
In the Matter of SHERIFF OF WORCESTER COUNTY
and

MASSACHUSETTS CORRECTION OFFICERS
FEDERATED UNION

Case No. CAS-03-3543

34.5 *established practice (history)*
34.93 *severance*
35.7 *supervisory and managerial employees*
35.821 *correctional officers*
91.1 *dismissal*
92.47 *motion to dismiss*
93.4 *petition for clarification*

April 7, 2004

Allan W. Drachman, Chairman

Helen A. Moreschi, Commissioner

Demitrios M. Moschos, Esq. *Representing the Sheriff of
Worcester County*

Matthew E. Dwyer, Esq. *Representing the Massachusetts
Correction Officers Federated
Union*

RULING ON MOTION TO DISMISS

STATEMENT OF THE CASE

On January 27, 2003, the Sheriff of Worcester County (Sheriff) filed a petition with the Labor Relations Commission (Commission) seeking to sever/exclude sergeants from a bargaining unit of correction officers (line officers) and sergeants for which the Massachusetts Correction Officers Federated Union (Union) is the exclusive collective bargaining representative. The Union maintains that the bargaining unit continues to be an appropriate bargaining unit and opposes the severance. The Sheriff argues that sergeants are inappropriately included in the existing bargaining unit because they supervise the line officers. The Sheriff does not question that the Union continues to enjoy majority status among sergeants, and the Sheriff will recognize the Union as the exclusive representative of all sergeants in a separate bargaining unit.

On March 19, 2003, the Union filed a Motion to Dismiss the petition. The Sheriff filed its opposition to the Union's Motion on April 24, 2003 and, on May 23, 2003, the Union filed a response to the Sheriff opposition to its Motion. On June 20, 2003, the Sheriff responded to the information filed by the Union. Commission agent Ann T. Moriarty, Esq. investigated the issues raised in the petition, and on July 1, 2003, the Commission provided the parties with a summary of the information adduced during the investigation. Further, because it did not appear that any material facts were in dispute, the Commission directed the parties to show cause *why* the Commission should not resolve the unit placement issue based on the factual summary. The Union responded to the Commission's show cause letter on July 10, 2003 and supplemented its re-

sponse on July 16, 2003. The Sheriff filed its response with the Commission on July 17, 2003.

STATEMENT OF FACT

After reviewing carefully the parties' responses to the Commission's show cause letter, the Commission has corrected and modified the facts where appropriate. Because all material facts necessary to the Commission's decision in this case are not in dispute, it is appropriate for the Commission to decide the case based on the following information:

Union's Bargaining Unit¹

In 1980, the Commission certified the International Brotherhood of Correctional Officers (IBCO) as the collective bargaining representative for all correctional officers below the rank of Assistant Deputy Master, employed by Worcester County at the Worcester County Jail and House of Correction, including captains, lieutenants, sergeants, and privates.

On August 7, 1995, the Union filed a representation petition (MCR-4413) with the Commission seeking to represent those same employees. On August 10, 1995, the Worcester County Sheriff's Office Superior Officers Association (Association) filed a petition (MCR-4414) with the Commission seeking to represent the captains and lieutenants in a separate bargaining unit, apart from the other corrections officers. The Commission consolidated the petitions for hearing and decision.

On January 10, 1997, the Commission decided that two bargaining units of uniformed correction officers, a supervisory unit, Unit A, and a non-supervisory unit, Unit B, were appropriate for the purpose of collective bargaining. The Commission defined those two bargaining units as:

Unit A: All full-time and regular part-time captains and lieutenants employed by Worcester County in the Sheriff's Department at the Jail and House of Correction, excluding all managerial, confidential and casual employees and all other employees of Worcester County

Unit B: All full-time and regular part-time sergeants and corrections officers (privates) employed by Worcester County in the Sheriff's Department at the Jail and House of Correction, excluding all managerial, confidential and casual employees and all other employees of Worcester County

Worcester County (Jail and House of Correction), MCR-4413, MCR-4414, slip op. (January 10, 1997). In that case, the parties did not dispute that the captains were supervisory employees and that the sergeants and the line officers belonged in the same bargaining unit. The Commission decided that the lieutenants were supervisory employees and properly belonged with the captains in a separate bargaining unit apart from the sergeants and the line officers. On March 14, 1997, the Commission certified the Association as the exclusive bargaining representative for employees in Unit A,

above, and certified the Union as the exclusive bargaining representative for employees in Unit B, above.

On October 24, 2000, the Sheriff and the Union signed a successor Memorandum of Agreement covering July 1, 2000 to June 30, 2003. The parties' first collective bargaining agreement had covered 1997 to 2000. The recognition clause of the parties' contract acknowledges the Union as the exclusive bargaining representative of:

All permanent correctional officers with the rank of correctional officer and sergeant employed at the Worcester County Jail and House of Correction ("Unit B") at West Boylston and Worcester, Massachusetts, and excluding the Deputy Superintendent, all First Assistant Deputy Superintendents, Assistant Deputy Superintendents, Captains and Lieutenants, and all other managerial and confidential employees and casual employees and all other employees.

This unit clarification petition is timely filed within the meaning of the Commission's rules and regulations. *See*, 456 CMR 14.06 (1)(b).

Other Bargaining Units

The Association continues to be the exclusive bargaining representative for supervisory employees in Unit B, above. The Sheriff and the Association are parties to a collective bargaining agreement covering July 1, 2001 to June 30, 2003.

The United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, AFL-CIO, Top Unit - Local 422, UAW (Local 422) is the certified exclusive bargaining representative for non-supervisory, civilian employees employed by the Sheriff. The Sheriff and Local 422 are parties to a collective bargaining agreement covering 1999-2002.

The National Association of Government Employees Local R1-255 (Local R1-255) is the exclusive bargaining representative for non-supervisory, professional, civilian employees employed by the Sheriff. The Sheriff and Local R1-255 are parties to a collective bargaining agreement covering July 1, 1999 to June 30, 2002.

Operations and Staffing

Correctional officers are members of a uniform service whose conduct is subject to on and off duty regulation by the Sheriff. They are organized on a semi-military basis as part of a uniform force with a chain of command in a hierarchical organizational structure. Specifically, correctional officers are organized with the following rank structure, organized by order of rank, noting the rank insignia and function:

Rank: Sheriff/Superintendent

Insignia: Four stars

Function: Chief Law Enforcement Officer and Chief Executive of the Sheriff's Office and Worcester County Jail and House of Correc-

1. The Commission takes administrative notice of its Decision and Certification of Representatives in the listed cases. The bargaining unit history stated here is as it appears in the Commission's January 10, 1997 Decision.

tion; First in Command of the Uniform Service; Appointing Authority.

Rank: Deputy Superintendent

Insignia: Eagle

Function: Correctional Officer. Commissioned Command Officer, Chief Operating Officer of the Worcester County Jail and House of Correction; Second in Command of the Uniform Service.

Rank: First Assistant Deputy Superintendent

Insignia: Silver leaf

Function: Correctional Officer, Commissioned Command Officer and Commander at the group level of the Worcester County Jail and House of Correction.

Rank: Assistant Deputy Superintendent

Insignia: Gold leaf

Function: Correctional Officer, Commissioned Command Officer and Commander at the group level of the Worcester County Jail and House of Correction.

Rank: Captain

Insignia: Two gold bars

Function: Correctional Officer, Commissioned Command Officer and Operations Officer of a department or unit of the Worcester County Jail and House of Correction.

Rank: Lieutenant

Insignia: One gold bar

Function: Correctional Officer, Commissioned Superior Officer and Senior Shift Officer.

Rank: Sergeant

Insignia: Three stripes

Function: Correctional Officer, Non-commissioned Superior officer and Senior Officer.

Rank: Officer

Insignia: None

Function: Correctional Officer, Non-commissioned Superior Officer

Within each rank, the order of rank is the officer with the senior date of appointment within that rank, unless specifically designated differently by the Sheriff or his designee. Until relieved by a superior ranking officer, the officer highest in rank and seniority is to take charge of any matter or situation that presents itself to the correctional officers or the staff present. While on the premises of the Sheriff's Office, correctional officers must address other correctional officers of a higher rank by rank and are not to use the first name of the officer.

Article 31, *Organization of Correctional Officers*, Section 1 of the contract between the Sheriff and the Union states:

The Union acknowledges that correctional officers are members of a uniform force whose conduct is subject to on and off duty regulation by the Sheriff. The Union acknowledges the force is organized on a semi-military basis with a chain of command in a hierarchical organizational structure under the command of the Sheriff.

The Sheriff has assigned an Assistant Deputy Superintendent to manage the operations of its four correction facilities: 1) maximum security; 2) medium security A; 3) medium security B; and, 4) minimum security. These four facilities, that were built and designed to house about 700 prisoners, currently house about 1,400 prisoners. These four facilities are staffed twenty-four hours each day, seven days each week using three shifts: 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m. and 11:00 p.m. to 7:00 a.m. The Deputy Superintendent, Assistant Deputy Superintendents, and the captains work the day shift Monday through Friday.

The Sheriff employs about 211 civilian employees, 301 line officers, fifty-seven sergeants, and thirty-seven lieutenants and captains. The Sheriff has issued a sexual harassment policy and a general order governing standards of conduct that are applicable to all officers and personnel.

Each of the four facilities is headed by an Assistant Deputy Superintendent, who reports directly to the First Assistant Deputy Superintendent. A captain is assigned as the executive officer in each operational area of the four facilities. The Sheriff has assigned three lieutenants to work as senior shift officers at each of the four facilities. Each senior shift officer/lieutenant is regularly assigned to work one of the three shifts at the facilities, on a four and two workweek, four days on, two days off (the 4/2 schedule).

The Sheriff also assigns one sergeant as a unit supervisor to each housing unit within each of the four facilities on all three shifts, seven days a week. Each of the four facilities has three housing units, except for medium security B, which has four housing units. There are from three to four or six to seven line officers assigned to each housing unit. On average, each shift is staffed with about twenty to twenty-five line officers. The total complement of officers, including all ranks, for a shift usually averages about 51 officers.

Like the senior shift officers/lieutenants, the unit supervisors/sergeants and the line officers work a 4/2 schedule. Because only one senior shift officer/lieutenant works each of the three shifts at the four facilities and each of these lieutenants works a 4/2 schedule, there are about six shifts each week, or two days out of seven, and three days out of seven every five or six weeks, that a unit supervisor/sergeant is the highest ranking officer in a housing area and/or in the facility. On those occasions, a unit supervisor/sergeant may be required to perform the duties of a senior shift officer/lieutenant, and in that capacity the sergeant is in charge of one of the three shifts, not just a housing unit. Based on the uncontested information provided by the Sheriff, during March 2003, a sergeant assumed the duties of a senior shift officer on 241 shifts out of 372 shifts, or approximately 65% of the shifts during that month. The sergeant receives no additional compensation for performing the

duties of a senior shift officer. At the minimum security facility only, line officers act as a sergeant and/or lieutenant if a sergeant or lieutenant shift is vacant.

The current published position description for sergeant has been in effect since before 1997 and neither party disputes its accuracy, as supplemented by the post order for unit supervisor, the post order for senior shift officer and, as amplified by the information contained in their respective submissions.

As a unit supervisor, a sergeant supervises the line officers, maintains the care and custody of inmates within his or her assigned area, and maintains discipline of officers and inmates. In addition, the essential functions of a sergeant, include:

- To evaluate the performance of subordinates.
- To conduct confidential investigations and inquiries.

Investigations are conducted by the staff assigned to the Internal Affairs Division. The Sheriff has assigned sergeants to the Internal Affairs Division. Although not specifically noted in the line officer's published position description, the Sheriff has also assigned line officers to the Internal Affairs division. Sergeants and line officers who are not assigned to the Internal Affairs Division do not conduct confidential investigations.

- To function as a senior shift officer in the absence of the lieutenant.

A sergeant functions as a senior shift officer in the absence of the lieutenant in all four correction facilities. As stated elsewhere in these facts, line officers act as a sergeant and/or lieutenant if a sergeant or lieutenant shift is vacant at the minimum security facility only.

- To provide on-the-job training for all officers under his or her command.

Although not listed as an essential function of their positions, line officers assist and guide fellow line officers in the proper performance of their duties.

- To check posts to ensure that duty stations are covered and to conduct roll calls or inspections of personnel and equipment.
- To act in the absence of superior ranking officers, i.e., provide instruction, assign work, etc.

When a line officer acts as a sergeant and/or lieutenant at the minimum security facility only, the line officer performs these two duties, next above.

Both sergeants and line officers perform the following essential functions:

- To maintain custodial care and control of inmates, including inmates who are violent in behavior and dangerous.
- To use physical force in a lawful manner to restrain and apprehend inmates and to suppress riots, violence, escapes, disturbances or other crises, including suicides, by inmates, including inmates who may be violent and dangerous.
- To carry and use fire arms when authorized in a safe and lawful manner.

• To function in dangerous situations where personal safety may be in jeopardy, where conditions are stressful, and where subject to physical and verbal abuse.

• To observe inmates' well-being and refer inmates to the appropriate supportive service, such as medical, as needed to aid in rehabilitation and to foster atmosphere of cooperation between inmates and staff.

• To patrol correctional facilities.

• To observe conduct and behavior of inmates and to monitor inmates' movements and whereabouts.

• To make periodic rounds, head counts, and security checks of buildings, grounds, and inmate quarters.

• To guard and direct inmates during work assignments while maintaining order and security in the institution.

• To prepare reports on such occurrences as fires, disturbances, accidents, security breaches, etc.

• To make entries into unit log of daily activities and to review daily activity reports to have accurate and up-to-date information available for reference by authorized personnel.

• To review and study the policy manual books and to keep current with the policies and procedures of the Jail.

Sergeants are authorized to apply four-point restraints to inmates but must seek approval from the Assistant Deputy Superintendent if the restraints are to remain on the inmate for more than two hours. The Sheriff's post order for senior shift officers provides, in part, that:

65. To maintain security and control, a senior shift officer shall have the authority to place an inmate under close supervision. Placement under close supervision may be utilized if the inmate demonstrates behavior which may be detrimental to the orderly operation of the shift or facility. Placement may be until such time that the inmate is evaluated by the proper inmate service. Prior to the end of his/her tour of duty, the senior shift officer shall complete the placement status form and an informational report outlining the details of placement.

The unit supervisor/sergeant has the authority to relieve a line officer from duty if he or she reports for work intoxicated, or is otherwise incapable of performing their shift duties, without first notifying a superior officer. After the line officer is relieved from duty, the unit supervisor/sergeant is required to notify the senior shift officer, captain or assistant deputy superintendent of his/her action in relieving a line officer from duty. The unit supervisor/sergeant also has the authority to modify correction officers' post assignments within a housing unit to meet the facilities' changing needs during a shift.² For example, if a line officer leaves during a shift due to illness or emergency, if necessary, the sergeant will reassign another correction officer to that post.

Sergeants do not have the authority to discipline line officers other than relieving a line officer from duty if he or she is incapable of performing their shift duties. However, sergeants are required to: 1) report all rule infractions by line officers to the senior shift offi-

2. Captains post and authorize changes to the daily schedule that contains the post assignments. Sergeants are authorized to change the post assignments to accom-

modate a staffing shortage caused by an unexpected absence or illness, or if a line officer is assigned to escort an inmate to the hospital.

cer/lieutenant or the Assistant Deputy Superintendent assigned to the particular facility; and, 2) testify at the appropriate disciplinary hearing or arbitration hearing about that rule infraction.

The unit supervisor/sergeant also evaluates the work performance of line officers within their assigned unit and issues a written report that is kept in the line officer's personnel file. The Sheriff uses this written evaluation for training purposes and its content is a factor considered in that officer's application for promotion to a higher rank. The evaluation does not impact the line officer's pay within rank.

If a shift is short-staffed due to an unexpected absence or illness of a line officer, and if overtime is authorized,³ a sergeant, as a unit supervisor or when performing the duties of a senior shift officer has the authority to hold a line officer over from the previous shift to fill the shift or to call in a line officer to fill the shift on an overtime basis.

Sergeants performed all of the above duties since at least January 1995 and they continue to perform these same duties although they may more frequently serve as senior shift officer. Line officers and sergeants receive the same training except that, starting in or about 1997, the Sheriff started a forty hour in-house training program for sergeants at or about the time of their promotion. The training includes presentations about job descriptions, the essential functions of a sergeant, a discussion of supervising styles and supervising former peers, the evaluation process, and the sergeant's role in progressive discipline. Not all sergeants currently on staff have received the forty hours of supervisory training. The annual salary for a sergeant ranges from \$32,996 to \$48,267. The difference between the maximum annual salary of a line officer (\$44,417) and that of a sergeant (\$48,267) is \$3,850.

Union's Constitution and By-Laws - Article XI Judicial Panel

Under Article XI of the Union's Constitution and By-Laws, a member in good standing may file written charges against another member alleging a violation of the Union's Constitution and By-Laws. All charges are heard by the Union's Judicial Panel.

In September 2001, the Union's Grievance Coordinator filed ethics charges against a sergeant employed by the Sheriff for violating the Union's Constitution and By-Laws. Specifically, the Grievance Coordinator alleged that the sergeant had colluded with management when he/she lied at a Step III hearing to the detriment of Union members. After hearing, the Union's Judicial Panel found the sergeant not guilty of violating the Union's Constitution and By-Laws. That sergeant was the only sergeant or line officer brought before the Union's Judicial Panel since the Union became the exclusive representative of sergeants and line officers in 1997. Since 1997, there have been four specific instances in which line officers and sergeants have testified against other line officers. None of the eight individuals who testified, six sergeants and two line officers, have been brought before the Union's Judicial Panel

for testifying against their fellow Union member at an arbitration or disciplinary hearing.

MOTION TO DISMISS

On March 19, 2003, the Union filed a Motion to Dismiss the petition on the grounds that the Sheriff is estopped from raising the appropriate unit placement of sergeants because it did not object to a bargaining unit including sergeants and line officers during a prior Commission unit determination proceeding and the sergeant's job duties have not changed since the Commission's 1997 decision. *Worcester County (Jail and House of Correction)*, MCR-4413, MCR-4414, slip op. (LRC, January 10, 1997). The Sheriff responded to the Union's Motion to Dismiss on April 24, 2003. In its response the Sheriff argues that: 1) the Commission may hear a unit clarification petition even if there have been no material changes in the duties of a sergeant; 2) estoppel does not apply where the parties have negotiated a further agreement and sufficient time has passed since the bargaining unit was first established; and, 3) there exists a legitimate issue as to whether sergeants should be separated from the Union's existing bargaining unit for reasons of law and policy.

On May 23, 2003, the Union filed a response to the Sheriff's opposition to its Motion to Dismiss, which included information about the duties and responsibilities of sergeants in support of the continued inclusion of sergeants in a bargaining unit with line officers. In this response, the Union argues that: 1) the existing bargaining unit is appropriate; 2) the unit clarification petition does not meet either prong of the two-part test for evaluating the merits of petitions seeking severance; 3) sergeants are not clearly supervisors under the Law; and, 4) the filing of an ethics charge by one bargaining unit member against another bargaining unit member, a sergeant, for violating the Union's constitution does not warrant severance.

On June 20, 2003, the Sheriff responded to the information filed by the Union arguing that: 1) the Union has not met its burden in showing that a Motion to Dismiss is justified; 2) the existing bargaining unit is inappropriate where the sergeants are clearly supervisors under the Law; and, 3) the existing bargaining unit is inappropriate where the sergeants and line officers have distinct and separate interests and union actions have created a chilling effect on relations between the ranks.

After reviewing carefully the facts and the parties' arguments, the Union's motion to dismiss the unit clarification petition is granted, and the unit clarification petition is denied for the following reasons.

A unit clarification petition is the appropriate vehicle to determine whether newly-created positions should be included or excluded from a bargaining unit and to determine whether substantial changes in the job duties of existing positions warrant either their inclusion or exclusion from a bargaining unit. *North Andover School Committee*, 10 MLC 1226, 1230 (1983). Further, a unit

3. About one year ago, the Sheriff issued a rule requiring the pre-authorization of overtime before a senior shift officer could hold a line officer over for overtime.

The Sheriff issued this rule due to budgetary constraints, and the rule is applicable to both lieutenants and sergeants when serving as the senior shift officer.

clarification petition is appropriate if the outcome sought by the petition is "... clearly supported by an apparent deficiency in the scope of the existing unit and must be, at least arguably, within the realm of what the ... parties intended when the unit was first formulated." *City of Somerville*, 1 MLC 1234, 1236 (1975), quoting, Goslee, *Clarification of Bargaining Units and Amendments to Certifications*, 1968 Wisconsin Law Review 988, 993. A unit clarification petition is not the appropriate vehicle to change the composition of an existing bargaining unit by severing positions thereby creating a new bargaining unit. Severance petitions inherently involve questions of representation that are not properly resolved in a unit clarification petition. *City of Quincy*, 10 MLC 1027, 1031 (1983).

There are rare exceptions to these general rules. In *Silver Lake Regional School District*, 1 MLC 1240 (1975), the Commission acknowledged that a severance question was improperly raised in a unit clarification petition, but decided to address the issue because the parties had fully litigated the issue and a severance petition would have been timely filed during the pendency of the unit clarification petition. In *City of Quincy*, 10 MLC 1027 (1983), the Commission declined to treat the public employer's petition to sever hospital employees from a city-wide bargaining unit as a severance petition, but examined the continued appropriateness of the unit in light of the substantial changes in the hospital's operation since the most recent certification.

The Commission has also reinvestigated and amended its certifications under certain, appropriate circumstances. For example, in *Town of Burlington*, 5 MLC 1234 (1978), upon the timely protest and petition of the affected employee, the Commission amended its certification to include the position of dog officer, which had been excluded previously from a residual bargaining unit that was intended to include all non-managerial employees not represented for the purposes of collective bargaining. Similarly, in *City of Boston*, 2 MLC 1353 (1976), the Commission found it unnecessary to address the employer's argument that police officers in the special investigative unit are either confidential or managerial employees, but rather used its general authority under the Law to address unit problems arising post-certification to exclude those employees from the police officers' bargaining unit rather than to "preserve a potentially divisive situation." *City of Boston*, 2 MLC at 1356.

Here, the Sheriff seeks to sever sergeants from an existing bargaining unit of sergeants and line officers, which the Commission found appropriate in a 1997 bargaining unit determination. The facts demonstrate that the sergeants' job duties have not changed substantially since the Commission's unit determination. Further, the Sheriff does not raise any other substantial changes that warrant the Commission's consideration of this inappropriately filed severance petition. Rather, the Sheriff argues that the Commission has the duty, discretion and authority to alter or amend a bargaining unit if the unit includes supervisory employees with the employees they supervise. In the Sheriff's view, this duty exists despite the absence of any material changes in the sergeants' job duties, and despite the fact that the Commission included the sergeants and the line officers in the same bargaining unit in 1997

without objection. The Sheriff also argues that since 1997 the parties have negotiated successive collective bargaining agreements, a reasonable amount of time has lapsed since certification, and the parties are now able to better assess the appropriateness of the bargaining unit at issue.

Section 3 of the Law requires the Commission to determine appropriate bargaining units consistent with the fundamental purpose of providing for stable and continuing labor relations, while giving due regard to the following tripartite statutory criteria: 1) community of interest; 2) efficiency of operations and effective dealings; and, 3) safeguarding the rights of employees to effective representation. Applying these criteria, the Commission generally establishes separate bargaining units for supervisory employees and the employees they supervise. *Worcester County*, slip op. at p.7, and cases cited.

The Sheriff states that it did not object to including sergeants in the same bargaining unit as line officers in the 1997 unit determination because it was not the issue litigated. However, the issue was not litigated because "none of the parties disputed that the sergeants and the line officers belonged in the same bargaining unit." *Worcester County*, slip op. at p.5. Further, no party to the case presented any evidence that the placement of sergeants and line officers in the bargaining unit was contrary to the Law or Commission policy. Therefore, the Commission treated the absence of any dispute about the inclusion of sergeants and line officers in the same bargaining unit as the parties' consent to that bargaining unit structure. See, *Town of Manchester-By-The-Sea*, 24 MLC 76, 80 (1998) (Commission adopted the parties' stipulation concerning the unit placement of several positions where it did not appear to conflict with the Law or with established Commission policy); *City of Worcester*, 6 MLC 1104, 111 (1979) (Commission adopted the parties' stipulations concerning the appropriate unit placement of five job classifications where no evidence was presented that any of the stipulations was contrary to law or policy and the stipulated unit placement was consistent with Commission and National Labor Relations Board case precedent). The Commission resolved the single litigated issue, whether the lieutenants were supervisory employees, and concluded that two bargaining units were appropriate, a supervisory bargaining unit including captains and lieutenants and a bargaining unit of sergeants and line officers. *Worcester County*, slip op. at p.7-8. We decline to revisit those unit determinations in this unit clarification petition.

The Sheriff had the opportunity to raise the supervisory status of sergeants in the 1997 unit determination, but failed to do so. It cannot now, absent changed circumstances, raise an issue that it had a full and fair opportunity to raise during the prior unit determination case. *North Andover School Committee*, 10 MLC at 1230 (a public employer should not be permitted to do through a unit clarification petition what it failed to do at the time of the representation proceeding); *City of Worcester*, 6 MLC 1902, 1903 (1980) (an employer is procedurally estopped from raising the appropriate unit placement of two positions because it had failed to do so during the prior representation proceeding). Compare *City of Lawrence*, 13 MLC 1087 (1986) (City is foreclosed from raising issues it failed to raise during a prior unit determination as a defense to a

refusal to bargain charge), with *City of Medford*, 3 MLC 1238 (1976) (Commission voids its certification of a bargaining agent in a totally inappropriate unit where the employer's disagreement with the unit composition was apparent from the eligibility list it submitted prior to the election).

Further, the Sheriff's desired outcome of its petition is not to transfer the sergeants from the non-supervisory bargaining unit to the existing supervisory bargaining unit, but to remove the sergeants from the existing bargaining unit. This outcome necessarily implicates the creation of a new supervisory bargaining unit of sergeants, which would be in addition to, and separate from, the existing supervisory bargaining unit of captains and lieutenants.⁴ The Commission has previously expressed its strong reservations about adopting an approach to bargaining unit determinations that creates more than one supervisory bargaining unit in a particular workforce. *Lowell School Committee*, 8 MLC 1010, 1014 (1981)

(Commission declines to sever principals and headmasters from a bargaining unit of administrators). Here, we are reluctant to adopt an approach to bargaining unit determinations for uniformed correction officers that effectively creates separate bargaining units for each rank or level of supervision. Therefore, we decline to exercise our discretion to re-examine the contours of this bargaining unit under Section 3 of the Law.

CONCLUSION

For the reasons stated, the Union's motion to dismiss the unit clarification petition is granted, and the unit clarification petition is denied.

SO ORDERED.

* * * * *

4. The Sheriff cites a Commission Hearing Officer's decision in *Norton School Committee*, 11 MLC 1198 (H.O. 1984) to support its position. However, the issue presented in that case did not implicate the creation of a new supervisory bargaining unit because the employer and the administrators' bargaining representative agreed that the positions in dispute should be removed from the teachers bargaining

unit and placed in the administrators existing unit. *Id.* at 1205, fn.16. Further, the hearing officer acknowledged in the decision that the unit clarification petition was not the appropriate vehicle to accomplish the transfer of the positions from one bargaining unit to another, but elected to decide the issue despite the procedural defects. *Id.* at 1204, fn. 13.