



Mayor Terence Murphy

City of Holyoke

Law Department

October 1, 2021

Holyoke City Council
536 Dwight Street
Holyoke, MA 01040

RE: Opinion on Professional Supervisors Association Collective Bargaining Unit

Dear Councilors:

You recently requested an updated legal opinion from this office regarding the status of the Professional Supervisors Association (hereinafter "PSA"), as to whether the association is a union, and if so, when the designation was approved and by what authority, under what general law it is affiliated, and the department heads that serve at the Mayor's pleasure.

The PSA is a duly recognized union pursuant to the Massachusetts Labor Relations Act, Mass. General Law Chapter 150E. The Association is, therefore, entitled to the same rights and benefits afforded under the law to other unions.

The agreement that was executed on April 17, 1990, between former Mayor Martin J. Dunn and the Association, specifically provides that the PSA "is recognized as the sole exclusive representative of all the professional department head employees [of the City] ... in all matters relating to rates of pay and other conditions and benefits of employment." **See Exhibit A.** Additionally, the agreement states that by mutual consent of the parties, the provisions of M.G.L. c. 150E shall be applicable to the terms of the Agreement.

All subsequent agreements between the City and PSA continued to recognize the Association as the exclusive collective bargaining unit for all professional and department head employees, including the most recent agreement dated June 3, 2021.

There have been two previous opinions written on this subject. The first opinion was written on March 29, 1993, by Acting City Solicitor Edward R. Mitnick, who concluded that "the agreement(s), by its own terms recognizes the Association as a lawful union or collective bargaining unit. As a result, the City must bargain with the Association in good faith in regard to wages, hours and conditions of employment." **See Exhibit B.**



Mayor Terence Murphy

City of Holyoke

Law Department

Then again, on June 17, 2019, Assistant City Solicitor Gina Paro opined that she agreed with the opinion of Acting City Solicitor Edward Mitnick that the PSA is a lawful collective bargaining unit under M.G.L. c. 150E and is entitled to the same rights that any other City union has. **See Exhibit C.**

Further, on October 29, 2019, the Commonwealth of Massachusetts, Department of Labor Relations (DLR), responded to a request of Damian Cote, an officer of the PSA, who requested that the DLR certify the PSA as the exclusive bargaining representative for professional employees employed by the City of Holyoke. The DLR was unable to process their petition because no question of representation existed. The City had already recognized the Association as the bargaining unit for these employees for over thirty years. They further recognized that the parties have been in and continue to be in a valid collective bargaining unit with the City. As the letter points out, MGL c. 150E section 4 allows a majority of employees in a bargaining unit to designate an exclusive representative in one of two ways, through a DLR petition for election and certification or by voluntary recognition by a public employer. Clearly, this unit has been recognized for over thirty years by multiple administrations and by the fact that the unit has entered into at least ten collective bargaining agreements with the City in those thirty years. There is no question in my opinion that this is a valid bargaining unit that has been recognized by the City of Holyoke. However, should there still be questions as to the City's voluntary recognition of this unit, I would direct your attention to Franklin County Sheriff's Office and National Correctional Employees Union 36 MLC 125, 138, WMAS-09-1001 (2010), which explained that written evidence of voluntary recognition is no longer needed once the parties have negotiated and executed a voluntary collective bargaining agreement. **See Exhibit D.**

My opinion does not differ from the opinions of Acting City Solicitor Edward Mitnick or Assistant City Solicitor Gina Paro. The Professional Supervisors Association is a lawful collective bargaining unit under M.G.L. c. 150E and is entitled to the same rights that any other City union has.

To address the other question asked of this department, the following positions are included in this bargaining unit:



Mayor Terence Murphy

City of Holyoke

Law Department

Department Heads

- Director of Parks and Recreation – Appointed for a term of five (5) years by the Parks and Recreation Commission, subject to confirmation by the City Council;
- Conservation and Sustainability Director – Appointed for a term of five (5) years by the Conservation Commission;
- Director of Council on Aging – Appointed for a term of five (5) years by the Mayor;
- Director of Wistariahurst Museum – Appointed for a term of five (5) years by the Mayor;
- Veterans Services Commissioner – Appointed for a term of one (1) year by the Mayor;
- Building Commissioner – Appointed for a term of three (3) years by the Mayor
- Chief Procurement Officer – Appointed for an initial term of three (3) years, and subsequent terms of four (4) years, by the Mayor, subject to confirmation by the City Council;
- Director of Public Health – Appointed for a term of five (5) years by the Board of Health;

Unit B – Professionals

- Safety Officer – Hired by the Superintendent of the Department of Public Works;
- Assistant Director of Planning / Principal Planner – Hired by the Planning Board;
- Senior Civil Engineer – Hired by the City Engineer and Superintendent of the Department of Public Works;
- Planner I – Hired by the Planning Board;
- Senior Project Manager – Hired by the Director of Planning & Economic Development;
- Planner II – Hired by the Planning Board;
- Development Specialist – Hired by the Director of Planning & Economic Development;
- Assistant Director of Economic Development – Hired by the Director of Planning & Economic Development;
- Assistant Director of Parks & Recreation – Hired by the Director of Parks and Recreation;
- City Historian – Hired by the City to work at Wistariahurst;
- Sealer of Weights and Measures – Hired by the Building Commissioner;
- Assistant Director of Council on Aging – Hired by the Director of the Council on Aging;
- Animal Control Officer – Hired by the Director of Public Health;
- Assistant Building Commissioner – Hired by the Building Commissioner;
- Assistant Superintendent / City Engineer – Hired by the Superintendent of the Department of Public Works;
- Property Maintenance and Demolition Supervisor – Hired by the Building Commissioner;
- Chief Inspector of Wires – Hired by the Building Commissioner.



Mayor Terence Murphy

City of Holyoke

Law Department

In summary, it is my conclusion that the Professional Supervisors Association has been recognized by the City of Holyoke as a lawful collective bargaining unit under M.G.L. c. 150E, and has been recognized as such since 1990 when former Mayor Martin J. Dunn recognized this Unit as a valid bargaining unit.

Please feel free to contact me should you have any additional questions.

Respectfully,

Lisa A. Ball
Acting City Solicitor