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Date issued: February 21, 2014

The Association of County Employees (ACE) filed this petition seeking to accrete two titles to its bargaining unit of employees at Plymouth County Sheriff's Department (Sheriff's Department): Part-time Deputy Sheriffs performing work as 1) Immigration and Custom Enforcement: Service (ICE) transportation officers; and 2) Assistant Fleet Supervisor. ACE contends that these titles share a community of interest with its existing bargaining unit and are otherwise appropriately accreted into its unit under the traditional three-step accretion analysis. The Department disagrees. For the reasons

1 set forth below, the Board declines to accrete the Part-time Deputy Sheriffs performing  
2 work as ICE transportation officers into ACE's bargaining unit, but accretes the  
3 Assistant Fleet Supervisor.

#### 4 Statement of Case

5 ACE filed this petition with the Department of Labor Relations (DLR) on  
6 December 23, 2011. The DLR investigated the petition through information requests  
7 and by conducting an informal conference on February 22, 2012. Both parties  
8 appeared at the conference and provided extensive position statements and supporting  
9 documents, including affidavits. On December 1, 2013, because it appeared that there  
10 were no material facts in dispute, the DLR sent the parties a letter asking them to show  
11 cause why the Commonwealth Employment Relations Board (Board) should not resolve  
12 the unit placement issue based on the information summarized therein. The parties'  
13 responses did not raise any material disputes of fact. The Board therefore issues this  
14 decision based on the facts in the show cause letter, as summarized below.

#### 15 Facts

##### 16 Bargaining Unit History and Composition

17 Before June 24, 1999, the Massachusetts Corrections Officers Federated Union  
18 (MCOFU) represented a bargaining unit of correctional officers and certain other titles  
19 employed by the Department at the Plymouth County Jail and House of Corrections  
20 (Facility). On June 24, 1999, in Case No. MCR-4723, the Board<sup>1</sup> certified ACE as the  
21 exclusive bargaining representative for the following unit:

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<sup>1</sup> References to the Board include the former Labor Relations Commission.

1 All correctional officers employed at the Plymouth County Jail and House  
2 of Corrections, all vocational instructors, lead electricians, plumbers,  
3 HVAC maintenance workers, warehouse supervisors, warehouse officers,  
4 K-9 unit sergeants and warrant unit sergeants but excluding the sheriff,  
5 deputy superintendents, assistant deputy superintendents, heat plant  
6 supervisors, farm superintendents, medical administrators, outside  
7 medical doctors, case workers, administrative assistants, steward I's, chief  
8 mechanical instructors, captains, lieutenants, clerical personnel,  
9 switchboard, operators, switchboard supervisors and all other employees.

10 The unit consists of a number of different titles with distinct responsibilities. There are  
11 approximately 300 bargaining unit members in all.

12 Correction Officers

13 Correction Officers provide care and custody of all inmates and detainees inside the  
14 Facility. Their duties include making rounds, conducting head counts and security  
15 checks, and writing reports and logs.

16 Transportation Officers

17 Transportation Officers are responsible for transporting all the different types of  
18 inmates housed at the Facility including county inmates, state inmates, juveniles and  
19 federal detainees including ICE detainees, as described in more detail below.  
20 Transportation Officers are also assigned certain duties for inmates and detainees that  
21 have no relationship with the Facility. For example, as part of the Warrant Management  
22 System (WMS), Transportation Officers are often asked by the courts to transport  
23 individuals with outstanding warrants (a.k.a. "safekeeps") from one court to the court  
24 from which the warrant issued. Transportation Officers also transport individuals  
25 without any connection to the Facility or the Department from courts to various  
26 rehabilitation facilities.

1           Transportation Officers have also transported ICE detainees with no connection  
2 to the Facility during “sweep” operations. In October 2011 and November 2011,  
3 Transportation Officer Karen O'Neill and another bargaining unit member were assigned  
4 to provide transportation in connection with an ICE sweep. Their operation was directed  
5 entirely by ICE personnel who were apprehending individuals. During the sweeps, the  
6 Transportation Officers transported the newly-apprehended ICE detainees from the  
7 sweep location to a number of other facilities, including the ICE holding center in  
8 Burlington MA, and then, at the end of the day, transported several new ICE detainees  
9 back to the Facility.

#### 10 Specialty Titles and Full-Time Deputy Sheriffs

11           Transportation Officers are one of several “Specialty” positions addressed in  
12 Article VIII, Section 1(C)(E) of the CBA, along with K-9 Officers/Sergeants and Warrant  
13 Unit Officer/Sergeants.<sup>2</sup> Employees holding these titles must obtain annual certification  
14 as Deputy Sheriffs to hold the full-time post. Specifically, pursuant to the CBA,  
15 bargaining unit members holding in these Specialty titles, are required to have a  
16 Massachusetts License to Carry a Firearm Class A or B – and other use of force and  
17 firearm qualification certifications. These qualifications are the same as those required  
18 for part-time Deputy Sheriffs (discussed below) to remain active and on-call.

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<sup>2</sup> The CBA also lists the “Front Gate Check Point” position as a Specialty, “Seasonal Detail” position. The Board takes administrative notice of its decision in Plymouth County Sheriff’s department, 30 MLC 85, CAS-02-3523, CAS-02-3535 (December 19, 2003), in which it determined that the Front Gate Check Point position, which previously had been staffed as a detail by non-bargaining unit Deputy Sheriff’s, should be accreted to ACE’s unit because it shared a community of interest with other bargaining unit employees who are required to serve as Deputy Sheriffs.

1 ACE estimates that approximately half of its bargaining unit members are  
2 commissioned Deputy Sheriffs. ACE further estimates that approximately 100 of its  
3 members work non-ICE details outside of their regular work schedule.<sup>3</sup>

4 Trades Titles

5 The ACE bargaining unit includes a number of licensed/certified trades positions  
6 such as lead electrician and electrician, plumbers, maintenance officers and HVAC  
7 maintenance officers.<sup>4</sup> These titles wear green uniforms. Unlike Correction Officers,  
8 Transportation Officers, Warrant Officers and Vocational Instructors, the trades  
9 positions do not have direct care and custody of inmates.

10 Part-time Deputy Sheriffs, Generally

11 Since before 1999, the Department has maintained a corps of non-unionized  
12 reserve or part-time Deputy Sheriffs whom it considers and sometimes refers to as  
13 temporary employees.<sup>5</sup> Part-time Deputy Sheriffs work on call, as needed, at the will of  
14 the Sheriff. The Department's Field Services division oversees the deputy detail

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<sup>3</sup> The Sheriff's Department employs other Full-time Deputy Sheriffs as MCOFU bargaining unit positions and non-union positions.

<sup>4</sup> The Board takes administrative notice of its decision in Plymouth County Sheriff's Department, 23 MLC 148, MCR-4443 (December 13, 1996). That decision concerned a petition filed by the National Association of Government Employees (NAGE) seeking to represent a number of trades titles employed by the Department, including electricians, plumbers, vocational instructors, and warehouse and maintenance employees. MCOFU intervened in the proceeding and sought to have an add-on election to include these titles in its correctional officers unit. After hearing, the Board determined that these titles shared a greater community of interest with MCOFU's unit than with NAGE's and excluded those titles from NAGE's unit. Id. at 150.

<sup>5</sup> In its response to the Show Cause letter, the Sheriff's Department clarified the difference between full-time Deputy Sheriffs and part-time or Reserve Deputy Sheriffs, which are explained above. For ease of reference, we refer to the Reserve/Part-time Deputy Sheriffs at issue here as part-time Deputy Sheriffs and modify the facts contained in the Show Cause letter to reflect this distinction.

1 programs of the Sheriff's Department and assigns all details. When working a detail,  
2 the requesting vendor or agency establishes the hours, work location, scope of work  
3 and rate of pay. The Sheriff's Department issues part-time Deputy Sheriffs' paychecks,  
4 however, and the part-time Deputy Sheriffs are considered Sheriff's Department  
5 employees.

6 Prior to 2001, the CBA between MCOFU and the Sheriff's Department permitted  
7 the Department to use part-time Deputy Sheriffs in the following four situations:

- 8 1. To fill in for bargaining unit members absent for more than five days;
- 9 2. For any transportation assignments and any outside details including but not  
10 limited to hospital security details, hospital visits, funerals, wakes, etc.;
- 11 3. During facility emergencies; or
- 12 4. For overtime assignments for which no bargaining unit member volunteered.

13  
14 During negotiations for ACE's first contract, ACE sought to restrict the  
15 Department's use of part-time Deputy Sheriffs. The result of these efforts was the  
16 following provision, which appeared in the parties' first CBA, effective July 1, 2001.

17 Temporary Employees

18 The parties agree that "temporary employees" shall no longer be used for  
19 Care and Custody of inmates inside or outside of the Plymouth County  
20 Correctional Facility. However, in the event an inmate is admitted to a  
21 hospital and/or funeral related services, temporary custody of that inmate  
22 may be granted at the discretion of the Sheriff.

23 During the most recent round of successor negotiations for the 2009-2012 CBA, the  
24 Union tried, but did not succeed, in eliminating the final sentence of this provision, which  
25 appears as set forth above in Article VII, Section Six (Section Six) of the 2009-2012  
26 CBA.

27 Off-Site Details

1 Before and after 2001, the Sheriff's Department utilized part-time Deputy Sheriffs  
2 to perform the following three off-site services involving security or monitoring of  
3 individuals who have no connection to the Facility:

- 4 1) Matron details at local police stations;
- 5 2) Extra security and transportation of arrestees at local July 4 celebrations; and
- 6 3) Providing security for the U.S. Marshal service at the Federal Courthouse.

7  
8 The Union has never filed a grievance over the Sheriff's Department's utilization of part-  
9 time Deputy Sheriffs for these services.

10 The Sheriff's Department also offers Road and County details to its Reserve  
11 Deputy Sheriffs. Road details are requested by towns in Plymouth County. Full-time  
12 Deputy Sheriffs' are offered the details first and part-time Deputy Sheriff's are offered it  
13 second. County details are hospital security details watching County inmates. These  
14 are offered to part-time Deputy Sheriffs.

#### 15 ICE Details

16 Since approximately 1998, the Sheriff's Department has contracted with ICE to  
17 house ICE detainees at the Facility and to transport them to and from courts, medical  
18 facilities, ICE facilities and other locations. The Sheriff's Department pays part-time  
19 Deputy Sheriffs a fixed rate, set by the Department of Labor, for ICE details. The  
20 Sheriff's Department bills ICE for the details, as well as for mileage when Department  
21 vehicles are used.

22 Before July 2001, part-time Deputy Sheriffs' ICE-related duties consisted of  
23 maintaining care and custody of ICE detainees admitted to hospitals, including  
24 transporting them to and from the hospitals. After 2001 and the inclusion of the  
25 Temporary Employees provision in the CBA, the part-time Deputy Sheriffs continued to

1 maintain care and custody of ICE detainees admitted to hospitals but, after 2006, and  
2 an award by Arbitrator Boulanger, the part-time Deputy Sheriffs ceased all transport of  
3 inmates and detainees to and from hospitals. That work was assigned only to  
4 bargaining unit members. The Sheriff's Department retained the discretion to assign  
5 hospital detail work inside the hospital either to part-time Deputy Sheriffs or to  
6 bargaining unit members.

7 In spring of 2010, ICE inquired about expanding part-time Deputy Sheriffs' ICE  
8 detainee security responsibilities, and, in particular, inquired whether the Sheriff's  
9 Department would allow part-time Deputy Sheriffs to enter the Facility with ICE  
10 detainees. On May 27, 2010, the Sheriff's Department informed an ICE representative  
11 that part-time Deputy Sheriffs would be allowed to bring detainees into the Facility and,  
12 on at least one occasion in 2010, the Department assigned part-time Deputy Sheriffs to  
13 the ICE Transportation detail. The Union filed a grievance in April 2010 over  
14 assignment, alleging that it violated two contract provisions, including Section Six.

15 On July 8, 2011, Arbitrator Diane Zaar Cochran issued an award holding that the  
16 Sheriff's Department violated Section Six by using part-time Deputy Sheriffs to perform  
17 ICE transport to and from the Facility.<sup>6</sup> As a remedy, she ordered the Department to  
18 cease and desist from using the part-time Deputy Sheriffs to perform such transports.  
19 Arbitrator Cochran also held, however, that Section Six permitted the Sheriff's  
20 Department to use part-time Deputy Sheriffs to perform ICE transport for inmates and  
21 detainees that had no connection to the Facility. In so holding, she relied on Section  
22 Six's language and the parties' past practice. She interpreted the first sentence of

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<sup>6</sup> Arbitrator Cochran's award referred to the Reserve Deputy Sheriffs as "part-time Deputies."



1 Section Six as pertaining only to inmates in the custody of the facility, whether they are  
2 located either inside or outside of the Facility. She rejected the Union's argument that  
3 the term "inmates" applied to inmates or detainees of *any* correctional facility or entity.  
4 She stated that her interpretation was supported by Section Six's second sentence,  
5 which permits the Sheriff's Department to grant "temporary custody" of inmates  
6 admitted to hospitals or funeral-related services. The Arbitrator reasoned that the  
7 Sheriff's Department could not grant temporary custody of inmates that were not  
8 already in its custody. As to past practice, the Arbitrator relied on the fact that the Union  
9 had never filed a grievance over the Department's use of part-time Deputy Sheriffs to  
10 perform the three off-site duties described above. Because these off-site duties  
11 involved the care and custody of persons unrelated to the Facility, the Arbitrator  
12 reasoned that this suggested the Union's acknowledgement that the part-time Deputy  
13 Sheriffs' duties must have some connection with the Facility for the Section Six ban to  
14 apply.

15 Since Arbitrator Cochran's award issued, part-time Deputy Sheriffs have ceased  
16 transporting ICE detainees to and from the Facility. They have continued, however, to  
17 transport ICE detainees that had no connection to the Facility from one location to  
18 another, i.e., from ICE facilities or other correctional facilities to courthouses or  
19 hospitals.

20 There are similarities in the ICE duties performed by bargaining unit  
21 Transportation Officers and part-time Deputies. Both work in teams of two, operate the  
22 same types of Department vehicles, use the same types of Sheriff's Department  
23 equipment, including restraints, and complete the same logs and "trip sheets."

1 Since 2010, nine different Reserve Deputy Sheriffs have performed ICE details.  
2 In February 2012, part-time Deputy Sheriffs spent an average of 21.2 hours a week  
3 working on ICE details. Since February 2012, six out of the nine part-time Deputy  
4 Sheriffs who perform ICE details spent between 8.9 and 31.59 hours per week  
5 performing non-ICE Road and County details

6 **Assistant Fleet Supervisor**

7 The Assistant Fleet Supervisor (AFS) position was created as a non-unit title in  
8 April 2011. It performs maintenance and repair on the Department's vehicles, including  
9 farm vehicles. When the Union first learned of this position in April 2011, it filed a  
10 grievance, claiming that the position was performing bargaining unit work ordinarily  
11 performed the Vocational Instructor – Vehicle Maintenance (Vocational Instructor). The  
12 Department denied the grievance and the Union decided to pursue the title through this  
13 petition instead.

14 The Department created the AFS title in order to have a professional automotive  
15 technician maintaining, repairing and diagnosing problems with the Department's fleet  
16 of motor vehicles and farm mechanical equipment. The AFS reports directly to the non-  
17 Union ADS/Fleet Manager.<sup>7</sup> The AFS works a flexible schedule, but mainly on the night  
18 shift when the vehicles are not in use. His base hours are Monday to Thursday from 4  
19 pm until midnight and Saturday from 7 am until 3 pm. The AFS covers for the Fleet  
20 Manager when he is on vacation (three weeks per year) and on personal time (five days  
21 per year). The AFS also covers the garage when the Fleet Manager is out. When the

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<sup>7</sup> On the Vocational Instructor job description, this title is referred to as the Fleet Supervisor.

1 Fleet Supervisor is out, the AFS is in charge of the garage but does not have any  
2 supervisory authority.

3 The AFS's job description states that the AFS must have a minimum of three  
4 years experience as a mechanic/technician and certification from the National Institute  
5 for Automotive Service Excellence (ASE) in a number of vehicle repair systems, such as  
6 Manual Drive Train & Axles, Suspension and steering. Preference is given to  
7 candidates with ASE certification as "Advanced Level Specialist, Master Automobile  
8 Technician and/or Registered Repair Technician." The current AFS is certified as a  
9 "Master Automobile Technician."

10 The AFS works in the garage, which is located on the same campus as the  
11 Facility, but in a separate building. At the beginning and end of each shift, the AFS  
12 obtains the keys to the garage from Central Control, which is located inside the Facility.  
13 Central control is staffed by a shift commander and Central Control officers, who are  
14 bargaining unit members. The Assistant Fleet Supervisor has no responsibility for the  
15 care or custody of inmates.

16 The Vocational Instructor is a bargaining unit member who also works in the  
17 garage. He spends 90% of his time supervising and instructing inmates on general  
18 repairs and maintenance of Department vehicles. When not teaching inmates,  
19 however, the Vocational Instructor performs maintenance and repair work on  
20 Department vehicles and is sometimes called in to perform emergency repair work. He  
21 works forty hours a week, Monday through Friday, and reports to the Fleet Supervisor,  
22 and, according to the job description, to the Assistant Fleet Supervisor, as needed. At

1 least once a week and at times when the AFS is filling in for the Fleet Manager, the AFS  
2 shares a shift with the Vocational Instructor.

3 The Vocational Instructor's job description states that a minimum of three years  
4 experience as a mechanic is required, but, unlike the AFS, the Vocational Instructor is  
5 not required to have ASE or advanced ASE certification. A further distinction between  
6 the AFS and Vocational Instructor's job descriptions is that the latter is required to  
7 demonstrate understanding and knowledge of correctional security practices and  
8 procedures. The Vocational Instructor and the AFS wear the same green uniform as  
9 the other bargaining unit trades titles.

10 Opinion<sup>8</sup>  
11

12 Before reaching the merits of the Union's petition as to these titles, we address  
13 the validity of the petition under the DLR's contract bar rule, 456 CMR 14.06 (1)(b).  
14 That rule states:

15 Except for good cause shown, no petition filed under the provisions of  
16 M.G.L. c. 150E, §4 shall be entertained during the terms of an existing  
17 valid collective bargaining agreement unless such petition is filed no more  
18 than 180 days and no fewer than 150 days prior to the termination date of  
19 said agreement, provided that a petition to alter the composition or scope  
20 of an existing unit by adding or deleting job classifications created or  
21 whose duties have been substantially changed since the effective date of  
22 the collective bargaining agreement may be entertained at other times.

23 The Sheriff's Department argues that the petition is contract-barred with respect to the  
24 part-time Deputy Sheriffs because it was filed during the term of the collective  
25 bargaining agreement and the part-time Deputy Sheriffs do not fall within any of the  
26 contract bar rule's exceptions. In particular, the Sheriff's Department notes that the

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<sup>8</sup> The Board's jurisdiction is not contested.

1 Sheriff's Department has employed part-time Deputies since before the Union was  
2 certified and their duties are not substantially different from other part-time Deputies that  
3 the Sheriff's Department uses for off-site details.

4 The Board disagrees that the petition is contract-barred as to this title.<sup>9</sup> Although  
5 the Sheriff's Department has used part-time Deputy Sheriffs in various capacities for  
6 many years, this petition specifically concerns part-time Deputy Sheriffs assigned to ICE  
7 transportation details, and not to part-time Deputy Sheriffs, generally. Further, the  
8 record shows that the ICE-related duties performed by part-time Deputies in connection  
9 with ICE detainees have materially changed several times since the Union was first  
10 certified in 1999. The most recent changes occurred in 2010 and 2011, when the  
11 Sheriff's Department indicated to an ICE representative that part-time Deputy Sheriffs  
12 could bring ICE detainees into the Facility and when it actually assigned a part-time  
13 Deputy to an ICE Transportation detail. The Union filed a grievance over the  
14 assignment. That grievance resulted in the Cochran arbitration award described above,  
15 which resulted in further changes in the duties performed by part-time Deputy Sheriffs  
16 assigned to ICE transportation details. Because the 2010 assignment and the 2011  
17 arbitration award occurred during the term of the collective bargaining agreement and  
18 resulted in material changes to the part-time Deputy Sheriffs' ICE-related duties, the  
19 Board finds it appropriate to entertain this petition at this time.

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<sup>9</sup> The Sheriff's Department does not argue that the petition is contract-barred with respect to the Assistant Fleet Supervisor. As set forth above, that title that was created in April 2011, after the effective date of the collective bargaining agreement.

1 Merits

2 A unit clarification petition is the appropriate procedural vehicle to determine  
3 whether newly-created positions should be included or excluded from a bargaining unit  
4 or to determine whether substantial changes in the job duties of existing positions  
5 warrant either their inclusion or exclusion from a bargaining unit. Sheriff of Worcester  
6 County, 30 MLC 132, 136, CAS-03-3543 (April 7, 2004) (citing North Andover School  
7 Committee, 10 MLC 1226, 1230, CAS-2525 (September 27,1983)). In analyzing  
8 whether an employee should be accreted into an existing bargaining unit, the Board  
9 uses a three-part test. It first determines whether the position was included in the  
10 original certification or recognition of the bargaining unit. Absent a material change in  
11 job duties and responsibilities, the Board will not accrete a position into a bargaining unit  
12 if it existed at the time of the original certification or recognition. Town of Granby, 28  
13 MLC 139, 141, CAS-3477 (October 10, 2001). If that examination is inconclusive, the  
14 Board will next examine the parties' subsequent conduct, including bargaining history,  
15 to determine whether the employee classifications were considered by the parties to be  
16 included in the unit. Finally, if that inquiry is inconclusive, the Board will examine  
17 whether the positions sought to be included in that unit share a community of interest  
18 with the existing positions. If the Board determines that the requisite community of  
19 interest exists, it will accrete the petitioned-for employee into the existing bargaining  
20 unit.

21 **Part-Time Deputy Sheriffs Assigned to ICE Transportation Details**

22 The first prong of the accretion requires us to determine whether these positions  
23 existed at the time of the original certification or recognition. The Sheriff's Department

1 argues that they did, because part-time Deputy Sheriffs have existed since that time  
2 However, as discussed in the preceding section, this petition concerns part-time Deputy  
3 Sheriffs assigned to ICE Transportation duties. In a similar vein, although the Sheriff's  
4 Department argues that this is not a separate position, we note that we have previously  
5 treated a security detail staffed by a part-time Deputy Sheriff as a separate position for  
6 purposes of determining whether it should be accreted to the Union's bargaining unit.  
7 See Plymouth County Sheriff's Department, 30 MLC 85 (2003). We do the same here  
8 with respect to part-time Deputy Sheriffs performing ICE transportation details. Thus, in  
9 this case, part-time Deputy Sheriffs have performed some duties in connection with ICE  
10 detainees since the Union was first certified in 1999. But those duties materially  
11 changed in 2010 when the Sheriff's Department expanded them to include transporting  
12 ICE detainees and changed again in 2011, when the resolution of the Union's grievance  
13 over that assignment resulted in further modifications to the duties of the part-time  
14 Deputy Sheriffs performing this detail. The first prong of the accretion test is therefore  
15 inconclusive.

16 Under the second prong of the accretion analysis, the Board examines how the  
17 parties have treated the disputed positions in their dealings with each other and in  
18 collective bargaining. City of Malden, 32 MLC at 100. The Board will not accrete a  
19 position into an existing bargaining unit if the parties have executed a collective  
20 bargaining agreement demonstrating their intent to exclude or include the petitioned-for  
21 positions, unless the job duties of the position have changed materially. Boston Public  
22 Health Commission, 39 MLC 218,229, CAS-11-1091, 1092 (February 28, 2013);  
23 Commonwealth of Massachusetts, 30 MLC 156, 157, CAS-03-3539, 3540 (May 27,

2004) (citing Board of Trustees, University of Massachusetts, 8 MLC 1385, 1389 (1981)) (additional citations omitted).

The Sheriff's Department argues that the parties' bargaining history, specifically Section Six and recent contract negotiations demonstrate that the parties considered the part-time Deputy Sheriffs to be excluded from the unit. The Union argues that the parties' subsequent conduct is inconclusive because the part-time Deputy Sheriffs ICE transportation duties were created after the most recent agreement was negotiated and there have been no negotiations since. We agree with the Employer that the parties' bargaining history, specifically Section 6 of the CBA, demonstrates that they considered part-time Deputies performing ICE transportation details for inmates or detainees that have no connection to the Facility to be outside of their bargaining unit.

To determine whether the parties considered these titles to be outside the unit, we start with the fact that when ACE succeeded MCOFU as the exclusive representative of the bargaining unit at issue here, one of its goals was to restrict the Sheriff's Department use of non-unionized part-time Deputy Sheriffs. The parties bargained over this issue and the result of their efforts was Section Six, which did not eliminate the use of part-time Deputy Sheriffs entirely, but instead set forth what duties the Sheriff's Department could and could not assign to these non-Union personnel. Because there is no dispute that the part-time Deputies were not part of the Union's bargaining unit and because the Union did not succeed in eliminating the use of part-time Deputies altogether, in its essence, Section Six reflects the parties' agreement that part-time Deputy Sheriffs who did not engage in the care and custody of inmates inside or outside of the Facility remained outside of the Union's bargaining unit. The question



1 before us, then, is whether the agreement that the parties reached extends to the  
2 positions at issue here, which were created around 2010. We believe it does based on  
3 the language of Section Six itself, which only prohibits the Sheriff's Department from  
4 assigning temporary employees duties related to the care and custody of inmates, as  
5 supported by the past practice of permitting the Sheriff's Department to assign part-time  
6 Deputies three off-site details involving the care and custody of individuals with no  
7 connection to the Facility.<sup>10</sup> Thus, although Section Six prevents the Sheriff's  
8 Department from assigning part-time Deputy Sheriffs to perform ICE related  
9 transportation duties with respect to inmates related to the Facility, it did not prohibit it  
10 from using part-time Deputies for ICE transportation details that have no connection to  
11 the Facility. Because the parties bargained and reached agreement over a provision  
12 that permitted the Sheriff's Department to assign these duties to persons outside of the  
13 bargaining unit, we consider Prong Two to be conclusive and dismiss the petition as to  
14 these titles. As we have said on multiple occasions, we will not allow a petitioner in a  
15 unit clarification proceeding to accomplish what it has been unable to gain at the  
16 bargaining table. See Boston Public Health Commission, 39 MLC at 229; City of  
17 Malden, 32 MLC 97,99-100, CAS-04-3599 (November 2, 2005)(citing North Andover  
18 School Committee, 10 MLC at 1230.<sup>11</sup>

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<sup>10</sup> Our reasoning is fully consistent with Arbitrator Cochran's award.

<sup>11</sup> Because we decide this case at the second prong of the accretion analysis, we do not reach the Union's arguments concerning community of interest or the applicability of the Board's 2003 decision regarding the Front Gate Check Point Officer. See Plymouth County Sheriff's Department, *supra*. In any event, this case is distinguishable because, unlike the situation here, the Front Gate Officers performed work on (or at least immediately outside) Facility property that had a direct and vital connection to the Facility and its overall security. Moreover, in the 2003 decision, the Board specifically

1    **Assistant Fleet Supervisor**

2           We reach a different conclusion as to this title. Because the AFS position was  
3    created after the initial certification and the effective date of the CBA and there has  
4    been no bargaining history regarding this title, the first two prongs of the accretion test  
5    are inconclusive. We therefore turn to the test's third prong, which examines whether  
6    the AFS shares a community of interest with the rest of the bargaining unit.

7           To determine whether employees share a community of interest, the Board  
8    considers factors like similarity of skills and functions, similarity of pay and working  
9    conditions, common supervision, work contact and similarity of training and experience.  
10   Town of Somerset, 25 MLC 98, 100 CAS-3145 (January 6, 1999). No single factor is  
11   outcome determinative. Town of Ludlow, 27 MLC 34, CAS-3435 (October 17, 2000).  
12   The Law requires that members of a bargaining unit share only a community of interest,  
13   not an identity of interest. Id.

14          The Sheriff's Department argues that the AFS does not share a community of  
15    interest with other bargaining unit members because it performs functions that require  
16    superior training and experience than that possessed by any bargaining unit members,  
17    and instead performs functions more like the Fleet Supervisor, whose position is outside  
18    the bargaining unit. The Union contends that the AFS shares a community of interest  
19    with other bargaining unit members, particular the Vocational Instructor, with whom it  
20    shares work duties and work location. The Union also notes the similarities between

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found that there was no bargaining history or other conduct that demonstrated that the parties considered this position either included or excluded from the bargaining unit. 30 MLC at 88.

1 the AFS and trades titles in terms of maintenance and repair duties, tool usage and  
2 licensing and certification requirements.

3 We agree with the Union that the AFS shares a community of interest with other  
4 members of the bargaining unit. He has work contact with the Vocational Instructor and  
5 the bargaining unit members who staff Central Control, wears the same uniform and  
6 has similar duties and skill as the Vocational Instructor and trades positions. Further,  
7 because the AFS has the opportunity to encounter inmates at least once a week, when  
8 he shares a shift with the Vocational Instructor, he shares the same safety concerns as  
9 other bargaining unit members, including the trades positions, who also work among  
10 prisoners. See Plymouth County Sheriff's Department, 23 MLC at 150 (trades positions  
11 have safety concerns "identical" to corrections officers).

12 Although, unlike the Correction Officers and the Vocational Instructor, the AFS  
13 does not have direct care and custody of inmates, the same can be said of the trades  
14 titles. Similarly, although the AFS may require more advanced certification than other  
15 bargaining unit members, this is not dispositive of community of interest. As noted  
16 above, the Law requires only that bargaining unit members share a community of  
17 interest, not that their job duties, skills and education be identical. Town of Ludlow, 27  
18 MLC at 36. Finally, the fact that AFS title may also be similar to the Fleet Manager does  
19 not persuade us that accretion is inappropriate where the Fleet Manager is not included  
20 in any other bargaining unit and there is no evidence or argument that the AFS has any  
21 managerial or supervisory authority that render his inclusion in ACE's unit inappropriate  
22 or that the AFS is otherwise not entitled to collective bargaining rights.

23  
24

1 Conclusion

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3 For the foregoing reasons, we conclude that the position of Assistant Fleet  
4 Supervisor is properly accreted into ACE's existing bargaining unit at the Plymouth  
5 County Sheriff's Department and amend the bargaining unit description in our  
6 Certification of Representatives issued in Case No. MCR-4723 to include this title. We  
7 decline to accrete the part-time Deputy Sheriffs performing ICE Transportation details.  
8

9 **SO ORDERED.**

COMMONWEALTH OF MASSACHUSETTS  
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

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MARJORIE F. WITTNER, CHAIR

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ELIZABETH NEUMEIER, BOARD MEMBER

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HARRIS FREEMAN, BOARD MEMBER