

## MASSACHUSETTS LABOR CASES

CITE AS 12 MLC 1643

BOARD OF REGENTS OF HIGHER EDUCATION, UNIVERSITY OF MASSACHUSETTS MEDICAL CENTER  
AND MASSACHUSETTS ASSOCIATION OF HEALTHCARE AND AFSCME, COUNCIL 93, AFL-CIO AND  
TEAMSTERS, LOCAL 170 AND OPEIU, SCR-2180 (3/4/86).

- 17.6 "03" consultant
- 34.1 appropriate unit
- 34.2 community of interest
- 35.1 casual and temporary employees
- 35.2 confidential
- 35.7 supervisory and managerial employees
- 45.1 contract bar

### Commissioners participating:

Paul T. Edgar, Chairman  
Maria C. Walsh, Commissioner

### Appearances:

- |  |  |
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| Mr. Preston Ripley                                     | - Representing Massachusetts Association of Service and Healthcare                               |
| Ralph F. Abbott, Jr., Esq.<br>and James M. Trono, Esq. | - Representing Board of Regents of Higher Education, University of Massachusetts Medical Center  |
| Augustus J. Camelio, Esq.<br>and Wayne Soini, Esq.     | - Representing American Federation of State, County and Municipal Employees, Council 93, AFL-CIO |
| Thomas J. Flynn, Esq.                                  | - Representing International Brotherhood of Teamsters, Local 170                                 |
| Robert Manning, Esq. and<br>Elizabeth Boyer, Esq.      | - Representing Office and Professional Employees International Union, AFL-CIO                    |

## DECISION

### Statement of the Case

On February 19, 1985, the Massachusetts Association of Service and Healthcare (MASH) filed a petition with the Labor Relations Commission (Commission) seeking to represent all classified employees of the University of Massachusetts Medical Center in Worcester (Employer). Their petition would include clerical, technical and service/maintenance employees in a common collective bargaining unit.

American Federation of State, County and Municipal Employees, Council 93, AFL-CIO (AFSCME) currently represents a unit of some, but not all, supply and maintenance persons employed by the Medical Center. These employees are covered by a current collective bargaining agreement between AFSCME and the Employer. AFSCME has



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intervened, and has moved to dismiss MASH's petition for reason of contract bar.<sup>1</sup>

Teamsters, Local 170 (Teamsters) has also intervened, and would have us establish two collective bargaining units: one for clerical and technical employees, and the other for service and maintenance personnel, including those employees represented by AFSCME. Teamsters does not currently represent any employees at the Medical Center.

Office and Professional Employees International Union (OPEIU) has likewise intervened, though it does not represent any of the employees of the Medical Center. This labor organization did not submit a brief or a concise statement of its position to the Commission, but at one point during the hearing it indicated a preference for a wall-to-wall unit of classified employees.

The Employer essentially agrees that the petitioned-for overall unit is appropriate. It has a list of approximately 125 persons it would exclude from the unit as "supervisors," and another list of 37 persons it claims are "confidential."

#### Findings of Fact

The University of Massachusetts Medical Center is a combined hospital, medical school and research center situated in Worcester.<sup>2</sup> Altogether, it employs approximately 4,200 persons. Almost 3,000 of these are considered by the Employer to be professional employees, who have individual employment contracts with the Medical Center. The Employer has established a separate payroll for these so-called "professionals." The remaining employees, approximately 1,350 in number, are denominated by the Employer as "classified employees," and they constitute the unit for which MASH has petitioned.<sup>3</sup>

The classified employees work in approximately 125 separate departments at the Medical Center, and they include technical, clerical and service/maintenance personnel. All are currently unrepresented except for approximately 260 supply and maintenance employees who work in the Environmental Building Services Department, the power plant and the Public Safety Department. The latter are represented by AFSCME, and are covered by a collective bargaining agreement which expires June 30,

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<sup>1</sup> AFSCME further contends that the petitioned-for unit is inappropriately broad, and that there is no precedent for the establishment of such a unit.

<sup>2</sup> By far, most of the employees work at the principal facility in Worcester. However, there are 6 satellite locations at Tri-River, Webster, Gardner, Chestnut Hill, Belchertown State School and the Monson Development Center.

<sup>3</sup> For brevity, we will refer to this group as the "classified employees." The term is one of convenience, and has no particular significance in labor relations lexicology.



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1986. It must be noted that some of the classified employees working in the Environmental Building Services Department and the power plant are not represented.<sup>4</sup>

Approximately 600 registered nurses employed at the Medical Center are represented by the Massachusetts Nurses Association. The international Brotherhood of Police Officers has represented 12 to 15 security employees since 1979, and the Massachusetts Coalition of Police has represented 3 sergeants in security since 1983. These employees are not in contention here.

All of the petitioned-for employees are classified according to the pay scale system established for employees of the Commonwealth.<sup>5</sup> Their payroll week commences on Sunday, and payday is Friday. All are paid on an hourly basis, and at the rate of time and a half for all hours worked over a forty-hour week. Each employee is issued a standard identification badge which does not differentiate between employee classifications. This includes those employees who are represented by AFSCME. All classified employees have free access to all areas of the Medical Center except patient care areas and animal quarters.

All classified employees share identical fringe benefits, including an orientation period, insurance, holidays, vacations, parking privileges, sick leave, tuition reimbursement, shift differential pay, leaves of absence, expense reimbursement and use of the library. A single cafeteria at the Medical Center serves all. Job vacancies are posted, and classified employees may bid for them. Written job descriptions, containing both the state title and the in-house "working title," have been devised and updated for all classified job positions. These job descriptions are written according to a common format. There is a common human resources policy, including a grievance procedure, for all classified employees.<sup>6</sup> An affirmative action policy applies to all hiring and promotional decisions. It is not uncommon for the Employer to address memoranda to "all classified employees."

Robert Tranquada, M.D., is the Chancellor/Dean of the Medical Center and is ultimately responsible for all facets of its administration. Tranquada is directly assisted by three vice-chancellors. One vice-chancellor is responsible for the Medical School, another for Administration and Finance, and the third is the Hospital Director. Below the three vice-chancellors are several echelons of supervisors including Associate Vice-Chancellors, Assistant Vice-Chancellors, and Administrators. Each of the 125 departments of the Medical Center has a department head or equivalent.<sup>7</sup>

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<sup>4</sup> Pursuant to a consent election agreement and a secret ballot election, we certified the AFSCME unit in 1971. At that time, the unit consisted of 7 employees. Since then, other, but not all, supply and maintenance employees have been accreted to it through voluntary recognition by the Employer.

<sup>5</sup> Each position contains both an official state title and an in-house "working title."

<sup>6</sup> AFSCME has its own contractual grievance procedure.

<sup>7</sup> (see page 1646)



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We have analyzed descriptions of the 125 departments at the Medical Center and have studied descriptions of each of several hundred individual positions. It would serve no purpose to describe the purpose and functioning of each department, and it would further delay the issuance of a decision upon this matter which concerns the representational rights of 1,350 employees. Certain patterns emerge, however, and must be noted.

The classified employees in 41 of the 125 departments at the Medical Center have continuous daily contact with classified employees working in other departments.<sup>8</sup> Examples are legion. Technical employees must visit all patient care areas, including the Emergency Department, to collect specimens. They prepare reports and distribute them to clerical employees for proper disposition. When a secretary or clerical worker is not present to receive telephone calls, as on the 3 a.m. to 7 a.m. shift, the technician performs that function. Medical secretaries work closely with laboratory assistants and laboratory technicians. They receive test results and, like the technicians, must possess knowledge of scientific and medical terminology. Clerical employees have frequent contact with Environmental Building Services and Physical Plant employees who maintain the cleanliness and equipment in their work areas, and with other service employees who deliver mail and supplies. Service and maintenance employees routinely visit all areas of the Medical Center while performing janitorial and repair services. Dispatch workers commonly deliver specimens to technologists, Physical Plant people work with medical technologists to repair refrigeration units and similar equipment, those who receive purchases from vendors must distribute them throughout the Medical Center, while clerical workers must assist in purchasing and inventory control. Further examples are myriad, and need not be chronicled.

At least 35 departments employ all three types of employees: technical, clerical and service.<sup>9</sup> These employees work in close proximity and share common supervision.

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<sup>7</sup> (from page 1645)

The employees working at the 6 satellite locations are paid in the same manner and receive like benefits as employees at the Worcester campus. Their lines of supervision are also similar.

<sup>8</sup> These departments include: the Social Service Department, Surgical Nursing, Anesthesiology, Cardiovascular Medicine, Computing Center, Dispatch/Escort, Emergency Department, Physical Plant, Environmental Building Services, Allied Health, Nursing Administration, Orthopedics, Pharmacy, Pulmonary Laboratory, Respiratory Care, Infection Control, Linen Services, Medical Nursing, Department of Medicine, Neurology, Purchasing, Department of Surgery, Volunteer Services, Animal Medicine, Chancellor/Dean Office, Office of Continuing Education, Office of Equal Opportunity/Affirmative Action, Materiel Handling, Family and Community Medicine, Admitting, Ambulatory Administration, Occupational Therapy, Human Resources, Public Safety, Radiology, Hospital Fiscal Services, Library, Materiel and Property Control, Molecular Genetics and Microbiology, Nutrition and Food Services, Pathology, and Physical Therapy.

<sup>9</sup> (see page 1647)



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Twenty-four departments within the Medical Center reported significant interchange among their employees.<sup>10</sup> In addition, there is evidence that employees may be promoted from lower paid service positions into more desirable technical ones. The Central Sterile Services Department is an example. Here, the entry level position is Institutional Domestic Worker, Grade 5. However, through training, education and experience that employee may become a Central Sterile Technician I, Grade 8 and eventually a Central Sterile Technician II, Grade 10. Many employees take notice of the posting of vacant positions, and they are encouraged to bid for positions even though those positions may be outside of the area of their current work.

Similarity of educational requirements is evident when comparing clerical and technical positions. Many of the clerical positions require or expect one or two years of formal education beyond high school, such as an associate's degree in secretarial services or completion of medical secretaries' school. By contrast, many technicians must demonstrate such attributes as graduation from a laboratory technician school, or completion of college level courses in a work-related area. There are 38 departments where the educational requirements for clericals are equal to or greater than those required of technical employees.<sup>11</sup>

9 (from page 1646)

Those departments include: The Nursing Specialty Division, Obstetrics and Gynecology, Occupational Therapy, Pathology, Perioperative, Pharmacy and Clinic-Pharmacy, Physiology, Pulmonary Laboratory, Radiology, Department of Risk and Safety Assurance, Surgery, Anatomy, Neurology, Medical Nursing, Molecular Genetics and Microbiology, Nuclear Medicine, Nutrition and Food Services, Orthopedics, Pediatrics, Pharmacology, Physical Therapy, Psychiatry, Radiation Oncology, Respiratory Care, Scientific Affairs/Grant and Contract Services, Surgical Nursing, Anesthesiology, Materiel and Property Control, Department of Medicine, Animal Medicine, Biochemistry, Emergency Department, Cardiovascular Medicine, Biomedical Media Center, and Family and Community Medicine.

<sup>10</sup>"Significant," as used here, means that five or more employees had entered a department from another department, or had left one department to work in another. These departments include: Surgery, Biochemistry, Unit Services, Orthopedics, Physiology, Placement Services, Purchasing, Respiratory Care, Group Practice Plan, Hospital Fiscal Services, Linen Services, Neurology, Anesthesiology, Computing Center, Family and Community Medicine, Nutrition and Food Service, Patient Information/Reception, Pharmacy, Pulmonary Laboratory, Radiology, School Fiscal Services, Hospital Administration, Dispatch/Escort, and the Department of Medicine.

<sup>11</sup>Those departments are: Administration and Finance, Nuclear Medicine, Oncology, Quality Assurance, Center for Health and Fitness, Computing Center, Curricular Plan, Financial Aid, Group Practice, Hospital Administration, Human Resources, Infection Control, Admitting, Life Flight, Obstetrics and Gynecology, Physical Therapy, Radiation Therapy, Child Development Services, Continuing Education, Emergency, Family and Community Medicine, Office of Graduate Medical Education, Radiology, Respiratory Care, Office of Grant and Control Services, Anesthesiology, Cardiovascular Medicine, Massachusetts Statewide Area Health Education  
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OPINION

Section 3 of the Law mandates that the Commission establish bargaining units that are:

...consistent with the purposes of 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.

Consistent with Section 3, the Commission has adopted a policy of preferring broad, comprehensive units over small fragmented ones. University of Massachusetts, 3 MLC 1179, 1186 (1976). Further, it requires that the employees sought to be represented in the same bargaining unit share sufficiently common working conditions and interests to warrant separate representation. Community Colleges, 1 MLC 1426, 1435 (1975). The Commission has observed repeatedly that a community of interest does not mean an identity of interest. City of Worcester, 11 MLC 1363, 1365 (1985); City of Malden, 9 MLC 1073, 1080 (1982). Only those differences that would produce inevitable conflicts that could not be reconciled through the bargaining process would defeat a community of interest. University of Massachusetts, 4 MLC 1384, 1392 (1977).

The Commission has previously approved comprehensive hospital non-professional employee units as appropriate. E.g., Plymouth County Hospital, MCR-1397 (Jan. 20, 1974); Falmouth Hospital, CR-3426 (Jan. 16, 1974); Jordan Hospital, CR-3358 (Oct. 3, 1972). The Commission also has found separate units of Hospital clericals, technicals, service and maintenance employees to be appropriate. E.g., Lynn Hospital, CR-3435 (July 29, 1974) [maintenance employees constitute separate appropriate unit]; Leominster Hospital, Inc., CR-3296 (June 16, 1971) [clerical unit appropriate]; City of Quincy, MCR-1311 (October 9, 1974) [all technical employees at Quincy City Hospital]; Somerville Hospital, CR-3399A (March 8, 1974) [service employees]. Because the appropriateness of the unit is determined on a case-by-case basis, the Commission's decisions reflect the differences that exist in each employing organization.<sup>12</sup> Thus, the Commission has also found that a

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Center, Medical Records, Minority Student Affairs, Neurology, School Fiscal Affairs, Social Services, Surgery, Biochemistry, Center for Educational Resources, Medicine, Molecular Genetics and Microbiology. To retain our necessary perspective here, we must note that some of the higher technical positions require a bachelor's degree or its equivalent.

<sup>12</sup>Decisions of the National Labor Relations Board also recognize that each employing enterprise varies. The resultant unit determinations reflect the fact that a community of interest among the employees of one employer does not necessarily exist among the same classifications of employees of a different employer. See e.g., Extendicare of West Virginia Inc., 203 NLRB 1232 (1973) [technical,  
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combination of technical and clerical health care employees is appropriate. Center for Blood Research - Blood Grouping Laboratory, 1 MLC 1120 (1974). In another case service, maintenance and clerical employees have been combined in one unit, while technical employees were placed in a separate appropriate unit. Barnstable County, 3 MLC 1144 (1976). In determining the appropriateness of each unit, the Commission was guided by consideration of the community of interest that existed in the petitioned-for unit.<sup>13</sup> Similarly, our consideration of the instant case requires examination of the factors that contribute to, or detract from a community of interest among the petitioned-for employees.

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service and maintenance employees form appropriate unit separate from clericals]; Woodland Park Hospital, Inc., 205 NLRB 888 (1973) [all non-professional employees form appropriate unit]; Allegheny General Hospital, 239 NLRB 872 (1978) enf. den. 608 F.2d 965, 102 LRRM 2785 (3d Cir. 1979) [unit of skilled maintenance employees separate from service employees appropriate]; Mount Airy Foundation, 217 NLRB 730 (1975) [service, maintenance, technical and LPNs included in one unit, excluding professionals and business office clericals].

<sup>13</sup>The Employer urges us to apply the "disparity of interest" test adopted by the National Labor Relations Board in St. Francis Hospital, 271 NLRB No. 160 (1984) to determine whether the petitioned-for unit is appropriate. Under the Board's disparity of interest test:

[T]he appropriateness of the petitioned-for unit is judged in terms of normal criteria, but sharper than usual differences (or "disparities") between the wages, hours, and working conditions, etc., of the requested employees and those in an overall professional or nonprofessional unit must be established to grant the unit.

Id. at \_\_\_\_\_, 116 LRRM 1465, 1470 (footnote omitted)

The Board's articulated rationale for adopting this test was that it would best effectuate the Congressional mandate of the 1974 health care amendments to the National Labor Relations Act to prevent the proliferation of health care bargaining units. The Commission consistently has articulated a policy of favoring broad units. Use of the traditional criteria to determine whether petitioned-for employees share the requisite community of interest, coupled with the Commission's preference for broad units, has served to avoid undue proliferation of bargaining units.

G.L. c.150E reflects no legislative intent that the Commission determine health care bargaining units by different criteria than it applies to other kinds of bargaining unit determinations. We are satisfied that the traditional community of interest test serves employees, employers and labor organizations effectively and we decline to adopt the disparity of interest test.



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### Community of Interest

AFSCME and the Teamsters contend that the classified employees in the petitioned-for unit do not share a sufficient community of interest to be included in a single bargaining unit. They point out that we have often recognized that clerical and technical employees have interests diverse from service and maintenance employees. Nonetheless, based on the facts in the record before us, we are persuaded that all of the petitioned for employees share a sufficient community of interest to warrant their inclusion in a single bargaining unit.

We reach this conclusion after having considered how the traditional factors for determining community of interest apply to this unique and highly centralized employer. Those factors include: similar working conditions, centralization of management control, geographic location, integration of operations and employee interchange. See e.g., Massachusetts Port Authority, 5 MLC 1844, 1853 (1979); Community Colleges, 1 MLC 1426, 1435 (1975).

The evidence submitted by MASH and the Employer reflects that the employees whom MASH seeks to represent share common working conditions. They are all paid an hourly rate pursuant to the same pay scale system. Further, all receive identical fringe benefits, including: insurance, vacations, holidays, sick leave and shift differential pay.

There is also significant evidence of integration of operations and employee interchange. For example, the classified employees in forty-one of the departments at the medical center, including technical, clerical, service and maintenance employees, have daily interdepartmental contact. Similarly, at least thirty-five departments employ a combination of clerical, technical and service employees, who work together in close proximity and share common supervision. The record also reflects that twenty-four departments have experienced transfers with five or more employees from other departments.

There are numerous examples of the integration of operations at the Medical Center. Medical Secretaries in the Clinical Pathology Laboratory have frequent contact with admitting clerks, employees of the Environmental Building Services Department and Physical Plant employees. Similarly, phlebotomists in the Hematology Department visit all patient floors and the Energy Department, where they have daily contact with ward clerks, and also share a laboratory with the Pharmacy.

Another indicia of community of interest, centralization of management control, is also apparent. The Medical Center is managed by the Chancellor and his direct subordinates, who administer the policies for all of the Center's 125 departments. Among those policies are human resource and affirmative action policies, including a grievance procedure, that are common to all unrepresented classified employees at the Medical Center.

Although the Teamsters and AFSCME challenge the community of interest among the petitioned-for employees, neither has introduced evidence to support their





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positions. The Teamsters argue that service and maintenance employees do not belong in the same unit with technical and clerical employees because the two latter groups "by and large" have more formal education and occupy higher pay grades than the former groups. However, the Teamsters point to no specific facts to support their assertion. Nor is the Commission able to glean from the record sufficient evidence of distinctions in education and pay grade levels among those groups to outweigh the evidence of community of interest outlined above.

Citing cases where the Commission has previously distinguished between "blue collar" and "white collar" employees, AFSCME also argues that the unit sought by MASH is inherently inappropriate. In those cited cases, however, the Commission has relied upon traditional community of interest factors to establish clerical units separate from "blue collar" employees.<sup>14</sup> For example, in Town of Saugus School Committee, 2 MLC 1412 (1976), the clerical employees were a functionally distinct group, under separate supervision and having little contact with other unit employees. The same was true of clerical employees in Boston Water and Sewer Commission, 7 MLC 1439 (1980). Consequently, contrary to AFSCME's assertions, the Commission will not separate blue collar and white collar units unless the evidence demonstrates a lack of common interests. See also Marblehead Municipal Light Department, 9 MLC 1323 (1982) where the Commission examined employee duties, working conditions, supervision, skills, functional integration and interchange to determine that a petitioned-for unit of "blue collar" employees was appropriate. The record in this case fails to demonstrate how a combination of those employees would make the particular unit sought here inappropriate.

AFSCME also suggests that the unit petitioned for is not appropriate because it includes service and maintenance workers who do not have interests sufficiently distinct from the supply and maintenance employees already represented by AFSCME to justify separate representation. Although we believe, in agreement with AFSCME, that there exists a community of interest between the petitioned-for employees and the employees represented by AFSCME, we find insufficient evidence to conclude that the similarity of interests between the employees sought and those currently represented by AFSCME destroys the community of interest in the petitioned-for unit. Were we seeking to design the most appropriate unit we might agree with the Employer and the Teamsters who both argue that, because the employees currently represented by AFSCME share a community of interest with those employees in the petitioned-for unit, the Commission should approve an overall unit that combines the employees represented by AFSCME with those in the unit sought by MASH. We find, however, that the policy of encouraging the broadest, most comprehensive unit is outweighed in this case by two factors. First, AFSCME and the Employer share a

<sup>14</sup> In 1975 when the Commission, by rule, established certain state-wide units of state employees, the Commission separated "administrative and clerical" workers from "service, maintenance and institutional" employees. In so doing the Commission relied upon traditional community of interest criteria. Notice of Determination of State Employee Bargaining Units, 1 MLC 1318, 1335-1337 (1975). Although the criteria examined to determine community of interest may be affected by employment patterns that reflect discrimination based on gender, ethnicity, or other irrelevant

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stable, established bargaining relationship in the existing supply and maintenance unit. Second, the other non-professional employees of the Medical Center have a legally protected right to bargain collectively if they so choose and comprise a unit appropriate to that purpose.<sup>15</sup>

Our finding that the employees in the petitioned-for unit share a community of interest follows from the particular facts in the record before us. Our decision here is influenced by factors unique to this employer and does not indicate that the petitioned-for unit is the only appropriate health care unit that could be fashioned at this or any other employing enterprise.

#### Employees at Satellite Facilities

Although MASH does not seek to represent the employees at six satellite medical facilities operated by the Employer, both AFSCME and the Employer argue that those employees should be included in the proposed unit.

The record before us contains a paucity of evidence concerning the satellite employees. It reflects only that they are paid in the same manner, receive similar benefits, and have the same lines of supervision as the employees at the Medical Center. It contains no evidence about the interchange between satellite employees and the Medical Center employees. The record does not reflect any integration of operations between the satellite facilities and the Medical Center. Absent this evidence, we decline to conclude that the exclusion of the satellite employees would render the petitioned-for unit inappropriate. Although we have expressed a preference for systemwide units in other contexts, see e.g., Board of Regents of Higher Education (University of Massachusetts), 8 MLC 1409 (1981), our decisions in those cases were based on a more complete record than we have here that permitted us to evaluate the community of interest and historical relationship between the employees of the various facilities. While the satellite facility employees may share a community of interest with the Medical Center employees, we do not find that such community of interest is either so unique or so strong as to require their inclusion in the Medical Center unit. Accordingly, we conclude that the petitioned-for unit is appropriate without the inclusion of the satellite facility employees.

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considerations, generally appropriate units can be determined through reference to the traditional community of interest criteria, discussed supra. There is nothing inherently inappropriate about a combined "blue collar" and "white collar" unit. The Commission has recognized that a combined unit can be an effective vehicle for collective bargaining. See e.g., New Bedford School Committee, 12 MLC 1058 (1985).

<sup>15</sup>AFSCME also argues that the petition filed by MASH must be dismissed because AFSCME and the Medical Center are parties to a current collective bargaining agreement covering a unit of 260 supply and maintenance employees who work in the Medical Center's power plant, Environmental Building Services Department and Public Safety Departments. MASH's petition sought a bargaining unit that specifically

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"03" Personnel

The parties also disagree about whether those persons compensated from the "03" account under G.L. c.29, Section 29A (03 personnel) should be included in the petitioned-for unit. The Employer argues that its 03 personnel are temporary at best and do not share a community of interest with the employees in the unit sought by MASH. AFSCME contends that 03 personnel should be included and MASH seeks to include all 03 personnel that have held more than two temporary appointments. We have held that 03 personnel as a class will not be deprived of collective bargaining rights on the ground that they are not "employees" within the meaning of Section 1 of the Law. Board of Regents of Higher Education (Southeastern Massachusetts University), 11 MLC 1486 (1985). The Commission presumes that individuals who perform services for a public employer for compensation and with supervision are public employees within the meaning of the Law, regardless of the source of their compensation. Id. at 1497. However, this presumption can be rebutted by evidence that the employer does not retain control over the individual worker. Id. This record contains no evidence to rebut the presumption that the 03 personnel are "public employees" as defined in Section 1 of the Law. Thus, the mere fact that some Medical Center employees are compensated from the 03 account does not warrant their exclusion from the proposed unit.

The Employer argues, however, that the relationship between the temporary employees it compensates from the 03 account and the Medical Center is too insubstantial or "casual" to warrant their participation in collective bargaining because they work only for sixty days at a time. Cf. Boston School Committee, 7 MLC 1947, 1951 (1981) (certain substitute teachers could be regular part-time employees). The Commission determines whether employees are casual by considering factors like continuity of employment, regularity of work, relationship of the work performed to the needs of the employer, and the amount of work performed by the employees. See e.g., Town of Leicester, 9 MLC 1014 (1982).

We do not have sufficient information to make a reasoned judgment about the nature of the employment relationship between the Medical Center and its temporary 03 personnel.<sup>15</sup> We decline to speculate about whether those employees have a sufficient expectation of continued employment to share a community of interest with other employees. Therefore, we are unable to determine the unit placement of the

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excluded "all employees currently covered by an existing collective bargaining agreement." Because MASH does not seek to represent any employees currently represented by AFSCME, the contract bar doctrine does not apply here.

<sup>16</sup> While we may assume from the position taken by MASH some of the temporary workers are employed longer than 60 days, the record does not specify how many employees work longer than 60 days, how many temporary employees become permanent, or other information relevant to this determination.



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temporary 03 employees at the Medical Center in the petitioned-for unit. Accordingly, we will permit the temporary 03 employees to vote subject to challenge.

The Employer has identified 125 employees whom it seeks to exclude from the proposed unit as supervisors. OPEIU and MASH agree with the Employer's designation of the employees as supervisors. The Teamsters have declined to take a position concerning the supervisory status of the 125 employees; and AFSCME does not agree that the employees are supervisors. The Commission generally separates supervisors from the employees whom they supervise. See e.g., Boston School Committee, 11 MLC 1352, 1360 (1985). We shall continue the practice in this case and exclude personnel who exercise supervisory authority from the unit of employees whom they supervise. We find, however, that the record does not permit us to reach a conclusion concerning the supervisory authority of the named employees, and we note that the job titles of some of the named employees are the same as other non-supervisory employees. Accordingly, although we shall exclude supervisors from the unit, we decline at this time to attempt to name the employees who meet the Commission's definition of "supervisor." See generally University of Massachusetts, 3 MLC 1179 (1976). Instead, if any of the 125 employees appear to vote at the election, they will be permitted to cast a vote subject to the challenge of any party and, if determinative, their supervisory status will be resolved through the challenged ballot procedure.

The Employer also identified 37 employees whom it contends are "confidential" within the meaning of the Law. MASH agreed that nine of the 37 named employees are "confidential" and should therefore be excluded from the unit. OPEIU claims that all 37 employees are not "confidential" and should be included in the unit. AFSCME declined to enter into any stipulation concerning the 37 employees, while the Teamsters declined to take a position concerning the 37 employees. No party offered evidence concerning the actual job duties of the 37 named employees, and we note that the job titles and, therefore, job descriptions, of some of the 37 employees are the same as non-confidential employees. Accordingly, although we shall exclude all "confidential" employees from the unit, we are unable, on the basis of the record before us, to identify the employees who meet the Law's definition of "confidential." G.L. c.150E Sect 1. See generally, Littleton School Committee, 4 MLC 1405 (1977). Therefore, if any of the 38 employees appear to vote at the election, they will be permitted to cast a vote subject to the challenge of any party and, if determinative, their confidential status will be resolved through the challenged ballot procedure.

#### Direction of Election

We therefore conclude that a question of representation has arisen within the meaning of Section 4 of the Law concerning certain employees of the Board of Regents at the University of Massachusetts Medical Center.

The unit appropriate for the purposes of collective bargaining consists of all non-exempt classified employees at the University of Massachusetts Medical Center in Worcester except those employees in the Environmental Building Services



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Department, the Public Safety Department and the power plant currently represented by AFSCME, Council 93, and also excluding supervisors, managerial employees, confidential employees, security employees, and all other employees.

It is HEREBY ORDERED that an election shall be held for the purpose of determining whether a majority of non-exempt classified employees described above wish to be included in a bargaining unit represented by the Massachusetts Association of Service and Healthcare; the American Federation of State, County and Municipal Employees, Council 93, AFL-CIO; the International Brotherhood of Teamsters, Local 170; the Office and Professional Employees International Union, AFL-CIO; or whether they wish to be represented by no employee organization.

The eligible voters shall consist of all non-exempt classified employees at the University of Massachusetts Medical Center in Worcester, except those employees in the Environmental Building Services Department, the Public Safety Department and the power plant represented by AFSCME, Council 93, and also excluding supervisors, confidential employees, managerial employees, security employees, and all other employees, whose names appear on the payroll of the Board of Regents/University of Massachusetts Medical Center for the payroll period immediately preceding this decision and who have not since quit or been discharged for cause.

In order to ensure that all eligible voters shall have the opportunity to be informed of the issues and of their statutory right to vote, all parties to this election shall have access to a list of voters and their addresses which may be used to communicate with them.

Accordingly, IT IS HEREBY FURTHER ORDERED that six (6) copies of an election eligibility list be filed by the Board of Regents/University of Massachusetts Medical Center with the Executive Secretary of the Commission, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, Massachusetts 02202, no later than fourteen (14) days from the date of this decision.

The Executive Secretary shall make the list available to all parties to the election. Since failure to make timely submission of this list may result in substantial prejudice to the rights of the employees and the parties, no extension of time for the filing thereof will be granted except under extraordinary circumstances. Failure to comply with this direction may be grounds for setting aside the election should proper and timely objections be filed.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN  
MARIA C. WALSH, COMMISSIONER

