BUREAU OF MEDIATION SERVICES

IN THE MATTER OF A PETITION FOR CLARIFICATION OR AMENDMENT OF AN APPROPRIATE UNIT

July 6, 2023

City of Minneapolis,
Minneapolis Minnesota
- and -
Police Officers Federation of Minneapolis,
Minneapolis, Minnesota

BMS Case No. 23PCL0820

UNIT CLARIFICATION ORDER

INTRODUCTION

On October 31, 2022, the State of Minnesota, Bureau of Mediation Services (Bureau) received a petition filed by the City of Minneapolis, Minneapolis, Minnesota (City or Employer). The petition seeks to clarify whether the job titles of Police Sergeant, Police Supervisor License, Police Investigative Team Leader, and Police Lieutenant should continue to be included within the existing appropriate unit. A Notice of Maintenance of Status Quo was issued by the Bureau on November 8, 2022.

A hearing was scheduled for March 30, 2023. On March 21, 2023, the hearing was postponed. Following the postponement of the hearing, a pre-hearing conference was held on March 31 at which time the parties discussed submitting their cases in writing to the hearing panel. A timeline was outlined for exchange of affidavits and exhibits between the parties. A follow-up pre-hearing conference was held on May 5, 2023, where the parties agreed to move forward with the written submissions in lieu of a hearing. The parties submitted their written briefs, affidavits/declarations and exhibits electronically to the hearing panel on May 17, 2023.

The Police Officer Federation of Minneapolis (Federation or Union) submitted affidavits and supplemental declarations from six witnesses and exhibits numbered 1-30. The City submitted affidavits or declarations from sixteen witnesses and 35 exhibits labeled with alphabetical letters by witness.

APPEARANCES

Briefs and exhibits were submitted by Sara Riskin, Assistant Minneapolis City Attorney on behalf of the City, and Jim Michels, Michels Law Firm PLLC on behalf of the Federation.

ISSUE

The original petition seeks clarification on whether the positions of Police Sergeant, Police Supervisor License, Police Investigative Team Leader, and Police Lieutenant are properly included within the appropriate unit certified to the Police Officers Federation of Minneapolis.

Over the years, the parties have recognized through the collective bargaining process changes in the job classifications in the appropriate unit. For example, the job titles of Police Supervisor License and Police Investigative Team Leader were not identified in the recognitions article of the 1998 collective bargaining agreement. (Union Exhibits 14 & 15). The City acknowledged in its brief, the job titles of Police Supervisor License and Police Investigative Team Leader are no longer used. (City Brief pg. 1)

Through discussion and submissions of the parties, the Bureau has determined the issue to be:

> Are the positions of Police Sergeant and Police Lieutenant properly included within the appropriate unit certified to the Police Officers Federation of Minneapolis?

POSITIONS OF THE PARTIES

The City argues: "Police Officers do not have a community of interest with the Sergeants and Lieutenants who are part of the MPD management structure, work under different conditions and in different locations, have different expectations and different training, supervise Officers' work, and evaluate Officers' performance." and "The two groups – one front-line employees who work in the field, the other supervisors and investigators whose primary work location is an office – represent fundamentally different roles, responsibilities, and interests, and should no longer be in the same bargaining unit." (City Brief pgs. 1-2)

The Federation's position is the community of interest factors do not apply in this case. The City's petition for clarification can only be considered under the supervisory definition found in Minn. Stat. §179A.03, subd. 17, and the Sergeants and Lieutenants are properly within the unit as they do not meet the supervisory criteria. Further, the Federation argues if the community of interest criteria set forth in Minn. Stat. §179A.09 are reviewed the factors support maintaining the current bargaining unit. (Federation Brief pgs. 9, 11 & 18)

BACKGROUND

Minn. Stat. §179A.03, subd. 2, (2022), the Minnesota Public Employment Labor Relations Act (PELRA) defines Appropriate Unit as a unit of employees determined under sections 179A.09 to 179A.11. Unit Determination criteria of Minn. Stat. §179A.09 is the applicable standard for determining appropriate units within a city. The criteria outlined in §179A.09, subd. 1, directs the Commissioner in determining the appropriate unit and is used as guidance in subsequent clarification requests.

The applicable subdivision in Minn. Stat. §179A.09 reads:

> *In determining the appropriate unit, the commissioner shall consider the principles and the coverage of uniform comprehensive position classification and compensation plans of the employees, professions and skilled crafts, and other occupational classifications, relevant administrative and supervisory levels of authority, geographical location, history, extent of organization, the recommendation of the parties, and other relevant factors. The commissioner shall place particular importance upon the history and extent of organization, and the desires of the petitioning employee representatives.*

In analyzing the positions of the parties, it is important to understand the background and history of the Federation's representation of these employees within the City.

On June 28, 1973, the Bureau determined an appropriate unit and certified the Federation as the exclusive representative upon receipt of a petition filed jointly between the City and the Federation. The unit was described as:

> "All employees of the Minneapolis Police Department in the classifications of Detective, Detective Captain, Detective Supervisor, Identification Officer, Inspector of Police, Lieutenant, Patrolman, Patrolman (when assigned to Mayor), Patrolman (when in charge of School Safety Division), Police Captain, Police Drill & Band Instructor, Policewoman, Sergeant, Special Investigator, Superintendent of Bureau of Identification, Supervisor of License Inspection, and

> Supervisor of the Morals and Narcotics Section, excluding all other employees." (BMS Case No. 73PR0566)

The Bureau's records show on September 30, 1980, the City filed a petition for clarification or amendment of appropriate unit. A hearing was scheduled for November 18, 1980 and subsequently cancelled. On October 12, 1981, the Bureau dismissed the petition without prejudice after finding no further interest appeared to exist. (BMS Case No. 82PR0326A)

In 1983, the City started restructuring which resulted in the classifications of Photo Lab Assistant, Photography Technician, and Manager – Support Services no longer requiring a peace officer license. In July 1985, a joint petition was filed by the City of Minneapolis and the Minneapolis Police Officers Federation requesting clarification of these three classifications within the appropriate unit. The Bureau determined on April 4, 1986 the "civilianization" of employment classifications within the Minneapolis Police Department is an inherent managerial right, and the Bureau had no jurisdiction to bar the employer from making such decisions. The Bureau found the Photo Lab Assistant, Photography Technician and Manager – Support Services were not essential within the meaning of Minn. Stat. §179A.03, subd. 7, and therefore did not belong in the unit represented by the Federation. (BMS Case No. 86PR0007)

The Federation appealed the decision to the Public Employment Relations Board (PERB) and requested a remand to the Bureau for the taking of additional testimony and evidence. On June 19, 1986, PERB granted the remand to the Bureau. A subsequent hearing was conducted by the Bureau. On February 9, 1987, the Bureau issued a Unit Clarification Order indicating, the newly-created employment classifications of Photo Lab Assistant, Photograph Technician, and Manager, Support Services are not essential within the meaning of Minn. Stat. §179A.03, subd. 7 and are excluded from the appropriate unit represented by the Federation. The Federation filed another appeal with PERB but subsequently withdrew the appeal.

On May 8, 1986, the Federation filed a petition for clarification of an appropriate unit regarding the positions of Commander for the Personnel Unit, Commander Research and Development Unit, and Supervisor of the Criminal History Unit. On February 22, 1988, the Bureau dismissed the Federation's petition because the issue raised was outside the Bureau's scope of review given the positions were filled with civilian employees. (BMS Case No. 86PR0944)

Based on the history outlined above, the Bureau's records do not show any changes in the unit description issued in 1973.

Review of the 1998 collective bargaining agreement the Recognition Article read,

> The City recognizes the Federation as the exclusive representative for the unit consisting of all certified employees in the classifications of:

> Identification Officer, Inspector of Police, Lieutenant, Patrol Officer, Police Captain, Police Drill & Band Instructor, Sergeant, Supervisor of License Inspection, Supervisor of Internal Affairs Unit, and Supervisor of the Morals and Narcotics Section, excluding all other employees. (Union Exhibit 14)

In the 1999-2002 collective bargaining agreement the parties negotiated a change to the Recognition Article to read: "The City recognizes the Federation as the exclusive representative for the unit consisting of all sworn law enforcement personnel except those appointed to serve in the positions of Chief of Police, Deputy Chief and Inspector." (Id.)

In 2003, the parties again negotiated a change to the recognition article for the October 15, 2002 – October 14, 2005 collective bargaining agreement. The Recognition Article was updated to: "The City recognizes the Federation as the exclusive representative for the unit consisting of all sworn law enforcement personnel except those appointed to serve in the positions of Chief of Police, Assistant Chief of Police, Deputy Chief and Inspector." (Ex. C to Declaration of Rasheda Deloney)

In the 2012 – 2014 collective bargaining agreement, the parties updated the Recognition Article in negotiations to be: "The City recognizes the Federation as the exclusive representative for the unit consisting of all sworn law enforcement personnel except those appointed to serve in the positions of Chief of Police, Assistant Chief of Police, Deputy Chief, Inspector and Commander." (Union Exhibit 14)

Then, in the 2015 – 2016 agreement the parties negotiated the Recognition Article to read: "The City recognizes the Federation as the exclusive representative for the unit consisting of employees serving in the following job titles: Police Officer, Sergeant and Lieutenant." (Id.)

While the Bureau is not bound by the Recognition Article negotiated by the parties, the Bureau has traditionally held that the agreements reached by parties to a collective bargaining relationship that spans a number of years will govern the dimensions of the appropriate unit. *Minnesota Teamsters Public and Law Enforcement Employees Union, Local No. 320 and Independent School District No. 831*, BMS Case No. 90PCL3199 (Aug. 17, 1990)

DISCUSSION

Following the postponement of the hearing set for March 30, 2023, the parties mutually agreed to submit written briefs, affidavits/declarations and exhibits to the hearing panel for consideration and a decision. There is no requirement that an in-person hearing be conducted. In an unpublished decision, the Court of Appeals acknowledged a hearing is not required on a petition for unit clarification, and that the rules authorize the Bureau to conduct a hearing or an investigation. *Minnesota Teamsters Public and Law Enforcement*

Employees Union, Local No. 320 v. City of Coon Rapids, A12-1349 (Minn. Ct. App. April 15, 2013) (unpublished).

I. Authority

The Union argues the Bureau's only authority to consider the City's petition seeking to remove Sergeants and Lieutenants from the existing bargaining unit is whether the Sergeants and Lieutenants meet the definition of supervisory employee under Minn. Stat. §179A.03, Subd. 17. In support of its argument the Union cites to *In re Clarification of Unit Hibbing Police Fed'n v. City of Hibbing*, A19-1157 (Minn. Ct. App. June 8, 2020) (unpublished). In *Hibbing* the Court of Appeals affirmed the hearing officer's decision that the captains are not supervisory and remain in the current unit.

The *Hibbing* case is distinguishable from the current matter before the Bureau. In *Hibbing,* the parties agreed the only matter before the hearing officer was whether the captains were supervisory under Minn. Stat. §179A.03, Subd. 17. The Court of Appeals in *Hibbing* stated: "The HO's order did not address the appropriateness of the proposed Captains' Unit under Minn. Stat. §179A.09, subd. 1, perhaps because, throughout the lengthy hearing, neither party had indicated that the appropriateness of that unit was an issue and both parties had agreed with the HO's statement that the primary issue was whether the captains were supervisory employees within the meaning of Minn. Stat. §179A.03 subd. 17." (*In re Clarification of Unit Hibbing Police Fed'n* at Pg. 5) Here, the City of Minneapolis bases its petition on the criteria set forth in Minn. Stat. §179A.09, subd. 1. (Union Exhibit 2) The City did not raise in its petition nor does it argue the Sergeants and Lieutenants meet the supervisory definition set forth in Minn. Stat. §179A.03, subd. 17.

The Bureau has the authority under Minnesota Rule 5510.0310, subp. 24 to review an appropriate unit determination under a unit clarification petition. The Rule states,

> *"Unit clarification" or "clarification petition" means the commissioner's determination regarding an appropriate unit involving: A. inclusions or exclusions of positions or job classifications in an appropriate unit; B. the confidential, supervisory, or essential status of positions, classifications, or the unit itself; C. modification of the unit description; or D. modification of the unit structure.*

The Bureau has reviewed the community of interest factors in unit clarification cases since at least 1985. *See, Minnesota Council 65, AFSCME and City of Virginia*, BMS Case No. 86PR0126 (January 10, 1985) More recently in 2013, the Court of Appeals held the record lacked substantial evidence to show that there had been a significant change in the community of interest and overturned a BMS order, but the Court recognized the Bureau's authority to look at the community of interest factors in a unit clarification. *See Minn. Teamsters Pub. & Law Enforcement Emps. Union v. City of Brooklyn Park*, A13-0059 (Minn. Ct. App. August 19, 2013) (unpublished).

In *Minnesota Council 65, AFSCME and City of Virginia*, BMS Case No. 86PR0126 (January 10, 1985), AFSCME filed a petition requesting to accrete the appropriate unit of library employees into the appropriate unit of City employees. The request for accretion was denied, but the case set out the burden of proof when a request is made by a single party to change an existing bargaining unit. The hearing officer stated:

> The Bureau, as a matter of policy, is reluctant to disturb established appropriate units especially when there is a history of bargaining and the request for amendment or modification is from a single party. Accordingly, the Bureau has established a greater burden of proof when a change in existing bargaining unit structure is sought by a petitioner, particularly when a single-party request is made to alter a bargaining unit structure that has existed for a considerable period of time.

The Bureau followed this higher burden of proof in another 1985 case, when it determined the job classifications of Printing Technician and Audio Visual Electronics Technician should not be removed from the broader custodial engineering unit represented by Local 867. There the hearing officer wrote:

> The issue here is raised by a joint petition of the parties. However, the "burden of proof" standard remains applicable where the issue is the removal of job classifications from an appropriate unit in which they have been historically included. Accordingly, the Bureau will require a higher "burden of proof" from the parties when determining issues which involve the removal of historically represented job classifications. *United Auto Workers, Local No. 867 and Independent School District No. 492*, BMS Case No. 85PR0731-A (June 13, 1985)

In *County of Ramsey and International Union of Operating Engineers, Local No. 70*, BMS Case No. 86PR0282 (January 24, 1986), the hearing officer outlined what a petitioner must demonstrate for a unit modification to be justifiable.

> The Bureau is cautious in entertaining requests to modify historic bargaining relationships absent substantial justification. To approve such requests the Bureau applies a "burden of proof" standard greater than that required in an original unit determination. To receive satisfaction, a petitioner must demonstrate through a preponderance of testimony and evidence that the unit modification is justifiable. Therefore, when considering requests for bargaining structure modification, the Bureau will favorably grant such requests only when: 1. All parties affected by the change agree to the modification; or 2. There is a history of substantial bargaining turmoil attributable

> to the issue in question; or 3. There is a significant change in the community of interest of involved employees.[1]

In the *Ramsey County* matter, the bargaining unit structure of Local 70 was established by an order on December 12, 1961. The hearing officer noted: "The record established that there is no agreement among the parties . . . . and there is no claim concerning a history of bargaining conflict. Therefore, the scope of inquiry is limited to consideration of community of interest changes."

It is important to note in 1993, the Court of Appeals affirmed the accretion of instructional assistants to the district's paraprofessional bargaining unit and stated, "Although the statute is designed to take public interest factors into account, see Minn. Stat. Sec. 179A.01, specific provisions of a statute should control over the general." *See School Service Employees #284 and ISD 270, Hopkins, 499 N.W. 2d 828, 831 (Minn. App. May 1993) BMS Case No.: 91PCL1108 citing City of St. Paul and Hall 58 N.W.2d 761 (Minn. 1953)*.

Here the parties are not in agreement to make a change to the bargaining unit. Also, neither party has claimed a history of bargaining turmoil. The bargaining unit was certified in 1973 and the parties have successfully negotiated numerous collective bargaining agreements since that time. Therefore, the scope of the Bureau's inquiry is whether there has been a significant change in the community of interest of the involved employees.

The Union argues the Minneapolis Police Sergeants and Lieutenants are not "supervisory employees" under the definitions set forth in Minn. Stat. §179A.03, subd. 17. This argument will not be addressed because neither in its petition nor its brief has the City argued the Sergeants and Lieutenants meet the definition of supervisory employee found in Minn. Stat. §179A.03, subd. 17.

II. Community of Interest Criteria

In reviewing whether the positions of Police Sergeant and Police Lieutenant are properly included within the appropriate unit certified to the Federation, we turn to the statutory criteria set forth in Minn. Stat. §179A.09. Because the unit was properly certified in 1973, we now must consider whether there has been a significant change within any of the positions in question causing us to find the factors no longer supports our original determination.

Ideally an appropriate unit provides the employer with reasonable protection from whipsaw bargaining, supplies the union with an adequate basis to marshal support, and allows for efficient and stable collective bargaining. The community of interest factors

[1] *See also Minnesota Water Treatment Plant Operators Association and City of Minneapolis and City Employees Union, Local No. 363*, BMS Case 91PCE2256 (June 26, 1991) where the petition was dismissed because the Association failed to meet its substantial burden of proof to warrant a separate unit for the classifications of Water Treatment Plant Operator I and II.

applied in determining units, absent statutory mandates to the contrary, allow significant flexibility to construct units that correspond to the factual situation within which bargaining will occur. The Bureau must therefore, weigh each of the factors comprising a community of interest in determining the inclusion or exclusion of the job classification in question to the appropriate unit. No single factor is individually determinative of the appropriate unit, instead the Bureau must consider all factors and weigh them against the need for orderly and constructive relationships.

Principles and the Coverage of Uniform Comprehensive Position Classification and Compensation Plans

The Employer and the Federation each highlight the existence of a citywide pay classification system. In its argument the Employer points out finding relevance in this factor flies in the face of reality, noting that 22 separate bargaining units have been certified therefore the City's classification system is not a basis to find the positions properly included. Instead, the Employer argues the "grade levels" should be determinative of the principles and coverage of uniform comprehensive compensation plans.

The original Public Employment Labor Relations Act language included direction in determining appropriate units, to consider:

> *[t]he principles and the coverage of uniform comprehensive position classification and compensation plans of the employees, the history and extent of organization, involvement of professions and skilled crafts and other occupational classifications, relevant administrative and supervisory levels of authority, the desires of the employees and employers, geographical location, and the recommendation of the parties, along with other relevant factors.*
> (Minn. Stat. §179.71 (1971))

Today, the issue of Principles and the Coverage of Uniform Comprehensive Position Classification and Compensation Plans of the employees language is unchanged. The statutory language is identical, only time has changed.

Classification Manager Brenda Miller declared "they analyze six factors" for each position and group them into grade levels based on a point value. She notes the front-line officers are grade level 8, the Sergeants are grade 10 and the Lieutenants are grade 11. More compelling are the wage information tables in Exhibit A of her declaration, representing salaries dating back to July 1, 2011. Displayed here is a step system for each of the three classifications, including the wage adjustment for each classification each year. In 19 of the 22 instances of wage adjustments, the "police", "sergeant", and "lieutenant" increases are identical. For the three instances where the increase varied, the first, "police" (the patrol position) received an increase two percent greater than "sergeant" and "lieutenant". The

second instance, the Sergeant received an increase two percent greater than Police and Lieutenant, who received the same amount. And the last occurred when the police received an additional one-half percent greater than the Sergeant and Lieutenant, occurring in the year following the greater Sergeant increase.

The argument each classification has a separate dollar range therefore representing a distinct classification, is not a divergence from other bargaining agreements identifying greater and lesser minimum and maximum ranges for positions within an appropriate unit. Additionally, while the Employer highlights the pay differentials between the patrol positions and the Sergeant and Lieutenant positions, the gap has actually closed. Providing the same wage adjustment to these positions for at least the last eleven years, maintaining nearly the same differential, provides illustration of a strong history of a classification and compensation relationship.

The Employer argues this factor is irrelevant since all employees are under a single umbrella classification and compensation plan. With the passage of the Pay Equity Act in 1984, public employers were tasked to develop relationships among most jobs within its governance. Since the mid-1980s, the City has been subject to compliance with the Act. Skipping forward to 2011, the first year within the Miller declaration, the relationship is established and recorded. From 2011 through 2022, the last year in the Miller exhibit, there has been no change in the relationship among Officer, Sergeant and Lieutenant within the plan. Additionally, described within exhibits E and F of the Miller declaration, are the analyses and findings for grading the Lieutenant and Sergeant upon request in 2005. These analyses show the outcome and placement of the positions onto a grade within the compensation matrix. Although not completely transparent, the Sergeant was awarded an additional 5 points under a factor which raised the total by 15 points. Examining the total points is beneficial in assessing the relationship the compensation and classification system has in determining this factor. Total points, which are not the combination of points within each of the City's classification factor worksheet, are 393 for Officer, 453 for Sergeant, 533 for Lieutenant, 685 for Inspector, 733 for Deputy Chief, 763 for Assistant Chief, and 848 for Chief.

Evaluating the relationships between the grades, the record lacks definition of point breaks, other than Ms. Miller's statement that "There are forty-five points in each grade level in our Cresap system." We can see in the Exhibit F chart, the anomaly exists where it is not a pure 45 points which separate classifications into grades but instead the classifications fall within the grade of what Ms. Miller describes as being 45 points. Comparing Police Officer to Sergeant, there is a 60 point differential, however the raw worksheet factor total represents a 15 point difference. Extrapolating from this fact, we can discern the Sergeant is in the lower end of grade 10 and the Officers are within the upper end of grade 8. Lieutenants are in grade 11 and 80 total points higher than the Sergeants, which is 40 points of worksheet factor points. A 60 total point separation Sergeant to Officer is insignificant when the Employer argues the Lieutenant and Sergeant are similarly situated with an 80 point separation.

While the City maintains a comprehensive compensation and classification system, determinations can be made where position relationships occur across grades, in the case of the officer, Sergeant and Lieutenant, the principles and uniformity of the compensation and classification system demonstrates a similarity supporting a community of interest. There has been no modifications to the system since at least 2011 and the Bureau had previously determined this factor supported the community of interest.

This factor favors continued unit inclusion for the Police Sergeant and Police Lieutenant.

Professions and Skilled Crafts, and Other Occupational Classifications

The unit in question consists solely of licensed peace officers. Union exhibits 16, 17 and 18 for the Police Officer, Police Sergeant, and Police Lieutenant all require Peace Officer Standards and Training Board (P.O.S.T.) licensure. Minnesota Rules 6700.0700, sets minimum standards for peace officer license eligibility. These minimum standards include:

A. The applicant shall be a citizen of the United States.
B. The applicant shall possess a valid Minnesota driver's license; or in case of residency therein, a valid driver's license from another state; or eligibility to obtain either license.
C. The applicant shall complete a comprehensive written application.
D. The applicant shall submit to a thorough background search, including searches by local, state, and federal agencies, to disclose the existence of any criminal record or conduct which would adversely affect the performance by the applicant of peace officer duties.
E. The applicant must not be required to register as a predatory offender under Minnesota Statutes, section 243.166 or 243.167.
F. No applicant may be appointed to the position of peace officer who has been convicted:
(1) of a felony in this state or in any other state or federal jurisdiction;
(2) of any offense in any other state or federal jurisdiction which would have been a felony if committed in Minnesota;
(3) under Minnesota Statutes, section 609.224, 609.2242, 609.231, 609.2325, 609.233, 609.2335, 609.234, 609.324, 609.465, 609.466, 609.52, or 609.72, subdivision 3; or convicted under any state or federal narcotics or controlled substance law irrespective of any proceeding under Minnesota Statutes, section 152.18, or any similar law of another state or federal law; or
(4) of any of the crimes listed in this item in another state or

> *federal jurisdiction, or under a local ordinance that would be a conviction if committed in Minnesota.*
>
> *G. The applicant shall be fingerprinted for the purpose of disclosure of any felony convictions. Fingerprint cards shall be forwarded to the appropriate divisions of the Bureau of Criminal Apprehension and the Federal Bureau of Investigation. The chief law enforcement officer shall immediately notify the board if a previous felony conviction is discovered.*
>
> *H. A licensed physician or surgeon shall make a thorough medical examination of the applicant to determine that the applicant is free from any physical condition which might adversely affect the performance of peace officer duties.*
>
> *I. An evaluation, including an oral interview, shall be made by a licensed psychologist to determine that the applicant is free from any emotional or mental condition which might adversely affect the performance of peace officer duties.*
>
> *J. The applicant shall pass a job-related examination of the applicant's physical strength and agility to demonstrate the possession of physical skills necessary to the accomplishment of the duties and functions of a peace officer.*
>
> *K. The applicant shall successfully complete an oral examination conducted by or for the agency to demonstrate the possession of communication skills necessary to the accomplishment of the duties and functions of a peace officer.*

Peace Officers have been subject to education and training standards established by the P.O.S.T. Board for decades; they have not expanded to include new ranks or exclude any existing ranks. Minn. R. 6700.0400 establishes the criteria for the certification of schools providing qualified peace officer training.

> *Subpart 1. Application. Upon filing a proper application, a school desiring certification shall be reviewed by the board. The board will not consider certification unless the school has shown a documented need for its program. The school must also file with the board satisfactory proof that the school will offer courses meeting the prescribed learning objectives, has reasonable training equipment and facilities including library, and has qualified instructors. All applications for certification must be accompanied by evidence that the higher education system office governing the applicant school has approved the application of the school and, if required, that the application has been approved by the Minnesota Office of Higher Education.*

Union Exhibit 16, Police Officer position description, Union Exhibit 17, Police Sergeant position description, and Union Exhibit 18, the position description for Police Lieutenant,

all require P.O.S.T Certification. In addition to the initial training, examination, and licensure, peace officer licenses must be renewed every third year:

> *Subpart 1. Validity of licenses and renewal dates. Peace officer licenses issued by the board under part 6700.0800 are valid until they expire, are revoked, or are surrendered by the licensee. Part-time peace officer licenses issued by the board pursuant to part 6700.1101 are valid as long as they remain active with the agency or agencies that employed the part-time peace officer on or before June 30, 2014. Upon leaving the agency or agencies of employment after June 30, 2014, part-time peace officer licenses are automatically canceled and shall not be renewed.*
>
> *Peace officer and part-time peace officer licenses are valid for a three-year period with a renewal date of June 30 on the third year of licensure.* (Minn. R. 6700.1000)

Minnesota Statute defines a peace officer as:

> (g) *"Peace officer" means a licensed peace officer or part-time peace officer subject to licensure under sections 626.84 to 626.863.* (Minn. Stat. §626.892, subd. 1)

The statute and rule do not differentiate ranks within an organization, instead applying equally across the profession to all licensed peace officers. Other sections of statute apply equally across the profession as well, such as the peace officer grievance and arbitration selection procedure.

The applicable definition of peace officer in §626.84 reads:

> *(c) "Peace officer" means:*
>
> *(1) an employee or an elected or appointed official of a political subdivision or law enforcement agency who is licensed by the board, charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state and who has the full power of arrest, and shall also include the Minnesota State Patrol, agents of the Division of Alcohol and Gambling Enforcement, state conservation officers, Metropolitan Transit police officers, Department of Corrections Fugitive Apprehension Unit officers, and Department of Commerce Fraud Bureau Unit officers, and the statewide coordinator of the Violent Crime Coordinating Council;*

The profession is well defined within multiple areas of statute and establishes a means to ensure applicants have received and understood appropriate training and educational skills. Not found in statute are licensure differentiations based on rank or assignment within a department. Peace Officer training has existed under the Board since 1967, with actual licensure and recertification applied a number of years later. Since its inception, the Board has maintained a single qualifying standard for all peace officers regardless of rank or assignment.

This factor supports the Bureau's initial finding of the appropriate unit and favors continued unit inclusion for the Police Sergeant and Police Lieutenant.

Relevant Administrative and Supervisory Levels of Authority

With regard to supervisory levels of authority, the parties have submitted neither the Police Sergeant nor the Police Lieutenant are supervisory under the statute. While several declarations submitted use terms like; supervise, oversee, direct, or manage, the individuals making the declarations do not suggest they are consistent with the terms of statute. Minn. Stat. §179A.03, subd. 17 defines a supervisory employee as:

> *a person who has the authority to undertake a majority of the following supervisory functions in the interests of the employer: hiring, transfer, suspension, promotion, discharge, assignment, reward, or discipline of other employees, direction of the work of other employees, or adjustment of other employees' grievances on behalf of the employer. To be included as a supervisory function which the person has authority to undertake, the exercise of the authority by the person may not be merely routine or clerical in nature but must require the use of independent judgment. An employee, other than an essential employee, who has authority to effectively recommend a supervisory function, is deemed to have authority to undertake that supervisory function for the purposes of this subdivision. The administrative head of a municipality, municipal utility, or police or fire department, and the administrative head's assistant, are always considered supervisory employees.*

Peace Officers are essential employees under the statute and therefore must exercise independent judgement in carrying out the authorities. Should the parties have submitted a stipulation declaring certain classifications are supervisory, the Bureau would have been required to investigate and determine whether the employees are supervisory employees in accordance with Minn. Stat. §179A.03, subd. 17. Here the parties, for purposes of contract language, stated the Sergeants and Lieutenants are supervisors, the Bureau has never been presented the question nor have we issued an order determining the positions to be supervisory employees. Article 16 of the parties current collective bargaining agreement (Deloney declaration, Exhibit D), which outlines the job classifications within

the contract, state under the Sergeant and Lieutenant heading, "Supervisor as defined by Minnesota Statute 179A.03, subd. 17". Again, while the parties may have used the term supervisor, they have not sought determination by the Bureau to actually have the positions classified as such. This language demonstrates the parties misunderstanding of statutory language regarding supervisory employee, in that, should Sergeants and Lieutenants actually be supervisory employees, they are not eligible to be in a unit with non-supervisory employees. (Minn. Stat. §179A.06) On page 11 of the City's brief, they point out the language regarding supervisory within the contract for the Police Sergeant and Police Lieutenant positions first occurred in the 2002-2005 labor agreement. The language remains within the current labor agreement. Further explanation by the City is that the language is used to establish staffing percentages as well as provide differentials within the bidding systems. Had the City or Union submitted to the Bureau for a determination regarding the supervisory employee status of the positions, a supervisory determination would have disqualified the Sergeant and Lieutenant from remaining within the unit. Instead, the parties continued to include them within the unit and crafted language specific to the positions as they related to other positions within the unit. Again, the parties have entered into the record the Police Sergeant and the Police Lieutenant positions do not meet the definition of supervisory employee under Minn. Stat. §179A.03.

For administrative levels of authority, the Police Officer position description (Union Exhibit 16) notes the position is "supervised by" Police Inspector, Police Captain, Police Lieutenant or Police Sergeant. Not singling out a clear line of authority regarding direct supervision, this 2004 document which was revised in 2012, indicates most anyone may provide direction. Union Exhibit 17, the Police Sergeant position description indicates the position is "supervised by" Police Lieutenant and higher level staff. Higher level staff are not defined, extrapolating from the Lieutenant position description along with the organizational chart submitted within the Miller declaration, we see there are no less than 5 higher levels. For the Police Lieutenant (Union Exhibit 18), similar language regarding higher levels leaves open just who or where these are. Relying on the organizational chart and titles used in the City Brief, we know there are at least 4 higher levels. To utilize such a great number of levels of authority within an agency to determine separate appropriate units, would have the effect of creating dozens of appropriate units rather than a unit which would offer the parties an orderly and constructive relationship. Creating units of single ranks also opens the gate for multitudes of variety of divisions, senior versus junior employee units, uniformed versus plain clothes units, squad car versus bicycle transportation units, day shift versus evening units, and so on. Instead, the administrative levels of authority are considered hand in hand with the supervisory levels of authority as they relate to actual job functions.

This factor supports the Bureau's earlier determination that the community of interest is shared between Police Officer, Police Sergeant and Police Lieutenant.

Geographic Location

Minneapolis is a city of the first class, with a population of roughly 429,000 people covering approximately 59 square miles. As many of the witnesses' declarations state, these Sergeants and Lieutenants have worked in a number of precincts, investigation and at the 911 Minneapolis Emergency Communication Center (MECC). Lieutenant Hand states, he expects Sergeants to "know what is happening on the street" and how officers are "doing and performing". Assistant Chief Huffman identifies in her declaration, referring to Sergeants, the responsibilities of, going out to the scene, collecting evidence, getting contact information from witnesses, monitoring pursuits, and helping with 911 calls. Lieutenant Khazraeinazmpour submitted that as a Sergeant she ran the roll call, monitored pursuits, and also responded to 911 calls.

While the City argues that Sergeants and Lieutenants spend more time inside the precinct building than outside on the street, it is clear from the declarations all licensed peace officers function throughout the City as needed. For a department providing public safety services it is obvious Officers, Sergeants and Lieutenants must respond to where they are needed. Whether a 911 incident, a pursuit, a use of force complaint, or "filling in when needed", the geographical location of the work is the 59 square miles that make up the City. The argument the police officers do not share a geographic location is not persuasive. They attend the roll calls identified by the declarants, they respond to 911 calls as do Sergeants and Lieutenants, and they work within and move between precincts as do all three positions. While the majority of declarations identify training received and provided, there is no indication this training is provided anywhere other than within the City.

While individual licensed peace officers may report to a particular precinct building for roll call or to begin their shift, the declarations all refer to work performed "on the street". Each individual identified the need to be on the street, whether responding to calls, observing, collecting evidence, investigating, or speaking with complainants. Only Operations Manager Geiselhart stated she reports to a particular center and does not conduct business on the road. There is no indication Ms. Geiselhart is a licensed Peace Officer, a Police Sergeant or a Police Lieutenant. She does however state the Sergeants or Lieutenants are contacted when no other officer is available, and these individuals may delay response or handle the call themselves.

The facts around the work location of the Police Officer, the Police Sergeant, and the Police Lieutenant, strongly indicate a common geographic location.

History and Extent of Organization

Perhaps one of the strongest and clearest indicators in this case is the history of the parties. Since 1973 the unit has been recognized and has included the positions under review,

along with others. Over time the titles have been updated, a few obsolete classifications dropped given they no longer existed, and the parties have negotiated several labor agreements. There has been no reported discord amongst employees regarding dissatisfaction with the negotiated terms of the labor agreement.

Focusing on the argument the Bureau should consider the current reality, some proof of a significant change in the job or organizational structure of the department is necessary. Here we have position descriptions that were established in 2003 and 2004 with revision dates of 2012, 2014 and only for the Lieutenant, 2021. With the Lieutenant position description there is no clear identification of exactly what changed. The organizational chart submitted by the City is dated 2005, with no indication of an update.

Since 2005, the Bureau has record of only 24 requests for service, included were contract mediation, grievance mediation or arbitration list requests. The actual number may be lower given the Bureau enters list requests as a separate event from mediation which may have occurred on the same case. Less than 24 requests in nearly 18 years is a relatively low number of instances for a City the size of Minneapolis and a unit as large as the Federation, especially considering the dynamics of the profession.

The extent of this organization has included the classification of Police Officer, Police Sergeant, and Police Lieutenant since its inception or since the creation of the rank. The Federation is not seeking to include positions for which it has not represented or has included within its structure. Successfully bargained labor agreements is demonstrative of the Federation's knowledge about the profession and their competency representing it. This is not a question of whether the Federation has capacity within the extent of their organization to include and represent the Police Sergeant and Police Lieutenant, they currently do and have for a very long time.

The legislature has placed particular importance on the factor involving the history and extent of organization. The record is heavy with history involving bargaining language, organization certification, and acceptance of the parties. A fundamental public policy objective of the PELRA is "to promote orderly and constructive relationships" between public employers and their employees. The history of the certified appropriate unit demonstrates the original unit stipulated to by the parties, reviewed and certified by the Bureau has produced a long and orderly relationship. To disrupt this without evidence of a significant change of the job duties or the organizational structure would be inappropriate and open the parties to uncertainty.

At this time the history of the organization is a clear indication the existing unit is appropriate and need not be modified.

Recommendation of the parties

Not surprising is the fact the parties have differing recommendations as to the construction of the appropriate unit. This consideration is equal between the Employer and Union positions. Both parties have had the chance to justify the basis behind their recommendation which have been considered within the other factors. Recommendations of each party are noted and have been given due consideration as they relate to the overall determination of the appropriate unit. The City emphasizes the need for amending the existing unit due to the changing societal dynamic. We have considered this and are well aware of the difficulties the Minneapolis Police Department has faced over the past few years. Union counterpoint to these concerns raised by the City are that the organizational structure of the bargaining unit is not cause for these difficulties and their certified appropriate unit should not be subject to dismantling. The Union relies on the statute and rule to recommend no change given the City has not provided necessary proof the existing unit is not appropriate.

While it is a recommendation itself which is considered when reviewing this factor, the Bureau must analyze the recommendation within the light of appropriateness. Both parties have submitted justification behind their recommendation which have been evaluated within the overall consideration.

Other relevant factors

The statute further prescribes the Commissioner place particular importance upon the history and extent of organization, and the desires of the petitioning employee organization. The supplemental declaration of Sergeant Sherral Schmidt includes the results of the survey from responding Police Officers, Sergeants and Lieutenants. While the employee organization is not the petitioner in the instant case, the information is illustrative of the desires of existing unit members. A vast majority of all positions surveyed did not support the removal of the Sergeant or Lieutenant from the existing certified appropriate unit. For the Lieutenants, it was a 100 percent rejection of the notion for exclusion from the existing unit by those who responded.

Differing from a unit determination and certification of exclusive representative petition, this case involves the question of whether the existing unit remains appropriate. Where the desire of the petitioning employee organization is useful in determining how the employees seek to organize and whether to elect an exclusive representative, where the clarification is involved, it holds little value. A clarification question is based on the continued appropriateness of an already certified unit, and whether there had been significant change warranting a change to that certification. Another consideration would be whether the original determination or certification was in error and needed correction through a unit clarification question. A recommendation by an employee organization to

maintain that which is not appropriate could not be given particular importance in determining whether the unit is appropriate.

The Bureau has noted the particular importance of this factor, however considering it as another relevant factor which does not carry the weight of the statutory factors identified above. The employee organization is not the petitioning party and given this is not a request for determination and certification, the desire is equivalent to a recommendation.

The City's main argument for exclusion of the Police Sergeant and Police Lieutenant from the existing unit is for perceived managerial role influence issues. They have not proven this to be necessary by a preponderance of the evidence. The fact that Police Sergeants and Police Lieutenants manage officers and oversee their work/duties does not rise to the level of no longer meeting the community of interest factors set forth in Minn. Stat. §179A.09. It is the City's responsibility as the petitioning party, seeking to modify an existing unit, to provide justification for its request. There is a heightened burden of proof placed upon the party seeking to amend a long standing certified appropriate unit, the burden has not been met.

CONCLUSION

The City has not met the burden of showing a significant change in the community of interest factors to warrant the removal of the Police Sergeants and Police Lieutenants from the appropriate unit certified in 1973. Because the parties have recognized through the bargaining process changes in the job titles and classifications within the appropriate unit, it is necessary to update the Bureau's unit description at this time.

Lacking a significant change in the positions, or within the organizational structure of the department, the Bureau finds no cause to declare the existing unit not appropriate. Given the unit is appropriate, given the long and successful relationship, and given the positions share a significant community of interest, the Bureau affirms its earlier finding and determines the existing unit appropriate.

However, given the updating of titles and agreements of the parties in collective bargaining, the official unit description will be updated to reflect proper terminology.

FINDINGS AND ORDERS

1. The existing certified unit is appropriate.

2. The positions of Police Sergeant and Police Lieutenant remain included within the appropriate unit.

3. The definition of the existing appropriate unit certified to the Police Officers Federation of Minneapolis on June 28, 1973 (BMS Case No. 73PR0566) is amended to be:

> All licensed peace officers, employed by the City of Minneapolis, Minnesota, who are public employees within the meaning of Minn. Stat. §179A.03, subd. 14, in the classifications of Police Officer, Police Sergeant, and Police Lieutenant, excluding supervisory, confidential, and all other employees.

STATE OF MINNESOTA
Bureau of Mediation Services

JOHNNY VILLARREAL
Commissioner

/s/ *Michael Stockstead*
Tiffany Schmidt
Jessica Mabin
Hearing Panel

Cc: Sarah Riskin
Jim Michels
Sherral Schmidt