

<hr/>		)	
STEPHEN MAREAN,		)	
		)	
	Petitioner,	)	
		)	
	and	)	
		)	
LOCAL 740, INTERNATIONAL		)	UNIT DETERMINATION
ASSOCIATION OF FIRE FIGHTERS,		)	REPORT
		)	
	Certified Bargaining Agent,	)	
		)	
	and	)	
		)	
CITY OF PORTLAND,		)	
		)	
	Employer.	)	
<hr/>		)	

PROCEDURAL HISTORY

This unit determination/severance proceeding was initiated on April 13, 2007, when Stephen Marean ("Petitioner"), a paramedic employed by the Portland Fire Department, filed a petition for unit determination/severance with the Maine Labor Relations Board ("Board").<sup>1</sup> The petition seeks a determination whether a unit consisting of Firefighter/Paramedics, Firefighter/Paramedic Lieutenants, and Paramedic in the EMS division should be severed from the existing Portland Firefighters bargaining unit pursuant to Sections 966 and 967 of the Municipal Public Employees Labor Relations Law ("MPELRL"). The Petitioner seeks to retain the same bargaining agent, Local 740, International

---

<sup>1</sup>The proper mechanism to seek the severance of a group of employees from a bargaining unit is to file a petition for a unit determination, as the Petitioner has done here. The Board Rules do not provide for a petition for "severance" *per se*; however, for ease of reference, the petition will be referred to as one for severance for the remainder of the decision.

Association of Firefighters ("Union" or "IAFF"), as the agent for this smaller bargaining unit. Both the Union and the City of Portland ("Employer" or "City") filed a timely response to the petition.

A hearing notice was issued on August 24, 2007, and was posted for the benefit of affected employees. The hearing was conducted on September 26, 2007. Petitioner Stephen Marean appeared on behalf of himself. Stephen Sunenblick, Esq., appeared on behalf of the Union. Elizabeth Boynton, Esq., appeared on behalf of the City. The parties were afforded full opportunity to examine and cross-examine witnesses, and to present evidence. The following witnesses were presented at the hearing: for the Petitioner, Stephen Marean; for the Union, Union President Bobby Reynolds; and for the City, Fire Chief Fred LaMontagne. The parties declined to present oral or written argument at the conclusion of the hearing.

#### JURISDICTION

The jurisdiction of the attorney examiner to hear this matter and to make an appropriate unit determination herein lies in 26 M.R.S.A. § 966. All subsequent statutory references are to the MPELRL, Title 26, M.R.S.A.

#### EXHIBITS

The following exhibits were moved into evidence and admitted to the record without objection of the parties:

#### Joint Exhibits

1. July 1, 2005-June 30, 2007 Collective Bargaining Agreement
2. December, 1995 Final Report & Recommendations to the Portland Fire Department, Greenshoe Group
3. July 1, 1996-June 30, 1998 Collective Bargaining Agreement, prior to 1997 merger amendment

4. July 1, 1996-June 30, 1998 Collective Bargaining Agreement, after 1997 merger amendment
5. July 1, 1998-June 30, 2001 Collective Bargaining Agreement
6. July 1, 2001-June 30, 2003 Collective Bargaining Agreement
7. July 1, 2003-June 30, 2005 Collective Bargaining Agreement
8. Portland City Charter provision Article 6, Section III, re: Civil Service Rules for Fire and Police
9. December 30, 1996, Memo to Portland City Council from Charles Harlow, Chair of the Public Safety Committee, to Mayor McDonough and Members of the [Portland City] Council re: Civil Service Ordinance changes
10. January 6, 1997 City Council Order #184 approving Civil Service Ordinance charges re: Merger [Passed by 9-0 vote on January 22, 1997]
11. September 6, 2007 List of all employees in the Local 740 bargaining unit
12. July 8, 1996 Letter from Robert Bourgault to Jan Hastings of Maine Education Association re: proposed MEDCU merger with Local 740
13. December 6, 1996 Letter to Marc Ayotte from Robert Bourgault re: Disclaimer of Interest of Medcu Association
14. December 6, 1996, Letter to Marc Ayotte from President and Vice President of Medcu (Jennifer Stewart and Timothy Nangle) re: conditional request to disclaim interest
15. December 6, 1996, MLRB Form 1, Agreement on Appropriate Bargaining Unit
16. December 6, 1996, MLRB Form 3, Voluntary Recognition Form
17. December 11, 1996 Letter to Marc Ayotte from Mark Gray, Executive Director of Maine Education Association, re: Disclaimer of Interest
18. December 20, 1996 Letter from Marc Ayotte to Robert Bourgault, Portland Education Association, Maine Education Association, Medcu Employees Association and City of Portland re: Merger of the bargaining units
19. January 6, 1997 Memo from Timothy Nangle, Vice President of Medcu, to Trisha Peightal re: Merger with Local 740
20. Portland Fire Department 2006 Annual Report

#### Petitioner Exhibits

1. Organizational Chart listing Martin Jordan as Chief of Department

2. December, 1995 Final Report & Recommendations to the Portland Fire Department, Greenshoe Group
7. January 5, 2006 Report of the Portland Fire Department Labor/Management EMS Committee: Final Recommendations
8. MEDCU "Policies and Procedures Guidelines Manual"
9. Medcu collective bargaining agreement for July 1, 1994 - June 30, 1996

#### City Exhibits

1. Portland Fire Department Organizational Chart

#### Union Exhibits

1. Portland Firefighters Local 740, IAFF - Constitution and By-Laws
2. Standard Operating Guidelines - Portland Fire Department

#### STIPULATIONS

The parties agreed to the following factual stipulations:

1. Local 740, International Association of Firefighters, (hereinafter "Local 740") is a public employee organization that is the certified bargaining agent for all full-time employees, within the meaning of 26 M.R.S.A. §962(2), in the City of Portland Fire Department.

2. The City of Portland is a public employer within the meaning of 26 M.R.S.A. §962(7).

3. The collective bargaining unit represented by Local 740 consists of all permanent public employees in the following classifications: Firefighter, Firefighter/Paramedic, Paramedic, Paramedic Lieutenant, Fire Lieutenant, Fire/Paramedic Lieutenant, Fire Captain, Education and Quality Improvement Officer and Public Education Officer.

4. The City of Portland has 8 fire stations on the mainland and a Marine Division at the Maine State Pier. In addition, the City has equipment on Peaks Island, Great Diamond Island, Cushing

Island, Cliff Island and Little Diamond Island which are staffed by Island volunteers.

5. In addition to fire apparatus at each station, there are 4 ambulances stationed throughout the city. ALS (Advanced Life Support) medical equipment and gear is also carried on all fire vehicles.

6. The Fire Department currently consists of the following divisions for budgetary purposes: Fire Administration, Fire Suppression and Fire Emergency Medical Services (EMS). Unit employees cross-trained in both firefighting and EMS may be assigned regularly or temporarily to either the fire suppression or to the EMS division.

7. As of 2007, new hires in the Fire Department below the rank of Chief or Deputy Chief are required to have an EMT-Basic license at the time of hire as a firefighter; and upon hire, are put through fire drill school for firefighting and are required to go to EMT-Intermediate training, and obtain the Intermediate license.

8. As of September 6, 2007, there were 231 employees covered by the bargaining unit. All but 1 of the employees are trained as Firefighters.

9. The bargaining unit consists of the following:

- 230 Firefighters/Officers
  - 141 have an EMT Basic license (EMT-B)
  - 18 have an EMT Intermediate license (EMT-I)
  - 49 have a EMT Paramedic license (EMT-P)
  - 22 have no medical license
- 1 Paramedic, without firefighter training, Stephen Marean, petitioner.

10. The command structure of the Department is as follows:  
Non-union: 1 Fire Chief, 6 Deputy Chiefs, Bargaining Unit  
Positions (regardless of licensure): Captain (including  
prevention and training), Lieutenant, Firefighter and petitioner  
Paramedic.

11. The Fire Chief reports to the City Manager, who in turn reports to the elected City Council. The City Manager appoints all City employees other than the City Clerk and the Corporation Counsel, who are appointed by the City Council.

12. Prior to January 1, 1997, Portland Firefighters, Fire Lieutenants and Fire Captains ("fire suppression") were in a separate bargaining unit represented by Local 740.

13. Prior to January 1, 1997, Portland Paramedics and Paramedic Lieutenants were in a separate bargaining unit named the Medcu Employees Association (hereinafter "Medcu"), an affiliate of the Maine Education Association and the Portland Education Association.

14. Medcu employees have always been stationed at Portland fire stations on a 24/7 basis, and since fiscal year 1982-83, have been a division of the Portland Fire Department.

15. The 1987-1990 collective bargaining agreement with Local 740 included language regarding reopening the contract to bargain over the issue of merger with the Medcu unit and was carried through each contract negotiated after that date to the 1996-89 contract.

16. In 1995, City administration and representatives of both Local 740 bargaining unit and the Medcu bargaining unit began meetings with an independent consultant, the Greenshoe Group, regarding possible merger of fire and emergency medical services.

Numerous meetings were held by the consultants with fire suppression and Medcu members.

17. A labor-management group consisting of representatives of the City Manager's office, Fire Administration, Medcu and Local 740 provided the consultant with input and consensus on the merger issues.

18. The Greenshoe Group outlined the outcome of the departmental and labor-management group discussions in its final report in December of 1995. This report recommended merger of the fire and emergency medical services.

19. In February, 1996, Medcu requested bargaining with the City as their contract expired on June 30, 1996.

20. Subsequent discussions were held with the City bargaining team with both Medcu and Local 740 representatives regarding merger of the two collective bargaining units, (fire suppression and Medcu) throughout 1996, with numerous formal bargaining sessions. At all times throughout the merger negotiations, Medcu bargaining unit employees were represented by Robert Bourgault, an experienced labor relations professional.

21. The above discussions resulted in an amendment to the 1996-1998 collective bargaining agreement between the City and Local 740 which was ratified by the merged unit and was approved by the Portland City Council on January 6, 1997.

22. Effective January 1, 1997, the two separate bargaining units were merged into one unit represented by IAFF, Local 740. The separate Medcu unit was dissolved and necessary forms were filed with the Maine Labor Relations Board for the new unit.

23. The hiring of new City of Portland firefighters (and

police officers) is governed by the City of Portland Civil Service Ordinance which provides for a written examination, physical fitness, [job suitability], physical agility testing, and background check for these positions.

24. Prior to merger, hiring of EMS personnel was not covered by the Civil Service Ordinance, but was governed by the City of Portland general personnel policies for hiring of all non-police and non-fire personnel.

25. Amendments to the City's Civil Service Ordinance were approved by the Portland City Council on January 22, 1997. The amendments merged the hiring of fire suppression and emergency medical services personnel under the Civil Service Ordinance.

26. Persons employed in the Paramedic and Paramedic Lieutenant positions at the time of merger were "grandfathered" in their positions and given a "grace" period during which they could, at their option, complete the basic fire written examination and fire drill school training in order to become firefighter/paramedics. The grace period ended on May 5, 1999. After that grace period, they would have to go through the regular civil service hiring process applicable to new employees to become firefighter/paramedics.

27. All but one employee, Stephen Marean, completed the special testing process for the "grandfathered" employees and all former Medcu employees became firefighters in addition to having paramedic licenses.

28. All employees in the unit are engaged in providing emergency services to the citizens of Portland and respond to accident calls, fires, hazardous materials and emergency medical calls. Both a fire truck and an ambulance are routinely sent to

calls in conjunction with one another.

29. All employees in the bargaining unit, other than Petitioner Marean, are eligible to participate in the Firefighter "special" retirement plan under the Maine State Retirement System (MSRS), i.e., retirement at ½ pay after 25 years of service. Petitioner Marean is not eligible for the Firefighters' special retirement plan, and is eligible only to participate in the regular City MSRS retirement plan or in the City's alternative 401(a) plan offered through the International City Manager's Association to all City employees. Only City employees trained as firefighters (or police officers) can participate in the special retirement plan.

30. The current schedule for all employees in the bargaining unit is 24 hours on; 24 hours off; 24 hours on; and 5 days off.<sup>2</sup> This schedule is permitted under the Fair Labor Standards Act as a permissible regular schedule for firefighters, including EMS personnel who are cross-trained as firefighters. Petitioner Marean, without the cross-training as a firefighter, is not eligible for the firefighter overtime pay exemption. Special pay provisions have been negotiated in each contract that apply only to petitioner Marean to ensure that he is paid in compliance with Fair Labor Standards.

31. Since the negotiation of the 1997 merger of the Medcu and Fire units, the parties have negotiated 4 collective bargaining agreements: 1998-2001; 2001-2003; 2003-2005 and 2005-2007--each were July 1 - June 30) and a 1999 amendment to the 1998-2001 agreement regarding the work schedule for the former Medcu employees.

---

<sup>2</sup>With the exception of 4 firefighters who perform administrative duties on a 5-8 or 4-10 schedule.

32. Since 1997, employees assigned to the EMS division have been represented on the Executive Committee and the negotiating teams for Local 740. All employees in the unit are eligible to participate in all aspects of union administration.

33. Local 740 does not agree to the proposed severance and formation of a new unit as proposed in the pending petition.

34. The petition requests that Local 740 represent the members of the proposed new unit if the severance petition is granted, and Local 740 has not agreed to represent members of a new unit if this severance petition is granted.

35. There is no contract bar to this petition.

36. The attorney examiner has jurisdiction, as designee of the Executive Director, to hear and decision this unit determination (severance) matter pursuant to 26 M.R.S.A. §966(1) and §966(2).

#### FINDINGS OF FACT

1. Approximately 50 firefighter/paramedics (including firefighter/paramedic lieutenants) are employed by the Portland Fire Department. Of this number, about 30 are assigned to the EMS division, meaning that their primary duty is to staff ambulances. The remaining firefighter/paramedics work primarily on fire suppression equipment.
2. In recent years, there has been a marked increase in calls for emergency medical services made to the department. About 70 percent of the call volume to the department is related to emergency medical services. Due to a variety of factors (lack of an additional ambulance, position vacancies in the EMS division, movement of cross-trained personnel from the EMS to the fire suppression division, etc.), the EMS division has had to deal with the increased workload

with fewer personnel and resources. This problem has been well known in the department.

3. Advanced Life Support (ALS) services are those services that can be provided by EMTs with either a paramedic license or an intermediate license.
4. The 2005-2007 CBA contained the following wage re-opener in the salary article:

Fire Department management and labor personnel will begin meeting immediately to discuss the manner in which Advanced Life Support is provided by the Portland Fire Department. The Committee will complete its work and will submit its joint recommendation to the Fire Chief and Union President no later than December 31, 2005. The Union has the option to re-open the wage article of the contract in relation to implementation of the recommended changes and the City has the option to re-open other contract articles that are affected by the recommended changes. In the event the Labor-Management Committee is unable to develop a joint recommendation by December 31, 2005, the Union and the City will enter negotiations within ten (10) calendar days of January 1, 2006. The parties will determine which articles need to be re-opened in relation to providing this service to the community and only those articles will be re-opened. The City will obtain guidance for these negotiations from the City Council and both parties will have full access to impasse procedures as defined by State statute.

5. The Portland Fire Department Labor/Management EMS Committee described in the re-opener convened and met from September to December, 2005. Of the seven labor committee members, five were paramedics, including a paramedic lieutenant. The Committee released its final report and recommendations on January 5, 2006. In the final report, the "problem statement" was described as follows:

The above data supports the statement that the City of Portland has seen an increase in the number of EMS responses with little increase in transporting resources since 1990. There are currently approximately 57 licensed firefighter/paramedics within the PFD with 32 allocated to the EMS Division, twenty-eight on ambulances and four EMS Lieutenants; five positions remain vacant. Current language in the CBA has allowed the remaining number of firefighter/paramedics to bid to fire apparatus. The PFD has attempted to increase EMS training and fire apparatus response to EMS calls to assist in its EMS mission, however, no additional transporting ambulances have been added.

At present the three current ambulances are operating at an above normal UHU [unit hour utilization]. The high UHU, coupled with unit vacancies due to unfilled positions, personnel on extended leave, personnel moving to a fire apparatus position, and normal vacations, has left the EMS division with fewer personnel to manage an increased workload. The increased workload has caused a "burnout" amongst some EMS division personnel. Some have bid to fire suppression apparatus but still remain with the department. Further, Portland Fire Department's EMS system does not have the ability or system in place to determine when or where additional transporting ambulances are needed in the city.

6. In the final report, one of the five identified "objectives and values" was as follows:

5. Adjust current "corporate culture" within the PFD whereby dissension exists between fire suppression and EMS personnel.

- a. Environment must be created in which all members' roles and responsibilities are valued and held in high regard.

- b. May be accomplished through further integration by:

- i. Creation of dual role companies;
- ii. Increased paramedic role in

outside fire ground and rehabilitation operations;  
iii. Increased role for fire apparatus EMS personnel in initial assessment, stabilization, and continued patient care on EMS calls.

7. The Committee's final report contained a number of both short-term and long-term recommendations. Some of these recommendations have been implemented, such as the purchase of a fourth ambulance for the department. Some of the recommendations directly affected terms and conditions of employment and, as the report acknowledged, would require contract negotiations between the Union and the City. Some of these recommendations included supporting the development of "dual role" personnel who could rotate between fire apparatus and ambulances, encouraging the "ceding" of bid and assignment rights in order to adequately staff ambulances, and developing methods to encourage rotation of EMS personnel to fire suppression and vice versa.
8. Following the release of this report, the Union and the City negotiated a series of three tentative agreements. In varying ways, each agreement allowed the City more freedom to assign fire department personnel to increase EMS coverage and to decrease overtime expenses, while offering various wage increases and incentives to fire department personnel. The agreements also encouraged the creation of more "dual role" firefighter/paramedics (that is, personnel who would function both on fire apparatus and on ambulances). All three tentative agreements were rejected by union membership, the first by a wide margin, the second two by narrower margins. The last tentative agreement was rejected in January, 2007.
9. Chris Boehm, a paramedic and a Union officer, spearheaded the negotiations for the first tentative agreement.

Paramedics were represented on the Union bargaining team to negotiate all three tentative agreements.

10. The Union and the City have not conducted further negotiations since the last tentative agreement was rejected. The collective bargaining agreement expired on June 30, 2007.
11. In early summer, 2007, the City implemented certain new personnel assignment methods, in large part to increase staffing of ambulances and to decrease overtime costs. One result of this has been increased assignment of EMTs with intermediate level licensure on ambulances.
12. These newly-implemented assignment methods are the subject of a grievance brought by the Union. As of the time of this hearing, the grievance was still being processed under the step system of the CBA.
13. The Petitioner believes that the increased use of EMTs with intermediate licensure on the ambulances requires the paramedics to take on an increased supervisory role without additional compensation.
14. The 1997 merger of the Medcu and Fire units resulted in a variety of financial and other benefits for employees in the Medcu units who cross-trained as firefighters after the merger. Besides eligibility for the special retirement plan and the overtime exemption (stipulation nos. 30 and 31), and coverage by the Civil Service Ordinance (stipulation no. 24), the Medcu employees received a significant pay increase (20-25 percent) and became eligible for certain health and death benefits only available to firefighters.
15. Of approximately 44 lieutenants employed by the department, four are designated EMS lieutenants. Any employee cross-trained as a firefighter/EMT is eligible (based on years of service, testing and qualification) to be placed on the promotion list for any lieutenant position.

16. The showing of interest that accompanied the petition filed in this matter was of the following form: "I, [print or type name], an employee of [name of employer] desire to have my job classification [name of classification] excluded from the [name of unit] unit and placed in a separate new bargaining unit. I desire to continue being represented by [name of bargaining agent] for purposes of collective bargaining." On each showing of interest provided, Local 740, IAFF was identified as the bargaining agent that the signing employee wished to continue to be represented by.

#### DISCUSSION

The issue presented by this case is whether a unit consisting of Firefighter/Paramedics, Firefighter/Paramedic Lieutenants, and Paramedic in the EMS division<sup>3</sup> should be severed from the existing Portland Firefighters bargaining unit. The Petitioner argues that the severance petition should be granted because the employees of the EMS division share a clear community of interest, their interests are not served by being in the larger fire department bargaining unit, and their interests are not being served by the bargaining agent. Both the City and the Union argue that the severance petition should be denied because the present unit shares a community of interest, the unit has a long and stable history of collective bargaining since the 1997

---

<sup>3</sup>During the hearing, the witnesses discussed in testimony whether or not an EMS "division" still exists within the fire department. Comparing an older organizational chart submitted by the Petitioner (Petitioner Exh. No. 1) with a chart submitted by the City (City Exh. No. 1) seemed to suggest that the paramedic/firefighters of the EMS division are presently assigned to one of four platoons, each with a chain-of-command consisting of lieutenants, captains, and a Deputy Chief, but that these employees are not under the direct supervision of an EMS Lieutenant or an EMS Deputy Chief. Referring to paramedic/firefighters as being in the EMS division, whether or not it is technically a "division," continues to describe those employees who are assigned primarily to staff ambulances, not to fire suppression apparatus.

merger, and because the Union has provided adequate representation for the entire firefighters unit.

The Board has ruled that a unit determination petition accompanied by an adequate showing of interest is the proper mechanism for attempting to sever a bargaining unit from an existing unit. See Teamsters Local No. 48 and State of Maine (Institutional Services Unit), et al., No. 84-A-02 (MLRB Apr. 2, 1984). As a unit determination, this matter turns upon an evaluation of the presence or absence of a "clear and identifiable community of interest" per 26 M.R.S.A. § 966(2). In determining whether employees share the requisite community of interest in matters subject to collective bargaining, the following factors, at a minimum, must be considered: (1) similarity in the kind of work performed; (2) common supervision and determination of labor relations policy; (3) similarity in the scale and manner of determining earnings; (4) similarity in employment benefits, hours of work and other terms and conditions of employment; (5) similarity in the qualifications, skills and training among the employees; (6) frequency of contact or interchange among the employees; (7) geographic proximity; (8) history of collective bargaining; (9) desires of the affected employees; (10) extent of union organization; and (11) the employer's organizational structure. Chap. 11, Sec. 22(3) of the Board Rules. The requirement that the hearing examiner examine the extent of the community of interest was explained by the Board over 20 years ago, and is still valid today:

Title 26 M.R.S.A. § 966(2) requires that the hearing examiner consider whether a clear and identifiable community of interest exists between the positions in question so that potential conflicts of interest among bargaining unit members during negotiations will be minimized. Employees with widely different duties, training, supervision, job locations, etc., will in many cases have widely different collective bargaining objectives and expectations. These different

objectives and expectations during negotiations can result in conflicts of interest among bargaining unit members. Such conflicts often complicate, delay and frustrate the bargaining process.

AFSCME and City of Brewer, No. 79-A-01, slip op. at 4 (MLRB Oct. 17, 1979).

While a petition for severance entails the same analysis of the community-of-interest factors as any unit determination petition, the issues are more complex. The hearing examiner must analyze both whether a community of interest exists amongst the employee classifications in the proposed bargaining unit to be severed, and also whether a community of interest exists amongst the proposed bargaining unit and the larger existing unit. As the National Labor Relations Board has noted, in its seminal severance case Mallinckrodt Chemical Works and IBEW, Local No. 1, 162 NLRB 387 (1966), a severance determination requires a balancing of competing interests:

The cohesiveness and special interest of a craft or departmental group seeking severance may indicate the appropriateness of a bargaining unit limited to that group. However, the interests of all employees in continuing to bargain together in order to maintain their collective strength, as well as the public interest and the interests of the employer and the plant union in maintaining overall plant stability in labor relations and uninterrupted operation . . . may favor adherence to the established patterns of bargaining.

Mallinckrodt, at 392.

In addition, one of the eleven community of interest factors, history of collective bargaining, receives heightened scrutiny in a severance petition. Previous Board decisions have deemed the history of collective bargaining to be a "very important" and sometimes the decisive element in severance petitions. Cf., e.g., Teamsters Local No. 48 and Town of Winslow and Council No. 74, AFSCME, No. 84-UD-17, slip op. at 11 (MLRB May 31, 1984)

(petition to sever fire fighters from public works unit denied; bargaining history "long" and "fruitful"); Teamsters Local No. 48 and County of Cumberland and Council No. 74, AFSCME, No. 84-UD-11 (MLRB March 16, 1984), aff'd, No. 84-A-04 (MLRB Apr. 25, 1984) (petition to sever patrol positions from corrections positions granted; two-year bargaining history cited). The NLRB also finds the history of collective bargaining to be a key element in determining severance petitions. Kaiser Foundation Hospitals and Independent Brotherhood of Skilled Hospital Maintenance Workers, 312 NLRB 933, at 936 (1993) (Board reluctant to disturb bargaining unit with long history of continuous bargaining, even where Board would not have found the unit appropriate if presented with the issue *ab initio*).

The burden on the petitioner seeking to sever positions out of an existing unit is high. While severance petitions resolved by hearing have not been numerous before the Board, the attorney examiner is aware of only one severance petition that has been granted in the Board's history, the petition to sever the patrol positions from the Cumberland County Sheriff's Office bargaining unit that contained both patrol officers and corrections officers. Teamsters Local No. 48 and County of Cumberland and Council No. 74, AFSCME, supra. One MLRB hearing examiner reviewed precedent from public sector labor boards in other states, concluding that those cases reflected the ". . . overwhelming view that severance petitions, while procedurally permissible, must nevertheless overcome formidable standards for success." Teamsters Local No. 48 and City of Portland, No. 81-UD-10, slip op. at 15 (MLRB July 10, 1981).

In the present matter, it is quite certain that the employees whom the Petitioner seeks to sever into a separate bargaining unit share a community of interest with each other based on the factors listed above. The issue remains whether this group of employees shares a community of interest with the

remaining positions in the present bargaining unit. Below, the hearing examiner will more fully discuss each community of interest factor as it relates to this larger question (bearing in mind, however, that scant evidence was presented at the hearing regarding many of these factors).

**(1) Similarity in kind of work performed.** The vast majority of the employees in the unit are trained as fire-fighters, and have some level of EMT licensure (basic, intermediate, or paramedic). On a day-to-day basis, the actual job function of one employee differs from another employee. For instance, one employee may work primarily on certain fire apparatus, while another employee may work primarily on an ambulance, while yet another employee may work primarily on fire prevention issues or training. The Board has recognized, however, that "similar work" does not mean "identical work." As the executive director has noted in a previous decision, Auburn Education Ass'n/MTA/NEA and Auburn School Committee, No. 91-UD-03, slip op. at 11 (Feb. 27, 1991):

In comparing the nature of the work being performed by the various classifications under consideration, the essence or basic type of the functions being performed is far more important than the details of each position's work responsibilities. Inherent in the existence of separate job classifications is a difference in the specific work assignment of each classification; however, such differences do not preclude the inclusion of various classifications in the same bargaining unit.

Here, while work assignments of the various positions in the department may differ, all the positions in the unit are employed to provide emergency services to the City. There is a significant commonality in the essential job functions and goals of all of the positions. This factor supports a finding of community of interest between the positions in the bargaining unit.

**(2) Common supervision and determination of labor relations policy.** All of the positions in the bargaining unit, including the supervisory positions (lieutenants, captains), are supervised by positions within the chain of command. All of the bargaining unit positions report to one of six Deputy Chiefs, and ultimately to the Fire Chief. The labor relations policy is uniform for the positions, based upon the collective bargaining agreement and the City Civil Service Ordinance. This factor supports a finding of community of interest between the positions in the bargaining unit.

**(3) Similarity in the scale and manner of determining earnings.** There was little testimony on this issue. A review of the CBA shows that almost all of the employees in the unit (on the work schedule as described in stipulation no. 30) are paid on a weekly basis, depending on rank and years of service in the position. The CBA also contains a variety of specialty compensation and stipends paid to employees on a weekly basis, depending on the classification of the work performed and/or the licensure of the employee. The Petitioner (the only paramedic who has not cross-trained as a firefighter) has a separate hourly pay plan in the CBA; he is not exempt as a firefighter from the overtime provisions of the Fair Labor Standards Act. This in itself is not relevant, however, as the Petitioner is not seeking to be separated from the bargaining unit on his own, but to separate all the paramedic/firefighters in the EMS division from the bargaining unit.

There is similarity in the scale and manner of determining earnings, and this has been true through all of the collective bargaining agreements for this unit. This factor supports a finding of community of interest between the positions in the bargaining unit.

**(4) Similarity in employment benefits, hours of work and other terms and conditions of employment.** The employment

benefits and other terms and conditions of employment for positions in the bargaining unit are the same as defined by the collective bargaining agreement. Almost all of the employees in the unit work the same schedule (hours of work) as outlined in stipulation no. 30. This factor supports a finding of community of interest between the positions in the bargaining unit.

**(5) Similarity in the qualifications, skills and training of employees.** Since the 1997 merger, the qualifications, skills and training of the unit employees have become more similar. As the stipulations describe in full, all of the employees from the former Medcu unit, with the exception of the Petitioner, cross-trained as firefighters within the first two years after the merger. Most of the firefighters accepted the opportunity to obtain an EMT license or to increase their level of license; of the present 230 employees in the unit, only 22 have no medical license. The requirement for advanced medical licensure has become more stringent since the merger: since the beginning of this year, all new hires to the department must have an EMT-basic license at time of hire and must go to training to earn an EMT-intermediate license. It is not necessary for the qualifications, skills and training required of various positions to be identical in order to be placed in the same bargaining unit. Nevertheless, the present unit has a great level of similarity in this regard. This factor supports a finding of community of interest between the positions in the bargaining unit.

**(6) Frequency of contact or interchange among the employees.** There was no evidence specifically presented on this issue. It appears from the stipulations that the limited number of fire stations should allow for a significant amount of opportunity for interchange between the employees in the EMS division and the other employees in the bargaining unit. This factor supports a finding of community of interest between the positions in the bargaining unit.

(7) **Geographic proximity.** See discussion in section (6), above.

(8) **History of collective bargaining.** This criterion, as discussed earlier, is an important one in considering a petition for severance. Past hearing examiners have examined various aspects of the collective bargaining history and adequacy of union representation in evaluating this criterion in severance petitions. See Teamsters Local No. 48 and County of Cumberland and Council No. 74, AFSCME, supra (length and stability of bargaining relationship; participation in union affairs by bargaining unit members seeking severance; the offering of special proposals for the group at bargaining table; whether unit created by agreement); Teamsters Local No. 48 and City of Portland, supra (adequacy of union representation in grievances; length and stability of bargaining relationship; the offering of special proposals for the group at bargaining table); Teamsters Local No. 48 and State of Maine (Institutional Services Unit), No. 83-UD-25 (MLRB Jan. 10, 1984), aff'd, No. 84-A-02 (Apr. 2, 1984) (same).<sup>4</sup>

---

<sup>4</sup>Past hearing examiners have relied on National Labor Relations Board precedent in finding that the history of collective bargaining and adequacy of representation are important considerations in severance petitions:

The adequacy of representation by the incumbent bargaining agent is an important factor in the NLRB's consideration of severance petitions. See, e.g., Bendix Corp., 227 NLRB 1534, 1537-38 (1977); Beaunit Corp., 224 NLRB 1502, 1504-5 (1976). The NLRB holds, however, that 'a union that does not accede to all demands made upon it by the unit seeking to be severed cannot be accused of inadequately representing that unit based on that fact alone.' Firestone Tire and Rubber Co., 223 NLRB 904, 906 (1976). A number of factors are considered, including whether members of the proposed unit have participated in the affairs of the incumbent union by acting as stewards and bargaining team members, and whether any special provisions affecting the interests of the proposed unit have been included in bargaining agreements. Bendix Corp., 227 NLRB at 1537; Beaunit Corp., 224 NLRB at 1504.

Teamsters Local No. 48 and State of Maine (Institutional Services

The present matter presents a unique history of collective bargaining in that the petition seeks to separate (at essence) the EMS employees who were merged with the firefighters ten years ago. It is important in this matter to note the extensive amount of work that occurred before these two groups merged; the magnitude of these efforts can be discerned by reviewing the final report and recommendations issued in 1995 of the independent consultant group employed to work with the City and the two bargaining agents to achieve this merger (Joint Exh. No. 2). Since the 1997 negotiated merger, four collective bargaining agreements have been negotiated on behalf of the merged units by the IAFF. There seems to be no dispute that the merger resulted in many tangible economic benefits for the EMS employees, especially those who cross-trained as firefighters after the merger (all but the Petitioner). Since the merger, EMS employees have been actively involved in the Union as officers and members of various bargaining teams. A review of the CBAs over the years demonstrates that numerous articles have been negotiated for the benefit of EMS employees.

It is also true that despite cross-training and other efforts, the merged units are not in complete harmony, nor are some the EMS employees content with all of the terms and conditions of their employment. The recommendations of the 2006 labor/management EMS committee made clear that some dissension exists between the EMS employees and the fire suppression employees. In recent years, there has been a marked increase in EMS calls to the Portland system with insufficient personnel to meet this increase. This issue is well known, resulting in the convening of the labor/management EMS committee to address this issue, as well as in the negotiating of three tentative agreements around this issue. The Petitioner further noted in his

---

Unit), No. 83-UD-25, slip op. at 14.

testimony that the recent decision by management to increase staffing of ambulances with EMTs with intermediate licensure has placed a greater burden on EMT-paramedics to effectively supervise those individuals.

The fact that some problems and dissension exists within the merged unit far from establishes, however, that the solution lies in separating the EMS personnel (now all cross-trained as firefighters and EMTs, except for the Petitioner) into a separate bargaining unit. This is so for several reasons. First, the issue of increased EMS calls/understaffing has been the focus of keen study and negotiations on the part of the City and the Union. Paramedics were well-represented on the labor/management EMS committee that studied this issue, as well as on the negotiating teams for each of the three tentative agreements.<sup>5</sup> The fact that the City began increasing the use of EMTs with intermediate licensure on the ambulances recently is the subject of a grievance filed by the Union. None of this demonstrates any inadequacy of representation on the part of the Union. Second, the lack of a viable identified alternate bargaining agent to represent the EMS personnel as a separate unit (the IAFF has not agreed to represent the group as a separate unit) provides no basis upon which to conclude that the EMS personnel would be better represented in a separate unit by a different bargaining agent. Finally, as the recommendations of the labor/management EMS committee lays out, not all the solutions to this problem are within the scope of collective bargaining. Solutions such as the purchase of additional ambulances or equipment, increase in training budget, education of health care providers, etc., are within the purview of management. Severing the EMS personnel

---

<sup>5</sup>The specifics of these tentative agreements were not presented. It cannot be concluded from the fact that the three TAs were voted down by membership that the concerns of the EMS personnel were not adequately represented during the process. In fact, they have been well represented.

into a separate bargaining unit will have little or no impact on these areas.

A review of all of the factors traditionally considered as part of the history of collective bargaining - length and stability of the parties' collective bargaining relationship, participation in union affairs by employees seeking severance, adequacy of union representation - strongly supports a finding that the EMS employees should not be severed into a separate bargaining unit. Further, the attorney examiner would be particularly loath to sever these units without a significant showing of proof in this area, as doing so would effectively "undo" the arduous and lengthy process that resulted in the units merging ten years ago.

**(9) Desires of the affected employees.** As this hearing examiner concluded in a previous severance case, the desires of all employees in the bargaining unit - both the employees who would become severed and the employees who would remain in the unit - should be considered in these matters. Such evidence can take various forms, but has traditionally been presented by testimony or by affidavit. See e.g. Eric Bell and Richmond Employees Association and Town of Richmond, No. 03-UD-10 (MLRB Sept. 26, 2003)(testimony of both groups of employees presented); Corporals and Sergeants, Cumberland County Sheriff's Office and County of Cumberland and Council No. 74, AFSCME, No. 02-UD-03 (MLRB May 31, 2002)(signed affidavits from employees supporting or opposing severance admitted into evidence). At a minimum, it would be expected that a petitioner seeking a severance should present evidence that the employees to be severed wish this change in the status quo.

Here, the Petitioner presented only his own testimony; he testified, obviously, that he supports the severing of EMS employees into a separate bargaining unit. The Petitioner did

not call any other witnesses, nor did he present affidavits or any other written evidence regarding the desires of other affected employees.

The attorney examiner does not believe that the showing of interest supplied by the Petitioner with the original petition (filed April 13, 2007) constitutes evidence of the present desires of the affected employees to be placed in a separate bargaining unit. The showing is now over six months old. While the names of the employees signing the showing of interest and the numbers supplied (other than that it was greater than 30 percent of employees in the unit to be severed, supporting a sufficient petition) is confidential information, the form itself is not. The employees who signed the original showing indicated a desire to be in a separate unit and to continue to be represented by the IAFF. The IAFF has not indicated a willingness to represent the EMS employees in a separate unit. In his testimony, the Petitioner seemed to indicate a belief that the question of severing the bargaining unit would be "put to a vote" following this determination. In fact, the attorney examiner here must either decide to sever or not to sever the unit based on the evidence and testimony presented at the hearing; if the unit were to be severed, the only vote would be one to elect a bargaining agent for the severed unit (the IAFF electing whether or not to be on the ballot as a potential bargaining agent). This raised the specter that the employees signing the initial showing of interest might not have understood the severance process.

There was virtually no evidence that the employees who would be severed into a separate bargaining unit desire this severance to occur; this strongly supports a conclusion that the bargaining unit should remain as presently configured.

**(10) Extent of union organization.** This criterion is not particularly valuable in evaluating a severance petition. The City has several other bargaining units of organized employees. If the EMS employees were to be severed, there would be two City bargaining units both containing cross-trained firefighter/paramedics, represented (possibly) by different bargaining agents. The severance would otherwise have an unknown effect upon the extent of union organization in the City. This factor neither supports nor undermines a finding of community of interest among the positions in the present bargaining unit.

**(11) The employer's organizational structure.** A review of the employer's organizational structure does not, in itself, support the conclusion that the EMS employees form a unit that should be a distinctive or separate group. The petitioner expressed concern in his testimony that the EMS "division" no longer exists, comparing an old organizational chart with a new one (Petitioner Exh. No. 1; City Exh. No. 1). While the newer chart shows a less distinct division for EMS employees, the older chart still divided the EMS employees into placements in four well-defined platoons, each with a separate chain of command.<sup>6</sup> To the extent that these charts show any actual change in organizational structure, this may be attributed to the desire to more fully merge the functions within the fire department - fostering true dual-role employees and increased rotation - all part of the recommendations made by the 2006 labor/management EMS committee. The organization of these employees within the fire department has become more integrated, not less integrated over time. The employer's organizational structure therefore supports

---

<sup>6</sup>The report of the 2006 labor/management EMS committee notes that while the merger of the Medcu employees and the fire employees occurred in 1997, the Medcu employees have been stationed at firehouses since 1975.

a finding of community of interest between the positions in the bargaining unit.

**Summary of community of interest factors.** In conclusion, a review of all of the community of interest factors strongly supports a finding that the employees in the EMS division share a community of interest with the remaining positions in the fire department bargaining unit. The history of collective bargaining (always an important issue in severance determinations) played a particularly important role in reaching this conclusion here. This bargaining unit was created in a unique way, via the merger of two bargaining units represented by two different bargaining agents, following a lengthy period of study and negotiation. The cross-training offered to both units of employees following the merger, bidding, and other conditions of employment, have resulted in a significant amount of cohesion in this unit. The presently-configured unit has a relatively lengthy history of collective bargaining, with the parties successfully negotiating four successive collective bargaining agreements. There would need to be proof of significant discord and disunity amongst the employees, and a significant failure of representation by the bargaining agent, in order to "undo" this particular unit. Nothing like that was presented here.

The history of collective bargaining for this unit especially distinguishes it from Teamsters Local Union No. 48 and County of Cumberland and Council No. 74, AFSCME, supra, the only case known to the attorney examiner where a severance petition was granted by the Board. In that case, there existed a significant difference in job function (patrol officers versus corrections officers), as well as a bargaining history of only two years, with one CBA. The present matter is considerably closer in facts to Teamsters Local Union No. 48 and Town of Winslow and Council No. 74, AFSCME, supra, an unsuccessful

petition to sever firefighters from a unit consisting of firefighters and public works employees that had a ten-year history of bargaining, with three CBAs negotiated. Further, the kind of work performed by the employees in the present unit is far more similar than the kind of work performed by the employees considered in Winslow.

#### CONCLUSION

The petition for unit determination filed on April 13, 2007, by Stephen Marean, seeking the severance of a unit of Firefighter/Paramedics, Firefighter/Paramedic Lieutenants, and Paramedic in the EMS division from the existing Portland Firefighters bargaining unit, is denied. These positions will remain as part of the presently-configured bargaining unit.

Dated at Augusta, Maine, this 26th day of October, 2007.

MAINE LABOR RELATIONS BOARD

---

Dyan M. Dyttmer  
Hearing Examiner

The parties are hereby advised of their right, pursuant to 26 M.R.S.A. § 968(4), to appeal this report to the Maine Labor Relations Board. To initiate such an appeal, the party seeking appellate review must file a notice of appeal with the Board within fifteen (15) days of the date of issuance of this report. See Chapter 10 and Chap. 11 § 30 of the Board Rules.