

COMMUNITY COLLEGES AND THE MASSACHUSETTS BOARD OF REGIONAL COMMUNITY COLLEGES, SCRX-11, et al. (5/16/75).

- (30 Bargaining Unit Determination)
- 34.1 appropriate unit
 - 34.2 community of interest
 - 34.3 desires of employees
 - 34.4 efficiency of operation (fragmentation)
 - 34.6 extent of organization
 - 34.7 geographic location - place of employment
 - 35.67 teachers

Commissioners participating:

Alexander Macmillan, Chairman
Madeline H. Miceli
Henry C. Alarie

Appearances:

Steven C. Kahn, Esq.	- Counsel for the Commission
Joseph Furnari, Esq.	- Counsel for the Employer
Joan Dolan, Esq.	- Counsel for Massachusetts Teachers Association
Leonard Kopelman, Esq.	- Counsel for American Association of University Professors
Judith Soltz, Esq.	
Nathan S. Paven, Esq.	- Counsel for Associated Community College Faculties
Michael A. Feinberg, Esq.	
Jack Carpenter	- Representative of Massachusetts Federation of Teachers, AFT, AFL-CIO

Statement of the Case

On May 2, 1974 the American Association of University Professors ("AAUP"), pursuant to the then-applicable Chapter 149 Section 178F, filed with the Bureau of Personnel and Standardization a petition (SCRZ-11) seeking certification as the exclusive representative for the purpose of collective bargaining of faculty employed at Berkshire Community College. Thereafter, the Massachusetts Federation of Teachers, AFT, AFL-CIO (hereafter, the "AFT") and the Massachusetts Teachers Association, National Education Association (hereafter, the "MTA") intervened on May 10 and 20, 1974, respectively.¹ On May 9 and 17, 1974 MTA and AFT filed with the Bureau of Personnel petitions (SCRX-13, 12) seeking to represent faculty units at North Shore and Cape Cod Community Colleges, respectively. MTA and the Cape Cod Chapter of AAUP intervened in SCRX-12 on May 20 and June 3, 1974, respectively, while AFT and the North Shore Chapter of AAUP intervened in SCRX-13 on May 17 and

¹The Associated Community College Faculties (or "ACCF") also intervened on November 20, 1974.



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June 4, 1974, respectively. On June 18, 1974 the Bureau of Personnel, pursuant to Chapter 149 Section 178F,² transferred SCRX-11 and 12 to the Commission in view of the existence of a dispute between the parties concerning the appropriateness of the petitioned - for units.³ Subsequently, following an informal conference before the Commission in July 1974, hearings upon the consolidated petitions⁴ were conducted before Chairman Macmillan on August 26, 1974 and thereafter before Steven C. Kahn a duly designated Hearing Officer, on various dates from August 27, 1974 to January 13, 1975. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence. Briefs filed by the parties have been carefully considered. No brief was filed by AFT. The Employer contends that the petitioned - for units are inappropriate and that the only appropriate unit, for which no employee organization petitioned, is system-wide.⁵ Accordingly, upon the entire record herein, the Commission finds:

Findings of Fact

1. The Massachusetts Board of Regional Community Colleges (hereafter, "the Board") is a "Public Employer" within the meaning of Chapter 150E, Section 1.
2. The Massachusetts Teachers Association ("MTA"), Massachusetts Federation of Teachers, AFL-CIO ("AAUP") and Associated Community College Faculties ("ACCF") are "employee organizations" within the meaning of Chapter 150E Section 1.

The system of regional community colleges in Massachusetts, established in

²Chapter 149, Section 178F (3) provides, in pertinent part:

"If no...agreement on an appropriate collective bargaining unit is reached between the employee organization...and the department or agency head within a reasonable time...the failure to reach such agreement...shall be held to constitute a dispute. When the failure to reach an agreement qualifies as a dispute, the parties involved shall use the services of the Labor Relations Commission to resolve such dispute."

Chapter 150E, which superseded Chapter 149 on July 1, 1974, contains no similar provision.

³SCRX-13 was similarly transferred to the Commission on July 14, 1974.

⁴Several additional petitions seeking to represent faculty in similar individual-campus units were thereafter filed and have been consolidated for all purposes. A full list of the petitions filed, and the intervenors therein, is attached hereto as Appendix "A".

⁵The Employer filed several motions during the proceedings seeking dismissal of the various petitions. In view of the disposition herein, the Commission declines to rule upon the motions.



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1958 by Chapter 15, Sections 27-39A (Chapter 605 of the Acts of 1958) in response to a perceived crisis in higher education, consists of the Board of Regional Community Colleges, at the apex of the "pyramid", and currently 15 colleges, located throughout Massachusetts,⁶ at the base. The Board, part of the Department of Education but not subject to its control, is composed of 17 members, 11 of whom are appointed by the governor, including Chairman Theodore Chase, President William G. Dwyer and Executive Director John V. Costello. The 17 member Board is divided into several subcommittees - including Finance, Education and Personnel - that perform Board functions within their designated jurisdiction. The full Board convenes "at least once a month" except July and August) for approximately five hours per meeting while the subcommittees meet an additional "five or six hours" a month. The Board, which maintains offices at 177 Milk Street in Boston, is assisted in the performance of its duties by an administrative staff of approximately 30, including William Baker, the Director of Personnel and Management Services, his four assistants and Daniel M. Asquino, budget analyst. Baker's duties are generally to "oversee the personnel and administration of the Board...and [to] implement...[its] policy", in which capacity he represents the Board in collective bargaining.⁷

By statute, the Board has the responsibility for the

"...determination of the need for education at the community and junior college level throughout the commonwealth, the development and execution of an over-all plan to meet this need and the establishment and maintenance of regional community colleges at suitable locations in accordance with this plan..." (Chapter 15, Section 28).

Specifically, the Board has the responsibility for developing curricula which "shall be substantially equivalent to the first two years of college" and shall include "transfer" educational programs, which are generally uniform throughout the system, and "terminal" or "career" programs, the varying content of which reflects the disparate requirements of the local communities served by the colleges. No curriculum proposal may be implemented by a college absent approval by the Board.⁸ The procedure for obtaining approval of curriculum modification is set forth in detail by the Board, which also provides standard forms for completion by the colleges.

⁶Thus, Berkshire Community College, located in Pittsfield, is approximately 140 miles from Boston and 207 miles from Cape Cod Community College. Springfield Technical Community College is approximately 90 miles from Boston while the distance between Quinsigamond Community College and Boston is 40 miles. Cape Cod and Quinsigamond Community College are separated by 110 miles while Quinsigamond is approximately 72 miles distant from Bristol Community College in Fall River.

⁷The faculty at Mt. Wachusett and Massasoit Community Colleges are now represented for purposes of collective bargaining by an affiliate of the MTA/National Education Association while the Bristol Faculty is represented by the AFT. Collective agreements were successfully negotiated by the parties pursuant to the now-repealed Chapter 149, Sections 178G-N, superseded by Chapter 150E on July 1, 1974.

⁸Colleges, however, retain discretion to adopt courses without the prior approval of the Board.



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The operations of the community colleges are highly integrated with policy formulated in Boston on a system-wide basis.⁹ Thus, the Board provides the colleges with a "Policy Handbook" (hereafter, "Handbook") which establishes state-wide guidelines concerning personnel, the curricula, the awarding of degrees, admissions, tuition fees, residence requirements, housing, fiscal affairs, construction and renovation of facilities¹⁰ and student activities and conduct. With respect to "personnel", the Handbook outlines the minimum guidelines for recruitment of faculty members, appointment of tenured faculty, grant of sabbatical leaves or leaves of absence, and removal - or suspension - from academic positions. Thus, the Handbook not only outlines the application procedure and provides a standard employment application form but also lists the factors to be considered in the selection of faculty, including - "ordinarily" - a prerequisite of a Master's Degree with preference for applicants with a doctoral degree in their field. While recruitment of faculty is conducted locally, appointments are the responsibility of the Board acting upon recommendations of the President of the College.¹¹

Eligibility requirements for appointment with tenure, recommendations for which are initiated at the college, are set forth in the Board's Handbook:

"Each faculty member who has had five consecutive years of full-time academic appointments at any accredited institution of higher learning or at any other Massachusetts Community College, of which the three immediately prior years must be in the College, shall be entitled to consideration for recommendation for appointment with tenure prior to the expiration of his fifth year in the College..."

The factors upon which recommendations for appointment with tenure are based - including instructional ability and performance, student and community relationships and professional standards - are also detailed in the Handbook. Tenure may be awarded only by "express grant" of the Board which, in 1973-1974, approved 125 tenure awards throughout the system. The Board has rejected - albeit infrequently - recommendations for appointment with tenure of faculty who have not satisfied Board eligibility requirements - e.g., a rank above "instructor" and at least five full-time academic appointments.

By the same token, only the Board, upon recommendation of the college president, may grant requests for sabbatical leave, which rarely number ten a year per college. Such requests are evaluated by the Board on the basis of the stated objective and proposed length of the sabbatical, the staffing requirements of the college, and the anticipated benefit to the individual and the college. The procedures for applying for sabbatical leave, and the general factors considered in

⁹ Indeed, the enabling legislation provides that the regional community colleges "shall be governed solely" (Chapter 15, Section 28) by the Board, which is directed to define the "duties and tenure of the...officers and members of the professional staff of the regional community college system..." (Chapter 15, Section 35).

¹⁰ No construction, repair or renovation project may be undertaken by a college without Board approval.

¹¹ The employment application reviewed by the Board consists of a standard application form, and a transcript and at least three recommendations in support thereof.



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acting upon an application, are fully outlined in the Handbook. Finally, the Handbook provides for the removal of faculty "for just cause" and establishes the procedures governing removal proceedings.¹²

The centralized management or administration of the community college system is reflected also in the budget procedure. Generally, the Board utilizes an "incremental" - in contrast to "functional" - budgeting system, pursuant to which only the increase over the prior year's allocation must be justified. In reviewing the budget, the Board also utilizes a mechanical "ratio" of 18-1 "transfer" and 15-1 "career" - i.e., for every 18 (or 15) students one faculty member may be employed. The ratios are "hard and fast guidelines" applied to every college throughout the system. Specifically, the budget procedure may be best described by reference to the preparation of the budget for Fiscal Year ("FY") 1975. In June 1974 the Board requested the colleges to submit a total anticipated student enrollment, by program, for FY 1975 and statements of "FY 1975 programmatic goals and objectives", which the Board utilized in its review of enrollments to determine if requested increases were justified. After the Board modified the submissions, it requested the colleges to commence preparation of a "rough" budget, by account, and to submit requests for new positions. After analyzing the budget information "on the basis of incremental increases over FY 1974", the Board requested the college presidents to come to Boston individually to justify their budgets. Modifications of the budgets were suggested and the presidents requested to prepare the official budget documents, which were then resubmitted to the Board. After further reviews of the budget document, the Board again summoned the college presidents to Boston for conferences and finally approved a substantially reduced budget.

While implementation of Board policy is delegated to the individual colleges, The Board maintains significant contact with the colleges. Thus, Dwyer, the Board President, has substantial contact with his counterparts not only individually but also through the Presidents Council, composed of the 15 college presidents, which meets every month (except July and August) and serves in an advisory capacity to the Board with power to recommend adoption of policy.¹³ In addition, Baker receives at least 25-30 telephone calls a day from representatives of the colleges with inquiries concerning implementation of a broad range of Board policy. Asquino, in turn, is in frequent contact with fiscal representatives at the 15 colleges in the preparation and administration of the regional community college budget.¹⁴ And James F. Hill, President of Cape Cod Community College, telephones Board

¹²The Handbook also authorizes the President of a College to suspend, with compensation, a faculty member whose dismissal he has recommended in writing. The suspension continues in effect until the occurrence of a prescribed event.

¹³Like the Presidents Council, statutory local advisory boards, composed of community representatives appointed by the governor, and student and faculty advisory commissions, composed of an elected representative from every college, serve as liaisons to the Board, either directly or, in the case of the community advisory boards, through the college presidents.

¹⁴Since a college may transfer allocated funds between accounts only with the approval of the Board, local fiscal officials have continuing occasion to consult with Boston.



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offices "at least every other day" - generally to confer with Baker or Costello - and visits Boston for business purposes "at least twice a month."

The college president, the designated local representative of the Board,¹⁵ is the liason between the Board and the colleges, and is largely responsible for the day-to-day operation of the college in accordance with established Board policy. Below the president in the administrative hierarchy of the college is the Assistant to the President, who assists the President in defining the functions and scope of the departments, preparing the college budget and, generally, overseeing performance of the college's administrative activities of the college, in which capacity he recommends appointments, promotions and transfers, schedules the work of the teaching staff and assists in the preparation of the college budget. The Dean of Administration develops college curriculum, prepares departmental budgets and, generally, supervises the "planning, research and extension of the administrative segment of the College...." Finally, the Dean of Faculty directs the functions of the faculty and recommends faculty appointments, promotions or tenure. Under the direct supervision of the Dean of Faculty are the Division Chairmen, liasons between Department Chairmen and the Dean of Faculty,¹⁶ who are generally responsible for providing "academic leadership and direction" for the Division. Among their duties are the development of curricula, preparation of Division budget requests and submission to the Dean of Faculty of recommendations for faculty appointment, tenure or leaves of absence. Finally, the system-wide faculty positions include professor, associate professor, assistant professor and instructor.¹⁷ The professor develops and prepares courses of instruction in his field, serves on administrative committees, supervises subordinate faculty and assists in formulating department policies. The Associate and Assistant Professors organize course material, conduct undergraduate classes and serve on administrative committees.

Faculty of the community colleges share common employment conditions, including salary schedules,¹⁸ overtime, vacations, holidays, life and health insurance, sick leave, court or funeral leave and retirement benefits, established either by statute or Board policy. Faculty are subject to a common grievance procedure

¹⁵None of the constituent colleges has an independent Board of Trustees.

¹⁶A few community colleges have only "divisions" (e.g. Cape Cod and Mt. Wachusett) or "departments" (e.g., Middlesex).

¹⁷The record does not disclose the duties of an "instructor".

¹⁸Placement of faculty on the salary schedule, however, lies, at least in significant part, within the discretion of the college president, the exercise of which may largely be governed by market forces.



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(utilized by state employees)¹⁹ promotion and merit increment systems, have similar hours of employment,²⁰ uniform position titles and receive paychecks issued from Boston. Moreover, community college faculty are subject to similar hiring, tenure and promotion procedures. For example, with respect to hiring, vacancies are posted throughout the system to "encourage the interchang[e] of faculty."²¹ Applications for employment are typically screened by the appropriate department or division chairman - or designated "agent"²² - who then submits a recommendation through the dean of the college to the President. The application is then forwarded to the Board, which reviews it for conformance with Board standards.

"Governance" - i.e., a system of shared authority or responsibility among faculty, administration and students - at the community colleges reflects a

¹⁹ Faculty have, however, developed local grievance procedures which are not entirely uniform. Thus, Northern Essex, North Shore, Cape Cod and Middlesex have faculty committees which hear faculty grievance and recommend disposition thereof to the President who, of course, may reject the recommendation. On the other hand, Holyoke, Springfield and Berkshire have no "formalized" grievance machinery while Bristol, Mt. Wachusett and Massasoit are under collective bargaining agreements that contain multi-step grievance procedures culminating in binding arbitration after recourse to the Board. In contrast, "unorganized" faculty - whatever their local grievance mechanisms - may appeal only grievances which allege unlawful discrimination or denial of procedural "due process", or which arise out of the dismissal or suspension of a tenured faculty member, or midcontract termination or suspension of nontenured faculty. The Board conducts an independent investigation of the facts underlying recommendations for faculty termination, as a consequence of which the Board in the preceding four years has overturned four of six recommended terminations.

²⁰ "Contact" (classroom) and office hours fluctuate from campus to campus, although the norm is approximately 12 contact hours.

²¹ Since January 1973, 75 faculty members have voluntarily transferred within the system. "Temporary" faculty interchange between colleges is "infrequent" while no permanent, involuntary transfers have occurred.

²² At Massasoit Community College, for example, every department has a "selection committee" which screens candidates for appointment, interviewing "7-10" applicants for a position and selecting three, one of whom the division chairman and dean are expected to recommend to the President for appointment. If none of the three candidates selected by the committee is acceptable to the administration, the committee conducts further interviews. The President of the College, however, retains the right to reject all names submitted by the Faculty Selection Committee.



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predictably wide diversity. For example, at Northern Essex the administration and Faculty Association established an Academic Council, a "deliberative" organization which, by delegation of the President, has a role in initiating policy proposals in areas of "faculty primary responsibility", including teaching, curriculum, professional development and faculty "status" (e.g., tenure, evaluation and sabbatical leave). The President, however, retains "the right of review and the ultimate responsibility for decision." The Council functions through a system of standing committees with jurisdiction over a particular faculty concern - e.g., the Academic Year Committee, which proposes an academic calendar; the Curriculum Committee, which receives and submits recommendations for proposed modifications of the curricula; the Sabbatical Leave Committee, which reviews applications for sabbatical leaves and makes recommendations with respect thereto; and the Budget Committee which recommends to the Academic Council budget proposals in areas of faculty primary responsibility. Bristol and Holyoke Community Colleges, in contrast, have no developed system of shared authority or responsibility; the faculty do not participate in decisions concerning hiring, promotion, tenure et al, over which the administration retains exclusive control. At several other colleges governance is only partly a reality. For example, the Springfield faculty have a voice in promotions and tenure but not in hiring, merit raises or placement on the salary schedule. Similarly, while the Middlesex faculty may recommend an academic calendar to the President and participate in the interviewing of candidates for department chairman, they have no voice in promotions, grants of tenure or merit increments, or placement on the salary schedule. Finally, at Berkshire Community College the faculty plays a role in hiring and the granting of tenure and leaves but not in promotions, salary placement or increments.²³

Opinion

Chapter 150E, Section 3 provides, in pertinent part, that

"[t]he commission shall...establish procedures for the determination of appropriate bargaining units which shall be consistent with the purposes providing for stable and continuing labor relations, giving due regard to such criteria as community of interest, efficiency of operations and effective dealings and to safeguarding the rights of employees to effective representation."

Accordingly, the Commission, in determining the unit appropriate for collective bargaining, must further the fundamental purpose of "providing for stable and

²³The Berkshire Faculty Handbook describes the limited functions of its Faculty Personnel Committee:

"This committee will make recommendations to the president of the college concerning the appointments, reappointments, nonreappointments and dismissals of full-time faculty members...This committee will also make recommendations to the president of the college concerning the granting of tenure and leaves."

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continuing labor relations" while according "due" consideration to the tripartite statutory criteria: (1) "community of interest"; (2) "efficiency of operations and effective dealings"; and (3) "safeguarding the rights of employees to effective representation". In establishing units appropriate for collective bargaining under Chapter 150E, the Commission endeavors to strike a balance between two potentially conflicting policies. On the one hand is the statutory mandate to "safeguard the rights of employees to effective representation", which the Commission construes to require consideration of "extent of organization" or the wishes of the employees as a factor in unit determinations.²⁴ On the other hand is the statutory mandate to preserve "efficiency of operations and effective dealings" which requires the Commission to weigh a potentially adverse impact of a proposed unit upon the Employer's operations and performance of its primary responsibility. No coherent unit structure, we submit, can fully accommodate the conflicting statutory influences. Accordingly, the Commission, in an effort to harmonize the Section 3 criteria, shall establish, as "appropriate" for collective bargaining, units which not only are predicated upon a substantial "community of interest" that, to the extent possible, best safeguards the rights of employees to "effective representation" and of the Employer and public to "efficiency of operations" but which also serve the fundamental statutory objective of "stable and continuing labor relations." In addition, the Commission has a responsibility to establish units compatible with the public interest. Thus, as the Commission recently pointed out:

"Bargaining by governmental employees is of vital importance to the citizenry at large, since wages and fringe benefits for those employees require the expenditure of a substantial portion of tax moneys. Given the difficulty of directly representing the public interest at the bargaining table, it is, in the first instance, our obligation to create a [unit] structure likely to produce responsible bargaining conduct."²⁵

In accordance therewith, the Commission is persuaded that broad, comprehensive, rather than smaller, fragmented, units will better serve the public interest and the overriding legislative policy favoring "stable and continuing labor relations."²⁶ By the same token, "appropriate" units may not include employees with

²⁴Of course, extent of organization may not be given conclusive or controlling weight in unit determinations. Lynn Hospital, CR-3435 (7/29/74) (at p. 12); N.L.R.B. v. Metropolitan Life Insurance Company, 380 U.S. 438 (1961).

²⁵Statement in Support of Adoption of Amendment to Rules and Regulations of the Commission Creating Statewide Occupational Units (3/3/75) (at p. 11) (hereafter cited as the "Statement").

²⁶Compare Jordan Marsh Company v. Labor Relations Commission, 316 Mass. 748, 751 (1944) in which the Supreme Judicial Court, construing the private sector counterpart of Chapter 150E, Section 3, directed that bargaining units be composed of "the largest number practically possible of employees" having the requisite community of interest. As the Commission pointed out in Lynn Hospital, supra, n. 24:

"The [Jordan Marsh] Court's rationale, essentially, was that establishment of the largest groupings possible under the circumstances would not only
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a diversity of employment interests so broad as to produce inevitable conflicts irreconcilable with the effective negotiation or administration of collective agreements.

A. Community of Interest

The "touchstone" of a community of interest is a demonstration that the requested employees comprise a coherent and homogeneous group with distinct employment interests apart from excluded employees, sufficient to warrant separate representation. In determining the existence of the requisite community of interest, the Commission considers such factors as "prior bargaining history, centralization of management, particularly in regard to labor relations; extent of employee interchange; degree of interdependence or autonomy of facilities; differences or similarities in skills and functions of the employees; and geographical location of the facilities in relation to each other" Tulane University, 195 NLRB 329, 330 (1972), citing Cornell University, 183 NLRB 329, 336 (1971). See also Statement, supra ("[A]n analysis of 'community of interest'... requires... a similarity of interests and working conditions predicated upon, inter alia, common supervision, similar work environment, similar job requirements, education, training and experience, as well as interchange and work contact" (at pp. 25-26)). Compare Gray Drug Stores, 197 NLRB 924, 925 (1972); Kalamazoo Paper Box Corporation, 136 NLRB 134, 139 (1962). No single factor is controlling, and the existence of the requisite shared employment interest will turn upon an imponderable amalgam of factors that, in confluence, establish a preponderant similarity of employment conditions.

Application of the foregoing principles compels the conclusion that the petitioned-for employees, who neither share - apart from excluded employees - readily identifiable skills and duties nor possess a significant level of autonomy, do not enjoy the requisite, distinct community of interest. Policy - including, of course, labor relations policy - is adopted by the Board and implemented by the colleges in accordance with detailed Board standards. Thus, the record discloses that the faculty of the 15 community colleges share a virtual identity of employment conditions established in Boston on a system-wide basis. For example, as noted above, faculty have a common salary schedule or range, overtime, vacation and holiday benefits, life and health insurance, sick leave, court or funeral leave and retirement benefits. Moreover, they are subject to similar hiring, promotion, tenure and grievance procedures, and have similar hours of employment and uniform job titles. In addition, the fundamental duties of the regional community college faculty, reflected in position descriptions, are established by the Board.

26(cont'd)

maximize the collective effectiveness of employees in negotiating conditions of employment with their employer but also would more effectively achieve the legislative purpose of promoting industrial stability by avoiding unit fragmentation and its potential ill effects of creating jealousies and conflicting or more competitive claims of a large number of small rival units which must work together in the industry but which may choose to be represented by different and possibly antagonistic unions' [citation omitted]" (at pp. 10-11).



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Finally, an academic transferring from one community college to another retains accrued benefits and credits, including two years service credit toward tenure.²⁷

The centralization of administrative control is reflected in every area of the Board's responsibility, including, in addition to labor relations, the development of curricula, the awarding of degrees, admissions, tuition fees, residence requirements, housing, fiscal affairs, construction and renovation of facilities and student activities and conduct. The budget procedure also discloses a level of integration of operations and centralized management that significantly erodes a claimed local autonomy. Thus, the record reveals that the Board exercises a detailed control over preparation of the unitary regional community college budget submitted to the General Court. Thus, after submitting budget information solicited by the Board, the college presidents are summoned to Boston to justify their budget requests, after which they are required to draft a "rough" budget document which is carefully honed by the Board and incorporated into a single budget document for legislative approval. In addition, the Board not only applies "hard and fast" budgetary guidelines from which the colleges may not depart but also must expressly approve a college's transfer of funds between accounts.

The control exercised by the Board over the community colleges is implemented, in part, by the contacts - formal and informal - between the Board and the colleges. Thus, Dwyer, Baker and Asquino testified that they have substantial and continuing contact with college representatives concerning the operation of Board policy while President Hall volunteered that in the discharge of his presidential responsibilities he confers with Boston by telephone "at least every other day" and by personal visit "at least twice a month." In addition, faculty, student and community advisory Commissions function, at least in theory, as liaisons between the Board, the college and the community and serve, in part, as conduits for the implementation of Board policy at the institutional level. In short, the Board oversees, in significant detail, the operation of the community college system. See The Pep Boys-Manny, Moe & Jack, 172 NLRB 246 (1968); U-Wanna Wash Frocks, 203 NLRB 174, 174-175 (1973).

Of course, the presidents of the colleges do exercise discretion - within the parameters of Board guidelines - in the day-to-day operation of their campus, with the predictable consequence that different structures and procedures for implementing Board policy have evolved. For example, the Northern Essex faculty, through its Academic Council, plays an active role in suggesting policy in areas of its primary responsibility while the faculty at Briston and Holyoke have virtually no developed governance structure. The "norm", perhaps, is Springfield or Middlesex where "governance" is only partly a reality. By the same token, local grievance procedures, whose development the Board has encouraged, reflect a significant disparity between, for example, Northern Essex or Bristol, on the one hand, and Springfield or Berkshire, on the other, where no formalized grievance mechanism exists. Evaluation of faculty performance, as pointed out by petitioning employee organizations, also reflects "local patterns set by faculty and local administration" (MTA Br., p. 13). For example, Holyoke and Springfield have

²⁷ Faculty tenure, however, is transferrable only at the discretion of the transferee college.



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a formal structure for student evaluation of faculty performance while Cape Cod and Bristol have either no - or only informal - student evaluation. And at Mt. Wachusett faculty evaluations are the responsibility of the division chairman in accordance with procedures set forth in their collective bargaining agreement, while at Northern Essex the Faculty Status Committee, an arm of the Academic Council, has the responsibility of recommending "norms and procedures" governing evaluation. Similarly, committee assignments, mandatory at Cape Cod, Holyoke and Berkshire, are voluntary at Middlesex and Massasoit. While examples of variances could be multiplied,²⁸ they reflect, at best, a limited degree of local autonomy which falls well short of establishing conflict of interest sufficient to warrant unit fragmentation. Compare 21st Century Restaurant, 192 NLRB 881, 882 (1971); Food Marts, Inc., 200 NLRB 18, 19 (1972); Pacific Drive-In Theatres Corp., 167 NLRB 661, 662 (1967). The locus of power in the community college system is indisputably Boston with only the authority to recommend, or to implement in accordance with uniformly applicable standards, vested in the colleges.²⁹ Distinctive procedures and structures that have developed at the colleges are a natural consequence of the process of "fleshing out" Board guidelines and reflect, not a lack of centralized control, but varying applications of uniform standards. Indeed, the record does not disclose significant departures from, or conflicts between Board policy, largely contained in the Handbook, and local practice. Thus, the Faculty Handbooks introduced into evidence generally include extensive verbatim excerpts of Board policy governing tenure, sabbatical leave, academic freedom, curriculum modification procedures, conditions of employment, et al. Certainly, the Faculty Handbooks cover matters which Board policy does not expressly or formally treat but, so far as the record discloses, not in a manner inconsistent therewith.

The Commission, of course, is cognizant of the factors cited by the employee organizations which militate in favor of the appropriateness of the petitioned-for units, including geographical separation, extent of organization and prior bargaining history. While the fifteen community colleges are separated by distances varying from a few to perhaps 200 miles, they are by no means inaccessible in view of the not insurmountable distances connected by a network of intra and interstate highways. Moreover, as the Employer colorfully notes:

²⁸ Faculty salary differentials, however, are attributable, in large measure, to the fact that individual colleges were incorporated into the system at various times since 1960 and that, accordingly, faculty in the system have served varying length of time.

²⁹ The distinction between the power to act and the power to recommend in the community college system is aptly described in the Bristol Faculty Handbook: "According to present policies established by the Massachusetts Board of Regional Community Colleges, a limited amount of power is delegated to the President of each college...[which] is confined within certain areas and within certain limits in accordance with Board policy. The President of the College is held responsible and accountable for all of the decisions and actions that take place within the College."



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"All four employee organizations have maintained a metropolitan Boston address for purposes of organization. For all intent and purposes the real collective bargaining process will take place where it actually counts, in Boston. It is the home of the General Court and the Regional Board. It is where the money and the action is. The issues to be resolved...will spring into viability or [be] crushed into anonymity in Boston. Witnesseth the present economic cleaver action" (Br., pp. 30-31).

In any event, the significance of the geographical separation of the campuses pales in comparison to the highly integrated operations and centralized management and control disclosed by the record.³⁰ "Extent of organization", as the Commission earlier pointed out (supra, p. 1434), may not be accorded controlling weight and, under the circumstances presented, is clearly outweighed by factors - considered above - militating against the appropriateness of the petitioned-for units. Finally, in view of the greatly expanded scope of collective bargaining under Chapter 150E to include a full range of economic matters not mandatorily bargainable under Chapter 149 - matters which are clearly within the control and authority of the Board - the Commission is less reluctant to disturb a unit structure developed under Chapter 149. Compare General Electric Company, 100 NLRB 1489, 1493 (1952) and cases cited at n. 5. Accordingly, the Commission declines to attach controlling significance to the prior bargaining history.

B. "Efficiency of Operations and Effective Dealings"
"Effective Representation"

1. Background

In July 1958 then Governor Foster Furcolo, citing a report of the Special Commission on Audit of State Needs, recommended the creation of a system of regional community colleges designed to serve every section of the state and to provide "high-quality college instruction, and low-cost education for qualified students." In recommending a state-wide system, Furcolo noted that a primary reason why community colleges had not developed in Massachusetts was the absence of an "agency or authority in the state entrusted with the initiation, planning and development of a state-wide community college system, with sufficient funds to carry out such a program." Moreover, the anticipated consequences of vesting in local communities the responsibility for the development of community colleges were inadequate financing, unnecessary duplication of curricula, laboratories and library facilities, and lack of "any real assurance of the minimum standards

³⁰ Compare Livingston & Christenson, State and Federal Regulation of Collective Negotiations in Higher Education, 1971 Wisconsin Law Review 91, 99 (1971) ("...[I]n unit determinations the Board will be extremely reluctant to permit fragmentation of a college or university labor relations program by sanctioning the creation of separate units for individual departments even though such departments may be functionally and geographically separate from their counterparts within the academic system.")



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needed for eventual accreditation which must prevail at a high-quality post high school institution."³¹

2. Application of statutory criteria

As noted above, the Commission, in determining units appropriate for collective bargaining, is statutorily required to duly consider "efficiency of operations and effective dealings", including, most fundamentally, the impact of a proposed unit structure upon the performance by the public employer of its primary "mission." As the foregoing summary of the legislative history establishes, a state-wide system was created to assure the development of a uniform, adequately-financed network of community colleges and thereby avoid unnecessary and expensive duplication. The legislative vehicle for accomplishing this objective was the Board - the central agency entrusted with the development of the system. The Commission is reluctant to sanction the creation of fragmented units which may impair the effectiveness of the centralized system established by the General Court. Accordingly, the Commission concludes that single-campus units are inconsistent with the legislative desire for a comprehensive, uniform system and that state-wide collective bargaining, coextensive with the Employer's administrative structure, will best enable the Board to discharge its primary responsibility for providing high-quality, low-cost education in a system uniformly controlled by a central authority. In so concluding, the Commission also recognizes - but does not primarily rely upon - the administrative disruption and cost attendant upon unit fragmentation and the at least potential risk of "whipsawing" or excessive competition among rival organizations with competing interests - interests which may adequately be reconciled by a single organization representing, on a system-wide basis, employees with essentially similar employment concerns.³²

³¹The enabling legislation creating a board of regional community colleges reflected the concerns of Governor Furcolo and the Special Commission on Audit of State Needs. Thus, Chapter 15, Section 28, defining the powers and duties of the Board, directs the Board to develop and execute an "over-all plan" to meet "the need for education at the community and junior college level throughout the commonwealth..." Section 28 further provides that every community college "shall be governed solely" by the Board.

³²In the rule-making proceeding for the creation of state employee units, the Commonwealth argued that its proposed "two-unit" structure would best preserve "efficiency of operations and effective dealings" - a position which the Commission did not endorse in view of its reasonable anticipation that "the employee organization representing the amalgam of employee interests...[would be] incapable of accommodating or internalizing the inevitable conflicts" State-ment, p. 29). In the instant case, however, the "amalgam of employee interests" that a single organization would represent is not sufficiently diverse to raise the spectre of irreconcilable conflicts.



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Nor is the Commission persuaded that a system-wide unit is inconsistent with the employees' right to effective representation. First, of course, placement in a single unit of employees having a substantial community of interest maximizes their collective strength and avoids at least part of the difficulty of conducting - on several fronts - simultaneous negotiation (and administration) of collective bargaining agreements. In addition, as noted above, the record discloses that under Chapter 150E the authority to resolve issues which would be the subject of collective bargaining is vested, not in the local administration, but in the Board. See, e.g., Gray Drug Stores, supra; Caribbean Restaurants, Inc., 162 NLRB 676, 678-679 (1967). Accordingly, since effective negotiations of uniform employment conditions can be conducted only with the Board, "it is impractical to negotiate changes...[thereof] on a piecemeal basis" with fragmented units. Shaw & Clark, Appropriate Bargaining Units in the Public Sector, 51 Oregon L. Rev. 151, 173 (1971). It may reasonably be anticipated, in any event, that the resolution of "local" issues - once identified - may be accommodated within the structure of a statewide bargaining unit - either by the creation of locals or by an informal, multi-level or tier bargaining system.

Admittedly, as the employee organizations point out, rejection of the petitioned-for units has an adverse impact upon faculty, eager to exercise their right to bargain collectively, who may be denied representation until co-employees, with whom they share a community of interest, reach a similar awareness of the potential advantages of collective bargaining. Moreover, as the employee organizations further point out, creation of a multi-location unit inevitably contemplates that the desires of employees at a single location to be represented for purposes of collective bargaining may be submerged by employees voting against representation elsewhere. Indeed, even at a single-location unit, minority wishes are similarly submerged. Unless, however, employees seek representation in "appropriate" units, as measured by the criteria of Section 3, the Commission is without authority to direct elections to record the representation sentiments of employees who comprise only a part of a coherent, homogeneous group. For the reasons stated above, then, the Commission concludes that single-campus units are inconsistent with the legislative purpose to provide for "stable and continuing labor relations", do not encompass the area of employment interest, inadequately preserve "efficiency of operations" and are not the only structure which will safeguard employees' rights to "effective representation."

The Commission's conclusion is not only fully warranted by application of the statutory criteria but also is consistent with the nearly uniform precedent - public and private sector - governing unit determinations in higher education. Thus, in State University of New York, 2 NY PERB 4010 (10/6/69), aff'd sub nom Wakshull v. Helsby, 64 LC ¶52, 423 (1970) the New York Public Employment Relations Board, affirming the decision of the Director of Representation, ruled that only a state-wide unit of academic and professional employees in the state university system was appropriate. In so ruling, the Board cited evidence that the entire "SUNY" faculty enjoys a "substantial community of interest", that the fundamental terms and conditions of employment are either "uniform at all campuses or locally determined in accordance with uniformly applicable standards or guidelines", and that the entire operations of the SUNY system, including the planning and budgeting procedures, are "under the control and implementation of the board of trustees" (at p. 4190). In view of such centralized control, the New York PERB concluded that



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"almost all allegedly 'local' issues will have serious statewide ramifications, either of an economic or policy nature...[and that, accordingly] [u]ntil such state-wide negotiations are conducted with a certified employee organization, it is clearly impossible for any sort of meaningful negotiations to take place at the campus level" (id.)

In New Jersey, the Public Employment Relations Commission ("PERC"), reversing a prior determination, adopted the recommendations of the Hearing Officer who concluded that separate units of faculty members at Paterson and Jersey City State Colleges were inappropriate. State of New Jersey, P.E.R.C. No. 72 (11/30/72). In so concluding, PERC noted the "very broad and comprehensive" authority of the Board of Higher Education over the 8 colleges in the system; the corresponding statutory limitations upon the authority of the individual colleges, the system-wide uniformity of job titles and functions, the broad identity of employment interests and, most fundamentally perhaps, "a highly centralized structure external to the individual colleges which sets, determines, and controls many major aspects of employment." (Slip op., p. 11). Evidence that hiring, reappointment and promotion of faculty are accomplished locally, in accordance with the policies of the Board of Higher Education; that local colleges can exceed the Board standards for hiring and promotion; that the academic calendar, lengths of classroom meetings, "release" time and required "on-campus" days per week are determined locally; that the colleges are physically separated with "virtually no interchange" of faculty; and that the enabling statute contemplated at least a limited decentralization of authority was not deemed inconsistent with the appropriateness of a statewide unit, merely persuading PERC that "there is an important function to be performed at the local level." (Slip op., p. 12). In Michigan State University, CCH State Laws ¶49, 997.53 (1970), the Michigan Employment Relations Commission ("MERC") ruled that a unit limited to the faculty at one of fifteen colleges comprising a university was inappropriate in view of the fact that "there was no cognizable line of demarcation [on the basis of employment interest] between the employees in the proposed unit and the balance of the faculty." And in Minnesota State College Bd. v. PERB, 87 LRRM 2981 (1974), the court discerned no substantial evidence to sustain PERB's determination that an individual state college unit was appropriate for collective bargaining, concluding that evidence supporting individual units - including geographical separation, local "adaptations" of uniform, system-wide standards and locally diverse administrative policies - was clearly outweighed by factors - including, most fundamentally, the centralization of administration - militating in favor of a state-wide unit. Finally, in Fairleigh Dickinson University, 205 NLRB No. 101, 84 LRRM 1033 (1973), in which the question of the appropriateness of a single or multi-campus professional unit in the private sector was first presented, the National Labor Relations Board directed an election in a university-wide unit in view of the "considerable" evidence that the faculty share a pervasive community of interest, and that none of the basic conditions of employment may be modified at the campus level. Compare Cornell University, supra, 183 NLRB at 336, in which the Board found that the appropriate unit of nonprofessional employees was statewide in view of evidence that they perform similar duties, enjoy largely identical employment benefits, and are subject to the centralized control of the University's personnel department.

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ORDER

Wherefore, on the basis of the foregoing, the Commission concludes:

1. That no question has arisen concerning the representation of certain employees of the Massachusetts Board of Regional Community Colleges within the meaning of Chapter 150E, Section 4.
2. That the petitions filed herein are dismissed without prejudice to the right of the petitioners to produce, within thirty days or such further time as the Commission, upon request, shall allow, the requisite showing of interest in a system-wide unit.³³

NAMES OF COLLEGES

SCR-X-11	Berkshire Community College
SCR-X-12	Cape Cod Community College
SCR-X-13,	
SCR-126-127,	
SCR-2049	North Shore Community College
SCR-2028,	
SCR-2033	Middlesex Community College
SCR-2030,	
SCR-2036	
SCR-2056	Springfield Technological Community College
SCR-2035	Quinsigamond Community College
SCR-2039	Massachusetts Bay Community College
SCR-2041,	
SCR-2048	Holyoke Community College
SCR-2055,	
SCR-2057,	
SCR-2059	Northern Essex Community College
SCR-2058	Bunker Hill Community College
SCR-X-11	Regional Board of Community Colleges, Berkshire Community College and American Association of University Professors

First Intervenor:

Massachusetts Federation of Teachers, AFT, AFL-CIO

Second Intervenor:

Massachusetts Teachers Association, NEA

Third Intervenor:

Associated Community College Faculties

³³ In view of the Commission's disposition of the unit "scope" question, further proceedings concerning unit "placement" shall be continued pending satisfaction of the "showing of interest" requirement.



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SCR-2035 Regional Board of Community Colleges,
Quinisigamond Community College
and
Massachusetts Federation of Teachers, AFT, AFL-CIO

First Intervenor:

Massachusetts Teachers Association, NEA

SCR-2036 Regional Board of Community Colleges,
Springfield Technological Community College
and
Massachusetts Federation of Teachers, AFT, AFL-CIO

SCR-2039 Regional Board of Community Colleges,
Massachusetts Bay Community College
and
Associated Community College Faculties

First Intervenor:

Massachusetts Teachers Association, NEA

Second Intervenor:

Massachusetts Federation of Teachers, AFT, AFL-CIO

SCR-2041 Regional Board of Community Colleges,
Holyoke Community College
and
Massachusetts Teachers Association, NEA

First Intervenor:

Massachusetts Federation of Teachers, AFT, AFL-CIO

SCR-2048 Regional Board of Community Colleges,
Holyoke Community College
and
Associated Community College Faculties

SCR-2049 Regional Board of Community Colleges,
North Shore Community College
and
Associated Community College Faculties

SCR-2055 Regional Board of Community Colleges,
Northern Essex Community College
and
Associated Community College Faculties

SCR-2056 Regional Board of Community Colleges,
Springfield Technological Community College
and
Associated Community College Faculties



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- SCR-2057 Regional Board of Community Colleges,
 Northern Essex Community College
 and
 Massachusetts Teachers Association, NEA
- SCR-2058 Regional Board of Community Colleges,
 Bunker Hill Community College
 and
 Massachusetts Teachers Association, NEA
- SCR-2059 Regional Board of Community Colleges,
 Northern Essex Community College
 and
 Massachusetts Federation of Teachers, AFT, AFL-CIO

