

and a law enforcement (Law Enforcement) division. The Corrections division is responsible for maintaining the safety and security of inmates at the County's jail, while the Law Enforcement division provides law enforcement operations for thirteen municipalities.

When fully staffed, the Sheriff's office is composed of approximately 250 employees, about 60 of whom work in the Law Enforcement division. The bulk of the remainder works in the Corrections division, with corrections officers representing most of those positions.¹

The jail is a secure facility that consists of several pods, i.e. wings, where inmates are housed. Due to the nature of its operations, the jail is continuously staffed, through three separate work shifts largely comprised of corrections officers. In addition to the jail, the Sheriff's facilities include the Law Enforcement Center, an office building located nearby the jail, but outside of the jail's secured area.

Bargaining Units and Corrections Working Conditions

There are two separate bargaining units composed of County Sheriff employees: (1) a group of employees (Corrections bargaining unit) whose positions are generally related to the operations of the jail, and (2) a group of employees (Law Enforcement bargaining unit) whose positions are generally related to the County's law enforcement operations. The MLRB certified the Union as the Corrections bargaining unit's designated bargaining agent in December 2010.² Additionally, the Teamsters Local Union No. 340 (Teamsters) has served as the Law Enforcement bargaining unit's designated bargaining agent for years.

The County and Union are parties to a collective bargaining agreement, i.e. contract. The contract contains a roster of the positions included in the Corrections bargaining unit, organized by those positions considered "Corrections" and those considered "Non-Corrections". There are nine position titles listed as "Corrections" all of which require the incumbent to obtain and maintain correctional officer certification. In contrast, the nine position titles listed as "Non-Corrections", including the Complaint Officer described below, do not require the incumbent to obtain correctional officer certification.

The following Corrections bargaining unit positions work in the Law Enforcement Center: Complaint Officer, Trustee Coordinator, Staff Development Specialist, Administrative Civil Deputy, Civil Deputy, Crime Analyst, and Receptionist Clerk.³ The remainder of the Corrections Unit positions work in the jail.

The supervisory chain-of-command for most Corrections employees is as follows (listed in descending order of supervisory authority): Sheriff, Chief Deputy, Major, Captains, Lieutenants, and Sergeants.⁴

Except for corrections officers, who are required to staff the three daily shifts at the jail, Corrections bargaining unit positions are primarily assigned to work during the day shift.

In terms of compensation, the Union's contract with the County contains wage scales that set the compensation for each of bargaining unit positions. Apart from any benefits provided through

the contract, the Corrections bargaining unit employees generally have access to a common set of employment-related benefits provided by the County.

Complaint Officer

As referenced above, the Corrections bargaining unit includes a Complaint Officer position. The Complaint Officer position has been a part of the Corrections unit since 1992 at the latest. The primary duty of the Complaint Officer is to serve as the liaison between the County Sheriff's Office and those of the District Attorney, Courts, Court Clerks, and the County's Domestic Violence Intake Office. In particular, the Complaint Officer is responsible for ensuring all necessary court-related paperwork, such as complaints or summonses, are completed and forwarded in a timely manner to the appropriate court or District Attorney office. To do so, the Complaint Officer is responsible for reviewing the reports of the arresting officers from the Law Enforcement division. The Complaint Officer is not required to carry a firearm or make arrests and drives a work vehicle without typical police decoration or blue lights.

The County maintains a job description for the Complaint Officer position, the most recent version of which was implemented in March 2016 and which has not been adjusted since. In terms of qualifications, the Complaint Officer is required to obtain and maintain a reserve officer law enforcement certification which requires 100 hours of attendance as the Maine Criminal Justice Academy. The County's Transportation Officers, who are members of the Corrections bargaining unit, are also required to obtain the same level of law enforcement certification as the Complaint Officer. There is no indication of recent changes to the statutes or regulations that govern a Complaint Officer's qualifications.

The Complaint Officer's regularly assigned duties do not involve working in the jail or engaging with the jail's corrections officers. Instead, the Complaint Officer default work location is on the Law Enforcement Center's first floor and the officer's direct supervisor is a Lieutenant from the County's Law Enforcement division.⁵ On a regular basis, the Complaint Officer is required to travel to several County courthouses.

Due to the nature of the Complaint Officer's duties, the position must be backfilled if the Complaint Officer is absent from work, or otherwise unavailable, on days that court is in session. Otherwise, the absence of necessary paperwork could adversely impact the court process. At times, it is difficult to backfill the Complaint Officer position if that individual is not available and only short notice of the absence is provided. In particular, the Complaint Officer's supervisor, a lieutenant in the Law Enforcement division, does not have the authority to order a Corrections division employee to fill the position.⁶ Instead, the Law Enforcement lieutenant must contact a counterpart in the Corrections division to attempt to backfill the Complaint Officer position with a Corrections employee who is the Complaint Officer's designated back-up. If the back-up is not available, the lieutenant assigns the Complaint Officer's responsibilities to a Law Enforcement deputy.

At the time of hearing, the Complaint Officer position was vacant in that its functions were not being performed by a full-time employee dedicated to that position. Since May 2021, the two most recent incumbents of the Complaint Officer position have retired. On at least one occasion, in August 2021, a court did not timely receive the paperwork that would have been filed by the

Complaint Officer. At that time, there was no incumbent Complaint Officer due to retirement. However, at the time of hearing, the County had assigned a Corrections bargaining unit employee, a Transportation Officer, to serve as the Complaint Officer on an interim basis.

While a corrections officer certification is not required for the Complaint Officer position, a recent incumbent Complaint Officer did, at times, maintain a correctional officer certification. While the incumbent maintained that certification, the County would, at times, assign the incumbent to corrections officer duties within the jail due to the shortage of available corrections officers. When the incumbent requested to, in effect, stop maintaining a correctional officer certification and performing related duties, the County initially denied his request. After the Union grieved the decision, the County acquiesced because, from the County's perspective, the Complaint Officer is not required by either the Complaint Officer position description or the Union's contract with the County to maintain a correctional officer certification.

Contract Negotiations, Proposed Removal of Complaint Officer from NCEU Unit, Agreement to Include Complaint Officer in NCEU Bargaining Unit Roster

In March 2019, the Union and County commenced negotiations for a successor collective bargaining agreement for the Corrections bargaining unit because their contract was set to expire at the end of June 2019. At the outset of the negotiations, the parties agreed to ground rules to govern their bargaining. In part, the ground rules read:

No new proposals may be added to the package after the third (3) negotiation session following the initial session, unless agreed to by the parties.

The parties conducted their third negotiation session no later than June 2019 and reached an initial tentative agreement in August 2019. The Union's membership rejected that tentative agreement during a ratification vote and the parties resumed negotiations in December 2019.

In late summer or early fall 2019, the County commenced successor contract negotiations with the Teamsters for the Law Enforcement bargaining unit. At either the first or second bargaining session, the parties discussed the idea of adding the Complaint Officer position to the Teamsters bargaining unit.⁷ The Teamsters subsequently approached the Union to inquire if the Union would voluntarily relinquish the Complaint Officer position to the Teamsters. The Union declined to do so, after which neither the County nor the Teamsters pursued the matter further during their negotiations.

In November 2020, the Union and County reached tentative agreements on two contracts for the Corrections bargaining unit that would run consecutively, the first from July 1, 2019, to June 30, 2020, and the second from July 1, 2021, through June 30, 2023. These contracts were ratified by both parties in December 2020. During the entirety of its negotiations with the Union, the County did not propose, discuss, or request to discuss with the Union its idea to remove the Complaint Officer from the Union's bargaining unit.⁸

As referenced above, the Union – County contract that runs through June 2023 includes a roster of the positions that comprise the Corrections bargaining unit. The Complaint Officer is expressly listed as one of those bargaining unit positions.

III. Analysis and Conclusions

Section 966(3) of the Municipal Public Employees Labor Relations Law 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. § 966(3).

Here, there is no dispute the County’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. Still, as set forth below, the petition is subject to dismissal for several reasons.

1. The County failed to raise the Complaint Officer’s unit status during contract negotiations before agreeing to include the Complaint Officer in the contract’s description of NCEU’s bargaining unit.

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. *RSU 57, Brd. of Directors and Massabesic Education Ass’n*, Nos. 20-UC-01 and 20-UD-01 at 4-5 (January 3, 2020) (*RSU 57*) citing *AFSCME Council 93 and Penobscot County*, No. 14-UCA-01 at 2-3 (December 17, 2013) (*Penobscot County*); see also 26 M.R.S.A. § 966(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 *RSU 57* at 5. 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 Area Teachers Ass’n and MSAD No. 32 Brd. of Directors*, No. 05-UC-02 at 12 (October 19, 2005) (*Ashland*); and *Topsham* at 9, FN 3.

Here, the record indicates the parties agreed to continue to include the Complaint Officer in the Union’s bargaining unit - as evidenced by the Complaint Officer’s inclusion in the roster of bargaining unit positions included in the contracts ratified by the parties in December 2020. Moreover, the record demonstrates the County could have, but failed to, raise the bargaining unit

status of the Complaint Officer in its negotiations with the Union prior to the ratification of those contracts. In particular, by the fall of 2019 at the latest, the County was aware of certain concerns about the Complaint Officer's unit status – as evidenced by the County and Teamsters discussing the idea of moving the Complaint Officer to the Teamsters bargaining unit – and, presumably could have requested to bargain this matter prior to the County and the Union reaching their final, tentative agreements approximately one year later.

While one could argue that the parties' ground rules barred the County from raising the Complaint Officer's status after the third negotiation session, the ground rules are not so absolute. Instead, those rules provide that, by agreement of the parties, a new subject could be introduced after the third negotiation session. In other words, the County could have at least asked the Union to bargain the Complaint Officer's status - thus preserving the County's right to seek clarification later - even if the Union rejected the request. E.g. *Ashland* at 12 (union preserved its right to seek clarification when it asked to negotiate the unit status of certain employees, but acquiesced to employer's demand to take the matter off the table because it involved a permissive subject of bargaining).

Although Chapter 11, § 6(3) of the Rules does not mandate dismissal, in previous unit clarification decisions, the 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. *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 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. To permit this petition to move forward would run contrary to these policies and the weight of hearing examiner precedent. As a result, the County's failure to raise the Complaint Officer's unit status prior to its agreement to continue to include the position in the contract's unit description serves, by itself, as grounds for the petition's dismissal.

2. The record fails to establish the requisite change in circumstances necessary for unit clarification.

A petitioner for unit clarification bears the burden of establishing the change in circumstances that would warrant the modification of an existing bargaining unit. E.g. *RSU 57* at 4. 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. *Id.*; see also *AFSCME Council 93 and Town of Sanford*, No. 08-UC-02 at 15-17 (July 23, 2008) (*Sanford*). The parties' bargaining history may be relevant. In particular, "[a] long and silent history of exclusion (or inclusion) suggests a certain degree of stability in the bargaining relationship. 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 *Penobscot County* at 5.

One initial issue regarding the alleged change in circumstances: In the petition, the County asserted that at the time the County implemented the Complaint Officer position, there was not available funding in the Law Enforcement division so the position was placed in the Corrections bargaining unit. Through its post-hearing brief, the County, for the first time, claims that funding is now available, which, the County asserts, represents a change in circumstances that would permit clarification. There is a concern with this information and argument - neither the original issue of funding nor the current availability of funds was raised on the record at hearing with the opportunity for direct or cross examination. Due to the potential lack of due process, I will not rely upon this information as a basis to find a change in circumstances.⁹

Moving to the merits of this case, the record does not establish any material change to the actual duties and functions of the Complaint Officer. Instead, at most, the County can point to an increase in the logistical difficulties for the County that arise when the Complaint Officer position is not adequately staffed. The impact of these difficulties on County functionality, as demonstrated by the August 2021 incident in which no one initially covered the Complaint Officer's duties on a scheduled court day, is not taken lightly. Nonetheless, the fact that an unfilled or partially filled position creates organizational difficulties falls short of the instances where the Board or a hearing examiner have found a qualifying change in circumstances, generally based on changes to a position's specific duties or functions. Cf. *Sanford* at 15-18 and cases cited therein.

Furthermore, given the lack of change in assigned duties, it is reasonable to conclude that, once filled, the Complaint Officer position will presumably function much in the same way, for better or worse, that it had for the significant number of years during which the County raised no objection to the Complaint Officer's inclusion in the Union's bargaining unit. See *Sanford* at 17 (alleged changes were insignificant in relation to the duties always performed over a 20-year period during which the parties agreed upon the position's bargaining unit status). The fact that a long-term bargaining unit position is temporarily vacant (or filled by someone unable to fully perform the job), but with no fundamental changes to the position's duties and functions, does not constitute a change that justifies clarification. Cf. *Oxford County and Teamsters Local Union No. 340*, No. 18-UC-01 at 3-4 (April 12, 2018) (change in circumstances found where the employer filled a vacant position with a full-time employee, for the first time, and, where the union was previously unaware of the position's existence).

Given the lack of substantial changed circumstances, to permit this clarification to move forward would be "an improper use of the unit clarification procedure." *RSU 57* at 4 quoting *Penobscot County* at 5. Accordingly, the County's failure to demonstrate the requisite change also serves as a basis for dismissal.

3. The Complaint Officer continues to share a community of interest with the NCEU bargaining unit.

Even assuming the petition passes the statutory threshold to qualify for a unit clarification determination, the end analysis indicates the Complaint Officer shares a sufficient community of interest with the Union's bargaining unit. A central purpose of determining whether a position shares a community of interest with a bargaining unit is to minimize potential conflicts of

interest between dissimilar positions that would “complicate, delay, and frustrate the bargaining process.” *MSAD 29 Education Ass’n, MEA/NEA and MSAD 29 Brd. of Directors*, No. 05-UC-01 at 15 (December 23, 2005) (*MSAD 29*) quoting *AFSCME and City of Brewer*, No. 79-A-01 at 4 (October 17, 1979).

There are eleven well-established criteria to consider when determining whether a community of interest exists, each of which is reviewed below in relation to the Complaint Officer and the Corrections bargaining unit. See Chapter 11, § 22(3) of the MLRB Rules.

- **Similarity in Work**

A review of the record indicates no real dispute that the Complaint Officer’s primary duties are dissimilar to those of the corrections officers who comprise the majority of the Corrections bargaining unit. This leaves open the question, as the County argues, that the Complaint Officer’s duties may be more aligned with the police functions of the Law Enforcement bargaining unit. When reviewing similarity of work, a critical focus is on the essence of a position, i.e. the basic type of functions performed, rather than the details of a position’s work responsibilities. *MSAD 29* at 15 quoting *Auburn Education Ass’n and Auburn School Comm.*, No. 91-UD-03 at 11 (February 27, 1991). Here, the essence of the Complaint Officer’s duties indicates a law enforcement function rather than a corrections function. In particular, the primary purpose of the Complaint Officer is to serve as a liaison between the Sheriff’s law enforcement officers and the courts. As a result, this factor supports a finding that the Complaint Officer does not share a community of interest with the Corrections bargaining unit.¹⁰

- **Common Supervision and Labor Relations Policy**

The Complaint Officer’s direct supervisor is a Lieutenant from the Law Enforcement division, suggesting a potential lack of community of interest with most Corrections positions, who are directly supervised by other Corrections division employees. However, the Sheriff and Chief Deputy serve as the two highest levels of supervisory chain of command for all Corrections bargaining unit employees, including the Complaint Officer. Additionally, a single collective bargaining agreement is negotiated between the County and the Union for all Corrections bargaining unit employees - suggesting a common labor relations policy for the Complaint Officer and the rest of the Corrections unit. Given the commonality in upper-level supervision and labor relations policy, there is sufficient indicia here of a community of interest between the Complaint Officer and Corrections unit.

- **Similarity in Earnings**

A review of the contractual wage scale indicates the Complaint Officer generally earns a comparable level of pay to the other Corrections bargaining unit employees. For example, in the Fiscal Year 2022 wage scale, the position with the lowest starting salary earns \$19.86/hour while the highest earns \$22.94/hour. The Complaint Officer’s starting salary for FY 22 is \$20.36/hour, which falls well within the range of bargaining unit salaries and indicates a community of interest.

- **Similarity in employment benefits, hours of works, and other terms and conditions of employment**

Apart from the benefits provided by the Union – County contract, all Corrections bargaining unit employees are entitled to the same general employment benefits provided by the County. In terms of hours of work, on the one hand, the Complaint Officer’s default schedule of business hours is distinct from the corrections officers’ staffing three daily shifts at the jail. On the other hand, aside from the corrections officers, the rest of the Corrections bargaining unit also work business hours like the Complaint Officer. The common employment benefits and the shared schedules with numerous other Corrections bargaining unit positions indicates a sufficient community of interest between the Complaint Officer and the unit.

- **Similarity in Qualifications, Skills, Training**

In terms of qualifications, the Complaint Officer, unlike the corrections officers, is not required to obtain a corrections officer certification, but, instead, is required to obtain the certification of a reserve law enforcement officer. These facts would suggest a lack of community of interest with the Corrections bargaining unit. However, upon closer review, there are at least eight other Corrections unit positions – those described as Non-Corrections in the contract’s bargaining unit roster – that are also not required to obtain corrections officer certification. Likewise, the Transportations Officers, also members of the Corrections bargaining unit are, like the Complaint Officer, required to obtain reserve law enforcement officer certifications. Given the overlap in qualifications between the Complaint Officer and those Corrections bargaining unit employees who are also exempt from corrections officer certifications and/or required to obtain law enforcement certification, this factor supports finding a community of interest.

- **Frequency of Contact with other Bargaining Unit Employees**

The record does not indicate substantive contact between the Complaint Officer, when performing regularly assigned duties, and other members of the Corrections bargaining unit. Instead, the Complaint Officer primarily engages with members of the Law Enforcement bargaining unit such as the Lieutenant who serves as the Complaint Officer’s direct supervisor, as well as those deputies for whom the Complaint Officer is filing paperwork at courthouses. Accordingly, this factor weighs against a community of interest between the Complaint Officer and the Corrections bargaining unit.

- **Geographic Proximity**

While the Complaint Officer does not work in the jail with the corrections officers, but rather the Law Enforcement Center (during those times when the Complaint Officer is working in-office and not visiting a courthouse), it is notable that at least six other Corrections bargaining unit positions also work in the Law Enforcement Center. Where a total of seven Corrections bargaining unit positions work in the Law Enforcement Center, and where the Law Enforcement Center is located relatively near the jail where the remainder of the bargaining unit works, it is reasonable to conclude the Complaint Officer has sufficient geographic proximity to the Corrections bargaining unit.

- **History of Collective Bargaining**

The Complaint Officer has been a member of the Corrections bargaining unit since at least 1992. Assuming the negotiation of multiple collective bargaining agreements during that nearly three-

decade period, there is nothing in the record to indicate the parties have regularly, if ever, experienced difficulty in addressing, specifically, the Complaint Officer's working conditions at the bargaining table. This presumption of collective bargaining stability indicates a community of interest exists between the Complaint Officer and the Corrections bargaining unit.

- **Desires of the Affected Employees**

The Complaint Officer's bargaining unit preference cannot be determined because, as of the date of hearing, the position remained vacant.

- **Extent of Union Organization**

This factor is not applicable to this case which involves a well-established bargaining unit and where the Complaint Officer is already considered a member of this unit. See *MSAD 67 Teachers Ass'n/MTA/NEA and MSAD 67 Brd. of Directors*, No. 91-UD-12 at 17 (May 23, 1991) (*MSAD 67*).

- **Employer's Organizational Structure**

It is unclear how instructive this factor is for the case at hand. Specifically, for nearly 30 years, the parties have considered the Complaint Officer to be part of the Corrections division, but, as noted *supra*, the Complaint Officer's engagement with the Law Enforcement division, which is the gist of the County's petition, indicates that the Complaint Officer's position within the County's organizational structure remains subject to dispute. To the extent that the Complaint Officer operates more within the sphere of the Law Enforcement division on a daily basis, as evidenced by his job duties and direct supervisor, it is reasonable to find that the Sheriff's organizational structure weighs in favor of finding that the Complaint Officer does not share a community of interest with the Corrections bargaining unit.

In sum, although certain criteria lean towards removing the Complaint Officer from the Corrections bargaining unit, the majority of factors that were considered support the opposite conclusion - that a sufficient community of interest does exist between the Complaint Officer and the Corrections unit. This finding is consistent with the goal of ensuring a community of interest to avoid potential conflicts that would interfere with the bargaining process. *MSAD 29* at 15. In particular, the record failed to indicate any material instance of the Complaint Officer's bargaining unit status complicating, frustrating, or delaying the parties' negotiations during the Complaint Officer's near three decade-long membership in the Corrections bargaining unit. *Id.* Despite the County's understandable concerns, removing the Complaint Officer from the Corrections bargaining unit is not necessary given the continuing, sufficient community of interest between the position and unit. See also *Teamsters Local Union No. 340 and MSAD 27*, No. 17-UD-02 at 10 (December 2, 2016) (it is well established that an initial standard for the creation of an acceptable bargaining unit is whether the unit is *an appropriate* unit, even if not necessarily the *most* appropriate unit).

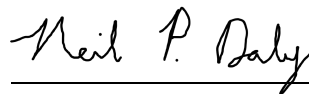
IV. Order

For the foregoing reasons, the undersigned ORDERS that the petition in case no. 21-UC-01 be, and hereby is, DISMISSED.

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 2021



Neil P. Daly
Executive Director

¹ At the time of hearing, about 67 corrections officer and 5 law enforcement deputy positions were vacant.

² Prior to 2010, the Corrections bargaining unit was represented by a separate labor organization that is not a party to these proceedings.

³ The Sheriff and Chief Deputy work in the Law Enforcement Center as do Law Enforcement bargaining unit employees including all patrol and detective supervisors as well as the detectives themselves.

⁴ The Sheriff and Chief Deputy also serve, respectively, as the highest and second highest levels of command for the Law Enforcement employees. Following the Chief Deputy, the Law Enforcement supervisory chain-of-command is captains, lieutenants, and sergeants.

⁵ The record indicated one other Corrections bargaining unit member – the crime analyst – who reports directly to a supervisor in the Law Enforcement division, in this case, the criminal investigation division sergeant.

⁶ The current supervisor of the Complaint Officer's position assumed that role in September 2020 and testified at the hearing as to the difficulty in backfilling the position.

⁷ At the time the County and the Teamsters discussed moving the Complaint Officer position to the Law Enforcement bargaining unit, the Complaint Officer's supervisor, a member of the Teamsters bargaining unit, conveyed his belief that the Complaint Officer position had a greater community of interest with the Law Enforcement unit in comparison to the Corrections bargaining unit.

⁸ In contrast, one of the County's initial proposals to the Union during negotiations was to remove the position of Administrative Secretary from the Union's bargaining unit.

⁹ Even if considered part of the record, the alleged fact that the County can now fund the Complaint Officer through the law enforcement budget does not strike me as the determinative change of circumstances that would support removing the position from its existing bargaining unit where, most typically, such a material change would necessarily involve the duties and functions of the position at issue.

¹⁰ One could argue that the existence of the other 8 positions in the Corrections bargaining unit designated as Non-Corrections indicates a fair number of other Corrections bargaining unit employees also perform duties that are dissimilar to the majority of the Corrections unit. In turn, to the extent that a number of those Non-Corrections employees perform law enforcement-related work, it would not be unreasonable to determine this information weighs in favor of finding a community of interest between the Complaint Officer and the Corrections bargaining unit. While that may be the case, the record did not adequately address the specific duties of those other positions so such a finding would be speculative.