

1 (University) should be accreted into AFSCME's clerical and technical bargaining unit or
2 should remain in the Association of Professional Administrators'/MTA/NEA (APA)
3 bargaining unit. Upon review of the facts before us, we conclude that the medical
4 biller/coder shares a greater community of interest with AFSCME's clerical and
5 technical unit than the APA unit, and thus, we accrete the position into AFSCME's unit.

6 Statement of the Case

7 On June 13, 2013, AFSCME filed a unit clarification petition with the DLR
8 seeking to accrete the position of medical biller/coder in the University's Office of
9 Counseling and Health Services (CHS). On July 11, 2013, the APA filed a motion to
10 intervene in the case, which was subsequently allowed.

11 On March 13, 2014, the DLR held an informal conference. The parties also
12 submitted position statements, job descriptions and other supporting documents,
13 including affidavits, both before and after the conference. On August 14, 2014, the DLR
14 sent a letter (August 14, 2014 letter) to the parties directing them to show cause why the
15 Commonwealth Employment Relations Board (Board) should not resolve the unit
16 placement issues based on the facts contained therein. On August 26, 2014, the Board
17 of Higher Education (BHE) filed a response stating that it had no objections to the facts
18 as presented in the August 14, 2014 letter. AFSCME and the APA submitted no
19 responses. Because all material facts necessary to the Board's decision in this case
20 are not in dispute, the Board decides the appropriate unit placement of the disputed title
21 based on the following facts.

Facts1 Background

2 The BHE is the governing authority for fifteen community colleges and nine state
3 universities and colleges, including the University. On January 20, 1976, the former
4 Labor Relations Commission (Commission) in Case No. SCR-2016 certified AFSCME
5 as the exclusive bargaining representative for a unit of clerical and technical employees
6 (Unit 1) at the state colleges. The certification described Unit 1¹ as follows:

7 All regular full-time and regular part-time clerical and technical employees
8 including trust fund employees who were on the payroll of the Employer
9 for the period ending October 25, 1975, who have not since quit or been
10 discharged for cause and excluding all consultants, CETA managerial and
11 confidential employees.

12 AFSCME and the BHE are parties to a collective bargaining agreement that, by
13 its terms, was in effect from July 1, 2011 through June 30, 2014 (AFSCME
14 Agreement).² Article 1, the Recognition Clause, states in pertinent part:

15 The Employer recognizes the Union [AFSCME] as the sole and exclusive
16 bargaining agent for the purpose of establishing wages, hours, standards
17 of productivity and performance and any other terms and conditions of
18 employment for all full-time and regular part-time employees in the
19 bargaining units certified on January 20, 1976, and any and all
20 amendments since that date. A regular part-time employee is defined as
21 an employee who is expected to work 50% or more of the hours in a work
22 year of a full-time employee in the same title.

¹ Also, in 1976, the former Commission in Case No. SCR-2050 certified AFSCME as the exclusive bargaining representative for a unit of maintenance and security personnel (Unit 2).

² AFSCME and the BHE executed a memorandum of understanding on January 17, 2012, which they ultimately incorporated into the fully integrated AFSCME Agreement.

1 On June 6, 1980, the former Commission certified the APA as the exclusive
2 bargaining representative for a unit of professional employees in Case No. SCR-2144.

3 The certification, in pertinent part, described the unit as:

4 All regular full-time and regular part-time professional employees who
5 regularly work twenty (20) or more hours each week occupying
6 administrative positions at the State Colleges under the jurisdiction of the
7 Board of Trustees, including trust fund employees who work twenty (20) or
8 more hours each week and who are eligible to participate in group
9 insurance and state retirement plans including the following positions: 1)
10 director, academic and career advising, 2) director, administrative
11 services, 3) director, admissions, 4) director, athletics, 5) director, campus
12 center, 6) director, community services, 7) director, computer services, 8)
13 director, counseling, 9) director, financial aid, 10) director, health services,
14 11) director, housing, 12) director, instructional media, 13) director,
15 institutional research, 14) director, library, 15) director, minority affairs, 16)
16 director, placement, 17) director, planning and development, 18) director,
17 project, 19) director, student records and registrar, 20) associate dean
18 (academic) (except the person performing the job of principal of the
19 campus school and except the person designated as and performing the
20 duties of the master of the training ship at the Massachusetts Maritime
21 Academy), 21) associate dean (student), 22) associate director (except
22 the person designated as and performing the duties of the chief engineer
23 of the training ship at the Massachusetts Maritime Academy), 23)
24 assistant director, 24) staff associate (except the person performing the
25 job of director of security and except the person acting as the confidential
26 secretary to or the administrative assistant for the president or executive
27 vice-president), and 25) staff assistant (except the person performing the
28 job of director of security and except the person acting as the confidential
29 secretary to or the administrative assistant for the president or executive
30 vice-president).

31 The APA and the BHE were parties to a collective bargaining agreement that, by
32 its terms, was in effect from January 1, 2012 through December 31, 2013 (APA
33 Agreement).³ Appendix A of the APA Agreement describes the bargaining unit, and the
34 position of staff assistant, with the exception of staff assistants who act as the

³ The APA and the BHE have treated the terms of the APA Agreement as continuing to remain in effect after December 31, 2013.

1 confidential secretary to or administrative assistant for the president or vice-president of
2 a college, continues to be included in the APA's bargaining unit.

3 CHS

4 The University has approximately 9300 undergraduate and graduate students. The
5 University's CHS, which is located in the Student Union, provides health care for
6 students' physical and emotional needs. The Health Services section of the CHS
7 focuses on students' physical well-being, while the Counseling Services section focuses
8 on their emotional well-being. A director, Elisa Castillo (Castillo), oversees the CHS and
9 reports to the Dean of Students. The CHS's clinicians consist of five or six therapists,
10 who provide counseling services, and a physician and two nurse practitioners, who
11 provide physical health services. The two nurse practitioners are members of the APA's
12 bargaining unit.⁴ The CHS's non-clinical staff consists of an administrative assistant II,
13 who is a full-time employee and an AFSCME bargaining unit member, as well as the
14 medical biller/coder, who is a part-time, twenty-hour per week employee⁵ and currently
15 a member of the APA's bargaining unit. The administrative assistant II and the medical
16 biller/coder report directly to the CHS's Associate Director Kimberly Daly (Daly),⁶ who is
17 a nurse practitioner.

⁴ Clinical staffers wear office attire, as do non-clinical staffers, rather than white medical coats.

⁵ The medical biller/coder works two days for eight hours each day and one day for four hours.

⁶ Daly completes a performance evaluation for the medical biller/coder, although the record does not reveal whether that evaluation impacts the medical biller/coder's salary.

We have added this fact upon further review of the medical biller/coder's job description.

1 The CHS is open either 8 am to 5 pm or 8 am to 6 pm Monday through Friday. The
2 administrative assistant II staffs the front desk and greets students. When students
3 arrive, they present their health insurance cards⁷ and their student identification cards,
4 commonly referred to as Clipper Cards.⁸ If students need to make any payment for
5 services, they pay with personal checks, credit cards or the Clipper Cards. The CHS
6 does not accept cash payments. If a student appears to be in distress, the staff
7 member at the front desk immediately puts them in contact with a doctor, therapist or
8 nurse practitioner.

9 Medical Biller/Coder

10 On or about April 19, 2013, the University posted the new medical biller/coder
11 position.⁹ Prior to this date, the University had used private vendors to perform the
12 CHS's medical coding¹⁰ and billing functions.¹¹ Medical coding refers to the assignment
13 of the appropriate codes on claims by gathering information from medical records.
14 Medical billing refers to the conversion of a health care service into a billing claim. On
15 or about August 2013, the University hired an outside applicant, Cecile Gagne (Gagne),

⁷ All full-time students must present proof that they have health insurance before they can enroll at the University.

⁸ Students can also load funds onto their Clipper Cards and use them as debit cards.

⁹ The record does not contain a copy of that posting or information concerning how the medical biller/coder position came to be placed in the APA's bargaining unit.

¹⁰ No other University employee performs medical coding.

¹¹ The other eight state universities and colleges and the fifteen community colleges do not employ medical biller/coders.

1 to fill the position. The job description for the medical biller/coder contains the following
2 general summary of the position's duties:

3 Responsible for facilitating proper charge capture, billing and adjudication of
4 claims in accordance with standard billing policies and reimbursement
5 principles, clinical documentation practices, and CPT¹²/HCPS¹³ and ICD-9-
6 CM¹⁴ coding through the use of CHS electronic information systems and
7 manual processes.

8 Specifically, the medical biller/coder verifies that the CPT coding, ICD-9
9 diagnosis and modifier codes, which clinicians have assigned to services, are correct for
10 billing purposes.¹⁵ The incumbent in the position is responsible for the accurate and
11 timely submission of claims to third-party payers and reconciles invoices and payment
12 for services.¹⁶ The incumbent reviews, researches and identifies third-party payer
13 remittance errors, which includes monitoring denials to ascertain any trends in denials,
14 provides feedback on how to reduce denials and prepares revenue cycle statistical
15 reports for distribution. The medical biller/coder serves as a liaison between the CHS
16 leadership and clinical staff and outside billers when billing, coding and system inquiries

¹² The acronym CPT stands for current procedural terminology, which is a standardized coding system for physician services that the American Medical Association developed.

¹³ The acronym HCPS stands for Healthcare Common Procedure Coding System, which is a standardized coding system for the processing of health insurance claims.

¹⁴ The acronym ICD-9-CM stands for the International Classification of Diseases, Ninth Revision, Clinical Modification and is the official system of assigning codes to diagnoses and procedures associated with hospital utilization.

¹⁵ The University refers to this function as "internal auditing" on the position's job description.

¹⁶ Ten AFSMCE unit members in the position of accountant in the University's financial services office, and two APA unit members in the positions of staff assistant in the student accounts/bursar's office and staff assistant in the graduate division administration, also perform billing functions.

1 arise, which includes proposing solutions to problems that arise. The incumbent in the
2 position arranges for and provides education to the clinical staff on compliance with
3 coding and billing practices, which includes meeting with clinical staff and keeping them
4 apprised of changes to coding and billing practices. The incumbent also maintains the
5 existing medical record system¹⁷ and other tools, including charge master, contracted
6 fee schedules and insurance plan inputs.

7 The medical biller/coder assists with contacting third-party insurers, which
8 includes overseeing the verification of student eligibility.¹⁸ The incumbent in the position
9 provides customer service to students regarding their concerns about insurance,
10 explanation of benefit statements, claims, etc. The incumbent is responsible for
11 ensuring that the CHS is in compliance¹⁹ with the provisions of the Health Insurance
12 Portability and Accountability Act (HIPAA) and the Family Educational Rights and
13 Privacy Act (FERPA).²⁰ The medical biller/coder is also responsible for providing the

¹⁷ The following employees at the University's School of Nursing also handle medical records: two administrative assistant II's, who are AFSCME unit members, and a staff assistant, who is an APA unit member.

¹⁸ Although the administrative assistant inputs students' health insurance cards into the computer system when they come for appointments, the medical biller/coder notifies students if they need to contact their insurance companies to obtain pre-approval for certain services. She also communicates with insurers if questions arise about a student's eligibility for services.

¹⁹ The medical biller/coder's job description references that the incumbent assists with establishing and maintaining an internal compliance plan. When asked what the internal compliance plan was, the University replied that the incumbent was responsible for ensuring the CHS staff was in compliance with HIPAA and FERPA.

²⁰ AFSCME and the APA indicated that all of their bargaining unit members who work in student services are familiar with FERPA.

1 University's Finance Office²¹ with data showing the amount of services for which the
2 CHS charges, including what portion of those services the CHS billed to insurers, and
3 the amount of co-payments that the CHS took in from students.²² Finally, the medical
4 biller/coder assists with front desk coverage and office administrative support as
5 needed.²³

6 The qualifications for the position required include: a) a minimum of five years'
7 experience in coding, billing and healthcare revenue cycle operations, b) coding
8 certification or relevant experience,²⁴ c) prior familiarity and experience with all
9 components of an electronic medical record and practice management system, d)
10 preferable working knowledge of Point and Click EMR/patient account systems²⁵ and
11 PeopleSoft,²⁶ e) demonstrated proficiency in PC applications including Internet
12 research, Microsoft Office and database management, and f) knowledge of all matters
13 pertaining to insurance and benefit plans. The part-time salary of the medical
14 biller/coder is approximately \$23,000.²⁷

²¹ AFSCME and the APA both have bargaining unit members who work in the University's Finance Office.

²² The medical biller/coder has no role in formulating the CHS' budget.

²³ All CHS staff members assist at the front desk when needed.

²⁴ Gagne had the relevant experience but did not hold the certification.

²⁵ The parties were unaware of any other University position that required working knowledge of Point and Click EMR/patient account systems.

²⁶ All University employees are familiar with PeopleSoft.

²⁷ APA unit positions have a salary range of \$25,000 to \$92,000, while AFSCME unit positions have a salary range of \$24,762 to \$92,000.

1 Medical Records Librarian

2 AFSCME contends that the medical biller/coder position shares certain duties
3 with the AFSCME unit position of medical records librarian. The nine state colleges and
4 universities, including the University, do not currently employ a medical records
5 librarian. AFSCME submitted the Commonwealth of Massachusetts Human Resources
6 Division Class Specification for the medical records librarian job series in support of its
7 argument. Specifically, AFSCME notes that the incumbents in the medical records
8 librarian job series design medical records management systems, evaluate medical
9 records filing systems, determine the proper filing of medical records folders and code
10 medical reports for filing and reference purposes.²⁸ The qualifications for incumbents in
11 the job series require knowledge of: a) the principles and practices of medical records
12 management, b) the types and applications of medical records filing systems, c) the
13 numeric and alphabetic filing systems used in medical records work, and d) the
14 terminology, coding, symbols and standard abbreviations used in medical records work.

15 Opinion

16 The issue before us is whether the position of medical biller/coder should be
17 removed from the APA's bargaining unit and added to AFSCME's Unit 1. A unit
18 clarification petition is the appropriate procedural vehicle to determine whether newly-
19 created positions should be included or excluded or to determine whether substantial
20 changes in the job duties of an existing position warrant inclusion or exclusion from a
21 bargaining unit. Town of Athol, 32 MLC 50, 52, CAS-04-3567 (June 24, 2005). In

²⁸ The APA contends that the coding of medical records for filing and reference purposes is different than the coding that the medical records biller/coder does as part of the billing process.

1 analyzing whether a position should be accreted into an existing bargaining unit, the
2 Board considers whether: 1) the position was included or excluded from the unit at the
3 time the unit was originally recognized or certified; 2) the parties' subsequent conduct,
4 including bargaining history, discloses that the parties considered the position to be in
5 the bargaining unit; and 3) the position shares a community of interest with other
6 positions in the existing bargaining unit. Town of Granby, 28 MLC 139, 141, CAS-3477
7 (October 10, 2001); Worcester School Committee, 15 MLC 1178, 1180, CAS-2734
8 (September 20, 1988).

9 In examining the first prong of the accretion test, the record establishes that the
10 University created the medical biller/coder position on or about April 19, 2013.
11 Because the position was not in existence in 1976 when the Board certified AFSCME as
12 the exclusive bargaining representative for Unit 1, the first prong of the three part test is
13 inconclusive. Furthermore, in the absence of any bargaining history or other conduct
14 demonstrating that the parties considered the medical biller/coder position as either
15 included or excluded from AFSCME's bargaining unit, the second prong of the accretion
16 analysis is similarly inconclusive. See Town of Somerset, 25 MLC 98, 100, CAS-3145
17 (January 6, 1999) (absent bargaining history, the Board is unable to determine whether
18 the parties agreed to exclude a position from the bargaining unit). We must therefore
19 determine whether the disputed position shares a community of interest with either
20 bargaining unit.

21 AFSCME contends that because the medical biller/coder's job duties are clerical
22 or technical in nature, the position shares a community of interest with other AFSCME
23 Unit 1 members and that the University should have classified the position as an

1 Administrative Assistant III. Conversely, the APA asserts that the medical biller/coder's
2 enhanced responsibilities and interaction with patients, colleagues and third parties
3 make the position administrative in nature and, thus, the position shares a community of
4 interest with its unit members. Finally, the University argues that its original decision to
5 place the medical biller/coder position in the APA's bargaining unit was correct because
6 of the position's administrative duties, which include facilitating the proper coding and
7 billing of charges and the successful resolution of claims.

8 To determine whether employees share a community of interest, the Board
9 considers factors such as similarity of skills and functions, similarity of pay and working
10 conditions, common supervision, work contact and similarity of training and experience.
11 Town of Granby at 141; Boston School Committee, 12 MLC 1175, 1196, CAS-2598
12 (August 30, 1985). No single factor is outcome determinative. Town of Ludlow, 27 MLC
13 34, 36, CAS-3435 (October 17, 2000). Here, the medical biller/coder shares a
14 community of interest with both bargaining units based upon work contact, common
15 supervision, and certain job functions. The medical biller/coder has work contact with
16 both units because she works with the administrative assistant II, who is a member of
17 AFSCME's bargaining unit, and with the nurse practitioners, who are members of the
18 APA's bargaining unit. Also, when necessary, she assists the administrative assistant II
19 with front desk duties and helps provide office administrative support. The medical
20 biller/coder shares common supervision with the administrative assistant II because
21 both positions directly report to Daly, the CHS's Associate Director, who is also a
22 member of the APA's unit. Turning to job functions, the medical biller/coder handles
23 medical records as do certain employees who work at the School of Nursing,

1 specifically the administrative assistant II, who is an AFSCME unit member, and the
2 staff assistant, who is an APA unit member. The medical biller/coder also processes
3 bills as do ten accountants in the Financial Services Office, who are AFSCME unit
4 members, and the staff assistant in the student account/bursar's office and the staff
5 assistant in the graduate division administration, who are APA unit members.²⁹

6 Where a position shares a community of interest with more than one bargaining
7 unit, the Board places the position in the unit in which it shares the greater community of
8 interest. Board of Trustees, University of Massachusetts, 31 MLC 209, 215, CAS-04-
9 3577 (June 22, 2005). Upon review of the nature of the medical biller/coder's job
10 duties, we conclude that those duties are more closely aligned with those of the clerical
11 and technical positions in AFSCME's Unit 1 than the APA's bargaining unit. The
12 medical biller/coder uses her knowledge of various computer programs and systems,
13 including the electronic medical record and practice management system, to ensure the
14 timely and accurate submission of claims. Although the medical biller/coder acts
15 independently when she processes bills, she processes those bills in accordance with
16 standardized billing procedures and reimbursement principles. The incumbent must be
17 knowledgeable about standardized billing procedures and reimbursement principles in a
18 similar way that the accountants in AFSCME's Unit 1 must be familiar with standard
19 accounting procedures and principles. Further, the incumbent in the position does not
20 make independent decisions about the initial coding of claims. Rather, the clinicians

²⁹ Because we have concluded that medical biller/coder shares a community of interest with certain existing AFSCME Unit 1 positions, we need not reach AFSCME's argument that the medical biller/coder also shares a community of interest with the position of medical records librarian, a position that currently does not exist at the nine state colleges and universities.

1 designate the codes, and she verifies the accuracy of the codes that the clinicians
2 select. When the medical biller/coder verifies the accuracy, she relies upon the
3 guidelines contained in the CPT/HCPS and ICD-9-CM coding systems. The
4 requirement that the incumbent be familiar with those coding systems is similar to the
5 need for certain technical titles to be familiar with computer applications and operating
6 systems.

7 Although the APA also points out that the medical biller/coder performs certain
8 educational functions as do certain other APA unit positions, a review of the record
9 shows that the educational functions that the medical biller/coder performs consist of
10 meeting with clinical staff and keeping them apprised of changes to coding and billing
11 practices. Thus, the information that the medical biller/coder provides to clinical staff
12 directly assists her in performing her main job duties, which includes verifying the
13 accuracy of medical coding. Therefore, we do not find that those educational functions
14 supersede the community of interest that the medical biller/coder position shares with
15 other AFSCME Unit 1 positions.

16 Finally, placement of the medical biller/coder in AFSCME's bargaining unit would
17 also avert any potential conflicts that could arise by having the medical biller/coder and
18 the associate director, the title to whom the medical biller/coder directly reports, in the
19 same bargaining unit.

20 Conclusion

21 For the reasons set forth above, we grant AFSCME's petition to accrete the
22 medical biller/coder position into its Unit 1. We note that because the current full name
23 of the position is staff assistant medical biller and coder/revenue cycle specialist and

- 1 because staff assistant is an APA unit title, we accrete the position into Unit 1 but not
- 2 the title as it currently exists.
- 3 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



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