



DECISION<sup>1</sup>Statement of the Case

1           On October 15, 2004, the Massachusetts College Law Enforcement Association  
2 (Association) filed a petition with the Board seeking to sever Campus Police Officers I  
3 and II from a bargaining unit of maintenance and security workers at numerous state  
4 and community colleges governed by the Massachusetts Board of Higher Education  
5 (Higher Ed. Board). On November 29, 2004, Local 1067 of AFSCME, Council 93, AFL-  
6 CIO (Council 93) filed an unopposed motion to intervene, which an agent of the Board  
7 subsequently allowed.

8           On November 22, 2004, the Association amended its petition to seek a bargain-  
9 ing unit of all full-time and regular part-time community college police officers and ser-  
10 geants who are employed by the Higher Ed. Board, excluding lieutenants, captains,  
11 deputy chiefs, and chiefs.

12           On December 22, 2004, March 11, 2005, March 21, 2005, March 28, 2005, and  
13 March 31, 2005, a duly-designated Board hearing officer, Victor Forberger, Esq. (Hear-  
14 ing Officer), conducted a hearing at which all parties had the opportunity to be heard, to  
15 examine witnesses, and to introduce evidence.

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<sup>1</sup> Pursuant to 456 CMR 13.02(1) of the former Labor Relations Commission's (Commission) regulations in effect prior to November 15, 2007, this case was designated as one in which the Commission would issue a decision in the first instance. Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission." The Commonwealth Employment Relations Board (Board) is the body within the Division charged with deciding adjudicatory matters. References to the Board include the Commission.



- 1 6. The issue of "Group 4" retirement is addressed solely through the Legislature and  
2 not through the collective bargaining process.
- 3 7. M.G.L. c.41, § 108L, the so-called "Quinn Bill," is inapplicable to campus police of-  
4 ficers and could not be applicable to them because the aforesaid statute applies by  
5 its terms only to police officers of cities and towns.
- 6 8. Because application of the provisions of the Quinn Bill is a matter of legislation, the  
7 benefits available through this law cannot be attained through collective bargain-  
8 ing.

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10 The following facts are derived from the testimonial and documentary evidence  
11 introduced during the hearing.

12 Council 93 and the Higher Ed. Board

13 The Higher Ed. Board is the governing authority for fifteen community colleges  
14 and nine state colleges.<sup>4</sup> Campus police officers I and II as well as institutional security  
15 officers I, II, III, and IV are part of a unit of maintenance and security personnel (consist-  
16 ing of 1,169 employees) at these colleges represented by Council 93. Besides campus  
17 police officers and institutional security officers, this bargaining unit includes power plant  
18 engineers (2nd and 3rd class), electricians (I and II), utility plant operators, and numer-  
19 ous other craft and maintenance positions. There is also a clerical and technical unit  
20 (consisting of 1,776 employees) at these colleges represented by Council 93, which in-  
21 cludes communications dispatchers (I and II), clerks (I through VI), accountants (I  
22 through V), and numerous other positions. In 1976, in Case Nos. SCR-2016 and SCR-  
23 2050, the Board certified the clerical and technical bargaining unit as Unit I and the  
24 maintenance and security personnel as Unit II, respectively. At the time, campus police

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<sup>4</sup> The Higher Ed. Board is also the governing authority for five university campuses, but those campuses are not part of the bargaining units at issue in this petition.

1 officers voted in the Unit II elections.<sup>5</sup> Employees in Unit I have a regular work week of  
 2 37.5 hours, while Unit II employees have a regular work week of 40 hours. Table 1, be-  
 3 low, identifies the colleges in Units I and II, the location of each campus in Massachu-  
 4 setts, and the number of campus police officers and institutional security officers cur-  
 5 rently at each campus.

**Table 1: Community and state colleges in the Massachusetts public education system and the number of campus police officers (CPOs) and institutional security officers (ISOs) at each campus**

<b>Community colleges</b>	<b>Town</b>	<b>CPOs</b>	<b>ISOs</b>	<b>State colleges</b>	<b>Town</b>	<b>CPOs</b>	<b>ISOs</b>
Berkshire Community College	Pittsfield	0	0	Bridgewater State College	Bridgewater	14	9
Bristol Community College	Fall River	6	1	Fitchburg State College	Fitchburg	11	0
Bunker Hill Community College	Boston	8	0	Framingham State College	Framingham	10	0
Cape Cod Community College	West Barnstable	1	0	Mass. College of Art	Boston	2	16
Greenfield Community College	Greenfield	1	1	Mass. College of Liberal Arts	North Adams	6	0
Holyoke Community College	Holyoke	8	0	Mass. Maritime Academy	Buzzards Bay	5	0
Mass. Bay Community College	Wellesley Hills	3	0	Salem State College	Salem	23	0
Massasoit Community College	Brockton	13	0	Westfield State College	Westfield	11	10
Middlesex Community College	Lowell	0	1	Worcester State College	Worcester	11	2
Mount Wachusett Community College	Gardner	6	1				
North Shore Community College	Danvers	16	1				
Northern Essex Community College	Haverhill	0	0				
Quinsigamond	Worcester	9	0				

<sup>5</sup> The Board takes administrative notice of the fact that the 1976 voter eligibility lists for Case Nos. SCR-2016 and SCR-2050 include the position of campus police officer.

Community colleges	Town	CPOs	ISOs	State colleges	Town	CPOs	ISOs
Community College							
Roxbury Community College	Boston	0	0				
Springfield Tech. Community College	Springfield	8					
<b>TOTALS</b>		<b>79</b>	<b>5</b>			<b>93</b>	<b>37</b>

1 Campus Police Officers

2 Campus police officers are sworn police officers employed at twenty state and  
 3 community colleges. As with city, town, or state police officers, they are responsible for  
 4 protecting individual's property and life, for upholding state law, and for apprehending  
 5 those individuals who violate state or local criminal law. Campus police officers are also  
 6 responsible for enforcing various campus rules and regulations.

7 Prior to their appointment, candidates for the position of campus police officer  
 8 undergo a background check, including fingerprinting, and they must pass a physical  
 9 agility test, medical examination, as well as written and oral examinations. In prepara-  
 10 tion for this testing, campus police officer candidates must complete an extensive  
 11 course of study at a police training facility.<sup>6</sup> At these training facilities, recruits under-  
 12 take a daily physical training regimen and complete coursework in emergency vehicle  
 13 operation, police officer technique and practices, use of various weapons available to  
 14 them, handling of evidence, and various criminal law matters.

15 After completing this training, campus police officers continue to undergo in-  
 16 service training to maintain their current job skills or to take on new responsibilities, as

<sup>6</sup> For example, one such facility is the Special State Police Officer Police Academy (Academy), operated by the Massachusetts State Police. The Academy offers a four-teen week (~590 hours) course of study for campus police officer candidates.

1 determined by state law and local campus police department requirements and proce-  
2 dures. This training, for example, has included courses in interrogation of suspects, of-  
3 ficer safety, defensive tactics, workplace violence, criminal law, using breathalyzers,  
4 and using of radar guns for assessing speed limits. Campus police officers also com-  
5 plete continuing education and training in handling various weapons.<sup>7</sup> The exact re-  
6 quirements campus police officers must meet varies from campus to campus and the  
7 specific job responsibilities of the campus police officer in question.<sup>8</sup> Almost all of the  
8 training and continuing education campus police officers undergo is paid for by the  
9 campus police department.

10 As already noted, campus police officers are divided into two classifications, I  
11 and II. Those employees in the campus police officer II classification usually have a  
12 greater degree of responsibility than those in the campus police officer I classification.  
13 On some campuses, campus police officer IIs have been given the rank of sergeant and  
14 have responsibility for a particular shift or a division within the campus police depart-  
15 ment, such as traffic or detectives. On other campuses, campus police officer IIs have  
16 specific responsibilities regarding certain campus security operations, like serving as a  
17 police prosecutor. Lieutenants and captains, who belong to a bargaining unit repre-  
18 sented by the Association of Professional Administrators, supervise both classifications  
19 of campus police officers. Campus police chiefs are not part of any bargaining unit.

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<sup>7</sup> Of those campuses where campus police officers carry firearms, the firearm is typically a handgun but can include a shotgun.

<sup>8</sup> Additionally, each college has ethical guidelines that its campus police officers must follow regarding their law enforcement responsibilities. These ethical guidelines have not been subject to collective bargaining.

1           Campus police officers are generally responsible for patrolling college campuses,  
2 including the grounds, buildings and college vehicles associated with a particular cam-  
3 pus. Campus police officers investigate crimes by gathering evidence and interviewing  
4 witnesses and suspects and may testify in courts of law regarding those efforts. They  
5 issue citations and make arrests when, in their discretion, it is appropriate, take indi-  
6 viduals into protective custody (e.g., when incapacitated by alcohol), and serve arrest or  
7 search warrants for which probable cause has been found. On some colleges, campus  
8 police officers also are responsible for monitoring parking lots, enforcing traffic laws, in-  
9 vestigating accidents, and directing traffic.<sup>9</sup> Where the campus police department has  
10 developed a community policing program, campus police officers may attend faculty  
11 and staff meetings to speak about recent criminal activities or concerns on the campus.

12 Finally, in light of their law enforcement responsibilities, campus police officers often find  
13 themselves in court testifying and submitting paperwork, and more than a few serve as  
14 police prosecutors for civil traffic violations and initial arraignments in criminal matters.

15           In the course of this work, campus police officers may be exposed to blood-borne  
16 illnesses or other biological contaminants. Accordingly, campus police officers are  
17 trained to handle these risks in the course of their work. Campus police officers also  
18 must respond to physical force used against them when apprehending individuals.

19           As sworn police officers, campus police officers can direct the actions of citizens  
20 — including Unit I and II members — in order to fulfill their law enforcement responsibili-

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<sup>9</sup> Depending on the college campus, campus police officers issue traffic citations under state law or citations under the college's regulatory authority. However, the ability of campus police officers to issue traffic citations may be limited in the future because of a decision by the Department of Public Safety for the Commonwealth not to provide traffic citation forms to campus police departments.

1 ties (e.g., commanding someone to exit her car or to stop running). Furthermore, on a  
2 college campus any individual, including members of a college's governing board or the  
3 Higher Ed. Board, are subject to arrest by campus police officers or the filing of criminal  
4 complaints in Massachusetts courts for criminal prosecution. In carrying out their job  
5 duties, campus police officers cooperate with employees of the Higher Ed. Board who  
6 do not work specifically in campus police departments. For example, a campus police  
7 officer may provide a ride to a campus nurse to the scene of a car accident and follow  
8 the nurse's directions in responding to the medical concerns of those involved in the ac-  
9 cident. Similarly, the campus police officer might request assistance from maintenance  
10 employees in cleaning up the scene of the car accident.

11       Some college campuses employ dispatchers who direct campus police officers to  
12 particular places on campuses as calls for police assistance are made. Campus police  
13 officers may request information from the dispatchers, such as driving history, when in-  
14 vestigating accidents or other matters. Additionally, campus police officers work with  
15 their counterparts in state or municipal police departments. For example, in recent  
16 years, playoff victories by the Boston Red Sox and the New England Patriots have led  
17 to general disturbances on some college campuses. In those situations, campus police  
18 officers have called on other police departments and campus co-workers, like institu-  
19 tional security officers and resident assistants, in controlling student crowds. Campus  
20 police officers may request assistance from municipal or other police departments when  
21 serving arrests or search warrants outside their particular college campus. Additionally,  
22 several campuses do not have their own jail or holding areas for arrestees. In these cir-  
23 cumstances, the campus police officers transport arrestees to municipal, county, or

1 state jail facilities and to clerk magistrates, if available at the time of booking, for a bail  
2 hearing.

3 The specific nature of a particular campus police officer's job responsibilities de-  
4 pends on the issues at each college campus and the officer's prior training and certifica-  
5 tions. Certifications and training held by a campus police officer at one college campus  
6 may be unnecessary at another college campus. For example, a firearms instructor  
7 may work at a college where campus police officers carry firearms but not at a campus  
8 where firearms are not required. Additionally, at some colleges the campus police de-  
9 partment may ask campus police officers to apply for appointment as special police offi-  
10 cers with the local municipality or as deputy sheriffs with the county sheriff's department.

11 Campus police officers regularly work shifts during the day, evening, or night  
12 hours,<sup>10</sup> and they usually work ten to twenty hours of overtime beyond their regularly-  
13 scheduled hours each week.<sup>11</sup> At some college campuses, the campus police depart-  
14 ment has developed specific procedures for how campus police officers volunteer for  
15 this additional overtime. Since 2000, Council 93 has bargained with local campus offi-  
16 cials regarding how overtime is to be assigned to campus police officers at each particu-  
17 lar campus. At Salem State College and Massasoit Community College, for example,  
18 the agreements Council 93 negotiated provide a procedure for how overtime can be as-

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<sup>10</sup> Each campus has its own start and stop times for these shifts. Typically, a day shift goes from morning to mid-afternoon, an evening shift goes from mid-afternoon to late evening, and a night shift goes from late evening to early morning.

<sup>11</sup> In addition to the campus police officers included in Unit II, campus police departments also employ campus police officers on a reserve basis. These non-unit, reserve campus police officers are offered work shifts when campus police officers in the unit are not available for the scheduled shift. The reserve campus police officers are free to decline a work shift without penalty, and a reserve campus police officer may go for weeks without work at the campus.

1 signed voluntarily and specify the requirements for when the campus police department  
2 can mandate overtime in order to maintain minimum staffing levels. These agreements,  
3 in part, stopped the practice at some campuses of leaving campus police officer shifts  
4 vacant. However, several college campuses still contract out part of their campus po-  
5 lice operations to independent third-party companies that provide security for a particu-  
6 lar shift or area of a campus.

7 Campus police officers are part of a paramilitary command structure where  
8 higher ranks connote greater authority. Rank is indicated by military insignia — stars,  
9 bars, and chevrons — displayed on uniforms, and superiors must be addressed by  
10 rank. Campus police officers wear distinctive uniforms, badges, name tags, and pos-  
11 sess specialized tools and equipment usually located on their utility belts, including  
12 handcuffs, rubber gloves, and weapons of various kinds, e.g., oleo-resin capsicum  
13 (pepper) spray, batons, and possibly firearms.<sup>12</sup> Campus police officers are also re-  
14 quired to wear bullet-resistant body armor. At some colleges, campus police officers  
15 drive specially marked police vehicles or mountain bikes.

16 On several occasions, campus police officers in the course of their job duties  
17 have taken police action against other college employees. In 2001, a campus police  
18 officer, David Bickford (Bickford), found an off-duty maintenance employee and Unit II  
19 member at Massasoit Community College filling his personal automobile with gasoline

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<sup>12</sup> Campus police officers are the only unit employees required to be licensed to carry firearms as a condition of employment. As already noted, not all campuses require campus police officers to carry firearms, however. Furthermore, certain campus police officers may also be required to dress as civilians because of their responsibilities as detectives or police prosecutors.

1 reserved for campus vehicles. Bickford filed criminal charges against the individual,<sup>13</sup>  
2 and he learned from his Chief that Massasoit Community College had suspended that  
3 individual for sixty days. Bickford also filed charges against a member of Council 93<sup>14</sup>  
4 and a college employee for indecent assault and battery against a co-worker. That unit  
5 member pled to a charge of assault and battery and was barred by the judge presiding  
6 over his criminal case from entering the college campus as long as the co-worker in  
7 question was employed by the college.

8         Additionally, Bickford investigated two maintenance employees for fondling a fe-  
9 male student.<sup>15</sup> While no criminal charges arose from that investigation, Bickford  
10 learned that the college had suspended the two employees with pay during the investi-  
11 gation and had suspended them for one day without pay as a result of Bickford's inves-  
12 tigation. Finally, Bickford has stopped and towed unit members' unregistered or unin-  
13 sured vehicles and has, on occasion, filed criminal charges against the drivers.<sup>16</sup>

14         At Framingham State College, a campus police officer investigated and charged  
15 a maintenance employee and Unit II member for committing open and gross lewdness  
16 and lascivious behavior on March 7, 2003 while off-duty. The campus police officer tes-  
17 tified against the Unit II member in question at his criminal trial. The individual was

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<sup>13</sup> The maintenance employee in question subsequently admitted to relevant facts, received a suspended sentence, and made restitution.

<sup>14</sup> The record is silent as to whether this employee belonged to Unit I or Unit II.

<sup>15</sup> The record is silent as to whether the maintenance employees were part of Unit II or contract employees.

<sup>16</sup> The record is silent regarding what disciplinary action, if any, the college has taken against these unit members.

1 found guilty, and the campus police officer learned that Framingham State College had  
2 terminated the individual's employment.

3 At Westfield State College, a campus police officer cited the president of Local  
4 1067, Christopher Olsen (Olsen), for failing to stay in marked lanes and for failing to  
5 stay on the right-hand side of the road when driving. Olsen has appealed those cita-  
6 tions, and the campus police officer might have to testify at a later proceeding. The traf-  
7 fic citations have had no impact on Olsen's employment with the Higher Ed. Board,  
8 however. Campus police officers at Westfield State College also have investigated em-  
9 ployees for stealing campus property and for violating a student's rights.<sup>17</sup>

10 At Salem State College, a campus police officer served as the prosecutor against  
11 a college employee for a motor vehicle violation.<sup>18</sup> The employee in question filed a  
12 grievance in response.<sup>19</sup> That campus police officer, a detective, has investigated ap-  
13 proximately a dozen other unit members for larceny and motor vehicle violations since  
14 1995. One investigation concerned the theft of approximately \$90,000 in electronic  
15 equipment. Through interviews, informants, and covert video surveillance, the detective  
16 investigated custodians represented by Council 93 and obtained and executed search  
17 warrants on the homes of these Unit II members in an effort to recover some of the sto-  
18 len property. Criminal charges were filed against the custodians, and the campus police  
19 officer learned that the college had terminated their employment.

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<sup>17</sup> The record is silent as to what bargaining unit, if any, these employees belonged.

<sup>18</sup> The record is silent as to whether this employee belonged to Unit I or Unit II.

<sup>19</sup> The record is silent over whether the Higher Ed. Board, Council 93, or the employee in question took any action regarding this grievance.

1           At Springfield Technical Community College, a campus police officer investigated  
2 college employees in July of 2004 about the theft of money from a campus office. In the  
3 course of that investigation, the campus police officer asked several employees to sub-  
4 mit voluntarily to a polygraph examination. The primary suspect in the case refused to  
5 take the polygraph examination and subsequently resigned.<sup>20</sup> In June of 2004, this  
6 same campus police officer investigated shipping and receiving employees about items  
7 missing from a loading dock. In the course of that investigation, a campus vice-  
8 president of administration asked the campus police officer to "shake [a carpenter] up"  
9 that the two had observed via video camera outside his assigned work area. The cam-  
10 pus vice-president told the campus police officer that the carpenter had time-keeping  
11 problems, and that the campus vice-president wanted the carpenter to return to his as-  
12 signed work area.<sup>21</sup> The campus police officer did as requested, even though the re-  
13 quest to "shake up" the carpenter was not part of the campus police officer's regular job  
14 duties and unrelated to the investigation into items missing from a loading dock.

15           Except for this last incident, campus police officers have not acted on behalf of  
16 the Higher Ed. Board in determining what discipline, if any, to apply against the indi-  
17 viduals subject to possible criminal prosecution or investigation by the campus police  
18 officers.<sup>22</sup> Furthermore, campus police officers are not the only police officers who en-

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<sup>20</sup> The suspect was not a unit member but a contract employee at the college.

<sup>21</sup> The record is silent as to whether the carpenter was a Unit II member or a contract employee.

<sup>22</sup> At the hearing, Council 93 indicated that it had a policy that unit members should not testify against each other at disciplinary hearings. However, the record does not show whether any unit member had ever testified or not testified at a disciplinary hearing. Furthermore, the record is silent as to how Council 93 might enforce this policy.

1 force criminal laws against college employees. State and local police officers have ar-  
2 rested unit members on occasion for criminal law violations. Like these police officers,  
3 campus police officers are subject to civil suit for violations of civil rights. Colleges, in  
4 their discretion, may indemnify campus police officers subject to civil rights suits be-  
5 cause of their law enforcement responsibilities.

6 If there are allegations of criminal conduct by campus police officers, then inter-  
7 nal affairs officers at the relevant campus conduct an investigation. These internal af-  
8 fairs officers — usually a lieutenant or a captain — are not part of the bargaining units  
9 represented by Council 93 and not included in the severance petition.

#### 10 Institutional Security Officers

11 The Massachusetts public education system employs 41 institutional security of-  
12 ficers at its community and state colleges. Institutional security officers do not undergo  
13 special police training, do not attend a police academy, and are not sworn police offi-  
14 cers. Institutional security officers do not carry firearms or other weapons, nor do they  
15 possess the other paraphernalia usually associated with campus police officers. Institu-  
16 tional security officers require only limited security-related work experience prior to be-  
17 ing hired, and their training largely occurs on the job.

18 Institutional security officers wear uniforms, though their uniforms are different  
19 from those of campus police officers, and institutional security officers do not have  
20 badges or similar police officer indicia. Institutional security officers primarily perform  
21 basic security functions on college campuses. They patrol specific buildings or areas

1 on a college campus, lock and unlock doors in evenings and mornings,<sup>23</sup> or staff a  
2 building entrance or exit.<sup>24</sup> While the job description for institutional security officers  
3 lists several police-like job duties, such as surveillance, investigating crimes, interview-  
4 ing witnesses, and determining if criminal activity has occurred, institutional security of-  
5 ficers have not, in practice, performed those job duties to the same degree and extent  
6 as campus police officers. Rather, institutional security officers maintain daily activ-  
7 ity/incident logs that might be used in college disciplinary proceedings against students  
8 or by campus police officers in criminal investigations. Institutional security officers  
9 conduct preliminary interviews with individual witnesses to an incident and report their  
10 findings to campus police officers or a college administrative body for disciplinary action.  
11 Institutional security officers do not arrest anyone or issue warnings. While they may  
12 confiscate/collect evidence (e.g., alcohol being consumed by student-minors on cam-  
13 pus), they do not prepare a chain of custody for that evidence.

14 Institutional security officers, however, issue parking tickets on some campuses,  
15 and they work with local police and campus police officers in maintaining order around  
16 the college campus. They serve as eyes and ears for campus police officers in policing  
17 college campuses. In emergency situations, such as a fire or reports of a gun inside a  
18 building, institutional security officers call for assistance from fire departments or cam-  
19 pus police officers, and institutional security officers must maintain their composure in

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<sup>23</sup> If an institutional security officer is not available, campus police officers or custodial employees may assume that responsibility.

<sup>24</sup> Some colleges have divided their institutional security officers between "walking" institutional security officers and "resident hall" institutional security officers. Resident hall institutional security officers are often responsible for working with students in a particular residence hall, while walking institutional security officers are mainly responsible for building security.

1 these circumstances and demonstrate empathy for those affected by an incident. Insti-  
2 tutional security officers have first-responder training and will provide CPR or other ap-  
3 propriate medical care for which they are trained. In light of their job responsibilities,  
4 institutional security officers face the risk of physical injury from others.

5 Some colleges have their institutional security officers work in three separate  
6 work shifts, while other colleges employ institutional security officers in only one or two  
7 shifts (e.g., an evening shift from 2 PM to 10 PM and a night shift from 10 PM to 6 AM).  
8 As with campus police officers, some colleges have contracted out this security-related  
9 work to independent, third-party organizations for particular shifts or locations.

10 Institutional security officers have frequent contact with campus police officers in  
11 the course of their work and will even work out of the same building. They may have  
12 two-way radios for communicating directly with campus police officers and for receiving  
13 communications from dispatchers. At one campus, those with the rank of institutional  
14 security officer III serve as supervisors for other institutional security officers on a par-  
15 ticular shift. Lower-ranking institutional security officers report problems they encounter  
16 or questions they have to an institutional security officer III, if available, at that college  
17 campus and submit time slips and any requests for time-off to the institutional security  
18 officer III. Lieutenants and police chiefs at campus police departments can direct the  
19 work of institutional security officers and assign them specific tasks like watching a spe-  
20 cific individual.

21 Occasionally, an institutional security officer is promoted to the position of cam-  
22 pus police officer. Upon that promotion, the individual still must take the required police

1 training mandated for campus police officers and pass the necessary qualifying exams  
2 discussed above.

3 Other unit members

4 Maintenance employees often drive college-owned vehicles in the course of their  
5 work, and on some campuses they wear uniforms specific to their jobs. Certain mainte-  
6 nance employees — electricians, plumbers, steam fitters, power plant engineers, and  
7 heating ventilation and air conditioning (HVAC) personnel — confront hazardous work-  
8 ing conditions on a daily basis, and they must be appropriately licensed prior to being  
9 hired. In order to maintain their licenses, some of these maintenance personnel must  
10 complete a certain level of coursework every few years (the amount of coursework and  
11 the length of time allowed to complete the coursework varies by occupation). While not  
12 responsible for enforcing criminal law in the Commonwealth, several maintenance titles  
13 must follow and enforce federal and state legal requirements (e.g., HVAC personnel  
14 must maintain certain records when reclaiming refrigerant). Maintenance employees  
15 also carry certain tools that can be characterized as weapons, such as buck knives,  
16 which they use in the course of carrying out their job responsibilities. Finally, certain  
17 maintenance employees must respond to emergencies in campus buildings (e.g., a fire  
18 inside a campus power plant). In these circumstances, maintenance personnel are re-  
19 sponsible for shutting down faulty equipment and making sure that equipment is safe to  
20 operate before allowing campus operations to resume.

21 Due to their specific job duties, employees in one classification usually do not  
22 perform the work of another classification. For example, a plumber will not perform the  
23 job duties of a campus police officer, and a campus police officer will not perform the

1 work of HVAC personnel. The training and job skills of each position are unique. Nev-  
2 ertheless, a campus police officer at one college campus voluntarily performs overtime  
3 snow removal work during winter snow storms.

4 In the course of carrying out their jobs, maintenance employees will often interact  
5 with campus police officers and institutional security officers. Those interactions usually  
6 occur when unit members run into each other while performing their jobs. The ensuing  
7 conversations have included issues ranging from collective bargaining concerns to how  
8 these unit members will coordinate their responses in restoring college operations after  
9 a fire in a classroom or dormitory.

10 All unit members carry identification cards issued to them by their respective col-  
11 lege.

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12 Bargaining concerns

13 Council 93 has three full-time staff representatives who represent unit members.  
14 The staff representatives can be reached via office phone, mobile phone, or e-mail  
15 messages, and each travels every week to the ten or so campuses for which each is  
16 responsible. These staff representatives report to Council 93's higher education coordi-  
17 nator who in turn reports to the executive director for Council 93.

18 At each campus, Council 93 typically has a chief steward for each bargaining unit  
19 along with other stewards who assist the chief stewards when handling grievances or  
20 other collective bargaining matters. These chief stewards are elected along with "table  
21 officers": a president, vice-president, recording secretary, and treasurer.

22 In the grievance process Council 93 has negotiated with the Higher Ed. Board,  
23 the chief steward usually files any grievances with the campus human resources direc-

1 tor.<sup>25</sup> The campus human resources director then decides either to hear the grievance,  
2 which places the matter at the second step of the grievance process, or to remand the  
3 matter back to a department head for a first-step grievance hearing. If the grievance is  
4 unresolved after the first and second-step hearings, a staff representative for Council 93  
5 can take the matter to the college president, the third step in the grievance process. At  
6 the fourth step of the grievance process, a joint labor-management committee attempts  
7 to resolve the matter. If no resolution is possible, an executive board for Council 93  
8 consisting of the table officers and all the chief stewards in units I and II vote on whether  
9 to take the grievance to binding arbitration.<sup>26</sup>

10 A Council 93 staffer also handles questions a unit member might have about  
11 whether his or her job is properly classified. The affected employee files certain paper-  
12 work with a campus human resources representative in a process called reallocation.  
13 The human resources representative may agree with the employee and reallocate the  
14 person into a higher job classification. Or, if the human resources representative dis-  
15 agrees with the requested reallocation, the staff representative then assists the individ-  
16 ual in presenting the request to a joint labor-management panel that decides the reallo-  
17 cation question.

18 For contract negotiations, Council 93 solicits volunteers from each group within  
19 the bargaining unit to be on the negotiating team.<sup>27</sup> From one to three campus police

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<sup>25</sup> Council 93's staff representatives often first attempt to resolve matters informally before filing grievances.

<sup>26</sup> As of March of 2005, five campus police officers serve on Council 93's executive board.

<sup>27</sup> For the last four contracts, Council 93 and the Higher Ed. Board have agreed to one collective bargaining agreement covering both Units I and II.

1 officers have served on the negotiating team for the last three contracts.<sup>28</sup> During the  
2 last round of contract talks, these volunteers surveyed campus police officers and de-  
3 veloped approximately eighty contract proposals for the negotiating team.

4 Council 93 also appoints liaisons who report back to the campus police officers at  
5 each campus on issues and concerns that arise during contract talks. Council 93 has  
6 these liaisons because certain collective bargaining concerns of campus police officers  
7 are unique. Many of their concerns are included in a supplemental agreement for public  
8 safety personnel.<sup>29</sup> This supplemental agreement specifies that employees who under-  
9 take job-related training like attending a police training academy are obligated to remain  
10 with the Higher Ed. Board a certain amount of time after that training is completed. The  
11 supplemental agreement further indicates that the Higher Ed. Board will cover the full  
12 expenses of all such training and specifies how that compensation is provided. How-  
13 ever, if the employees fail to remain with the Higher Ed. Board the specified amount of  
14 time, those employees must reimburse the Higher Ed. Board for the cost of the training.  
15 The supplemental agreement also provides for a clothing allowance, compensation for  
16 all costs associated with appointment as a special police officer under M.G.L. c.22C,  
17 § 63, compensation of up to \$250 for immunization for Hepatitis B, and paid detail work.

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<sup>28</sup> For the most recent collective bargaining agreement, effective by its terms from July 1, 2001 to June 30, 2004, three campus police officers served on the negotiating team. The negotiating team also included clerical staff, trades people, and building maintenance personnel.

<sup>29</sup> Besides this supplemental agreement for campus police officers and institutional security officers, there is a supplemental agreement for all unit members at the Massachusetts Maritime Academy.

1 In the most recent collective bargaining agreement, Council 93 negotiated a  
2 night/weekend pay differential of an additional 75 cents per hour,<sup>30</sup> an increase in unit  
3 members' clothing allowance to \$700 by the final year of the collective bargaining  
4 agreement, and reimbursement to campus police officers for the bullet-proof vests they  
5 are required to wear.<sup>31</sup> Council 93 and the Higher Ed. Board additionally agreed to a  
6 \$300 stipend for campus police officers who work as emergency medical technicians,  
7 an additional duty many campus police officers have assumed.

8 For a successor contract, some campus police officers want all unit members to  
9 have body armor available to them. They also want a schedule of four days on and two  
10 off instead of the current five-day schedule, so the campus police officers will have more  
11 opportunities to rest throughout the year. Additionally, they want compensation from the  
12 Higher Ed. Board for the costs associated with maintaining civilian clothes. Council 93  
13 has proposed and the Higher Ed. Board has tentatively agreed to create a campus po-  
14 lice officer III position.

15 While staffers for Council 93 lack expertise in criminal law and police practices,  
16 those staffers have represented campus police officers in several local matters at col-  
17 leges campuses, including the use of firearms at Salem State College, the use of over-  
18 time at Salem State College, Massasoit Community College, and Bristol Community  
19 College,<sup>32</sup> and the use of a video surveillance system at Massasoit Community College.

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<sup>30</sup> The previous differential was only fifty cents per hour and did not include work on weekends. Campus police officers were largely responsible for this change.

<sup>31</sup> This benefit is worth approximately \$1,000.

<sup>32</sup> The negotiated agreement at Bristol Community College, for example, indicates that overtime opportunities will be offered first to those unit member campus police officers and institutional security officers who volunteer to be on a primary overtime list and then

1 For instance, Council 93 conducted impact bargaining over the decision to arm campus  
2 police officers at Westfield State College with firearms. That bargaining started ap-  
3 proximately a year prior to implementation and involved regular consultation with the  
4 affected campus police officers. Council 93 negotiated a provision to the new policy  
5 providing that those campus police officers who did not pass firearm testing require-  
6 ments would retain their current positions. When one of the affected campus police of-  
7 ficers at Westfield State College failed one of the firearm-related testing requirements,  
8 Council 93 filed a grievance. The campus police chief and Council 93 resolved the  
9 grievance by allowing the campus police officer in question to retake the failed test,  
10 which he subsequently passed.

11 Council 93 also has bargained over workload concerns at Bristol Community Col-  
12 lege when the campus police chief began requiring campus police officers to secure all  
13 campus buildings. In January of 2004, a Council 93 staffer and the campus police chief  
14 reached an agreement that divided securing interior doors from exterior doors. Accord-  
15 ing to the agreement, securing interior doors would continue to be the responsibility of  
16 the campus custodial staff while campus police officers would assume securing exterior  
17 doors.

18 Council 93 has resolved disputes informally, such as when a campus police offi-  
19 cer at Westfield State College complained of harassment from a supervisor and Council  
20 93 worked out a mutually agreeable shift change. Council 93 has pursued grievances

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to those campus police officers and institutional security officers who do not volunteer to be on the primary list as well as to non-unit, part-time campus police officers and institutional security officers. If no one from either list accepts the overtime assignment, the campus police chief can mandate overtime according to inverse order of seniority.

1 by institutional security officers when they were denied promotions to campus police of-  
2 ficer positions.

3 Council 93 has not resolved several issues that concern campus police officers.  
4 On or about December 17, 2004, the Massasoit Community College Police Department  
5 notified campus police officers that it was contracting out firearms instruction and ar-  
6 morers. The current firearms instructor sent an e-mail message to a Council 93 staffer  
7 about grieving this loss of work. The staffer then met with campus police officials about  
8 the change and planned to file a prohibited practice charge with the Board if the issue  
9 was not resolved satisfactorily. However, the campus police officer in question does not  
10 recall the staffer informing him of these actions.

11 Finally, the campus police officers who filed this petition for the most part have  
12 not filed grievances, participated in bargaining sessions, or otherwise sought out repre-  
13 sentation by Council 93.

#### 14 Opinion

15 The Board does not favor severance petitions and has declined to use them to fix  
16 imperfectly constructed bargaining units. City of Quincy, 31 MLC 35, 38 (2004); Town of  
17 Marblehead, 27 MLC 142, 145 (2001). To sever a group of employees from an existing  
18 bargaining unit, the petitioner "must demonstrate that the petitioned-for employees consti-  
19 tute a functionally distinct appropriate unit with special interests sufficiently distinguishable  
20 from those of other unit employees, and that special negotiating concerns resulting from  
21 those differences have caused or are likely to cause conflicts and divisions within the bar-  
22 gaining unit." City of Boston, 25 MLC 105, 119 (1999).

1 Functionally distinct

2           The first prong of the Board's severance analysis requires the petitioner to dem-  
3 onstrate that the proposed bargaining unit consists of employees who comprise a func-  
4 tionally distinct, appropriate unit with special interests sufficiently distinguishable from  
5 those of the existing unit of employees. City of Quincy, 31 MLC at 39. The Board con-  
6 siders many factors in determining whether the petitioned-for employees constitute a  
7 functionally distinct unit from the existing bargaining unit, including whether the peti-  
8 tioned-for unit of employees: 1) have specialized skills that are acquired through a re-  
9 quired course of study; 2) maintain and enhance their skills through continuing educa-  
10 tion; 3) perform significantly different job functions compared with the existing unit of  
11 employees; 4) share work locations or common supervision with the existing unit of em-  
12 ployees; and 5) either interact with or share duties with any other bargaining unit mem-  
13 ber. Id., citing Town of Barnstable, 28 MLC 165, 169-170 (2001); City of Lawrence, 25  
14 MLC 1, 5 (1998).

15           By virtue of its composition, Unit II contains numerous functionally distinct positions.  
16 While campus police officers are not the only employees in Unit II who possess specific  
17 skills, undergo extensive training and certification, and enforce laws, the skills, training,  
18 certification, and laws campus police officers enforce are unique to them.<sup>33</sup> Furthermore,  
19 their uniforms, hours of work, and opportunities for overtime are distinct from other unit

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<sup>33</sup> While institutional security officers share some of the legal responsibilities campus po-  
lice officers have for securing campus property and maintaining safety, their authority to  
enforce criminal laws or campus regulations is much more limited. Moreover, they lack  
the training and certification campus police officers possess, and institutional security offi-  
cers do not undertake the extensive continuing education that campus police officers un-  
dergo.

1 members. Campus police officers use equipment, such as handcuffs and batons, that is  
2 not available to other unit members. Finally, the record shows that campus police officers  
3 do not share common supervision with other unit members.

4 In its brief, the Association contends for the first time in these proceedings that  
5 when the Board certified Unit II in 1976, the position of campus police officer differed  
6 significantly from what exists currently. According to the Association, campus police of-  
7 ficers functioned as security guards at that time. However, the Association introduced  
8 no evidence at the hearing to support that contention. City of Boston, 10 MLC 1140,  
9 1147 (1983) (allegations made after a hearing closes are not part of the record). Absent  
10 evidence of compelling changes in the job duties of the disputed positions since 1976, we  
11 decline to modify a bargaining unit that the Board certified was appropriate for collective  
12 bargaining, even if the evidence demonstrates that the proposed bargaining unit contains  
13 some functionally distinct members. City of Quincy, 31 MLC 35, 39 (2004); City of Fall  
14 River, 26 MLC 13, 17 (1999) (severance petition dismissed when parties failed to demon-  
15 strate any change in bargaining unit since last certification election); Boston School Com-  
16 mittee, 25 MLC 17, 21-2 (1998) (differences in pay and job duties among unit employees  
17 unchanged from when Board previously certified unit). Even if the Association had shown  
18 a compelling change in the position of campus police officer, it has not met its burden un-  
19 der the second prong of the severance analysis, as described in more detail below.

#### 20 Special Bargaining Concerns

21 The second prong of the severance analysis requires a finding that special negoti-  
22 ating concerns of the campus police officers have caused or are likely to cause serious  
23 conflicts or divisions within the bargaining unit that will effectively interfere with collective

1 bargaining. City of Boston, 25 MLC at 120. To establish the requisite degree of conflict  
2 necessary for severance, the petitioner must show that the petitioned-for employees play  
3 no role in the representation process, cannot participate on the negotiating team, and have  
4 their interests subordinated by the incumbent union to the interests of the other employees  
5 in the unit. City of Quincy, 31 MLC at 39, citing City of Somerville, 27 MLC 62, 66 (2000)  
6 (further citations omitted). However, the petitioned-for employees' inability to achieve their  
7 bargaining goals within a larger unit or their dissatisfaction with their bargaining represen-  
8 tative's accomplishments is insufficient to establish the type of conflict necessary to war-  
9 rant severance. Town of Marshfield, 15 MLC 1130, 1136 (1988); New Bedford School  
10 Committee, 12 MLC 1058, 1060 (1985); Lowell School Committee, 8 MLC 1010, 1014  
11 (1981).

12 The Association argues that the law enforcement responsibilities of campus po-  
13 lice officers demonstrate potential and actual conflicts with unit members, because  
14 these employees investigate, arrest, charge, testify against, and prosecute Unit II mem-  
15 bers.<sup>34</sup> However, the record does not show a causal relationship between the law en-  
16 forcement actions of campus police officers and the personnel decisions of state and  
17 community college officials. While campus police officers have broad authority in law  
18 enforcement matters over any person on a college campus, they have no authority to  
19 determine what discipline, if any, state or community colleges can mete out against Unit  
20 II members for violating either criminal law or campus regulations. The incidents cited

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<sup>34</sup> Many of the incidents cited by the Association either do not involve Unit II members, or the record is silent regarding the unit status of the individuals involved.

1 by the Association confirm this testimony.<sup>35</sup> Furthermore, there is nothing in the record  
2 to suggest that campus police officers have even considered unit membership or their  
3 relationship to their employer when issuing traffic citations against Unit II members, of-  
4 fering testimony at criminal proceedings involving Unit II members,<sup>36</sup> preventing or  
5 prosecuting possible criminal violations, or taking some other action against Unit II  
6 members.

7 Moreover, the Association's emphasis on how the law enforcement activities of  
8 campus police officers may create conflicts with other unit members ignores the possi-  
9 bility that members may also willingly cooperate with campus police officers. By arrest-  
10 ing and prosecuting those who steal from or assault others on a college campus, cam-  
11 pus police officers are providing for the safety and protection of their fellow unit mem-

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<sup>35</sup> The Association presented only one incident in which a campus police officer allegedly disciplined a co-worker — when a campus vice-president asked a campus police officer to "shake up" a carpenter. Even presuming that the carpenter in question was a member of Unit II — something not clear in the record — the campus police officer in question admitted that this action was outside his regular job duties. Other law enforcement incidents that involved Unit II members show that: (a) the traffic citation issued to the president of Local 1067 has not led to any formal discipline of him or had any impact on his employment at Westfield State College; (b) Salem State College, not campus police officers, decided to terminate the employment of the custodians accused of stealing electronic equipment from the college; (c) Bickford had no role in determining what discipline was appropriate for the maintenance worker caught stealing gas; (d) the record is silent regarding what weight, if any, college officials at Framingham State College gave to the actions of campus police when terminating the employment of the individual charged and found guilty of committing open and gross lewdness and lascivious behavior; and (e) the record does not show what discipline, if any, was meted out to Unit II members (other than Olsen) for traffic violations issued by campus police officers or what impact, if any, towing Unit II members' vehicles for violating state or campus traffic rules has had on collective bargaining matters.

<sup>36</sup> There is nothing in the record to indicate that campus police officers have testified at disciplinary hearings.

1 bers. Furthermore, the record is replete with evidence regarding how campus police  
2 officers cooperate with other unit members. Campus police officers transport nurses to  
3 accident scenes, coordinate the evacuation of buildings with maintenance employees in  
4 the case of fires, complement their efforts with those of institutional security officers, and  
5 receive directives from dispatchers who belong to Unit I.

6 Notably, the record shows that campus police officers have served and continue  
7 to serve on Council 93's executive board for Units I and II and have served on Council  
8 93's negotiating teams. In the collective bargaining agreements between the Higher Ed.  
9 Board and Council 93, there are numerous provisions that directly relate to the concerns  
10 of campus police officers, such as reimbursement for bullet-proof vests, a clothing al-  
11 lowance, reimbursement for training, and a night/weekend pay differential. Moreover,  
12 Council 93 staffers have represented campus police officers and negotiated resolutions  
13 on several issues ranging from overtime assignments to the use of firearms. Therefore,  
14 the evidence is insufficient to demonstrate that the petitioned-for employees have special  
15 negotiating concerns that have caused or are likely to cause serious conflicts or divisions  
16 within the bargaining unit effectively interfering with collective bargaining.

17 The Association presents additional reasons outside of the Board's traditional sev-  
18 erance analysis in an effort to sever campus police officers from Unit II. We turn to con-  
19 sider their merit.

#### 20 Severance of Guards as a Matter of Policy

21 The Association argues that the Board should, as a matter of policy, segregate  
22 campus police officers into their own bargaining units. To this end, the Association  
23 urges the Board to follow the hearing officer's decision in County of Middlesex, 13 MLC

1 1654, 1661 (H.O. 1987), to endorse the proviso in the National Labor Relations Act  
2 (NLRA) regarding security guards.<sup>37</sup> In that case, the hearing officer allowed severance  
3 of police officers from a larger unit of employees because of the security duties the po-  
4 lice officers exercised. "Security police must owe their allegiance to their employer," the  
5 hearing officer explained, "especially with respect to enforcing rules to protect the em-  
6 ployer's property against employees and the general public, or to protect the safety of  
7 persons on the employer's premises." Id.

8 The decisions of hearing officers, however, do not serve as precedent in Board  
9 proceedings. City of Taunton, 26 MLC 225, 227 n.5 (2000); Town of Plainville, 18 MLC  
10 1001, 1011 (1991). Furthermore, the Board explicitly held in City of Somerville, 28 MLC  
11 60, 63 (2001), that a prohibition against mixing guard and non-guard units was not ger-  
12 mane to the public sector. Congress enacted § 9(b)(3) of the NLRA "to insure to an em-  
13 ployer that during strikes or labor unrest among his other employees he would have a  
14 core of plant-protection employees who would enforce the employer's rules for the pro-  
15 tection of his property and persons thereon without being confronted with a division of  
16 loyalty between the employer and dissatisfied fellow union members." McDonnell Air-  
17 craft Corp., 109 NLRB 967, 969, 34 LRRM 1489, 1489 (1954). Because public-sector  
18 employees are prohibited from striking under Section 9A(a) of the Law,<sup>38</sup> the Board in

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<sup>37</sup> Section 9(b)(3) of the NLRA, 29 U.S.C. § 159(b)(3), prohibits the National Labor Relations Board (Board) from including in a bargaining unit "any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

<sup>38</sup> Section 9A(a) of the Law states: "No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall induce, en-

1 City of Somerville found that the type of bargaining unit segregation expressed in  
2 § 9(b)(3) of the NLRA was inapplicable under M.G.L. c.150E.<sup>39</sup> 28 MLC at 63. The  
3 Board also pointed out that it previously had recognized units where security-related  
4 personnel had been grouped with non-security related personnel. Id. At 63-64, citing  
5 Dukes County/Martha's Vineyard Airport Commission, 25 MLC 153 (1999), and City of  
6 Springfield, 24 MLC 50 (1998).

7 The Association asks the Board to distinguish City of Somerville, because the  
8 law enforcement responsibilities of campus police officers are wholly distinct from other  
9 unit members and have led and will lead to irreconcilable conflicts with unit members  
10 due to campus police officers' responsibilities to enforce state law and campus regula-  
11 tions. These arguments are similar, if not identical, to arguments already examined un-  
12 der the second prong of the Board's severance analysis and thus provide no basis for  
13 distinguishing City of Somerville.

14 The Association next contends that the Board recognized this alleged labor  
15 relations conflict between law enforcement personnel and non-law enforcement  
16 personnel when it placed state law enforcement officers in their own bargaining unit.<sup>40</sup>

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courage or condone any strike, work stoppage, slowdown or withholding of services by such public employees."

<sup>39</sup> The Board reached a different conclusion under M.G.L. c.150A when accepting parties' stipulations regarding an appropriate bargaining unit in ITT Job Training Services Inc., 19 MLC 1032, 1033 (1992) (parties stipulated to bargaining unit that excluded security and safety personnel). Because this decision was based on a consent agreement, it does not serve as precedent for c.150A representation questions. See City of Fall River, 26 MLC at 17 n.25 (Board's approval of consent agreements is based on the representations of the parties and does not bind the Board in its role of establishing appropriate bargaining units).

<sup>40</sup> There are two statewide units that involve security-related job functions: Unit 5 for law enforcement officers and Unit 4 for "Institutional Security, including correctional officers

1 However, the Board created statewide bargaining units 4 and 5 not because security-  
2 related personnel had to be separated from employees who did not have these  
3 responsibilities but because of stipulations by the relevant parties regarding the  
4 community of interest for each proposed unit. Commonwealth of Massachusetts, 18  
5 MLC 1381, 1384-92 (1992) (Board describes bargaining history of the statewide  
6 bargaining units); State Bargaining Unit Rules, 1 MLC 1318 (1975) (Board articulates its  
7 reasons for the creation of the various statewide bargaining units). Moreover, as the  
8 Board noted in City of Somerville, supra, the statutory units for the Trial Court segregate  
9 court officers and probation officers, but not security employees, who are included in the  
10 overall non-professional units. 28 MLC at 63, citing Chief Justice for the Administration  
11 and Management of Trial Court, 23 MLC 9 (1996) (Commission accreted employees,  
12 including security guards, transferred from counties to Trial Court to statutory non-  
13 professional unit). Cf. Commonwealth of Massachusetts, 31 MLC 115 (2005) (Board  
14 dismisses a petition to represent lieutenants and captains in the State Police because of  
15 specific exclusion in the Law). Consequently, the Association's contention is not  
16 persuasive.

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and other employees whose primary function is the protection of the property of the employer, protection of persons on the employer's premises and enforcement of rules and regulations of the employer against other employees." See 456 CMR 14.07(1). While the Association alleges that campus police officers are equivalent to the law enforcement personnel in statewide bargaining unit 5, the Supreme Judicial Court observed in Harvard Crimson, Inc. v. President & Fellows of Harvard College, 445 Mass. 745, 752 (2006) (citations to statutes omitted), that the police powers of campus police officers "are, by statute, far less extensive than the powers of regular police" and not equivalent to the powers afforded a member of the state police.

1 Finally, the Association also points to other states that have segregated law en-  
2 forcement employees into separate bargaining units to indicate how serious and signifi-  
3 cant this conflict between security and non-security personnel is. The Association ar-  
4 gues that these other states have decided to place law enforcement personnel in their  
5 own bargaining units in many cases without consideration of their right to strike. An ex-  
6 amination of several of the states cited by the Association reveals little, if any, support  
7 for the Association's arguments. For the most part, the policies of these other states are  
8 based on: (a) differences over who can strike and the ensuing problems of creating  
9 mixed units of employees, some of whom possess a right to strike and others being  
10 prohibited from self-help, see, e.g., Manitowoc County, Dec. No. 25851 (WERC January  
11 1989) (Wisconsin Employment Relations Commission puts law enforcement personnel  
12 with the power to arrest in separate municipal bargaining units because they are prohib-  
13 ited from striking whereas other municipal employees are not); and Minn. Stat.  
14 § 179A.03, subd.7 (defining police officers as essential employees for purposes of pub-  
15 lic-sector collective bargaining) and Minn. Stat. § 179A.18 (prohibiting strikes by essen-  
16 tial employees but allowing non-essential employees to strike); (b) policies arising from  
17 concerns or statutory mandates unique to those states, see, e.g., Temple University, 26  
18 PPER ¶26161 (1995) (a bargaining representative cannot under Pennsylvania public-  
19 sector collective bargaining law represent both municipal police officers and campus  
20 security guards, because law enforcement personnel are excluded from collective bar-  
21 gaining under the state's Public Employee Relations Act, 43 P.S. §§ 1101.101 et seq.,  
22 and pursue collective bargaining under Act 111 of 1968, and because organizations that  
23 seek to represent security guards cannot also represent non-guards under 43 P.S.

1 § 1101.604(3)); and County of Erie and Sheriff of Erie County, 29 PERB ¶3031 (1996)  
2 (New York's Public Employment Relations Board determined that sheriff deputies who  
3 engage in police services or ancillary services directly related to law enforcement prop-  
4 erly removed from a unit of other sheriff deputies because "police service is concerned  
5 with the broad spectrum of human rights, public order, and the protection of life and  
6 property") (internal citations omitted); or (c) reasons not applicable to the petition at is-  
7 sue here, see, e.g., Mo. Rev. Stat. § 105.510 (Missouri statute excludes police officers  
8 from collective bargaining and so there is no issue about whether they should or should  
9 not be included in bargaining units with other kinds of employees); City of St. Louis,  
10 Public Case No. 84-116 (slip op. February 4, 1985) (police officers include those per-  
11 sons engaged in law enforcement who, regardless of job title, perform duties and func-  
12 tions substantially comparable to those performed by police and deputy sheriffs).

### 13 Severance of Campus Police Officers As Supervisors

14 The Association further argues that the Board should sever the campus police  
15 officers because their role in campus operations places them in a position analogous to  
16 supervisors of unit members.<sup>41</sup> In support of this argument, the Association points to

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<sup>41</sup> The Board generally establishes separate bargaining units for supervisory employees and the employees they supervise. City of Chicopee, 1 MLC 1195 (1974). This well-established policy stems from the Board's belief that individuals who possess significant supervisory authority owe their allegiance to their employer, particularly in the areas of employee discipline and productivity. City of Westfield, 7 MLC 1245, 1250 (1980). Therefore, rather than place supervisors in the untenable position of having to discipline employees on whom they rely to secure improved wages, hours, and terms and conditions of employment through the collective bargaining process, the Board places supervisors in separate bargaining units. Id. It is the existence of supervisory authority, not the frequency of its use, that creates the likelihood of conflict between supervisors and subordinates. Town of Bolton, 25 MLC 62, 67 (1998).

1 campus police officers' law enforcement responsibilities as evidence of potential and  
2 actual conflicts with unit members. As already noted, the authority campus police offi-  
3 cers have in matters of law enforcement is distinct and not analogous to the authority of  
4 supervisors: (1) to make major personnel decisions regarding hiring, transfer, promo-  
5 tion, discipline, and discharge; (2) to recommend such personnel decisions; or (3) to as-  
6 sign and direct the work of their subordinates. Cf. Town of Holden, 25 MLC 175, 176  
7 (1999) (lieutenant and sergeants qualify as supervisors because they contribute to dis-  
8 cussions and make recommendations concerning disciplinary and hiring decisions dur-  
9 ing the bi-weekly departmental meetings with the police chief and assign overtime). Ac-  
10 cordingly, this argument is without merit.

11 Amendment of the Petition to Include Institutional Security Officers

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12 If the Board declines to sever campus police officers, the Association asks the  
13 Board to consider a combined unit of campus police officers and institutional security  
14 officers. Our reasons for declining to sever the campus police officers hold equally true  
15 for the institutional security officers. While they might have certain functionally distinct  
16 job duties, there is no evidence that those duties have changed since the Board's origi-  
17 nal certification in 1976. Moreover, the evidence does not reflect any facts demonstrat-  
18 ing that the ISO's have any special bargaining concerns that have caused or are likely  
19 to cause serious conflicts or divisions within the bargaining unit that will effectively inter-  
20 fere with collective bargaining. Finally, the showing of interest provided by the Associa-  
21 tion in this matter is less than fifty percent of the employees in this proposed unit, and

1 the Association has not indicated what uncommon or extenuating circumstances excuse  
2 the showing of interest requirement.<sup>42</sup>

3 Conclusion

4 For all of the above reasons, the Board declines to sever the campus police offi-  
5 cers from the existing unit and allows Council 93's motion to dismiss the petition.

6 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF LABOR RELATIONS

COMMONWEALTH EMPLOYMENT RELATIONS  
BOARD

  
MARJORIE F. WITTNER, CHAIR

  
ELIZABETH NEUMEIER, BOARD MEMBER

<sup>42</sup> Division Rule 14.05(2), 456 CMR 14.05(2), states that: "No petition filed under 456 CMR 14.03 seeking to represent a bargaining unit of employees already represented for purposes of collective bargaining and no petition filed pursuant to 456 CMR 14.04 shall be entertained, in the absence of uncommon or extenuating circumstances, unless the Board determines that the petitioner has been designated by at least fifty percent (50%) of the employees involved to act in their interest."