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| 29-82 | transferred to A.D. | P.B.A. v. Anderson, 17601 N.Y. Co. S.Ct., 12/27/82. | 33 |

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of the Petition

of

POLICE BENEVOLENT ASSOCIATION, LONG ISLAND RAILROAD POLICE, INC.

DECISION NO. 29-82

DOCKET NO. RU-822-81

-and-

THE CITY OF NEW YORK AND RELATED PUBLIC EMPLOYERS

-and-

CITY EMPLOYEES UNION, LOCAL 237, IBT

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DECISION AND ORDER

On July 14, 1981, the Police Benevolent Association, Long Island Railroad Police, Inc. (hereinafter "PBA - LIRR") filed a petition with the Office of Collective Bargaining in which it sought certification of a proposed bargaining unit presently consisting of 1557 employees in the following titles (hereinafter referred to collectively as "Special Officers"):

Special officer
Senior Special Officer
Supervising Special officer
Hospital Security Officer

These titles are currently part of a bargaining unit composed of 4600 employees serving in 58 titles. The certified representative of this existing unit is City Employees Union, Local 237, International Brother-

hood of Teamsters (hereinafter "Local 237"). The collective bargaining agreement covering the unit expired on December 31, 1981. There is no dispute that the petition herein was timely filed.

Local 237, by letter dated August 24, 1981, move(-., to intervene in the proceeding, and requested the dismissal of the petition on the ground that the unit placement issue previously had been determined by the Board, and no new grounds for consideration were allegedly raised, in the petition.

By letter dated September 2, 1981, the PBA - LIRR replied to Local 237's request for dismissal, and directed the Board's attention to specific new grounds for consideration alleged in the petition.

On September 10, 1981, Local 237 submitted a further detailed response to the PBA - LIRR's claims. In a letter dated September 22, 1981, the PBA - LIRR replied briefly to Local 237's response, and requested that this matter be set down for a hearing so that it could produce relevant testimonial and documentary evidence in support of its petition.

On October 21, 1981, the City of New York, by its Office of Municipal Labor Relations, submitted a letter opposing the PBA - LIRR's petition on the ground that the

action sought by the petitioner would result in the fragmentation of an appropriate unit.

By order of this Board made on October 1, 1981, this case was assigned to a Trial Examiner for the purpose of conducting hearings on the petition. Subsequently, hearings were held on December 10, 15, and 28, 1981, February 1, 2, and 3, 1982, and March 4 and 11, 1982. Sixteen witnesses testified and 30 exhibits were received into evidence. A transcript containing 923 pages of testimony and argument was made. All parties were given a full opportunity to examine and cross-examine witnesses and to present relevant evidence and argument. The City of New York, by its attorney, made an oral closing statement, while the PBA - LIRR and Local 237 chose to submit written closing arguments, which were filed on April 10, 1982 and March 31, 1982, respectively.

## Background

The representation status of the Special Officer series of titles has had a long and varied history, dating back to the first organizational efforts in the early 1960's. The first City-wide certification for the Special Officer title was issued in 1964. During 1965-1966, Local 237 first achieved City-wide certification for the titles of

Special Officer and Senior Special Officer. In 1968, Local 237 was further certified to represent the new title of Hospital Security Officer. In 1969, upon the petition of another union, an election was held, and was won by Local 237, which was then recertified by this Board for a unit of all three titles.[1] In 1973, the new title of Supervising Special Officer was added to Local 237's certification.

During the period from 1972 through 1976, the Police Benevolent Association Municipal Special and Superior Officers, the Special and Superior Officers Benevolent Association, and the Patrolmen & Security Offices Section, Allied Services Division, BRAC, AFL-CIO, filed various petitions for certification for the above unit. All of these petitions were dismissed or withdrawn for reasons concerning contract bar and bona fides.

In 1976, the City petitioned for the consolidation of the Special Officers unit with another unit represented by Local 237, covering various custodial, maintenance, inspection, skilled crafts, and related titles. The consolidation was opposed at that time by Local 237. In Decision No. 55-76, this Board granted the City's petition and consolidated the units. Subsequently, in 1977

[1] Decision No. 56-70.

and 1978, upon the City's petitions, the Board further consolidated the unit created in Decision No. 55-76 with two other units represented by Local 237.[2] This new unit is the presently existing unit, except for minor amendments[3] which are not pertinent herein.

On July 12, 1979, the PBA - LIRR petitioned for certification of almost the same unit sought in the present petition.[4] The City and Local 237 opposed the petition, contending that the PBA - LIRR was not a bona fide labor organization and that the requested unit was inappropriate. After a hearing was held, this Board issued our Decision No. 24-79, in which we found that the PBA - LIRR was a bona fide labor organization but that its petition should be dismissed because it failed to show that the existing unit was no longer appropriate and because the creation of the requested unit would present an unwarranted deviation from the Board's established policy against fragmentation of units.

The PBA - LIRR challenged the Board's determination in the courts. In late 1980, the Appellate Division,

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[2] Decision Nos. 9-77, 67-78.

[3] Decision Nos. 10-79, 11-80, 31-80, 36-81, 14-82, and 26-82.

[4] The only difference between the unit sought in the petition in 1979 and the one petition is the inclusion in the title of Special Officer (CETA).

First Department, unanimously confirmed the Board's decision, and the Court of Appeals denied permission for further appeal.

In the instant proceeding, the PBA - LIRR contends that its petition is based, at least in part, upon new facts which could not have been presented to the Board in the proceeding in 1979. For this reason, the PBA - LIRR argues that the Board's determination in that proceeding is not dispositive of the present matter.

## Positions of the Parties

### PBA - LIRR's Position

The PBA - LIRR contends that the Board should reconsider the unit placement of the Special Officer series of titles because,

> "Since the aforesaid 1979 Petition, certain facts and circumstances have come to light which will demonstrate beyond any doubt the appropriateness of the proposed unit...."

The principal new fact alleged by the PBA - LIRR is the enactment, effective September 1, 1980, of Article 2, Section 2.10 et seq., of the Criminal Procedure Law, known as the Peace Officers Law, which granted peace officer

status to employees in the Special Officer titles.[5] As a consequence of obtaining peace officer status, the PBA - LIRR argues that the powers and responsibilities formerly possessed by Special officers only while on duty, now have been

> "... extended to a 24 hour right and obligation to take action."

It is also alleged by the PBA - LIRR that peace officer status brings with it new mandatory minimum training requirements. The PBA - LIRR argues that as a result of the changes flowing from the Special Officers' new peace officer status,

> "... any prior similarities to other titles [in the bargaining unit] now have become at best coincidental, and clearly insufficient to overcome the further solidification of a community of interest which Special Officers share."

The other new facts and circumstances alleged by the PBA - LIRR include the following:

1. Claimed unique interests and goals possessed by Special officers and not applicable to other members

[5] The original enactment of the Peace Officers Law, effective September 1, 1980, applied to, inter alia, Special Officers employed by the City of New York. Following a court decision which held that the Law, did not apply to Special Officers employed by the Health and Hospitals Corporation, the Legislature amended §2.10(40), effective July 1, 1981, to apply expressly to Special Officers employed by the Health and Hospitals Corporation as well as by the City of New York.

of the existing bargaining unit. These unique interests and goals concern, inter alia, their desire for firearms, bullet proof vests, better defensive equipment, unlimited line of duty injury pay, a heart bill for disability pensions, longevity pay, better training, 24 hour legal services for job-related problems, an increased uniform allowance, and other rights and benefits commonly enjoyed by police officers.

2. Alleged failure of the existing unit to provide Special Officers with a voice in the collective bargaining process.

3. Alleged inherent conflict of interest arising from the fact that Special Officers have been and will continue to be required to take police action against members of the existing unit who are not Special Officers.

4. Claimed vast differences between the working conditions and nature of duties of Special Officers and other members of the existing unit.

5. An alleged policy at all levels of government to separate police and security employees from, all other employees for the purpose of collective bargaining.

The testimony and evidence presented by the PBA - LIRR touched upon all of the above claims but emphasized the nature of the Special Officers' duties,

which the PBA - LIRR argued were comparable to those performed by Police Officers. There was also considerable testimony concerning the hazards of a Special officer's job, including the risk of injury and of unfounded criminal charges.

The PBA - LIRR also argued that Special Officers were dissatisfied with their present representation by Local 237, and offered testimony in support of this claim. Upon the objection of Local 237, the Trial Examiner ruled that testimony concerning the alleged inadequacy of representation by the incumbent union in specific cases was irrelevant to the issue of unit placement, and would be excluded. However, the Trial Examiner ruled that he would permit the introduction of testimony concerning representation by Local 237 for the limited purpose of showing the handling of the alleged unique interests and needs of Special Officers within the context of the existing bargaining unit. The PBA - LIRR voiced an exception to this limitation imposed by the Trial Examiner, claiming that the question of whether Local 237 has represented adequately the Special Officers is relevant to the issue of whether it should be permitted to continue to represent them in the future. This exception is preserved for review by this Board herein.

In its closing argument, the PBA - LIRR attempts to apply the unit determination criteria contained in §2.10 of the Revised Consolidated Rules of the Office of Collective Bargaining (hereinafter "OCB Rules") to the evidence presented at the hearings. In so doing, the PBA - LIRR concludes that the Board's criteria mandate that the Special Officers be placed in their own unit. The PBA - LIRR submits that the Board's policy against fragmenting an existing unit must give way in the face of the clear justification for a separate unit established by the evidence in the record herein.

Local 237's Position

Local 237 asserts that, the Board having previously determined the appropriateness of the existing bargaining unit, and having dismissed the PBA - LIRR's petition in 1979, the only matters properly to be considered by the Board at this time are the new facts and circumstances alleged by-the PBA - LIRR to have come to light since the dismissal of the 1979 petition. Local 237 submits that the only new fact alleged by the PBA - LIRR is the enactment of the Peace Officers Law, which granted Special Officers peace officer status. It is contended by Local 237 that the other new evidence the PBA - LIRR promised to introduce, "... never showed up."

Local 237's analysis of the effect of the Peace Officers Law indicates that Special Officers, who formerly had the powers of peace officers only while on duty, now possess those powers on a 24 hour per day basis. Local 237 alleges that the enactment of the Law has had no effect at all on the Special Officers' on-the-job responsibilities and powers. For example, Special Officers had the same power to make an arrest on the job, prior to obtaining peace officer status, as they now exercise as peace officers. It is concluded by Local 237 that the attainment of peace officer status has absolutely no bearing on the duties of Special Officers or upon their appropriate unit placement.

In support of its contention that the existing unit continues to be appropriate, Local 237 presented testimony to the effect that, within Local 237, the Special Officers have their own chapter, elect their own officers, draw up their own bargaining demands, elect a negotiating committee of chapter members only, and ratify or reject any contract proposal by a vote of chapter members only. Local 237 alleges that this internal union structure has insured that the special needs and interests of the Special Officers are represented. Evidence of Local 237's representation of Special Officers in grievance and disciplinary matters was also presented.

Through cross-examination, Local 237 attempted to show that the PBA - LIRR's witnesses were not familiar with the duties and powers of other job titles in the existing unit, and thus were not able to ascertain whether any occupational similarities existed between Special Officers and certain of the other titles in the unit. In this regard, Local 237 introduced testimony that other unit titles enforce provisions of law, issue summonses, testify in administrative and court proceedings, and protect public property. Local 237 argues that the evidence shows that many of the job duties of Special Officers are not dissimilar from those of various inspectional and custodial titles in the unit.

Finally, Local 237 questions whether the PBA - LIRR is a bona fide labor organization within the context of this case. Acknowledging that the Board sustained the bona fides of the PBA - LIRR in 1979, Local 237 nevertheless argues that the testimony of the PBA LIRR's President establishes that if the PBA - LIRR were certified as the collective bargaining representative, the Special Officers would not be permitted to be members of the PBA - LIRR or to vote in its elections or run for office. Rather, they would possess those rights only within an affiliated organization to be created, which might not

have a local number or even its own charter. Local 237 submits that an organization which, if certified, would deny membership and voting rights to the employees whom it is certified to represent, cannot be deemed to be a bona fide labor organization. Accordingly, Local 237 asks that the PBA - LIRR's petition be dismissed.

City of New York's Position

The City of New York opposes the PBA - LIRR's petition on the ground that it would fragment an existing appropriate bargaining unit. The City submits that the PBA - LIRR has failed to show that the duties and/or job functions of Special officers have changed in any significant way that would justify their removal from a unit previously determined by the Board to be appropriate.

The City introduced evidence showing that of the 47 categories of peace officers created in the Peace Officers Law,[6] the City was able to obtain information concerning the peace officers' representation status for 28 categories, on a State-wide basis, and reported the following results: 12 categories of peace officers are in separate bargaining units, 13 categories of peace officers are in mixed units with other non-peace officer employees, and 3 categories of peace officers are not represented by any union and have not been placed in any

[6] Criminal Procedure Law §2.10.

bargaining unit. The City argues that there exists a long history of mixed units, and that such units have functioned effectively in representing the rights of all unit employees, both peace officers and non-peace officers. The City contends that this fact reinforces the Board's prior finding that the rights of the employees in the instant proceeding can be represented effectively in the current bargaining unit.

For the reasons, the City requests that the PBA - LIRR's petition be denied.

## Discussion

Section 1173-5.0(b)(1) of the New York City Collective Bargaining Law (hereinafter "NYCCBL") empowers the Board of Certification:

> "to make final determinations of the units appropriate for purposes of collective bargaining between public employees and public employee organizations, which units shall be such as shall assure to public employees the fullest freedom of exercising the rights granted hereunder and under executive orders, consistent with the efficient operation of the public service, and sound labor relations .... "

Section 2.10 of the OCB Rules, which is designed to implement Section 1173-5.0(b)(1) of the NYCCBL, provides that the Board, in determining appropriate bargaining units, consider, among other factors, the following:

> "a. Which unit will assure public employees the fullest freedom in the exercise of the rights granted under the statute and the applicable executive order;
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> b. The community of interest of the employees;
>
> c. The history of collective bargaining in the unit, among other employees of the public employer, and in similar public employment;
>
> d. The effect of the unit on the efficient operation of the public service and sound labor relations;
>
> e. Whether the officials of government at the level of the unit have the power to agree or make effective recommendations to other administrative authority or the legislative body with respect to the terms and conditions of employment which are the subject of collective bargaining;
>
> f. Whether the unit is consistent with the decisions and policies of the Board."

These criteria are substantially equivalent to the analogous provisions of 9207(l) of the Taylor Law[7] which govern unit determinations made by the New York State Public Employment Relations Board (hereinafter "PERB").

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[7] Civil Service Law, Article 14, §200 et seq.

As the City and Local 237 point out, this Board has established a policy favoring consolidation of bargaining units and discouraging fragmentation of units whenever possible. As we discussed in Decision Nos. 28-78, and 67-78, the rationale for this policy is rooted in the purposes underlying public sector labor law. Be cause of the importance of this case to the employees supporting the petition of the PBA - LIRR, we will again review the history of the development of this policy.

The NYCCBL was enacted pursuant to Section 212 of the Taylor Law, which gives local governments the option of adopting their own provisions and procedures which must be "substantially equivalent" to those of the Taylor Law. Section 212 gave the City of New York an opportunity to enact a statute specifically designed to deal with its unique labor relations considerations. For example, the City had approximately 400 bargaining units of municipal employees at the time the Taylor Law became Thus, unlike PERB, the Office of Collective effective. Bargaining was unable to start with a clean slate; CCB from its inception had to deal with a large number of existing bargaining units.

This situation was eased somewhat by the foresight of the drafters of the NYCCBL, who, in Section

1173-10.0c,[8] allowed for the continued viability of the inherited certifications but also provided for Board action to change pre-Act units and certifications. The statutory authority to review and revise existing bargaining units contemplated the preferability of gradual change by ad hoc determinations rather than a sudden, perhaps disruptive, revamping of the City's bargaining structure. Pursuant to this statutory mandate, we have, over the past 12 years, reduced the number of units with which the City must negotiate from approximately 400 to the current 80.

We have followed a policy of creating larger units based on broad occupational groupings, comprising as many employees and titles as can effectively operate as an entity. In making consolidation determinations, including those which have affected the Special Officer titles,[9] we have balanced considerations of public employee freedom of choice in organizing and designating representatives on

[8] Section 10.Oc provides that: "Certificates or designations issued by the department of labor prior to the effective date of this chapter and in effect on such date shall remain in effect until terminated by the board of certification pursuant to its rules. Nothing contained in this subdivision shall limit the power of the board of Certification to determine bargaining units differing from those determined by the department of labor."

[9] See Decision Nos. 55-76, 67-78, and 24-79.

the one hand, and efficient operation of the public service and sound labor relations on the other (See NYCCBL Section 1173-5.0(b)(1)). We are called upon again to attempt to harmonize these considerations in the present case.

It should be noted that we initially directed that a hearing be held in this matter based upon the PBA - LIRR's representation that it wished to present evidence of new facts and circumstances which came to light subsequent to our consideration of its 1979 petition. Upon reviewing the record herein, we find that the only new fact presented by the PBA - LIRR is the enactment of the Peace Officers Law, effective September 1, 1980, which had the effect of granting the Special Officers peace officers status on a 24 hour per day basis. The PBA - LIRR failed to show that any of the other facts and circumstances presented at the hearing could not have been presented in the proceeding in 1979. We find that these other facts and circumstances are not new; rather, they are matters which the PBA - LIRR could have presented in the earlier proceeding, but failed to do so.

Nevertheless, in view of the importance of this case to all concerned, and in the interest of determining this matter based upon a fuller record than was available in the earlier case, we have decided to consider all of the evidence presented by the parties at the hearings held in the instant proceeding. Accordingly, we turn to the

merits of this case.

Firstly, we reject Local 237's contention that the PBA - LIRR is not a bona fide labor organization. Nothing has been shown which would cause us to reconsider our 1979 determination of the bona fides of the PBA - LIRR. Local 237's objections to the membership and voting structure of the PBA - LIRR involve internal union matters which are no~ subject to our review or approval. We note that the evidence shows that unit employees would be able to vote and hold office in a self-governing affiliate of the PBA - LIRR, and that while the PBA - LIRR would negotiate on behalf of the affiliate, only members of the affiliate would have the right to vote on any proposed contract. We cannot say that this structure offends any employee rights guaranteed by the NYCCBL. Therefore, we deny Local 237's request to dismiss the petition on this basis.

Next, we consider the PBA - LIRR's reliance on the enactment of the Peace Officers Law. Apparently, the PBA - LIRR contends that this law, granting peace officer status to Special officers, is evidence of the Special Officer's community of interest, one of the criteria required to be considered by this Board in determining appropriate bargaining units. In considering evidence of

employees' duties and responsibilities, as relating to their community of interest, we scrutinize the actual duties and responsibilities which the employer has required, or, consistent with the job specifications for the title in question, may require, the employees to perform. The Peace Officers Law, standing alone, represents hypothetical responsibilities, and is of little probative value in determining the actual duties performed by Special officers, or in evaluating their community of interest. Thus, we find that the mere enactment of the Peace officers Law gives no cause for us to reconsider the unit placement of Special Officers.

However, the parties presented evidence of the actual effect, if any, the Peace Officers Law has had upon the duties performed by Special Officers. Such evidence of actual effect is far more relevant than the mere fact of enactment of the law. our review of this evidence leads us to find that while there has been some impact resulting from the Law, there has not been a significant change in duties and responsibilities. The changes that have occurred are not significant in the context of a unit determination proceeding. The changes relate to mandated minimum training requirements, and the fact that the affected employees retain their peace officer powers

24 hours a day, not just when on duty. No evidence was submitted that the employer has required Special Officers to take police action while off duty and away from their places of employment, as is the case with Police officers. Accordingly, we conclude that the actual effect of enactment of the Peace officers Law has not been such as would warrant a change in unit placement.

Much-of the PBA - LIRR's presentation focused on a detailed illustration of the duties, responsibilities, risks, needs, and goals of Special Officers. The thrust of the PBA - LIRR's case is that Special Officers perform, duties nearly identical to those performed by Police Officers, and that as a consequence of those duties, they, are exposed to various risks (e.g., assault, injury, false criminal charges) which have created special needs and goals which differ from those of other bargaining unit employees. The witnesses presented by the PBA - LIRR consider themselves to be the equivalent of Police Officers without guns, and they desire many of the benefits enjoyed by Police Officers, such as firearms, bulletproof vests, unlimited sick leave, better pension benefits, better training, 24 hour: legal service for job-related problems, and an increased uniform allowance. They are dissatisfied and frustrated because their present unit representative,

Local 237, has been unable to obtain these benefits for them.

The PBA - LIRR made little effort to compare the duties of Special Officers to those of other titles in the bargaining unit, other than to submit the written job descriptions for the other titles. on cross-examination, it appeared that the Special Officers who testified on behalf of the PBA - LIRR had little, if any, familiarity with the actual duties and powers of other unit employees. The evidence shows that the Special officers who testified were not aware of whether they shared any community of interest with the other titles in the unit, or whether there existed occupational similarities between their job functions and those of others in the unit. The witnesses were certain of the needs and interests shared by Special Officers, but were ignorant of whether their needs and interests were consistent with or inconsistent with those of the other unit employees.

We hold that while the evidence presented by the PBA - LIRR establishes a clear community of interest among the Special Officers, it fails to show that community of interest conflicts with or is inconsistent with the interests of other titles in the unit. It is clear to us that Special Officers and many of the inspectional, custodial, and other titles in the unit have certain duties

and responsibilities in common. This Board's statement in Decision No. 55-76, in which Special Officers were first consolidated with various inspectional, custodial, general maintenance, and skilled craft titles, retains its validity:

> "... it should be noted that the building custodians ... enforce 'safety requirements' and protect buildings and grounds from vandalism, while special officers likewise are concerned with the observance of 'adequate safety precautions' and 'safeguard life and property against fire, vandalism, theft, etc.' It is also significant that in the Department of Social Services, the largest employer of building custodians and second largest employer of special officers, and the only agency employing significant numbers of both groups, both are organizationally part of Plant Management, as are stockmen and other unit employees.
>
> "Similarly, many of the inspectors ... issue summonses for violations of the regulations which they enforce and testify at proceedings relating to these violations, while special officers issue summonses to law violators and testify in court in relation thereto."

We accept the fact that Special Officers have special needs and goals, related to their specific duties, which may not be shared by other members of the existing unit. But, we do not find that the pursuit of these special benefits and goals is inconsistent with the interests of other titles in the unit. In this regard, we note that Local 237 presented unrefuted evidence that Special Officers

have their own chapter within the Local, elect their own officers, draw up bargaining demands, select a negotiating committee of chapter members only, and accept or reject any proposed contract by a vote of chapter members only. The PBA - LIRR's witnesses disputed the effectiveness of the chapter and the frequency of its meetings, but did not contest its structure and powers. The record further shows that Local 237 has been successful in negotiating certain benefits for Special Officers which are more favorable than those enjoyed by most other unit employees. For example, all Special Officers titles receive a uniform allowance which, although lower than that received by Police Officers, is over 60% higher than that received by other uniformed members of the bargaining unit. And, one title in the Special Officer series, that of Hospital Security Officer, receives an assignment differential in addition to basic salary, when assigned responsibility for the security of a hospital center or large hospital.

In considering the PBA - LIRR's petition in this matter, we emphasize that this is not a case calling for an initial unit placement. We are not writing on a clean slate. If we were in the position faced by PERB fourteen years ago, where there were no pre-existing bargaining units on the State level, a persuasive argument might be made to create a security and law enforcement unit, made

up of such titles as Special officers, Traffic Enforcement Agents, Sanitation Enforcement Agents, and possibly School Crossing Guards. But, the reality of the situation is that these titles are all currently in different units, represented by different labor organizations, and are functioning effectively therein. We are not willing or able to disrupt this structure at this late date, where existing units have functioned effectively for many years. In this connection, we note that rulings as to bargaining units do not purport to designate the only appropriate unit. Rather, it is the function of this Board to certify an appropriate bargaining unit.

PERB precedent is instructive in dealing with this situation. PERB's Director of Representation has held, in a case involving Deputy Sheriffs, that while allegations of the performance of police duties and responsibilities might raise a question of the initial unit placement of employees, these functions are not a dispositive factor when the fragmentation of an existing overall unit is at issue. Ontario County Sheriff and Security and Law Enforcement Employees Council 82, AFSCME, AFL-CIO, 9 PERB ¶4038 (1976). In such a case, the question of whether the special interests of the petitioned-for employees have been sacrificed or submerged, is the significant consideration. Applying this principle to the record in the

present case, we do not find that the special interests of Special Officers have been sacrificed or submerged. The mere fact that many of their goals have not yet been achieved is not sufficient proof that those goals have been sacrificed to the interests of the remainder of the unit.

Similarly, PERB has held that, in a case in which, if faced with an initial unit placement question, it would otherwise order the establishment of two separate units, it will nevertheless refuse to fragment an existing unit if the evidence shows that there has been a history of meaningful and effective negotiations on behalf of all employees in the unit. Town of Smithtown and Local 342, Long island Public Service Employees, United Marine Division, NMU, AFL-CIO, 8 PERB if 3015 (1975). We find evidence of such effective representation of the entire existing unit in the present case.

We are also persuaded by the City's submission of evidence showing that for those categories of peace officers for which information is available, approximately half are in mixed bargaining units with other non-peace officer employees. We believe that these figures demonstrate that there is no inherent inconsistency in placing peace officers in mixed units.

In our view, the fragmentation of the existing bargaining unit and the creation of the unit proposed by the PBA - LIRR would have an adverse effect on the efficient operation of the public service and on sound labor relations, and would be inconsistent with our long-established policy of reducing the number of bargaining units with which the City must deal. In the absence of any convincing proof that inclusion in the current unit prejudices the collective bargaining status of the employees involved, we find that the creation of the proposed unit would be in derogation of both the public interest and the legislative intent of the drafters of the NYCCBL. As we stated in Decision No. 67-78, each unit is yet another entity with which the City must bargain, requiring a separate contract to be negotiated and administered, and generating its own separate grievances, interpretations and arbitrations.

We are mindful that the State of New York bargains with only approximately seven units, exclusive-of the State University, unlike New York City, which is still required to bargain with 80 units. In establishing the State units, PERB was determined that the then-existing New York City unit structure of over 400 units would not be followed.[10] We have made considerable progress in the

[10] See 1 PERB 1424 (1968).

last decade to render the New York City bargaining unit structure more rational, workable, and efficient by reducing the number of units with which the City must negotiate from over 400 to the current 80, through the implementation of our policy of creating larger units based upon broad occupational groupings, comprised of as many employees as can effectively operate as an entity while still preserving the employees rights of self organization. In the present case, we see no justification for reversing this policy by creating an additional unit based primarily on evidence of community of interest. While community of interest is a relevant factor in unit determinations$ it is not the sole factor. If this factor were given the overriding weight urged by the PBA - LIRR, it could lead to a deluge of similar requests for similar special units based on community of interest determined by extent of organization, and a return to fragmentation without regard to the effect on the efficient operation of the public service and sound labor relations.

As a final matter, we consider the PBA - LIRR's exception to the Trial Examiner's ruling which excluded testimony concerning Special Officers' dissatisfaction with the adequacy of Local 237's representation in the case of certain grievances. We affirm the Trial Exam-

iner's determination that such evidence is not relevant to the issue of unit placement. If Special officers believe that they have not been represented adequately in particular cases, they have proper legal recourse through the filing of a duty of fair representation charge under the Board of Collective Bargaining's improper practice procedures. If they feel a more general dissatisfaction with their current representative, they may seek a change of representative through a decertification proceeding. However, dissatisfaction with a unit representative's performance is not a valid reason to change the make-up of the unit unless it is shown that inadequate representation is a consequence of conflicting interests within the unit.

The Trial Examiner's ruling permitted the PBA -LIRR to offer testimony concerning the adequacy of Local 237's representation for the limited purpose of attempting to show how the unique interests and needs of Special Officers were handled within the context of the existing unit. General testimony of the alleged inadequacy of Local 237's representation was excluded. We believe that the Trial Examiners' ruling struck the proper balance between what testimony is relevant to the question of the appropriate bargaining unit, and what testimony is not relevant. Accordingly, we affirm the ruling.

In conclusion, based upon our review of the entire record herein, we remain unconvinced that there is such an exceptional situation presented in this case as to warrant our deviating from our established policy against fragmentation of units. Therefore, the petition of the PBA - LIRR seeking a unit composed solely of the titles in the Special Officer series must be dismissed.

## O R D E R

NOW, THEREFORE, pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the petition of the PBA - LIRR be, and the same hereby is, dismissed.

DATED: New York, N.Y.
July 1, 1982

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
MEMBER