

STATE OF MAINE

MAINE LABOR RELATIONS BOARD

Case No. 24-UC-01

Issued: November 22, 2024

STATE OF MAINE

Petitioner/Employer,

and

MAINE STATE TROOPERS ASSOCIATION

Respondent/Labor Organization.

UNIT CLARIFICATION REPORT

I. Statement of the Case

On March 1, 2024, the State of Maine (State) filed with the Maine Labor Relations Board (Board or MLRB) the above-captioned petition for Unit Clarification. The petition seeks to add the position of State Police Investigator to a bargaining unit represented by the Maine State Troopers Association (Union). The Union objected to the petition asserting that (1) there was no requisite change in circumstances that would permit unit clarification, and (2) the petition is subject to dismissal because the State failed to raise the issue of the State Police Investigators’ unit placement during the parties’ successor contract negotiations. On August 26, 2024, the undersigned Hearing Examiner conducted a hearing at which the parties introduced stipulated facts and documentary and testimonial evidence into the record in relation to the Union’s objections. The parties filed post-hearing briefs on October 29, 2024.

After consideration of the entire record, the unit clarification is granted because the record indicates (1) a sufficient change in circumstances because, in effect, the State reactivated a position that had been vacant and inactive for over a decade and, (2) the parties substantively discussed the issue of the State Police Investigators’ unit placement at the same time as their successor contract negotiations.

II. Facts

Stipulated Facts

At hearing, the parties stipulated certain facts for the record. Each party put forward its own set of stipulated facts, as follows:¹

State's Stipulated Facts

1. Since the initial CBA between the parties, the parties negotiate successor CBAs by providing the other party with written "package proposals" for each article of the prior CBA it wishes to eliminate or change or add. The other party will then respond to the proposal in writing by either accepting or rejecting the proposal. If the proposal is rejected the party may make a counter proposal by modifying the proposed language.
2. When the parties reach agreement on changes to language or the addition of new language, the document reflecting such change is referred to as a "Tentative Agreement" or "TA". When the parties agree to a new CBA, the document that is agreed-to as the new CBA is a compilation of all "TAs" changing language of specific articles that are agreed-to by the parties, as well as the language from the previous CBA that was not changed.
3. The overall tentative agreement is then sent to the Union members, and the members either vote to ratify or not ratify the tentative agreement. If the agreement is ratified, the parties then sign the agreement, usually in a ceremony with the Governor. The date that members ratify the CBA becomes the effective date of the agreement. This date is reflected in the Preamble of the new CBA.
4. Subsequent to the ratification and signing of the agreement, the parties work together to finalize the CBA for printing by reviewing the agreed-to language for accuracy, drafting a final agreement incorporating the TAs into the language from the prior CBA that was not changed, as well as updating the table of contents, page numbers, signature pages and the classifications listed in Addendum A.
5. In January of 2002, the Special Agent Investigator class was removed from the Law Enforcement Bargaining Unit of the Maine State Employees Association and added to the MSTA State Police Unit via agreement between the State, Union and MSEA.
6. The duties of the Special Agent Investigator classification from that time did not change and are the functional equivalent of the current duties of the State Police Investigator classification.
7. The sole incumbent of the classification, Kenneth MacMaster, retired in 2008. Because there were no other employees in the classification, and no current operational need for the classification, the Bureau of Human Resources inactivated the classification in October of 2008.

8. Despite having an incumbent who was represented by the Union in the classification from 2002-2008, the Special Agent Investigator was not included in the list of classifications in Addendum A in the CBAs from 2002 through 2008.
9. The Special Agent Investigator was added to the list of classifications in Addendum A in the 2015-2017 CBA between the parties. The Special Agent Investigator classification was also included in the 2017-2019 CBA between the parties.
10. In the negotiations for the 2019-2021 CBA, the parties reached an overall tentative agreement on July 26, 2019.
11. Neither the Special Agent Investigator classification nor any other classification were discussed during the negotiation of TAs for the 2019-2021 CBA and were not included in any of the proposals of the parties.
12. The 2019-2021 CBA was ratified by a vote of Union members on or around August 11, 2019, and the parties signed the agreement in a ceremony with the Governor on August 20, 2019.
13. In September of 2019, pursuant to the customary process, the parties then circulated a draft CBA, including the language from the prior CBA that was not changed, as well as the changes reflected in the TAs. This document listed the Special Agent Investigator classification (as well as other classifications which were subsequently removed) in Addendum A. This document was sent by Chief Negotiator for the State, Kelsie Lee, to Chief Negotiator for MSTTA, Craig Poulin, on 9/3/19. In her email, Lee informed Poulin of the following:

“Attached is the 2019-2021 draft contract for MSTTA to proofread and edit if necessary. You will find the changes highlighted in red. A couple things that need housekeeping before we send it to print are:

 - The index and page numbers (I’ll do this last)
 - List of classifications (Sue will verify)
 - Signature sheet (I’m struggling with the spacing and will have my admin person fix last).”
14. The State subsequently removed the Special Agent Investigator classification from Addendum A because there were no employees in that classification, and it was inactive.
15. The Union agreed to the changes and the final CBA was sent for printing.
16. The process BHR follows for inactivating/reactivating classes is as follows: When the Bureau of Human Resources is made aware that there are no active positions assigned to a classification and the agency no longer has plans to use it, the Bureau of Human Resources inactivates the classification using the PER50 Form. When the Bureau of

Human Resources is informed that the class is needed by an agency, the classification is reactivated using the PER5 Form. The process of reactivating a dormant classification is distinct from the process of creating a new classification.

17. On June 15, 2023, the Special Agent Investigator classification was re-activated because the Maine State Police needed additional investigators to assist the Major Crimes Unit. Maine State Police needed experienced investigators to perform investigatory duties that would not take away from their roster of Troopers, who are needed primarily to perform first-response duties (the other classification performing investigatory duties within the State Police, the State Police Detectives, promote from Troopers, so if Troopers promoted to State Police Detective it would reduce the number of available Troopers).
18. In September of 2023, problems were identified by MainePERS when it came to qualifying employees in the Special Agent Investigator classification for eligibility in a special retirement plan for State Police. To ensure that the employees in the classification would be eligible for the special retirement program for State Police, as the previous employee in the classification was, the name of the Special Agent Investigator classification was changed to State Police Investigator (so it would be considered a member of State Police). While the name change required the State to create a new classification (State Police Investigator) and abolish the previous classification (Special Agent Investigator), the job duties and role of the Special Agent Investigator and State Police Investigator are identical.

Union's Stipulated Facts

1. On or about March 1, 2024, the State filed a Unit Classification Petition seeking to have the classification of State Police Investigator included within the Union's bargaining unit.
2. On or about March 13, 2024, the Union filed a response objecting to the relief sought. The Union asserts both that the requisite change in circumstances surrounding the formation of the bargaining unit does not exist and also that the inclusion of the classification could have been raised by the State prior to the conclusion of the contract negotiation and was not.
3. In its Unit Clarification Petition, the State asserted that it need not show changed circumstances because the Special Agent Investigator was previously part of the State Police Unit via agreement with the Union, and the duties and role of the Special Agent Investigator while included in the State Police Unit and the duties and role of the current State Police Investigator are identical. The State also asserted that if a showing of changed circumstances is necessary, the change that has occurred is the creation of the State Police Investigator classification in September of 2023, which was necessary to make positions within the classification eligible for the special State Police retirement plan that the employee in the Special Agent Investigator classification from 2002-2008 was eligible for.

4. In 2023, the State determined that due to operating shortages, it wanted to reconstitute the classification of Special Agent Investigators. It posted these job openings on or about July 20, 2023.
5. Subsequent to that, MPERS indicated to the State that Special Agent Investigators could not participate in the State Police special retirement plan. For that reason, the State chose to change the name to State Police Investigator, thus making those employees eligible for the State Police special retirement plan.
6. The parties stipulate that the job duties and responsibilities of these employees would be the same regardless of which name was used.
7. The State and Union were parties to a collective bargaining agreement which was due to expire on June 30, 2023.
8. The parties were in negotiations for a successor collective bargaining agreement on June 30, 2023. The negotiations continued until December 31, 2023, at which time an agreement on a new CBA was reached. The complete agreement is silent on the investigator issue.
9. On September 14, 2023, the State created a job description for State Police Investigator.
10. After the receipt of the job description, the Union sent a ten-day demand for bargaining over the inclusion of this classification. This demand was sent on September 25, 2023.
11. The parties agreed to meet and did so on October 10, 2023. Although this meeting occurred during the time period when the parties were negotiating the 2023-2025 CBA, it was not part of formal negotiations for the CBA.
12. Although there was some overlap of individuals, including the Chief Negotiators for both the State and the Union, the people appearing for both parties at the meeting on October 10, 2023 were not the same individuals who comprised the formal negotiating teams for the successor collective bargaining agreement.
13. Neither party ever made a written proposal in contract negotiations regarding this issue.
14. Between October 10, 2023, and into June 2024, the parties attempted to resolve by agreement the issue and were unsuccessful.
15. The Union also filed a grievance on this issue. This grievance is still unresolved and is awaiting arbitration.
16. The historical collective bargaining agreements between the parties have contained an Addendum A.

17. The collective bargaining agreements between the parties listed Special Agent Investigator in Addendum A in the 2015-2017 and 2017-2019 contracts. However, it was never included prior to or subsequent to those contracts.
18. The CBA for 2019-2021 dropped Special Agent Investigator from Addendum A.
19. In 2001, there was one State employee with the classification of Special Agent Investigator. His name was Kenneth MacMaster, and he was represented by MSEA (Maine State Employees' Association).
20. At that time, it was agreed by the State, Union and MSEA that that position would be included in the State Police Unit represented by the Union.
21. The Union continued to represent Mr. MacMaster as a Special Agent Investigator until his retirement in 2008.
22. The State Police has never employed another Special Agent Investigator other than Mr. MacMaster.
23. The State Police has never employed any individual as a State Police Investigator until it recently (after September 2023) hired three individuals.
24. The Union does not contest the assertion by the State that there is a great community of interest between this classification and the other classifications represented by the Respondent.

Facts from Hearing Testimony and Documentary Evidence

Members of the Union's Bargaining Unit

As referenced in the stipulations, the parties' collective bargaining agreement includes a section titled "Addendum A - State Police Unit Classifications." As its title suggests, Addendum A appears to reflect the parties' understanding as to the position titles included in the Union's bargaining unit. As one Union representative testified at hearing, Addendum A is essentially a recognition clause of the members of the Union's bargaining unit.

The following positions are listed in Addendum A of the parties' 2021 -2023 collective bargaining agreement:²

- State Police Corporal
- State Police Detective
- State Police Pilot
- State Police Pilot Supervisor
- State Police Polygraph Examiner
- State Police Polygraph Examiner Supervisor
- State Police Sergeant-E

State Police Specialist
State Police Trooper
Transitional Duty (MSTA)

Job Duties of State Police Investigator Position

The State Police Investigators are each assigned to one of the State Police's Major Crime Units that are geographically located throughout the state. According to the State Police Investigator position description, the investigator's responsibilities include investigating complex crime scenes as well as investigating unsolved homicides, missing persons, and child exploitation cases. As explained at hearing, the investigators are similar in function to a detective but are not eligible to promote into certain other State Police positions that detectives are eligible for.

Creation of State Police Investigator Position

In addition to the stipulated facts, at hearing, the lieutenant colonel for the Maine State Police testified that, on several occasions, ranging from 2015 to the 2021-2022 timeframe, the State had difficulty in filling vacant detective positions, especially in certain geographic areas. As a result, as early as 2015, the State considered reviving the position of Special Agent Investigator which had been vacant since the last incumbent retired in 2008.

Discussions Between the State and Union Regarding the State Police Investigator Position

The parties presented somewhat conflicting evidence regarding the scope of discussion between the parties about including the State Police Investigator position in the Union's bargaining unit. The lieutenant colonel testified that he had initial conversations with the Union's president in April or May of 2023 regarding the State's plan to reactivate the Special Agent Investigator position. The lieutenant colonel indicated the Union president conveyed certain concerns about the impact of the reactivation on the ability of State Police Troopers to promote into detective positions. According to the State, it took certain measures to mitigate those potential adverse impacts such as using trooper positions that the State was unable to fill as the staffing slots for the Special Agent Investigators.

From April 28, 2023, through September 11, 2023, the parties met a total of twelve times to negotiate their successor collective bargaining agreement. The lieutenant colonel testified to his belief that the State raised the issue of the unit status of the Special Agent Investigator position at least once during those negotiations at the actual bargaining table, sometime towards the end of the overall negotiations. The State also introduced into the record a picture of the lieutenant colonel's bargaining notes that included a reference to the Special Agent Investigator position. The lieutenant colonel indicated he wrote that note because he wanted to ensure the State raised the issue during a negotiation session. Additionally, the lieutenant colonel estimated the parties met informally approximately three to four times from April to September 2023 to discuss the Investigator position. He also indicated the informal conversations continued through and after the parties' December 31, 2023, ratification of their successor contract.

On cross examination, the lieutenant colonel acknowledged that he was not 100% certain that the Special Agent (or State Police) Investigator position was raised during an actual successor contract negotiation session. Likewise, he confirmed the State did not explicitly state at the bargaining table or in a written proposal that it intended to file a unit clarification regarding the Investigator position.

In some contrast, the Union president testified that while he had heard some rumors regarding the Special Agent Investigator position, the first official notice that he received was the job posting issued in July 2023 which indicated the Investigator positions were assigned to the Union's bargaining unit. The Union president contacted the lieutenant colonel to discuss the matter during which the president conveyed the Union's concerns regarding the potential for these positions to take away existing bargaining unit work.³

On or about September 1, 2023, the Union's president and chief negotiator met with the lieutenant colonel and a State Police major to attempt to reach agreement on certain conditions for the State Police Investigators' ability to perform certain other duties currently performed by other Union bargaining unit employees. While the parties had a productive conversation and reached some consensus for a potential framework to address the Investigator position, the State's Office of Employee Relation indicated it was not amenable to the proposed framework.⁴

Similarly, on September 25, 2023, the Union sent the State a written demand to bargain in connection with the creation of the State Police Investigator position and the State's initial designation of the position as part of the Union's bargaining unit.⁵ In response to the demand to bargain, the parties met on October 10, 2023. This meeting was attended by the Union's president, its chief negotiator for the then-ongoing contract negotiations, and attorney. The State's attendees similarly included the lieutenant colonel, the State's chief negotiator, as well as another representative from the Office of Employee Relations. During the meeting, according to the Union's chief negotiator, the State indicated they (the State) had the ability to move forward as planned, that they intended to do so, and they did not necessarily need the Union's agreement.⁶ The Union attempted to reinforce the productive aspects of the parties' September 1 meeting which would have provided a framework for the parties to agree to the inclusion of the State Police Investigators in the Union's bargaining unit. The State did not present any written proposals during this meeting and the parties did not reach any related agreement at or following the meeting.

Both of the Union representatives who testified at hearing indicated that the State did not raise the issue of the Special Agent (or State Police) Investigator at the table during successor contract negotiations or otherwise indicate during the negotiation sessions that the State intended to file a related unit clarification.

III. Analysis and Conclusions

Section 979-E(3) of the State Employees Labor Relations Act permits a party to file a petition for unit clarification if (1) there is a currently recognized or certified bargaining unit, (2) the circumstances surrounding the formation of the bargaining unit are "alleged to have changed sufficiently to warrant modification in the composition of the bargaining unit," (3) the parties are

unable to agree on appropriate modifications, and (4) there is no pending question concerning representation. 26 M.R.S.A. § 979-E(3).

Here, there is no dispute the State's petition satisfies three of the four statutory elements for a viable unit clarification where the bargaining unit in question is currently recognized, the parties are unable to reach agreement on appropriate modifications, and there is no question concerning representation. However, as noted above and addressed below, the Union asserts there has been no requisite change in circumstances that would support a clarification of the Union's bargaining unit.

1. The State's reactivation of the long-vacant Special Agent Investigator position represents a change in circumstances that supports unit clarification for the related State Police Investigator position.

The requirement of changed circumstances is a threshold question in a unit clarification proceeding. *Ashland Area Teachers Ass'n and MSAD No. 32 Brd. of Directors*, No. 05-UC-02 at 12 (October 19, 2005) (*Ashland*). The petitioner for unit clarification bears the burden of establishing the change in circumstances that would warrant the modification of an existing bargaining unit. *County of Cumberland and National Correctional Employees Union*, No. 21-UC-01 at 6 (November 22, 2021) (*County of Cumberland*) citing *RSU 57, Brd. of Directors and Massabesic Education Ass'n*, Nos. 20-UC-01 and 20-UD-01 at 5 (January 3, 2020) (*RSU 57*). To "change the status of a classification without a substantial showing of changed circumstances would be an improper use of the unit clarification procedure." *RSU 57* at 4 quoting *AFSCME Council 93 and Penobscot County*, No. 14-UCA-01 at 5 (December 17, 2013) (*Penobscot County*).

Most commonly, qualifying changes are found when either a new job classification is created after the parties conclude negotiations, or the job duties of an existing position are substantially adjusted. *County of Cumberland* at 6. As one hearing examiner put it, "[t]he creation of a new job classification normally meets the requirement of changed circumstances, as it is impossible to consider the bargaining unit status of a position before it exists." *Ashland* at 12-13.

In this case, a number of facts support finding a change in circumstances. Foremost, the State reactivated the position of Special Agent Investigator after an extended period of dormancy. More specifically, the State deactivated this classification in 2008, and it remained vacant and deactivated for nearly fifteen years before its formal reactivation in 2023. Additionally, since at least 2019, the parties had removed any reference to the Special Agent Investigator position in what is, effectively, the recognition clause from the parties' collective bargaining agreement. Taken together, these facts indicate that the Special Agent Investigator position had, for all intents and purposes, ceased to exist in any active, practical application for years prior to the State deciding to post the position in the summer of 2023. Finally, the State created an actual new position (State Police Investigator) for the job duties previously performed by the Special Agent Investigator position.⁷

In effect, the above facts indicate an overall impact not entirely dissimilar to the creation of a brand-new position. In particular, a position that was practically non-existent was reactivated and staffed after nearly fifteen years of vacancy. As a result, the record establishes that a sufficient change in circumstances exists in connection to the State Police Investigator position to support a unit clarification for that position.

2. The petition is not subject to dismissal where the parties substantively discussed the bargaining unit status of the State Police Investigator position at the same time they were negotiating their successor collective bargaining agreement.

Importantly, the law not only permits, but encourages, parties to negotiate and attempt to reach consensus on the composition of a bargaining unit, including changes to existing bargaining units, prior to seeking MLRB intervention. *County of Cumberland* at 5-6. See also 26 M.R.S.A. § 979-E(3); *RSU 57* at 4-5; *Penobscot County* at 2-3; *Town of Thomaston and Teamsters Local Union No. 340*, No. 90-UC-03 at 11 (February 22, 1990) (*Thomaston*); *Town of Topsham and Local S/89, IAMAW*, No. 02-UC-01, Interim Report at 3 (December 21, 2001) (*Topsham*); *City of Augusta and AFSCME*, Nos. 81-UD-20 and 81-E-01 at 6 (June 2, 1981).

In turn, a unit clarification petition may be denied if the petition requests clarification of unit placement questions which could have been raised, but were not, prior to the conclusion of negotiations that resulted in an agreement containing a bargaining unit description. Chapter 11, § 6(3) of the MLRB Rules; see also *County of Cumberland* at 5-6. To emphasize this point, a hearing examiner declined to exclude two employees from a bargaining unit - despite the examiner's determination that the positions would normally be prohibited by statute from unit membership - because the employer previously agreed to their inclusion during successor contract negotiations and failed to raise or preserve the sought-after exclusions during bargaining. *Thomaston* at 12-15. The *Thomaston* hearing examiner also indicated that had the employer raised, pursued, and preserved the exclusions during negotiations, the employer would presumably have been entitled to unit clarification. *Thomaston* at 12; see also *AFSCME Council 93 and City of Saco*, No. 93-UC-02 at 12-13 (December 10, 1992) (*Saco*); *Ashland* at 12; *Topsham* at 9, FN 3.

Although Chapter 11, § 6(3) of the Rules does not mandate dismissal, in previous unit clarification decisions, hearing examiners often cited to a party raising a unit status issue during negotiations as a basis for that party's ability (or lack thereof) to seek a subsequent unit clarification. *County of Cumberland* at 5-6; *RSU 57* at 5, *Ashland* at 12, *Topsham* at 9, *Saco* at 12-13, *Thomaston* at 12-15; cf. *MSAD 25 Education Ass'n and MSAD 25 Brd. of Directors*, No. 01-UC-01 at 7 (December 21, 2000). This emphasis is consistent with the well-established preferences (as reflected, in part, by the existence of the rule in question) to not disturb previously agreed-upon units during the life of the contract and for parties to address these types of matters on their own prior to coming to the Board. See *Penobscot County* at 3-4.

Here, there is some ambiguity as to whether the State specifically raised the status of the Special Agent (or State Police) Investigator at the actual bargaining table. While the lieutenant colonel indicated his belief that this took place, the Union's witnesses were generally adamant that it did not. It is ultimately unnecessary to take one version over the other where there are

sufficient undisputed facts that indicate the State adequately raised and preserved this issue for subsequent unit clarification apart from the actual bargaining table. Therefore, for the purposes of this report, it is presumed that the State did not raise the status of the State Police Investigator position or otherwise indicate its intent to file a related unit clarification at the successor contract bargaining table.

Although such a failure might be fatal to other unit clarifications, that is not the case here. Instead, even relying more on the Union's evidence put forward at hearing as to the scope and timing of the parties' engagement on this issue, those facts indicate that, on at least two occasions (September 1 and October 10), many, if not all, of the parties' principals met to discuss the issue of the State Police Investigator position prior to the conclusion of negotiations for the successor collective bargaining agreement on December 31, 2023.⁸ The available evidence indicates these two meetings, the latter of which occurred in direct response to the Union's specific demand to bargain, were substantive in nature and included exploration of each party's position regarding the inclusion of the State Police Investigator in the Union's bargaining unit. While these discussions did not specifically occur at the parties' successor contract bargaining table, it is difficult to discern a material end difference, especially where bargaining unit placement is a permissive subject of bargaining, and the Board retains the end authority to decide the matter either through unit determination or clarification proceedings.⁹

Also notable is that at the October 10 meeting, the State conveyed its intent to move forward with including the State Police Investigator in the Union's bargaining unit regardless of any agreement. As the Union president confirmed, he did not see this issue ultimately going away. While the State did not explicitly say that it would file a unit clarification, the impact of this omission, if any, is reduced by the State's declaration of its intended course of action and the accompanying lack of indication that the State would depart from its plan. Again, in the event of a dispute over unit placement, the parties must go to the Board, a result implicit when the State insisted on its course of action with no accompanying agreement from the Union.

When compared to instances where Board hearing examiners dismissed unit clarifications based on Chapter 11, § 6(3) of the MLRB Rules, the facts at issue here share a number of material distinctions in that the dismissed petitions either did not involve substantive discussions of the unit placement issue prior to the close of negotiations or the petitioner indicated acquiescence to maintaining the status quo for unit placement at the time the parties' reached agreement on the successor contract. See *County of Cumberland* at 5-6 (employer failed to raise requested exclusion during successor contract negotiations and the parties never discussed the matter before reaching agreement on new contract); *Thomaston* at 12 (employer failed to bring up statutory exclusion until after the parties reached tentative agreement).

The Union, in effect, seeks to exclude from bargaining unit membership (at least for the duration of the parties' current collective bargaining agreement) a position that the Union agrees shares a "great" community of interest with its existing unit, is practically identical to a position that the parties previously included in the same unit, and that the Union appears amenable to representing so long as the parties first reach agreement on the impact of the position's inclusion in the unit. However, there is no real dispute that the parties had the opportunity to substantively engage on the status of the State Police Investigator position during the pendency of the

successor contract negotiations – even if not at the actual table – or that the State indicated it would continue its intended course of action for this position regardless of the Union’s agreement. Therefore, a denial of the requested clarification could be fairly described as preferring form over function. Such a denial would be inconsistent with the apparent, overarching purpose of the relevant law and procedural rule which is to encourage the parties to attempt to resolve a bargaining unit question on their own before coming to the Board. That is what took place here. As a result, clarification is appropriate under these particular circumstances.

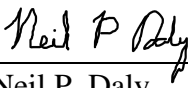
IV. Order

For the foregoing reasons, the undersigned ORDERS that the petition in case no. 24-UC-01 be, and hereby is, GRANTED. The bargaining unit of Maine State Police employees represented by the Maine State Troopers Association is clarified to include the position of State Police Investigator.

V. Right to Appeal

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 MLRB within fifteen (15) days of the date of the issuance of this report. See Chapter 10 and Chapter 11, § 30 of the MLRB Rules.

Dated this 22nd day of November 2024



Neil P. Daly
Executive Director

¹ To maintain consistency between the rest of the decision and the stipulated facts, the Hearing Examiner edited the stipulated facts to include the term “Union” when referring to the Maine State Troopers Association and “State” to refer to the State of Maine.

² The Union’s bargaining unit also currently includes the position of Detective Corporal but, for a reason unexplained at hearing, this position is not listed in Addendum A.

³ In subsequent internal Union conversations, the Union’s president learned that the detectives felt overwhelmed by their workload and were in favor of the reactivation of the Special Agent Investigator positions.

⁴ According to the Union’s chief negotiator, the proposed framework was similar to the parties’ historical agreement for the Special Agent Investigator position when that position was an active part of the Union’s bargaining unit.

⁵ In the Union’s email through which it conveyed its demand to bargain, the Union indicated that the Union president and the lieutenant colonel had spoken at length about this issue. The Union also hoped to address the issue less formally than going to the MLRB or arbitration.

⁶ When asked if there was ever a time where it looked like this issue was going away, the Union president responded that, while he thought the parties were making progress, he did not see it going away.

⁷ It is reasonable to acknowledge that the position of State Police Investigator, while technically “new” in name, was really just renaming an existing classification. As a result, the import of the “new” status of the State Police Investigator position does not hold the same weight as a position that was entirely not in existence prior to the creation of its position title.

⁸ While the evidence indicates the parties’ conducted their last formal negotiation session on September 11, 2023, the Union’s stipulated facts also stated that negotiations continued until the parties reached agreement on December 31, 2023.

⁹ On a number of occasions, Board examiners have noted that the topic of bargaining unit inclusion is a permissive subject that can be unilaterally removed from the bargaining table by either party. E.g. *AFSCME Council 93 and Town of Sanford*, 08-UC-02 at FN 1 (July 23, 2008); *Thomaston* at FN 6.