certification and
22 continuing education.

1 Although there is a great deal of diversity in the job functions of various positions
2 within the UPSEU unit, the stipulated records reveal that the Senior Code Enforcement
3 Inspectors, the Code Enforcement Inspectors, and the Zoning Code Inspectors perform
4 duties similar to others in the unit, work closely with others in the unit, and share working
5 conditions with others in the unit. The petitioned-for employees work both in an office
6 environment and in the field. Their duties include in-person contact with the public. They
7 use laptops, cell phones, and city vehicles to perform their daily duties. None of these
8 factors make the petitioned-for employees functionally distinct from others in the UPSEU
9 unit. Most of the other employees in the Code Enforcement Building Division who are
10 represented by UPSEU also use laptops and cell phones to accomplish their duties.
11 Certain other positions within UPSEU's unit, such as the Assistant Assessor, also work
12 in both an office and field environment while inspecting properties. The petitioned-for
13 employees are not alone in having in-person contact with the public. Additionally, the
14 Senior Code Enforcement Inspectors, the Code Enforcement Inspectors, and the Zoning
15 Code Inspectors work closely with others in the unit in the execution of their job duties,
16 such as the Office Manager of Inspectional Services, the Inspectional Services Clerk, and
17 the Senior Inspectional Services Clerk. The petitioned-for employees share property data
18 input functions with other UPSEU positions within the Code Enforcement Building
19 Division. They also share a work location and supervision with the other UPSEU positions
20 within the Code Enforcement Building Division, working in the same building and reporting

1 to the same Director, Steve Desilets. For all these reasons, we conclude that NAGE has
2 not satisfied the first prong of the severance analysis.⁷

3 Even if we did find that the Code Enforcement Inspectors, Senior Code
4 Enforcement Inspectors, and Zoning Code Inspectors constituted a functionally distinct
5 appropriate unit with special interests sufficiently distinguishable from those of the other
6 employees in UPSEU's unit, NAGE has failed to demonstrate that the unique qualities
7 have or will likely cause conflicts in unit. Under the second prong of the severance
8 analysis, NAGE must show that the special negotiating concerns of the petitioned-for
9 employees have caused or are likely to cause serious conflicts or divisions within the
10 bargaining unit that will effectively interfere with collective bargaining. City of Boston, 25
11 MLC 105, 120, MCR-4537 (January 22, 1999). To establish the requisite degree of
12 conflict necessary for severance, the CERB considers whether the petitioned-for
13 employees play no role in the representation process, cannot participate on the
14 negotiating team, and have their interests subordinated by the incumbent union to the
15 interests of the other employees in the unit. City of Somerville, 27 MLC 62, 66, MCR-
16 4784 (December 1, 2000).

17 NAGE maintains that because NAGE represents and negotiates exclusively for
18 inspectors, NAGE is best suited to provide the representation required to meet the needs
19 and improve the working conditions of the Code Enforcement Inspectors, Senior Code

⁷ We also note that even if we agreed it was appropriate to sever the petitioned-for employees, which we do not, NAGE would still not represent all of the City's inspectors as it asserts. The Community Health Advocates are also inspectors employed by the City. NAGE did not petition-for the Community Health Advocates who are currently represented by UPSEU.

1 Enforcement Inspectors, and the Zoning Code Inspectors. NAGE also argues that having
2 two unions represent employees within one department, as here, leads to tension,
3 animosity, and strained relationships, and also disrupts the daily work assignments.
4 Lastly, NAGE argues that the employees at issue in the petition wish to be represented
5 by NAGE. In contrast, UPSEU maintains that the petitioned-for employees played a
6 prominent role in the representation process overall and in collective bargaining in
7 particular, serving as officers in UPSEU and participating on bargaining committees.
8 Moreover, UPSEU has negotiated wage upgrades for the petitioned-for employees and
9 represented them in the grievance procedure.

10 We are not persuaded by NAGE's arguments. First, we note that NAGE's petition
11 only seeks to sever the Code Enforcement Inspectors, Senior Code Enforcement
12 Inspectors, and Zoning Code Inspectors, not any other position represented by UPSEU
13 within the Code Enforcement Building Division, such as the Inspectional Services Clerk,
14 the Senior Inspectional Series Clerk, the Inspectional Services Office Manager, and the
15 Deputy Sealer Weights & Measures. Hence, both NAGE and UPSEU will continue to
16 represent various employees within the Code Enforcement Building Division regardless
17 of the outcome in this matter. Moreover, although there may be some tension among the
18 employees, the stipulated record is devoid of any evidence that supports a conclusion
19 that having two unions representing employees within the Code Enforcement Building
20 Division has led to any serious conflicts or divisions that interfere with collective
21 bargaining.

1 Secondly, although NAGE argues that it is best suited to provide the representation
2 required to meet the needs and improve working conditions for the Code Enforcement
3 Inspectors, Senior Code Enforcement Inspectors, and the Zoning Code Inspectors,
4 NAGE failed to provide any evidence that the petitioned-for employees are being
5 excluded from representation by UPSEU or that their interests have been subordinated
6 to the interests of others in the unit. The stipulated record demonstrates that the
7 petitioned-for employees have a significant role in the representation process. For
8 example, one Code Enforcement Inspector, Juan Martinez (Martinez), served as
9 UPSEU's Vice President. He was on the bargaining team for a 2013-2016 successor
10 Collective Bargaining Agreement (CBA), as was a Senior Code Enforcement Inspectors,
11 Bruce Lincoln. Martinez was acting president when he negotiated an upgrade in pay
12 specifically for the Code Enforcement Inspectors and the Senior Code Enforcement
13 Inspectors and a clothing allowance for the Code Enforcement Inspectors and the Zoning
14 Code Inspectors as part of the 2013-2016 CBA. More recently, UPSEU named two other
15 Code Enforcement Inspectors to its bargaining team for the current successor CBA
16 negotiations, although both left the team on their own initiative prior to the start of
17 negotiations. Further, the evidence demonstrates that UPSEU has negotiated other
18 agreements with the City, in 2018 and 2019, to increase wages for the petitioned-for
19 employees.

20 The stipulated record also demonstrates that UPSEU has been responsive when
21 Code Enforcement Inspectors have requested it to file grievances on their behalf. In this
22 regard, UPSEU filed a grievance on behalf of Martinez and took steps to file a grievance

1 on behalf of another Code Enforcement Inspector, who ultimately opted not to pursue the
2 grievance.

3 The evidence therefore demonstrates that UPSEU is representing the petitioned-
4 for employees' interests. Even if the Code Enforcement Inspectors, Senior Code
5 Enforcement Inspectors, and Zoning Code Inspectors are still dissatisfied with UPSEU's
6 representation and would prefer to be included in NAGE's unit, it is well-established that
7 the petitioned-for employees' inability to achieve their bargaining goals within a larger
8 unit, or dissatisfaction with their representative's accomplishments, is insufficient to
9 establish the irreconcilable conflict necessary to warrant severance. City of Worcester,
10 36 MLC 151, 155, MCR-09-5360 (April 5, 2010) citing City of Boston, 25 MLC at 120.

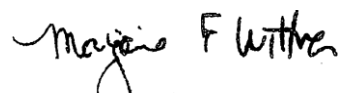
11 In the absence of evidence that the long-standing inclusion of the Code
12 Enforcement Inspectors, Senior Code Enforcement Inspectors, and Zoning Code
13 Inspectors in the bargaining unit has caused serious divisions or conflicts, there is no
14 basis to sever these titles from the unit. See Town of Braintree, 5 MLC 1133, 1136, MCR-
15 2659 (July 6, 1978), (finding no basis to sever Clerk from Unit A, or Custodians from Unit
16 C where no evidence that their inclusion in their respective units posed any collective
17 bargaining difficulties for them).

18 CONCLUSION

19 For the reasons set forth above, we decline to sever the Code Enforcement
20 Inspectors, Senior Code Enforcement Inspectors, and Zoning Code Inspectors from the
21 existing UPSEU bargaining unit and dismiss NAGE's petition.

22 **SO ORDERED.**

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



MARJORIE F. WITTNER, CHAIR



JOAN ACKERSTEIN, CERB MEMBER



KELLY STRONG, CERB MEMBER