

***Ind. Law Enforcement Benevolent Assn., 14 OCB2d 27 (BOC 2021)***  
(Rep) (Docket No. RU-1679-21)

***Summary of Decision:*** ILEBA filed a petition to represent the Associate Traffic Enforcement Agent title within the jointly certified Traffic Enforcement bargaining unit, and to replace CWA as one of the jointly certified bargaining representatives or, in the alternative, to fragment the ATEA title from the bargaining unit and represent it in a new bargaining unit. Since the Board has long rejected the “substitution theory” and ILEBA has not shown changed circumstances demonstrating that the Traffic Enforcement bargaining unit is no longer appropriate, the Board dismissed the petition. (*Official decision follows.*)

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**OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION**

**In the Matter of the Certification Proceeding**

***-between-***

**INDEPENDENT LAW ENFORCEMENT BENEVOLENT ASSOCIATION,**

***Petitioner,***

***-and-***

**THE CITY OF NEW YORK and  
THE NEW YORK CITY POLICE DEPARTMENT,**

***Respondents,***

***-and-***

**COMMUNICATIONS WORKERS OF AMERICA,  
DISTRICT COUNCIL 37, AFSCME, AFL-CIO, and  
LOCAL 237, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,**

**Intervenors.**

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**DECISION AND ORDER**

On June 11, 2021, the Independent Law Enforcement Benevolent Association (“ILEBA”) filed a petition to represent the title Associate Traffic Enforcement Agent (“ATEA”). ATEAs are

in the Traffic Enforcement Agent bargaining unit, which is jointly represented by Communications Workers of America (“CWA”), District Council 37, AFSCME, AFL-CIO (“DC 37), and Local 237, International Brotherhood of Teamsters (“Local 237”) (collectively “Incumbent Unions”). ILEBA seeks to replace CWA as one of the jointly certified bargaining representatives or, in the alternative, fragment the ATEA title from the Traffic Enforcement bargaining unit and represent it in a new bargaining unit. Since the Board has rejected the “substitution theory” and ILEBA has not shown changed circumstances demonstrating that the ATEA title is no longer appropriately placed in the Traffic Enforcement bargaining unit, the Board dismisses the petition.

### **BACKGROUND**

Local Law 56 of 2005 changed the level of bargaining for a number of civil service titles. The changes included adding the Traffic Enforcement Agent (“TEA”) and ATEA titles to the uniformed level of bargaining. *See* New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”) § 12-307(a)(4)(ii). At that time, the ATEA title was represented by CWA in one bargaining unit, and TEA Levels I and II were represented by CWA in a separate bargaining unit.<sup>1</sup> TEA Levels III and IV were represented by DC 37, and the Parking Control Specialist (“PCS”), and Associate Parking Control Specialist (“APCS”) titles were represented by Local 237. Each of these units was covered by its own collective bargaining agreement and included other titles that were either not in the same level of bargaining or were not in the uniformed police service.

In 2014, after an extensive hearing regarding the duties and responsibilities of the titles

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<sup>1</sup> CWA’s two bargaining units were represented by different locals: Local 1181 and Local 1182.

effected by Local Law 56 of 2005, the Board determined that a separate bargaining unit was appropriate for the TEA, ATEA, PCS and APCS titles. *See DC 37, 7 OCB2d 1, at 85 (BOC 2014)*. The Board found that “all four levels of the TEA title and the ATEA title share a community of interest in that they are all employed in the traffic enforcement bureau of the NYPD, they have interchange/contact, share lines of promotion, a common organizational structure, and some common supervision.” *DC 37, 7 OCB2d 1, at 74*. In addition, the Board found that “the community of interest factors weigh very strongly” in favor of combining the TEA and ATEA titles with the PCS and APCS titles because of the “undisputed evidence that employees in the PCS and APCS titles are used interchangeably with employees in the TEA and ATEA titles.”<sup>2</sup> *Id.* Because Local Law 56 gave the traffic enforcement titles the “common ability to negotiate terms at the unit level as well as common duties and responsibilities, skills, training, interchange, and supervision,” the Board concluded that despite their lengthy history of negotiating in separate units represented by different bargaining representatives, “the City, the employees, and bargaining process will benefit from consolidation of all the traffic enforcement titles into one unit.” *DC 37, 7 OCB2d 1, at 75, 78*. The Board removed these titles from their prior bargaining units and, since all three unions had an interest in representing the new unit, ordered an election to allow employees to determine which union would represent the newly created bargaining unit.

Thereafter, the Incumbent Unions requested to be jointly certified as the bargaining representatives of the newly formed Traffic Enforcement unit. The Incumbent Unions submitted a stipulation (“Stipulation”) to the Board in which, among other things, they agreed that bargaining for the unit would be “negotiated by a twelve-member negotiating committee consisting of

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<sup>2</sup> The Board noted that there were “only 40 employees in the parking control titles, and there ha[d] been no new employees hired into th[ese] title[s] in over 15 years.” *DC 37, 7 OCB2d 1, at 77*.

representatives from each union and that any bargaining agreement reached would be ratified by all members of the unit.”<sup>3</sup> See DC 37, 7 OCB 15, at 2 (BOC 2014). The Stipulation also provided that each union “will continue to have the exclusive right of dues check off, to process grievances and to receive welfare fund payments for the employees in the titles for which it is now certified.” (Stipulation at 2). It expressly provided that CWA “will remain the collective bargaining representative” of the ATEA title and TEAs Levels I and II, that DC 37 “will remain the collective bargaining representative” of TEA levels III and IV, and Local 237 “will remain the collective bargaining representative” of the PCS and APCS titles. (*Id.*) It also provided that each union would “conduct the ratification process separately” and that, if any union “no longer represents any employees currently in the Traffic Enforcement bargaining unit, that union will immediately cease to be a party” to the Stipulation. (*Id.* at 4, 6) The City was not a signatory to the Stipulation, though it did not oppose the Incumbent Unions’ request for a joint certification. Based on the request, the Board certified the Incumbent Unions as “joint representatives” for the traffic enforcement bargaining unit, designated as Certification No. 15-14.

Contrary to the terms of the Stipulation, after the BOC certification of the joint representatives, each Incumbent Union negotiated separately with the City.<sup>4</sup> In the following round of bargaining, the parties also negotiated separate successor contracts, but coordinated so

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<sup>3</sup> According to ILEBA, no election was held among the membership of the Incumbent Unions regarding the Stipulation.

<sup>4</sup> In January 2016, CWA Local 1182 and the City signed a memorandum of agreement covering TEA Levels I and II from March 10, 2010 through December 30, 2017. In February 2016, Local 237 and the City signed a memorandum of agreement covering the PCS and APCS titles from September 16, 2010 through April 10, 2018. In April 2016, DC 37 and the City signed a memorandum of agreement covering TEA Levels III and IV from March 3, 2010 through July 2, 2017. In May 2016, CWA Local 1181 and the City signed a memorandum of agreement covering the ATEA title for the period of March 16, 2010 through June 5, 2017.

that each agreement expired on the same date.<sup>5</sup> According to ILEBA, none of these agreements were ratified by the entire Traffic Enforcement bargaining unit.

ILEBA's petition to represent ATEAs was accompanied by a showing of interest from 30% of employees in the ATEA title, not the entire Traffic Enforcement unit.<sup>6</sup> OCB's Director of Representation found the petition timely and the showing of interest sufficient for a petition to represent a unit consisting solely of the ATEA title. She then directed ILEBA to submit an offer of proof of changed circumstances demonstrating that the ATEA title was no longer appropriately placed in the Traffic Enforcement bargaining unit and granted the other parties an opportunity to respond to ILEBA's offer of proof. After ILEBA indicated that it was not seeking to fragment the ATEA title from the Traffic Enforcement bargaining unit, she gave all the parties the opportunity to address the Board's precedent rejecting the argument that a rival union can be substituted for one of the joint certificate holders.

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<sup>5</sup> On November 7, 2019, CWA Local 1181 and the City signed a memorandum of agreement covering the ATEA title from June 6, 2017 through November 10, 2021. On the same day, CWA Local 1182 and the City signed a memorandum of agreement covering TEA Levels I and II from December 31, 2017 through November 10, 2021. On November 26, 2019, Local 237 and the City signed a memorandum of agreement covering the PCS and APCS titles from April 11, 2018 through November 10, 2021. On April 19, 2021, DC 37 and the City signed a successor agreement covering TEA Levels III and IV from September 26, 2017 through November 10, 2021.

<sup>6</sup> David Casey, who filed this petition, was the President of CWA Local 1181 from December 2014 until March 2018. According to CWA, a majority of Local 1181 members voted to recall him, but the votes fell short of the two-thirds majority required. In 2018, CWA ordered an independent audit, which found violations of Local 1181's by-laws and accounting irregularities and placed it under a temporary administration, which controlled the local's affairs and finances until it ended in May 2021. CWA received \$50,000 from its insurer based on Casey's actions. In 2020, Casey ran for President of Local 1181 and lost. He subsequently founded ILEBA and currently serves as its President.

## POSITIONS OF THE PARTIES

### ILEBA's Position

ILEBA asserts that it is not seeking to fragment ATEAs from the Traffic Enforcement bargaining unit. Instead, it argues that it is seeking an election to determine who will represent ATEAs within the existing Traffic Enforcement bargaining unit.<sup>7</sup> According to ILEBA, the Stipulation demonstrates that the Incumbent Unions intended, and the Board approved, “individual bargaining units within the larger unit.” (ILEBA Sept. 24, 2021 Letter at 3) Further, ILEBA argues that the City and the Incumbent Unions acquiesced to the “intact nature of the individual bargaining units” by negotiating separate collective bargaining agreements for the next two rounds of bargaining, in contravention of the joint negotiation and ratification provisions of the Stipulation. (*Id.*)

Accordingly, ILEBA claims that the members of “each individual unit within the larger unit” have the right to choose their own bargaining representative under the New York State Constitution, the Taylor Law, and the NYCCBL.<sup>8</sup> (*Id.*) ILEBA asserts that the Incumbent Unions acknowledged this right in the Stipulation, when they addressed what would happen in “the event [that] one of the unions ... no longer represents any employees currently included in the Traffic Enforcement bargaining.” (Stipulation at 6) ILEBA argues that requiring the entire bargaining unit to vote regarding who represents ATEAs “would effectively provide other unions who do not

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<sup>7</sup> ILEBA notes that an election was not held to determine who would represent the Traffic Enforcement bargaining unit and that the members of the Incumbent Unions did not vote on the Stipulation.

<sup>8</sup> In support, ILEBA notes that in *Municipal Police Benevolent Assn.*, 56 OCB 4, at 4 (BOC 1995) the petitioner sought to fragment a title from an existing unit and the Board held, “it would be inequitable to require that the thirty percent showing of interest be made for the entire existing unit.”

represent these employees a veto over the ATEA unit members,” in violation of the New York State Constitution, the Taylor Law, and the NYCCBL. (Sept. 24, 2021 Letter at 4)

ILEBA argues that Board precedent regarding the substitution of a joint certificate holder is not dispositive because here the Incumbent Unions “ignored the Board’s order that they had to bargain together as one unit” over the course of seven years and two rounds of bargaining. (ILEBA’s Oct. 15, 2021 Letter at 2) It notes that even CWA’s locals negotiated separate contracts and alleges that only the members represented by each local voted to ratify the agreements. ILEBA argues that it would be inequitable to allow the Incumbent Unions to “flout the order of this Board” and then use the Board’s unit consolidation decision to prevent the members of the individual units from exercising their constitutional and statutory rights to choose their bargaining representative. (ILEBA’s Oct. 15, 2021 Letter at 3)

If the ATEAs were to vote to have ILEBA replace CWA as their representative, ILEBA contends that DC 37 and Local 237 could decide whether to enter into a joint representation agreement with ILEBA. If those unions did not agree to such an arrangement, ILEBA argues that the Board should revert to its initial decision to conduct an election to determine which union would represent the entire Traffic Enforcement bargaining unit.

In the alternative, ILEBA claims that the City and the Incumbent Unions’ actions in contravention of the Stipulation are changed circumstances that demonstrate that the Traffic Enforcement bargaining unit is no longer appropriate. According to ILEBA, the negotiation and signing of separate collective bargaining agreements demonstrates that there is a conflict of negotiation interests within the Traffic Enforcement bargaining unit.<sup>9</sup> ILEBA contends the

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<sup>9</sup> As evidence, ILEBA asserts that the fact that “no bargaining has taken place on behalf of the entire unit” demonstrates “the conflict between the negotiation interests of the employees.” (Sept.

Incumbent Unions have already fragmented the bargaining unit and that a Board fragmentation decision would merely reflect what has actually occurred.

### **City's Position**

The City takes no position beyond the “procedural appropriateness and factual background” of ILEBA’s petition. (City Ans. ¶ 2) It asserts that there are no changed circumstances that warrant the creation of a separate bargaining unit for employees in the ATEA title. Further, it notes that, were the Board to grant the petition, the new unit would be headed by a former President of CWA who was accused of improper management and replaced by a temporary administrator.

### **Incumbent Unions' Positions**

The Incumbent Unions each argue that ILEBA’s petition should be dismissed because an election in the petitioned-for unit would result in fragmentation of the certified bargaining unit. They assert that facts and law in the Board’s 1974 decisions are analogous here. They emphasize that they never agreed to be in a joint representation agreement with ILEBA or any other organization. DC 37 argues that they “enter[ed] a partnership voluntarily” and that the substitution of another union into that partnership would create “‘a confederation of separately represented autonomous parts,’ a concept that the Board has explicitly rejected.” (DC 37 Oct. 18, 2021 Letter (quoting *Local 1199, Drug and Hospital Union, RWDSU*, 14 OCB 33, at 11 (BOC 1974)) CWA notes that none of the Incumbent Unions are “free to unwind this arrangement and to walk away from it with their former members” and that the Stipulation permits a union to leave the joint certification only if the titles it represents cease to exist. (CWA Oct. 18, 2021 Letter at 2) CWA

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24, 2021 Letter at 7) However, it does not cite to any specific terms or conditions within the Incumbent Unions’ agreements to support the assertion that there is a conflict of interest among the titles in the bargaining unit.



contends that the only way to change the bargaining representatives is to hold an election for the entire unit. Since ILEBA did not submit a timely showing of interest for the entire unit, it argues that the petition must be dismissed.

The Incumbent Unions contend that it was only a few years ago that the Board determined that the TEA, ATEA, PCS, and APCS titles shared a compelling community of interest, and ILEBA has not shown that inclusion of ATEAs in the Traffic Enforcement unit inherently prejudices ATEAs' rights under the NYCCBL. The Incumbent Unions assert that there is no evidence of conflicting or inconsistent interests within the Traffic Enforcement bargaining unit or that ATEAs' interests have been sacrificed or submerged. In addition, Local 237 argues that granting ILEBA's petition would unduly disrupt the history of collective bargaining and the efficient operation of public service and sound labor relations. DC 37 asserts that the history of successful negotiations by the jointly certified unions demonstrates stable labor relations within the unit and with the employer.

CWA further contends that breaking up the unit because the former president of one of its constituent locals cannot "accept that he lost a free and fair election" would undermine stable labor relations. (CWA Ans. ¶ 38) It argues that the democratic rights of ATEAs are not harmed by dismissal of ILEBA's petition because they had recently and overwhelmingly rejected Casey's leadership. Further, according to CWA, ILEBA is not a labor organization under the NYCCBL. It alleges that ILEBA has no members, no constitution and bylaws, and has never held an election. CWA claims that Casey simply appointed himself president and collected authorization cards from ATEAs under false pretenses and through intimidation. According to CWA, the petition was brought solely to disrupt stable relations, and an election would serve no legitimate interests given

“the cloud of malfeasance and impropriety surrounding Casey.”<sup>10</sup> (CWA Ans. at 7)

### **DISCUSSION**

This Board has the exclusive authority to make “final determinations of the units appropriate for purposes of collective bargaining.” NYCCBL § 12-309(b). While “in rare instances, at the request of the parties,” the Board has certified multiple unions as the joint representatives of a bargaining unit, it is well established that “a bargaining unit with two or more jointly certified representatives possesses no different or greater status than a bargaining unit with a single certified representative.” *Emergency Medical Benevolent Assn.*, 46 OCB 7, at 6 (BOC 1990). Generally, the Board does not concern itself with the “internal jurisdiction over employees in a given title” within a jointly certified bargaining unit. *Hotel, Hospital, Nursing Home and Allied Health Servs. Union, SEUI, L. 144*, 60 OCB 1, at 34 (BOC 1997); *see also Local 237, IBT*, 17 OCB 10, at 3 (BCB 1976) (finding that “an internal dispute among the joint representatives of the unit ... should be resolved by the unions themselves).

In 1974, this Board expressly rejected the argument that a rival union could seek to substitute itself as the bargaining representative of a subset of employees within a jointly certified bargaining unit.<sup>11</sup> *See Local 1199, Drug and Hospital Union, RWDSU*, 14 OCB 33, at 11, *motion*

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<sup>10</sup> CWA cautions that a direction of election could be perceived as an endorsement of the fitness and ability of ILEBA to represent employees. In light of Casey’s history, it argues that allowing ILEBA to collect dues without the oversight of an international union or executive board, would expose ATEAs to serious financial risk, particularly since it is unlikely that any insurance company would offer a fiduciary liability policy to an organization headed by Casey.

<sup>11</sup> The Board also rejected the argument that it could not consolidate formerly separate bargaining units without conducting an election among the employees and that, before it issued a joint certification, it should have inquired whether the unions had given notice to their members and obtained their consent. *See Local 1199, Drug and Hospital Union, RWDSU*, 14 OCB 33, at 8.

*for reconsideration denied*, 14 OCB 50 (BOC 1974). As an alternative to fragmenting a recently consolidated bargaining unit, the petitioner in *Local 1199* indicated its willingness to participate in joint bargaining on the basis that the employees it sought to represent “still pay dues only to Local 237, IBT, still have grievances processed only by it, and still are members of the Local 237 Welfare Fund.” *Local 1199, Drug and Hospital Union, RWDSU*, 14 OCB 33, at 11. We rejected “this ‘substitution’ theory ... as a matter of law or policy since it is tantamount to a request for a separate unit, which we find to be inappropriate and is predicated on the notion, which we reject, that the consolidation created a confederation of separately represented autonomous parts.” *Id.* In denying the petitioner’s motion for reconsideration, the Board further explained that we have “authority to determine that groups of employees must bargain together as one unit, but [we] cannot dictate to employee organizations the coalitions in which they must participate.”<sup>12</sup> *Local 1199, Drug and Hospital Union, RWDSU*, 14 OCB 50, at 5.

The Public Employment Relations Board (“PERB”) has similarly rejected the contention that it can process a petition to challenge the status of only one joint certificate holder. *See Fedn. of Court Clerks, UFT, L. 2, NYSUT, AFT, AFL-CIO*, 15 PERB ¶ 3046, at 3077 (1982) (dismissing a petition to represent only one part of jointly certified bargaining unit). In *Fedn. of Court Clerks*,

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The Board noted that “joint consolidations on consent of all affected certificate holders[] have regularly been permitted without the requirement of elections” and explained that “no true question of representation was involved since the petitioning unions, the separate certificate holders, consented to the consolidation.” *Id.* at 9-10 (BOC 1974) (citing *Deputy Sheriffs Assn.*, 6 OCB 76 (BOC 1970) and *CWA*, 12 OCB 41 (BOC 1973)).

<sup>12</sup> While ILEBA argues that Board should order an election if DC 37 and Local 237 do not want to enter a joint representation agreement with it, it has not submitted a sufficient showing of interest among employees in the entire Traffic Enforcement bargaining unit to warrant an election. *See* OCB Rule § 1-02(c)(2)(i); *Local 1199, Drug and Hospital Union, RWDSU*, 14 OCB 33, at 11-12 (denying an alternative request to conduct an election among employees in the entire bargaining unit because petitioner had not submitted a sufficient showing of interest among employees in the entire bargaining unit).

like here, the petitioner did not seek to fragment titles from the jointly certified bargaining unit. Instead, it asserted that “there are four distinct groups of employees within the existing unit ... and that each employee organization services its own group of employees by representing those employees in grievances, legal actions and improper practice cases.” *Id.* In addition, “each employee organization dr[ew] its members only from its own part of the unit and each set[] its own dues structure.” *Id.* Therefore, the petitioner argued that PERB could transfer the “rights and responsibilities” of one of the joint bargaining representatives. PERB rejected this argument and held that it “may not certify an employee organization for a part of an existing negotiating unit.” *Id.*

It is well established that “[w]here, as here, the Board has made a previous determination that a title is appropriately placed in its current bargaining unit, it will not reconsider its decision ‘unless convincing proof of changed circumstances demonstrates that the pre-existing unit is no longer appropriate.’” *LEEBA*, 11 OCB2d 13, at 16-17 (BOC 2018) (quoting *HHC PBA, Inc.*, 8 OCB2d 20, at 18 (BOC 2015)). Seven years ago, in consolidating the traffic enforcement titles into one bargaining unit, this Board found that the “very strong community of interest” among the TEA, ATEA, PCS, and APCS titles and their “common ability to negotiate terms at the unit level” outweighed their “lengthy histories of separate collective bargaining.” *DC 37*, 7 OCB2d 1, at 77-78; *see also Local 375, CSTG*, 20 OCB 29, at 13 (BOC 1977) (noting, in consolidating units, that “[o]ur determination as to appropriate unit is not vitiated by the bargaining history”). We acknowledge that, by negotiating separately, the joint bargaining representatives have undermined the Board’s certification of one bargaining unit for all traffic enforcement titles. Nevertheless, there are no factors present here that warrant reconsideration of the appropriateness of the bargaining unit.

ILEBA has not alleged any change in the ATEA's duties or level of bargaining or provided "sufficient evidence of inconsistency" of interests among the titles within the unit. *Municipal Police Benevolent Assn.*, 56 OCB 4, at 11 (dismissing fragmentation petition when petitioner did not produce any "convincing proof that due to changed circumstances" inclusion of the sought-after title in the bargaining unit inherently prejudiced the employees' rights); *see also LEEBA*, 11 OCB2d 13; *HHC PBA, Inc.*, 8 OCB2d 20. Instead, ILEBA argues that, by negotiating separate agreements and disregarding some terms of the Incumbent Unions' Stipulation, the parties have *de facto* fragmented the Traffic Enforcement unit or that this evinces changed circumstances that demonstrate that fragmentation is appropriate.<sup>13</sup> However, where the joint certificate holders have negotiated separate collective bargaining agreements for titles within one bargaining unit, the Board has not found that the consolidated unit is no longer appropriate. *See Emergency Medical Benevolent Assn.*, 46 OCB 7, at 6-7 (finding that when "a single unit [was] covered by four contracts, of differing lengths and time periods," employees were "entitled to choose one period which was open under any of the ... contracts ... to commence a representation proceeding which was effective with respect to all of the jointly certified representatives"). In *Emergency Medical Benevolent Assn.*, the Board also noted that the petition to create a new unit was "contrary to this Board's established policy of discouraging the fragmentation of existing bargaining units." *Id.* at 11-12. Thus, the Board indicated that if it were not dismissing the petition for failure to submit a sufficient showing of interest it would "require the petitioner to submit convincing proof that the current bargaining unit prejudices the collective bargaining status of the employees serving in the

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<sup>13</sup> Contrary to ILEBA's assertion, the Board did not mandate the manner in which the Incumbent Unions must negotiate. *See DC 37*, 7 OCB 15, at 2. The Board merely summarized the Stipulation. Thus, any alleged violation of the Incumbent Unions' Stipulation is not a violation of the Board's order.

titles covered by the petition.” *Id* at 12. “In the absence of such proof, the fragmentation of the existing unit and the creation of an additional unit would be in derogation of both the public interest and the legislative intent of the drafters of the New York City Collective Bargaining Law.” *Id*.

Therefore, we find that the Traffic Enforcement bargaining unit remains appropriate. Accordingly, the petition must be dismissed.<sup>14</sup>

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<sup>14</sup> Since we dismiss the petition, we need not consider the allegation that ILEBA is not a *bona fide* employee organization.

**ORDER**

NOW, THEREFORE, pursuant to the powers vested in the Board of Certification, it is hereby:

ORDERED, that the petition for representation of Associate Traffic Enforcement Agents, filed by the Independent Law Enforcement Benevolent Association, docketed as RU-1679-21, be, and the same hereby is, dismissed.

Dated: December 2, 2021  
New York, New York

SUSAN J. PANEPENTO  
CHAIR

ALAN R. VIANI  
MEMBER