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ANDROSCOGGIN COUNTY PATROL	)	
DEPUTIES	)	
	)	
Petitioner,	)	
	)	
And	)	
	)	
ANDROSCOGGIN COUNTY EMPLOYEES	)	
ASSOCIATION	)	
	)	UNIT DETERMINATION REPORT
Incumbent Bargaining Agent,	)	
	)	
And	)	
	)	
ANDROSCOGGIN COUNTY SHERIFF’S	)	
OFFICE	)	
	)	
Employer.	)	
_____	)	

**I. Statement of the Case**

On October 31, 2023, a group self-titled as the Androscoggin County Patrol Deputies (Petitioner) filed with the Maine Labor Relations Board (Board or MLRB) the above-captioned petition for Unit Determination. In effect, the petition seeks to sever the supervisory and non-supervisory law enforcement patrol officers of the Androscoggin County Sheriff’s Office (County) from a bargaining unit represented by the Androscoggin County Employees Association (ACEA). If severance is granted, the Petitioner requests an election to determine whether the employees in question desire to continue to be represented by ACEA or wish to be represented by the Fraternal Order of Police (FOP).

On March 2, 3, and 20, 2023, the undersigned Hearing Examiner conducted a hearing at which the parties introduced documentary and testimonial evidence into the record to address the question of severance.<sup>1</sup> The Petitioner filed a post-hearing brief on May 5, 2023.<sup>2</sup>

After consideration of the entire record, and as set forth below, this petition is subject to dismissal because the evidence indicates a sufficient community of interest exists between the Petitioner and the remainder of the ACEA bargaining unit such that the extraordinary remedy of severance is not warranted.

## **II. Facts**

### **County Sheriff's Operations**

The Androscoggin County Sheriff's Office is led by an elected sheriff (Sheriff). The primary functions of the Sheriff's office are to provide law enforcement and corrections operations for the County. To that end, the Sheriff's office is composed of several divisions including civil (Civil), corrections (Corrections), dispatch (Dispatch), and law enforcement (Law Enforcement).

### **Facilities**

The Sheriff's Office is located in several inter-connected buildings on a plot of land in Auburn, Maine. The front half of the overall structure, which contains the Law Enforcement offices, is located on Turner Street, which is also where you will find the Law Enforcement main entry. The communications center for the Sheriff's Office is located in a secure area near the back end of the Turner Street building. The next portion of the overall structure is the County courthouse, which is then attached to the County jail.

The jail, including its main entry, is situated on Pleasant Street. There is a secured, internal hallway that runs from the Law Enforcement offices on Turner Street to the jail on Pleasant Street.<sup>3</sup> The jail entrances are controlled by a control officer who must manually, via a remote lock, permit any individual, even if they are a Sheriff's Office employee, to enter or exit the jail. In slight contrast, there are secure areas in the Law Enforcement offices that are accessible via badge/key for Sheriff's Office employees, regardless of division.

### **Civil Division**

The Civil division includes three servers and one supervisor.<sup>4</sup> In general, the Civil division employees are responsible for serving certain legally binding documents such as notices of eviction or divorce.

Regarding certification, the servers in the Civil division are required to obtain part-time law enforcement officer certifications, commonly referred to as a green pin.<sup>5</sup> A green pin certification indicates that individual can only perform approximately 1100 hours of law enforcement duties annually and is prohibited from investigating certain crimes, unless trained, and engaging in high-speed chases. Once certified as part-time law enforcement officers, the Civil servers have the power of arrest and are permitted to carry firearms. They also participate in the County's in-house law enforcement training and field training officer program as need be. Two of the three servers have voluntarily maintained their certification as corrections officers and participate in certain overtime opportunities in the County jail.

The County provides each of the three servers a patrol car which includes a mobile terminal, i.e., laptop computer. The County also issues to each server an initial uniform, an annual uniform allowance for uniform upkeep, a side arm, a portable radio, and a ballistic vest.

### **Corrections Division**

The Corrections division is generally responsible for maintaining the safety and security of inmates at the County's jail. The Corrections division is comprised of 55 employees,<sup>6</sup> the majority of which are corrections officers but who also include three cooks who work in the

jail's kitchen, five transport (Transport) deputies, and one program director who is responsible for overseeing certain programs for incarcerated individuals.

As to certification, Corrections officers are required to attend a five-week basic corrections academy which is conducted at Maine's criminal justice academy. After certification, Corrections officers are required to participate in certain annual training to maintain their certification. In general, the subject matter of their ongoing training is related to their duties as a Corrections officer.

The County jail is separated into six zones. At any given time, approximately 10 or 11 Corrections officers are staffing the entirety of those zones. Corrections officers work one of two 12-hour shifts which run from 7:00 a.m. to 7:00 p.m. and from 7:00 p.m. to 7:00 a.m. At least one supervisory Corrections officer is required to be on duty at all times.

In terms of filling potential overtime, a Corrections officer receives a credit for each overtime shift they work, and a list is maintained based on the number of credits each officer earned. If there comes the need to require overtime, the Corrections officer with the least number of credits is required to work that overtime shift. Unless the overtime involves a supervisory shift, Corrections supervisors are not included in the overtime-eligible list.

The majority of the Corrections officers' chain of command includes corporals as the first level supervisors of the approximately 20 non-supervisory corrections officers. The corporals report to sergeants who report to a captain, the assistant jail administrator. The captain reports to a major who serves as the jail administrator. The major reports to the Chief Deputy Sheriff who serves as the second-in-command to the Sheriff.

For equipment, Corrections officers are provided an initial set of seasonal uniforms, an annual uniform allowance for uniform maintenance, a duty belt with the appropriate holders related to their position, and handcuffs. For each shift, they are provided radios, but they do not take the radios home. A total of three corrections employees are issued a laptop computer for the performance of their duties.

### **Transport**

As referenced above, the Corrections division includes five Transport officers, specifically one sergeant who is the first-level supervisor for four Transport deputies. The Transport officers, as their name suggests, are primarily responsible for transporting incarcerated individuals to and from the County jail, as need be, most typically for court or medical appointments. They usually work a Monday-Friday schedule, from 8:00 a.m. to 4:30 p.m. The Transport officers spend the bulk of their time out of the office, either on the road or in court.

In comparison to the majority of Corrections officers, the Transport sergeant and deputies are, like the Civil division, required to obtain green pin certifications. Once certified as part-time law enforcement officers, the Transport sergeant and deputies have the power of arrest and are permitted to carry firearms. The Transport sergeant and deputies have a public safety obligation and are actively involved in a handful of traffic stops each year but are not typically dispatched to respond to an emergency call or make any related arrests. However, they do effectuate the

arrests of individuals ordered under arrest while in court. If a Transport officer (voluntarily) possesses a fulltime law enforcement officer certification, they may perform overtime shifts, referred to as details, which are reserved for Law Enforcement officers. As to training, the Transport officers are required to complete the in-house annual training obligations for both the Corrections and Law Enforcement employees, including annual firearms qualification.<sup>7</sup> They also participate in the County's field officer training program as need be.

For equipment, the Transport officers drive fully marked cruisers with emergency lights. The Transport sergeant is permitted to commute to and from work with his cruiser, which does not include a mobile terminal. The County issues the Transport officers sidearms, which they carry in the performance of their duties on a duty belt, as well as shotguns that are stored in their cruisers. The duty belts also hold oleoresin capsicum spray, handcuffs, and a taser.

### **Dispatch Division**

The function of the Dispatch division is to receive calls for assistance and to distribute those calls to the Law Enforcement division in order to facilitate the appropriate response. The Dispatch division is comprised of approximately 11 or 12 dispatchers whose first level supervisor is a Dispatch sergeant.<sup>8</sup> The sergeant reports to the director of Dispatch who reports to the Chief Deputy, the second-in-command to the Sheriff of the Sheriff's Office. Dispatchers are required to obtain certain certifications and to maintain this certification through continuing education, some of which involves medical certification. In terms of initial certifications, at least one of the programs is one week long.

As compared to the other divisions that wear more formal uniforms, the dispatchers wear a uniform that consists of a polo shirt, cargo pants, and sweatshirt. They are provided an initial uniform, and then provided a uniform allowance which, in comparison to the other divisions, is smaller due to the straightforwardness of the uniform. Apart from uniforms, the County does not issue any additional equipment to the dispatchers.

The dispatchers work 8-hour shifts in the previously referenced communication center, located on the second floor, in a secured area, at the back end of the Turner Street building.

### **Law Enforcement Division**

The Law Enforcement division provides law enforcement operations for thirteen municipalities and is composed of approximately 27 employees including 12 patrol deputies, 4 corporals, 5 sergeants (including one supervisory detective), 3 detectives, one school resource officer, one records clerk, and the major who is responsible for the division.<sup>9</sup> The detectives and their supervisory sergeant comprise a subgroup known as the Criminal Investigation Division (CID). Generally, the primary function of the Law Enforcement division is to respond to complaints or calls for assistance, protect and serve the public, investigate crimes, and enforce Maine's laws.

The majority of the Law Enforcement officers' chain of command (with the exception of CID) includes corporals as the first level supervisors. The corporals and CID detectives report to sergeants who report to a major who serves as the administrator for the Law Enforcement division. The major reports to the Chief Deputy Sheriff who serves as the second-in-command to the Sheriff.

All patrol deputies, detectives, corporals, sergeants, and the school resource officer in the Law Enforcement division must be sworn law enforcement officers who have obtained their full-time law enforcement certification, commonly referred to as a blue pin. A blue pin certification requires the officer to successfully attend the Maine Criminal Justice Academy's 18-week, overnight/residential law enforcement training program. This training program is a purposefully high stress environment that including substantive training on physical combat, defensive tactics, firearms, emergency vehicle operations, and conducting investigations for operating under the influence. Several individuals testified at hearing that there is no real comparison between the blue pin training and the training for the other Sheriff's Office divisions due to the length and intensity of the blue pin training.

In addition to earning a blue pin, the Law Enforcement officers must participate in in-house training on an annual basis to maintain their certification. They may also participate in field training officer training. Likewise, depending upon a specialty, a Law Enforcement officer - for example, a K-9 officer - may undergo additional rigorous training (as the K-9 corporal did) to obtain that specialized certification.

The majority of the Law Enforcement division, to the extent that they are not on the road engaging in law enforcement duties, work out of the basement of the Turner Street building which includes a patrol room. The Sheriff and Chief Deputy have offices on the first floor of that building.

In terms of equipment, the Law Enforcement officers are generally issued their own cruisers with mobile terminals. They are permitted to take their cruisers home.<sup>10</sup> The County also provides initial uniforms, a uniform allowance for uniform upkeep, ballistic vest, sidearm, rifle, shotgun, taser, body camera, and a duty belt. The uniform allowance provided to the Law Enforcement officers is larger than those provided to the other Sheriff's Office employees.

As for schedules, the Law Enforcement patrol officers typically work one of four 12-hour shifts which run between 5:00 a.m. and 5:00 p.m. and 5:00 p.m. to 5:00 a.m. Currently, for three of the four shifts, there is an expectation that four officers work the shift, at least one of whom must be a supervisor.<sup>11</sup> The fourth shift is currently composed of one sergeant, one corporal, and one patrol deputy. This shift is expected to include a second patrol deputy once that deputy's temporary assignment elsewhere ends. On occasion, the County will permit a shift with three officers, so long as one is a supervisor and there are also instances where only two officers are on duty at a given time. If a patrol deputy is not available for a scheduled shift, a supervisor may be required to perform the overtime to cover that shift.

In general, the Law Enforcement patrol officers have limited interaction with other Sheriff's Office employees. For example, a typical interaction with a Corrections employee would be limited to dealing with someone who has been arrested and is being transferred to the custody of the County jail. As for the other divisions of the Sheriff's Office, the Law Enforcement division has the most regular interaction with the Dispatch division. This occurs both formally, through the performance of their respective work duties, e.g., Dispatch receiving a call for assistance and distributing that call to Law Enforcement, and informally (and presumably less frequently)

where Law Enforcement employees will occasionally socialize with Dispatch employees around the communications center.

### **ACEA Bargaining Unit and Representation of Unit**

Since at least 1991, the vast majority of the Sheriff's Office employees in the Civil, Corrections, Dispatch, and Law Enforcement divisions have been a part of a single bargaining unit for the purposes of collective bargaining with the County. Generally speaking, the bargaining unit contains all supervisory and non-supervisory staff in the Civil, Corrections, Dispatch, and Law Enforcement divisions with the exception of the Sheriff, Chief Deputy, and the administrators and assistant administrators of the jail and Law Enforcement division.

The composition of the Sheriff's Office bargaining unit has remained intact since at least 1991. At this time, amongst Maine counties, Androscoggin County is apparently unique in having a single bargaining unit that includes both corrections and law enforcement employees. Certain law enforcement bargaining units in Maine do include both law enforcement and dispatch employees.

Prior to 1991, the bargaining unit of Sheriff's Office employees was represented by the Teamsters. From 1991 until 2010, the unit was represented by the American Federation of State, County & Municipal Employees (AFSCME). In 2010, the unit voted to leave AFSCME and to create the ACEA as their bargaining agent. The ACEA has remained the certified bargaining agent since then.

On an annual basis, the ACEA membership votes to elect the ACEA's officers including the president, vice president, secretary, treasurer, sergeant of arms, a chief steward, a group of five stewards, and a four-person executive board. In terms of the stewards, the election is based simply on the five individuals who receive the most votes. In other words, there is no specific allocation of steward positions to a particular division. In the most recent election, three Corrections employees (including at least one supervisor), one Dispatch employee, and one supervisory Law Enforcement employee were elected stewards. Prior to that election, a separate Law Enforcement employee served as a steward for three years, and, at the outset of that three-year period, held a non-supervisory position.

At hearing, several individuals testified that the ACEA does not conduct regularly scheduled union meetings. When the ACEA does conduct meetings, it holds a series of four meetings over the course of two days so that employees from all shifts can attend. Historically, ACEA's president could communicate irregularly with bargaining unit members and would sometimes not answer questions via email for several months, if ever.

In part, an ACEA steward is expected to represent a bargaining unit member in connection to potential disciplinary matters. On at least one recent occasion, a Law Enforcement corporal who is a steward represented for a time a fellow Law Enforcement officer in connection to a disciplinary action.<sup>12</sup> On a separate occasion, the ACEA represented a bargaining unit employee in a due process hearing after which the employee ultimately resigned in lieu of termination.

In terms of grievances, when the ACEA brings issues to the County's attention, which it has done so on a number of occasions and which are known as level 1 grievances, those issues are typically resolved without the need for a formal grievance. Within recent memory, two Law Enforcement corporals brought complaints forward to the ACEA regarding the scheduling of vacation time, an issue that affected certain Law Enforcement supervisors. The ACEA responded that it would file a grievance if the employees wanted, but the employees ultimately declined.<sup>13</sup> At the time of hearing, the ACEA had most recently filed a formal grievance with the County approximately 3-4 months prior to hearing. During the preceding sheriff's administration, the ACEA filed grievances on behalf of a certain employee. There is no evidence to indicate the non-Law Enforcement divisions in the ACEA bargaining unit voted against moving forward with a meritorious grievance involving Law Enforcement employees.

As to lobbying, the ACEA does not participate in a group known as the Maine Law Enforcement Coalition which is composed of the four largest law-enforcement focused unions in Maine. While a representative of FOP testified that he was not aware of ACEA participation in any legislative matter, the ACEA submitted documentary evidence to indicate that on at least one occasion, in 2021, the ACEA testified to a legislative committee in support of a proposed bill.

#### **Law Enforcement Concerns Regarding ACEA Representation and Request for Severance**

In early March 2022, a group of Law Enforcement officers approached the ACEA to request that they be moved into a separate bargaining unit composed only of Law Enforcement officers. A primary rationale for this request is that, simply due to the number of Corrections employees, Corrections has the ability to outvote the Law Enforcement division. As a result, those requesting a separate unit believe the Law Enforcement division has to "walk on eggshells" when pursuing items beneficial to Law Enforcement during collective bargaining agreement negotiations. Otherwise, they risk upsetting the Corrections employees prior to the ratification vote for a collective bargaining agreement.<sup>14</sup>

On at least several occasions, ACEA leaders have indicated to certain Law Enforcement officers that Corrections has the ability to outvote Law Enforcement so they should take care not to upset the Corrections voting bloc. For example, around March 2022, certain Law Enforcement officers were voicing their concerns via group emails regarding the then-ongoing successor collective bargaining agreement negotiations. An ACEA executive board member responded in part, via email, that they should contact ACEA leadership directly with their concerns or they would "risk pissing off all of corrections, which we need in order to pass."<sup>15</sup> Similarly, during a meeting around that time attended by the Law Enforcement Officers and certain ACEA leaders, the ACEA president stated to the effect that Corrections could "bury" Law Enforcement if Corrections wanted to.

Another concern is that, from certain Law Enforcement officers' perspective, their work is substantively different from that of Corrections employees such that it only makes sense for Law Enforcement to have a separate bargaining unit. In support, they cite the distinctions in day-to-day work duties, training, and certifications, as well as a Law Enforcement officer's greater exposure to liability due to the inherent nature of engaging in law enforcement with the general public. Similarly, certain Law Enforcement officers voiced concern that a provision in the ACEA-County collective bargaining agreement that permits division-to-division transfers, with

seniority retained, could, in theory, result in a long-tenured Corrections division employee transferring into the Law Enforcement division and having the most seniority in that division immediately.<sup>16</sup>

Certain Law Enforcement officers also testified about the ACEA's lack of action in response to the termination of the call sharing agreement with the State Police and the related increase to the patrol area for which they were responsible. The officers had requested the ACEA to bring forward certain related concerns to the County's attention, but the ACEA did not ultimately do so.

Ultimately, on or about March 7, 2022, certain Law Enforcement officers requested that the ACEA ask the County about creating a separate Law Enforcement bargaining unit. During discussion of this issue, the officers indicated they would be satisfied with a separate unit represented by the ACEA under, at least initially, the same contract terms that were currently being negotiated for the existing bargaining unit.

The ACEA's president approached the County manager about the issue shortly thereafter and the manager put the idea forward, on an informal level and without detailed explanation, to the County commissioners. In general, the County commissioners, while not voting on the matter formally, reacted negatively to the idea, apparently due to concerns that the idea was raised in the midst of the then on-going negotiations and their disinclination to bargain an additional contract. The County manager emailed the ACEA president that the commissioners would not approve the creation of a new bargaining unit and the ACEA president relayed the response to the Law Enforcement officers.

The ACEA did not ever submit a request for a separate unit as a bargaining proposal during the successor contract negotiations and the record generally indicated the ACEA did not provide the County with any detailed explanation of the potential for Law Enforcement to initially stay under the terms of the collective bargaining agreement that was being negotiated.

Certain Law Enforcement officers continued to pursue a separate bargaining unit and turned their focus to obtaining representation by FOP. As it relates to FOP representation, another concern of certain Law Enforcement officers is that ACEA lacks the resources to adequately defend a Law Enforcement officer in the event the officer is subject to lawsuits or prosecution for their on-duty conduct, particularly if the concept of qualified immunity is abolished.<sup>17</sup> More specifically, the entirety of ACEA's financial resources amounts to approximately \$300,000 and the legal defense of a law enforcement officer could potentially exceed that. In some contrast, FOP offers an insurance plan that provides certain legal coverage, including when an officer is criminally charged.<sup>18</sup> Outside of Maine, FOP has paid significant amounts that exceed ACEA's resources to defend law enforcement officers in criminal trials. Additionally, the proponents of moving to FOP believed that ACEA's leadership might be too friendly with the Sheriff such that it would be beneficial to obtain representation from an outside party.<sup>19</sup>

As noted above, the Petitioner filed the petition at hand on October 31, 2023. The petition was accompanied by showings of interest signed by 14 members of the Law Enforcement division for



a proposed bargaining unit of 25 positions. The positions included in the proposed unit are Patrol Deputies, Detectives, Corporals, Sergeants, and the School Resource Officer.

In late November 2022, the ACEA conducted an internal vote amongst its membership regarding the potential severance of the Law Enforcement officers. There were two questions put forward, the first of which was presented to all of the membership and the second to the non-supervisory Law Enforcement officers. The questions were: (1) Are you in favor of a voluntary severance of non-supervisory patrol staff to FOP? and (2) Do you wish to be voluntarily severed from ACEA to FOP? The results from the vote were, for question one, 20 in favor, 29 opposed, and for question two, 3 in favor and 10 opposed.

In December 2022, one of the Law Enforcement officers sent out an electronic poll to other Law Enforcement officers addressing the question of severance. Through this poll, less than a majority of the respondents indicated a preference for severance.

In February 2023, the ACEA conducted another vote for its membership regarding severance. At this vote, a ballot drafted by the Petitioner was provided to all attendees. The ballot asked whether the voter was in favor of allowing the non-supervisory Law Enforcement officers to voluntarily sever from ACEA to form their own bargaining unit with FOP. The ballot indicated the County did not oppose the proposed severance and would not attempt to renegotiate the terms of the existing ACEA bargaining unit would keep the exact terms for a non-supervisory Law Enforcement bargaining unit. Out of 51 total votes, 11 were in favor and 40 were opposed to the proposed severance. The ACEA leadership denied four individuals the right to vote by proxy in the February vote but had permitted proxy votes for the preceding November ballot.

### **Rates of Pay, Contract Negotiations, and Current Collective Bargaining Agreement**

Since the ACEA was certified as the bargaining agent for the bargaining unit composed of Sheriff's Office employees, the ACEA and County have entered into a number of collective bargaining agreements that govern the working conditions for those employees. Historically, the ACEA and County applied a single pay scale for all bargaining unit employees, regardless of division. Within that pay scale, the Law Enforcement employees received a stipend of \$1.25/hour in recognition of their obtaining and maintaining a blue pin law enforcement certification. At some point, the Law Enforcement employees were provided their own pay scale with the \$1.25 stipend rolled into their base pay. In 2021, prior to the start of successor contract negotiations, the County, in consultation with the ACEA, provided a raise to all County employees of \$1.00/hour with the exception of Law Enforcement employees who were provided \$2.25/hour.<sup>20</sup> On a consistent basis, the Law Enforcement pay scale is proportionately higher than the Corrections pay scale.

When determining the rate of pay for Law Enforcement employees, the County generally considers the compensation for comparable law enforcement-type positions in Androscoggin County. Similarly, for Dispatch employees, the County considers the rates of pay for the Lewiston/Auburn communication center.

In terms of determining the rate of pay for Corrections employees for the most recent contract negotiations, the County reviewed the salaries of comparable positions in the county jails across

the state and then formulated a number it believed would place it in a competitive position with those jails (considering also, at the time of the contract negotiations, the County had a number of Corrections vacancies). The County indicated it is not able to effectively compare on any scope less-than statewide for Corrections because each county, as compared to multiple municipalities within a county, are the only entities that operate jails. According to testimony, the pay scale for Corrections is at, or near, the top for the entire state.

On October 14, 2021, the ACEA president emailed the ACEA's membership to inform them of the County's plan to provide the raise that wound up as a \$1.00/hour raise for Corrections and \$2.25/hour for Law Enforcement (as referenced above). In part, the president referenced successor contract negotiations and stated the plan was to start negotiations in January 2022 for a collective bargaining agreement that would commence in January 2023. On December 1, 2021, the ACEA president emailed the ACEA membership and indicated that he wanted to speak with every member to gather their ideas for the upcoming negotiations. He stated that any and all ideas would be considered and provided his contact information. On December 15, 2021, the ACEA president emailed the ACEA membership again, with another update regarding the raise. He also referenced a plan to start successor contract negotiations in January 2022.

Prior to the start of successor contract negotiations, apart from the emails above, there is no indication the ACEA conducted a members-wide in-person meeting (or set of meetings) to solicit input from the membership as to bargaining priorities. Instead, ACEA leadership met with employees on an individual basis, with some of those meetings not occurring until after the start of negotiations. In general, the Law Enforcement officers were informed their interests would be the focus of the upcoming negotiations. The apparent goal was to bring the Law Enforcement pay in parity with the pay for police officers in Lewiston and Auburn.

The ACEA leadership did not consult with all of the membership before selecting a four-person bargaining team. The bargaining team, once designated, did not include any non-supervisory Law Enforcement officers, but did include a Law Enforcement sergeant who is also a member of the ACEA's executive board.

Prior to the start of negotiations, the Sheriff expressed to the ACEA president an interest in lowering the length of service obligation from 25 years to 20 years in order to qualify for a retirement pension value of approximately 50% of the employee's salary.

On February 15, 2022, the ACEA and County met for their first negotiation session for the successor contract negotiations. Later that day, the president emailed the ACEA membership with an update on what transpired at the first meeting including an overview of the County's and ACEA's respective proposals. He noted, in part, that the ACEA proposals were not final. A Law Enforcement officer responded via email, voicing his concerns as to how the negotiation team was selected, the lack of apparent proposals to increase the Law Enforcement pay rate for incumbent officers (taking into consideration their increased workload from the end of the call-sharing agreement with the State Police), and the lack of input from the membership on bargaining proposals. One of the ACEA bargaining team members then responded via email addressing, in part, certain concerns raised by the officer and also encouraging the membership to contact the ACEA bargaining team as the process continues.

On March 7, 2023, certain ACEA leaders met with certain Law Enforcement officers to discuss the officers' concerns with the ongoing contract negotiations. Through the meeting, the officers reiterated their concern that ACEA failed to consult with them in advance of the negotiations as well as their strong desire for a separate bargaining unit composed of Law Enforcement officers. The ACEA representatives responded that the interests of the Law Enforcement officers were at the forefront of the negotiations and the ACEA remained focused on increasing Law Enforcement salaries to reach parity with Lewiston and Auburn. They further explained the wage proposals the ACEA was pursuing. These included a consolidation of salary steps (which would permit employees to reach the top salary step more quickly), as well as accompanying annual raises related to cost-of-living adjustments and expanded stipends. As to retirement benefits, the ACEA representatives indicated they were proposing, in part, a retirement option where an employee would be eligible for 66% of their salary as a pension after 25 years of service (25/66 plan). On several occasions, the ACEA representatives asked if there were additional proposals the Law Enforcement officers wanted to pursue. In general, apart from the creation of a separate Law Enforcement bargaining unit, the officers did not have substantive suggestions.

The ACEA introduced into the record what appear to be ACEA's notes from their bargaining sessions with the County in February and March 2022 as well as what appears to be correspondence from the ACEA to the County representing the ACEA's response to a preceding negotiation session in March. A review of this documentation indicates the ACEA consistently sought wage proposals for all ACEA bargaining unit employees that were higher than the County was willing to ultimately agree to. Likewise, the ACEA repeatedly sought expanded stipends for Law Enforcement officers for specialized roles such as the K-9 officer. The County, again, would not generally agree to the requested expansions. The ACEA also proposed on several occasions that the County implement the 25/66 plan for, in part, Law Enforcement officers but this proposal was rejected by the County.

At the close of negotiations, and after approximately three to five bargaining sessions, the ACEA and the County entered into a three-year collective bargaining agreement to run from January 1, 2023, through December 31, 2025. The ACEA's membership ratified that agreement by a vote of 47 in favor to 8 opposed.

The ratified agreement contains a number of provisions that apply to, and benefit only, Law Enforcement officers. These include a separate salary scale that is higher in value, at every step, when compared to the other two salary scales in the agreement, i.e., those applying to Corrections and Dispatch. For calendar year 2023, the salary range for Corrections employees is a low of \$21.42/hour and a high of \$28.44. For Law Enforcement, it is a low of \$24.06 and a high of \$32.08, and for Dispatch it is a low of \$22.42 and a high of \$29.44. Notably, according to testimony, it was estimated that the Law Enforcement salary scale underwent the greatest proportional increase in value where the highest step on the Law Enforcement salary scale increased by approximately 17% from the preceding contract to the current contract. In contrast, the highest step for Corrections increased by 9% and for Dispatch, the increase was 12%.

The ACEA was not entirely successful in accomplishing all of its bargaining goals in relation to the Law Enforcement officers. For example, consistent with the ACEA's stated goal of reaching pay parity with the Lewiston and Auburn police departments, a review of the current ACEA-County, Lewiston, and Auburn, collective bargaining agreements indicates the Law Enforcement base pay scale reached comparable levels with the Lewiston and Auburn base pay scales. However, it also appears that at least Lewiston reopened their collective bargaining agreement and increased the rates of pay to, again, outpace ACEA's Law Enforcement officers.<sup>21</sup>

Additionally, while certain stipends were included in the collective bargaining agreement that benefit Law Enforcement officers (as well as other bargaining unit employees) such as supervisory and degree stipends, there is no reference in the contract to any of the new stipends that the ACEA proposed during negotiations, e.g. K-9 officer stipend.<sup>22</sup> In terms of retirement benefits, the ratified collective bargaining agreement implemented the 20-year length of service of obligation for Corrections and Law Enforcement employees.

There is no indication in the record that the ACEA demanded to bargain, or did bargain over, certain prior changes to working conditions including the County's requirement that certain Law Enforcement officers wear body cameras and their vehicles contain location monitors.

As to the bargaining unit's reaction to the new collective bargaining agreement, one member of the ACEA bargaining team indicated he had not heard anything but positive reactions to the contract, including Law Enforcement officers. An ACEA steward testified that some of the Law Enforcement officers still wanted additional stipends and other less-substantive benefits. Two Law Enforcement officers who are not ACEA representatives testified that they had some lingering concerns over Lewiston and Auburn continuing to outpace the County's pay rates as well as the manner in which the ACEA negotiated the contract. In particular, the ACEA's failure, from their perspective, to consult with the Law Enforcement officers prior to the start of negotiations.

### **III. Analysis and Conclusions**

Section 966(1) of the Municipal Public Employees Labor Relations Law permits a party to file a petition for unit determination if there is a dispute between a public employer and employees as to the appropriateness of a proposed bargaining unit. 26 M.R.S.A. § 966(3). A request to remove a group of employees from an existing bargaining unit in order to place them in a separate unit is commonly referred to as a severance, i.e., the employees in question are potentially severed from their existing unit. E.g. *Marean and Local 740, IAFF and City of Portland*, No. 07-UD-22 at 1 (October 26, 2007). A unit determination petition, accompanied by a showing of interest, is the appropriate method to pursue a severance. *Id.* at 16; see also *Adams and Teamsters Local Union No. 340 and City of Waterville*, No. 23-UD-02 at 13 (October 28, 2002).

Here, there is no question the Petitioner has met the threshold obligations to request a severance where there is no agreement to permit the Law Enforcement officers to establish their own bargaining unit and the Petitioner timely filed a unit determination petition with the requisite showings of interest. Therefore, the determinative issue is whether there is a clear and identifiable community of interest between the Law Enforcement officers and the other members

of the existing bargaining unit represented by ACEA. *Marean and Local 740, IAFF and City of Portland*, No. 07-UD-22 at 16.<sup>23</sup>

As part of that examination, the Board must consider the competing interests between the existing bargaining unit employees and those seeking to create a separate unit. *Marean and Local 740, IAFF and City of Portland*, No. 07-UD-22 at 16 quoting *Mallinckrodt Chemical Works and IBEW Local #1*, 162 NLRB 387, 392 (1966) (the special interest of a sub-group may support finding that the sub-group, by itself, represents an appropriate bargaining unit; however, the interests of all employees in maintaining collective bargaining strength may favor maintaining the established bargaining pattern). Ultimately, the Petitioner bears a high burden to establish that severance is warranted. *Id.* at 17; see also *Adams and Teamsters Local Union No. 340 and City of Waterville*, No. 03-UD-02 at 16.

Next, in examining whether a community of interest exists between the Law Enforcement officers and the remainder of the ACEA bargaining unit, there are eleven well-established criteria, each of which is reviewed below in relation to the employees at issue. See Chapter 11, § 22(3) of the MLRB Rules.

- **Similarity in Work**

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 Law Enforcement officers' duties is the performance of active law enforcement with members of the public which is, to an extent, distinct from the central purposes of the Civil, Corrections, and Dispatch employees. As noted by another hearing examiner, if this were a unit determination for a new unit of police officers, this factor would be given considerable weight. *Bell and Richmond Employees Association and Town of Richmond*, No. 03-UD-10 at 19 (September 26, 2003). However, in the matter of a proposed severance involving a wall-to-wall unit with an established bargaining history, such is the case here, there is less emphasis on this factor. *Id.* As a result, the evidence for this factor neither supports nor undermines a finding of a community of interest. *Id.*

- **Common Supervision and Labor Relations Policy**

The Law Enforcement officers and the remainder of the ACEA bargaining unit do not share immediate supervision; however, they all fall under the ultimate supervision of the Sheriff and Chief Deputy. Additionally, a single collective bargaining agreement is negotiated between the County and the ACEA for all four divisions of the Sheriff's Office employees - suggesting a common labor relations policy for the Law Enforcement officers and the remainder of the bargaining unit. Within the context of a severance petition, where the employees have separate immediate supervision, but share upper-level supervisors and a common labor relations policy, this factor neither supports nor undermines a community of interest. *Adams and Teamsters Local Union No. 340 and City of Waterville*, No. 03-UD-02 at 22.

- **Similarity in Scale and Manner of Determining Earnings**

All of the Sheriff's Office employees are paid on an hourly scale with most positions also eligible for certain stipends based on supervisory or educational status and potential overtime. A

review of the contractual wage scales and other evidence generally indicates the Law Enforcement officers earn more than the other Sheriff's Office divisions. However, the separation between the groups at every step of the scale is a matter of a few dollars per hour. Several distinctions exist in that the County generally uses other Androscoggin County municipalities to determine an appropriate rate of pay for the Law Enforcement officers while it undertakes more of a state-wide review for Corrections employees. Additionally, only certified law enforcement officers can perform paid details.

In this case, the overarching commonalities of generally similar pay scales and common access to stipends outweighs the difference in the manner in which the County reviews comparable salaries and access to paid details. As a result, this factor supports a finding of a community of interest between the Law Enforcement officers and the ACEA bargaining unit. *Bell and Richmond Employees Association and Town of Richmond*, No. 03-UD-10 at 20.

- **Similarity in Employment Benefits, Hours of Work, and other Terms and Conditions of Employment**

Apart from any benefits provided by the ACEA-County collective bargaining agreement, there is no indication that County provides the Law Enforcement officers substantively different benefits compared to the other ACEA bargaining unit employees. In terms of hours of work, the majority of the Corrections employees and the Law Enforcement officers work 12-hour shifts, although there is a two-hour difference in the start time of the respective shifts. Regarding conditions of employment that flow from the collective bargaining agreement, while certain contractual provisions apply only to the Law Enforcement officers, these are relatively limited in number in comparison to the entirety of the agreement. In all, this factor supports a finding of a community of interest. *Marean and Local 740, IAFF and City of Portland*, No. 07-UD-22 at 20-21.

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

In terms of qualifications, the Law Enforcement officers are distinct in having to obtain a blue pin law enforcement certification, which necessarily entails successful completion of an 18-week overnight training course. Generally, this level of qualification substantively exceeds those for the other Sheriff's Office divisions. Although the Civil and Transport officers are required to obtain a green pin law enforcement certification, it is unclear from the record what overlap exists, if any, between the blue pin certification and the green pin part-time certification. However, as noted by a previous hearing examiner, the impact of distinct qualifications is limited for a severance petition involving a wall-to-wall, long-established bargaining unit, where there have always presumably been distinctions in qualifications and training. *Bell and Richmond Employees Association and Town of Richmond*, No. 03-UD-10 at 21. Therefore, consistent with that decision, this factor neither supports nor undermines a community of interest finding. *Id.*

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

The record does not indicate substantive contact between the Law Enforcement officers, when performing regularly assigned duties, and the majority of the other members of the ACEA bargaining unit. One exception would be the Dispatchers who regularly engage with the Law Enforcement officers when facilitating the officers' response to emergency calls. Nonetheless, given the lack of interaction between the Law Enforcement officers and the bulk of the bargaining unit, this factor weighs against a community of interest between the officers and the

remainder of the bargaining unit. *Adams and Teamsters Local Union No. 340 and City of Waterville*, No. 03-UD-02 at 24.

- **Geographic Proximity**

As indicated by the evaluation of Frequency of Contact factor, the Law Enforcement officers are, in effect, geographically separated from the remainder of the bargaining despite sharing a common office building. In particular, the majority of Law Enforcement officers at issue are either away from the Sheriff's Office building engaged in law enforcement duties or working in a section of the building that is separated from many of their bargaining unit colleagues. As a result, this factor also weighs against finding a community of interest between the officers and the other bargaining unit employees. *Adams and Teamsters Local Union No. 340 and City of Waterville*, No. 03-UD-02 at 24.

- **History of Collective Bargaining**

When reviewing the community of interest for a severance petition, the history of collective bargaining history is given heightened scrutiny and may be the decisive element. *Marean and Local 740, IAFF and City of Portland*, No. 07-UD-22 at 16-17. Specific elements to consider regarding collective bargaining include the length and stability of the bargaining relationship, participation in union affairs by bargaining unit members seeking severance, offering of special proposals related to the severance group at the bargaining table, and the adequacy of union representation in grievances. *Id.*

In the case at hand, the evidence on the record in relation to the history of collective bargaining strongly supports a finding of a community of interest between the Law Enforcement officers and the remainder of the ACEA bargaining unit. Foremost, the bargaining unit in question has remained intact since 1991 and the ACEA has represented this unit (and engaged in the negotiation of several collective bargaining agreements) since 2010. See *Bell and Richmond Employees Association and Town of Richmond*, No. 03-UD-10 at 23, 25; *Teamsters Local Union No. 340 and National Correctional Employees Union and York County*, No. 12-UD-02 at 21-22 (August 31, 2012). The length and stability of this bargaining relationship is substantively longer than the single instance in which a Board hearing examiner approved a severance. Cf. *Teamsters Local Union No. 48 and County of Cumberland and AFSCME Council No. 74*, No. 84-UD-11 (March 16, 1984) (bargaining unit in question had only been in existence a little over two years).

Apart from the length and stability of the bargaining relationship, the evidence indicates the ACEA actively represents the Law Enforcement officers. In terms of collective bargaining, the interests of the Law Enforcement officers were a primary concern during the most recent successor contract negotiations. To that end, the ACEA put forward a variety of proposals to address those interests including increased base salaries (in an attempt to bring the officers level to the Lewiston and Auburn police salaries), expanded stipends, and a 25/66 retirement plan. While the ACEA was not successful in obtaining all of the above proposals, the Law Enforcement officers were still the beneficiaries of the highest wage scales as well as the largest percentage wage increase when compared to the rest of the bargaining unit. See *Bell and Richmond Employees Association and Town of Richmond*, No. 03-UD-10 at 24-25 (even if a

union is ultimately unsuccessful in obtaining certain contractual benefits for its bargaining unit employees, this, by itself, does not establish inadequate representation).

Similarly, while the ACEA selected its own bargaining team without a vote from the membership, the impact of this exclusion is mitigated by the fact that the team included a supervisory Law Enforcement officer and the ACEA, in effect, solicited (at least via union-wide email) any bargaining ideas prior to the start of negotiations. Moreover, when certain Law Enforcement officers expressed concern regarding the status of negotiations, ACEA leaders met with those officers to explain the ACEA's proposals and to ask what else the Law Enforcement officers wanted. Although certain ACEA leaders made troubling comments about the ability of the Corrections division to outvote the Law Enforcement division, the fact remains the union's membership approved – by a significant margin – a collective bargaining agreement that provided the highest material benefit to the Law Enforcement officers. There was a corresponding dearth of evidence to establish the Corrections division has, at any time, actually voted down contractual benefits for other divisions.

Turning to grievances, the record suggests the ACEA regularly resolves issues with the County without the need for a formal grievance and occasionally files formal grievances. When two Law Enforcement officers faced particular issues with vacation time, the ACEA offered to file grievances on their behalf, the employees ultimately declined. Ultimately, there is an absence of evidence to establish the ACEA is regularly failing to pursue or process meritorious grievances for Law Enforcement officers - even if certain Law Enforcement officers believe their efforts could be better. Cf. *Adams and Teamsters Local Union No. 340 and City of Waterville*, No. 03-UD-02 at 26 (hearing examiner found union's grievance representation ultimately sufficient even though there was testimony a steward failed to timely file a grievance); *Teamsters Local Union No. 48 and State of Maine and AFSCME Council 74 and Maine State Employees Association*, No. 83-UD-25 at 13-14 (hearing examiner found union's bargaining history sufficient despite testimony that union refused to file or process grievances).

As to the Petitioners' participation in ACEA affairs, the evidence indicates this participation is relatively limited, and not necessarily by the choice of the Petitioners. Where stewards are selected by majority vote, it potentially limits the ability of Law Enforcement officers to serve in that capacity - although there is one supervisory Law Enforcement officer currently serving as a steward and one non-supervisory Law Enforcement officer served as a steward in recent memory. Additionally, due to the unilateral selection of the ACEA bargaining team, that potentially limits the ability of one of the Petitioners to directly serve on that team (although that harm is arguably mitigated by the presence of a supervisory Law Enforcement officer on the team). While engagement could certainly be better, this particular element does not appear fatal to the overall consideration of the ACEA's bargaining history on behalf of the Law Enforcement officers in light of the ACEA's active representation of the Law Enforcement interests at the bargaining table and with potential grievances.

Although the FOP may have greater financial resources than the ACEA, and while the ACEA's record may not be perfect, the evidence put forward in relation to the history of collective bargaining factor described above weighs in favor of finding a community of interest exists between the Law Enforcement officers and the ACEA bargaining unit. *Bell and Richmond*



*Employees Association and Town of Richmond*, No. 03-UD-10 at 22-26; *Adams and Teamsters Local Union No. 340 and City of Waterville*, No. 03-UD-02 at 24-29.

- **Desires of the Affected Employees**

When reviewing the desires of the affected employees, the preferences of all bargaining unit employees – both the employees seeking severance and those who would remain in the existing unit – should be considered. *Bell and Richmond Employees Association and Town of Richmond*, No. 03-UD-10 at 26. In this case, the evidence indicates a general split between those two groups. At hearing, several Law Enforcement officers testified as to their preference for a separate bargaining unit. Additionally, as noted above, the Petitioner provided a total of 14 showings of interest for a proposed bargaining unit of 25 employees.<sup>24</sup> At the same time, evidence was introduced into the record indicating that on two separate occasions, including one where the Petitioner drafted the ballot, a majority of the bargaining unit (at least those who voted) rejected the proposed separation of the Law Enforcement officers. Given the general split between the employees seeking severance and the remainder of the bargaining unit, this factor neither supports nor undermines a finding of community of interest.

- **Extent of Union Organization**

This factor is not self-evidently applicable to a severance petition and therefore neither supports nor undermines a community of interest finding. *Adams and Teamsters Local Union No. 340 and City of Waterville*, No. 03-UD-02 at 31-32.

- **Employer's Organizational Structure**

It is unclear how instructive this factor is for the case at hand. For over 30 years, the parties have operated with a single bargaining unit despite the Sheriff's Office being composed of several, distinct divisions. Similar to the evaluation of the Similarity of Work criterion, if this petition involved a new bargaining unit of Law Enforcement officers, it would be reasonable to conclude that the County's organizational structure supported a separate unit for Law Enforcement. Nonetheless, that is not the case where, here, the ACEA and County have engaged for years in a relatively stable, productive labor-management relationship as it relates to the wall-to-wall bargaining unit (evidenced, in part, by recent collective bargaining negotiations). As a result, the County's organizational structure is not, apparently, a significant impediment to a productive labor-management based on the current bargaining unit. In turn, this factor neither supports nor undermines a finding of community of interest.

- **Summary**

As noted previously, the Petitioner bears a high burden to establish that a severance of the Law Enforcement officers should be granted. Here, the Petitioner has not met that standard. While the record shows the ACEA's representation of the Law Enforcement officers is not perfect, it nonetheless demonstrates a community of interest continues to exist between the officers and the other members of the ACEA bargaining unit. Critically, the evidence supports a conclusion that the ACEA actively and adequately represents the Law Enforcement officers in the collective bargaining process. As a result, there is an insufficient basis to disrupt a long-standing, and relatively stable, bargaining unit and labor-management relationship. *Bell and Richmond Employees Association and Town of Richmond*, No. 03-UD-10 at 28-29.

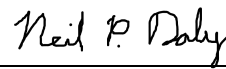
#### IV. Order

For the foregoing reasons, the undersigned ORDERS that the petition in case no. 23-UD-03 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 31<sup>st</sup> day of July 2023



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Neil P. Daly  
Executive Director

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<sup>1</sup> The County did not object to the requested severance of patrol officers from the ACEA but did oppose the inclusion of both supervisory and non-supervisory patrol officers in any newly created unit. Because the question of composition for any new bargaining unit here is dependent on an initial determination of whether severance is appropriate, the parties agreed to address this matter through a bifurcated hearing process. The initial stage of hearing was dedicated to whether severance should be granted. The County did not substantively participate in this portion of the proceedings. If severance is ultimately granted, the parties will return to hearing to address whether supervisors and non-supervisors should be placed together in any newly created unit(s).

<sup>2</sup> The deadline for submitting post-hearing briefs was May 5, 2023. The ACEA's post-hearing brief was not filed until May 6, 2023, and therefore was not considered.

<sup>3</sup> The County purchased seven acres of land for the purpose of relocating the Sheriff's Office to that land. As of the hearing for this petition, the County plans to provide separate buildings on the land for Law Enforcement and the County jail. The Sheriff indicated the plans are subject to change.

<sup>4</sup> At the time of hearing, there were no vacancies in the Civil division.

<sup>5</sup> The Civil division supervisor does not possess a green pin certification and is no longer permitted by the County to conduct the work of a server.

<sup>6</sup> At the time of hearing, there were seven vacancies amongst the Corrections employees.

<sup>7</sup> The Transport sergeant serves as the Sheriff's Office certified firearms instructor and urban rifle instructor.

<sup>8</sup> At the time of hearing, there were no vacancies amongst Dispatch employees.

<sup>9</sup> The major is not a member of the ACEA bargaining unit. All of the other 26 Law Enforcement employees are ACEA bargaining unit members and, as of the hearing, there were no vacancies in the Law Enforcement division.

<sup>10</sup> The allowance of take-home patrol cars is an existing benefit protected by the ACEA – County collective bargaining agreement.

<sup>11</sup> Prior to July 2021, the County and the Maine State Police were parties to a call sharing agreement through which the State Police would respond to certain emergency calls in the County. While the call sharing was in effect, the

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Sheriff's Office maintained a staffing per shift of at least two officers, one being a supervisor. After the termination of call sharing, the patrol area for which each officer was responsible for increased.

<sup>12</sup> There is insufficient evidence to conclude the steward failed to ultimately represent the employee in connection to the discipline, which consisted of a verbal counseling and written counseling. Notably, the employee apparently admitted to the conduct at issue. However, also notable is that the steward provided the ACEA president a related memorandum reviewing the issue which included the employee's assertion that his supervisor, a member of the ACEA executive board, was retaliating against the employee due to the employee supporting a separate bargaining unit for Law Enforcement officers. There is no indication the ACEA or the steward followed up on the allegation of retaliation.

<sup>13</sup> From one witness's perspective, no one employee should have to be the face of a grievance. Instead, a union should pursue a general grievance to address the underlying issue. An FOP representative also testified that it would sometimes take a grievance forward that a grievant does not want to proceed with if it would affect the entire membership.

<sup>14</sup> During negotiations for the preceding collective bargaining agreement, certain Corrections employees were upset that the Dispatch employees were provided an additional \$1.00/hour raise. Ultimately, the contract was ratified with the raise included.

<sup>15</sup> For context, the ACEA executive board member indicated the Law Enforcement officers should put forward concerns privately because the Law Enforcement division's pay scale would likely be "much larger" than that for Corrections and officers "need to show a little humility even though we're deserving and the market justifies it."

<sup>16</sup> While several current Law Enforcement officers transferred from other Sheriff's Office divisions, they typically did so near the outset of their careers. The record did not indicate any instance of a long-tenured employee transferring into the Law Enforcement division and displacing the majority of the unit's seniority.

<sup>17</sup> In 2020, several Law Enforcement officers were involved in an on-duty shooting. Through the County's participation in a risk pool, the officers were provided legal representation and were not required to pay any money out-of-pocket either for that representation or the settlement of any related lawsuits. There was no evidence on the record of a Sheriff's Office employee having to pay money out-of-pocket for legal representation and/or settlement of civil actions related to their on-duty conduct.

<sup>18</sup> It is possible for police officers who are not FOP bargaining unit members to obtain FOP legal defense insurance. At the time of hearing, no ACEA bargaining unit employees had pursued this coverage.

<sup>19</sup> As an example, the Petitioners raised the fact that the Sheriff emailed the Law Enforcement officers with information related to enrolling in the FOP insurance plan without becoming FOP bargaining unit employees.

<sup>20</sup> The ACEA membership voted to approve the raise with only 1 or 2 votes against.

<sup>21</sup> An FOP representative testified that by end of 2026, the ACEA's Law Enforcement officers would be approximately \$10 to \$13/hour below the pay rates for Auburn and Lewiston respectively.

<sup>22</sup> The contract also references a Police Academy stipend which is reserved only for Law Enforcement officers attending the 18-week academy. One witness testified to the existence of this stipend; however, the stipend is not listed with an express amount line item as the other stipends are in the contract.

<sup>23</sup> Technically, the evaluation of a severance petition would also address whether a community of interest exists amongst the employees who would be severed. See *Marean and Local 740, IAFF and City of Portland*, No. 07-UD-22 at 17-18. In this case, the parties did not specifically address this particular issue; however, in light of the evidence presented on the record there is no reasonable basis to conclude the proposed bargaining unit of Law Enforcement officers lacks a community of interest within itself. Therefore, the remaining analysis of the

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community of interest factors is limited to examining the relationship between the Law Enforcement officers and the remainder of the ACEA bargaining unit. *Id.*

<sup>24</sup> A previous hearing examiner has declined to rely upon showings of interest as an indicator of employee preference. *Marean and Local 740, IAFF and City of Portland*, No. 07-UD-22 at 16. However, from the undersigned Hearing Examiner's perspective, such express, signed indications of an employee's intent are relevant.