

MASSACHUSETTS BOARD OF REGENTS OF HIGHER EDUCATION AND MASSACHUSETTS COMMUNITY COLLEGE COUNCIL/MTA/NEA, SCR-2190 (3/30/88).

- 34.1 appropriate unit
- 34.2 community of interest
- 34.8 similarity of work (interchangeability)
- 34.902 add-on election
- 34.91 accretion
- 35.11 regular part-time employees
- 35.673 university faculty

Commissioners participating:

Paul T. Edgar, Chairman
 Elizabeth K. Boyer, Commissioner

Appearances:

- Americo A. Salini, Esq. - Representing the Massachusetts Community College Council/MTA/NEA
- Judith A. Wong, Esq. - Representing the Massachusetts Board of Regents of Higher Education

AMENDED DECISION

Statement of the Case

On April 24, 1987, the Massachusetts Community College Council/MTA/NEA (MCCC) filed a petition with the Labor Relations Commission (Commission) seeking to represent certain part-time faculty and professional employees employed by the Massachusetts Board of Regents of Higher Education (Employer) in its community colleges. On May 29, 1987 the MCCC amended its petition to seek a unit of "All faculty teaching credit courses less than full time during the day and all professional staff less than full time" employed at the community colleges.

Following an investigation and pursuant to notice, an expedited hearing on the petition was held before Margery E. Williams, Esq., a designated agent of the Commission, on October 21, 26 and November 10, 1987. The parties submitted testimonial and documentary evidence and were otherwise afforded full opportunity to be heard. Both parties submitted post-hearing briefs on December 2, 1987. By letter dated January 7, 1988, the Commission notified the parties that the hearing had been redesignated a formal hearing.

During the course of the hearing the parties stipulated that the Commission had jurisdiction over the petition and that the petitioned-for employees were public employees within the meaning of Section 1 of G.L. c.150E (the Law). They also reached agreement on the following generic description of the employees sought:

All regular part-time faculty teaching credit courses during the day who have taught any part of the academic year for each of the last



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three consecutive academic years or who are currently teaching in their third consecutive academic year, and all regular part-time daytime professional academic support personnel who have been employed any part of the fiscal year for each of the last three consecutive fiscal years, or are currently employed in their third consecutive fiscal year, employed by the Commonwealth of Massachusetts, Board of Regents of Higher Education in its Community Colleges, including employees in the job titles listed in Attachment A.¹

On the first day of hearing, the MCCC, consistent with the position that it had taken during the Commission's investigation of the petition, filed a motion to amend the petition to seek in the alternative an add-on election to accrete the petitioned-for employees into an existing full-time unit represented by the MCCC, or an election among the petitioned-for employees as a separate unit.² The MCCC expressed its preference to represent the petitioned-for part-time employees as part of the existing full-time unit, while the Employer took the position that the petitioned-for employees should be represented in a separate unit.

Where the parties have stipulated to an appropriate unit, the Commission will adopt the stipulation, as long as it does not conflict with the Law or with established Commission policy or precedent. See Board of Trustees, State Colleges, 4 MLC 1428 (1977). The agreements of the parties here do not involve any such conflict. Therefore, the only two issues for decision are:

1. Whether the petitioned-for employees are appropriately included in the existing unit of full-time employees or in a separate unit;
2. Whether the coaches are appropriately included among the petitioned-for employees.

¹ Attachment A, appended to this decision, lists the referenced job titles to be included in the unit description, as agreed by the parties. The parties were unable to agree to the unit placement of the Coach position, which the Employer contends should be excluded from any bargaining unit determined by the Commission.

² On March 25, 1983 in Case No. SCR-2167, the Commission certified the MCCC as the representative of the full-time unit, described as follows:

All regular full-time professional faculty personnel and academic support personnel including the following job titles:

Instructor, Assistant Professor, Associate Professor, Professor, Librarian (in those cases where the Librarian is under the supervision of the Director of the Learning Resource Center or its equivalent), Assistant Librarian, Cataloguer, Coordinator of Student Activities, Placement Officer, Health Care Counselor, Counselor, AV/TV Coordinator, Director of Instructional Media (in those cases where the Director is under the supervision of the Director of the Learning Resource Center or its equivalent), Director of Cooperative Education.

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Findings of Fact

Part-Time Faculty

There are fifteen community colleges in the Massachusetts community college system. There are currently three bargaining units in the community colleges: the full-time day faculty unit; a unit of full and part-time faculty in the colleges' Division of Continuing Education; and a unit of clerical, maintenance and technical employees.

In addition to full-time day faculty, most of the community colleges employ part-time day faculty to teach classes. The proportion of part-time to full-time faculty varies with each college. At North Shore Community College, for example, there are 140 full-timers and 60 to 90 part-timers; at Bunker Hill Community College 150 full-timers and 40 part-timers; at Springfield Technical Community College 182 full-timers and 33 part-timers. The part-time faculty fulfill four basic needs: (1) Part-timers teach courses funded by short-term grants, such as English as a second language, dental assisting and business courses. (2) Part-timers teach courses in special disciplines, such as fire science. (3) When certain courses are heavily enrolled, part-timers teach sections containing the overflow of students. (4) Part-timers are hired to replace full-timers who are temporarily unavailable to teach.

Part-time faculty report to the same college administrators as full-time faculty. There is no formal performance evaluation procedure for part-time faculty, but department or division chairs do evaluate some informally, and some receive student evaluations.³

The hiring process for part-time faculty is less formal and protracted than that for full-time faculty, but it is conducted by the same college administrators, i.e., the department or division chairs and the Dean of Academic Affairs. The desired qualifications vary depending on what the part-timers will be teaching. If they are to teach a traditional academic discipline such as English or history, the Employer attempts to hire candidates with the same qualifications as full-time faculty, such as a master's degree. In practical skills programs, such as x-ray technician courses, the Employer seeks candidates with an appropriate background, academic or otherwise. In practice, these requirements are flexible because part-timers must often be hired on short notice.

Part-time faculty teach one or two courses per semester and receive a lump sum for each course they teach. The rate varies with each community college. Part-time faculty receive no benefits, do not hold academic rank, and are not eligible for tenure or sabbaticals. They are not required to advise students, hold

2 (continued)

Excluding Presidents, Deans, Assistants to President, Assistants to Deans, Head Librarians, Registrars, Division Chairpersons, and all managerial and confidential employees, and all other employees.

3 (see page 1592)



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office hours or perform "college service" as it is defined in the collective bargaining agreement covering full-time faculty.⁴ In practice, however, when their schedules permit part-time faculty do meet with students to advise them, and some hold office hours, borrowing an office from a full-time colleague for that purpose. Part-time faculty play no role in the various governance committees of the community colleges, but they sometimes attend monthly departmental meetings.

Part-time faculty teach in the same buildings and often interact with full-time faculty, discussing common concerns and exchanging syllabuses. When part-time faculty substitute for full-timers or teach the overflow of heavily enrolled courses, their work is identical to the full-time faculty's. They teach the same courses to the same students.⁵ It is not unusual for the Employer eventually to hire a part-timer into a full-time faculty position.

Coaches

Part-time coaches coach teams in the various sports offered by the community colleges, such as baseball, basketball, softball, tennis, golf and cheerleading.⁶ They preside over daily practice sessions, help improve students' performance, attend all games, and perform some administrative tasks such as keeping statistical reports and talking to the media. They also recruit athletes, both within the colleges and from high schools, and keep track of athletes' academic performance to ensure that they remain eligible for the teams.

³ (from page 1591)

Full-time faculty are subject to a detailed evaluation procedure under Article 13.00 of the current collective bargaining agreement between the Employer and the MCCC.

⁴ Article 12.03, "Workload of Faculty," of the current collective bargaining agreement covering full-time faculty provides, inter alia:

- A. Faculty work load shall consist of:
1. Instructional workload, which includes:
 - a. teaching in both traditional and non-traditional learning modes;
 - b. instructional preparation;
 - c. assessment of student performance.
 2. Non-instructional workload shall consist of:
 - a. student assistance/advisement;
 - b. college service, which includes:
 1. serving as advisor to student activities;
 2. serving on governance, ad hoc, college standing committees, system-wide task forces or committees, or labor-management committees;
 3. preparing grant proposals;
 4. participating in college, division, department or other related meetings and/or activities;
 5. participation in the improvement and development of academic programs and resources, including recruitment.

(5 and 6, see page 1593)



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Coaches' work is seasonal, with the seasons depending on the sport. In season, they generally work at least two hours per day supervising team practice. On nights when there are games they work longer hours. In the off season coaches spend time recruiting players and sometimes helping players who are having academic difficulties.⁷ Coaches report to the director of athletics at their college. In the course of recruiting players and monitoring their academic performance, coaches may have some contact with faculty. They also interact with the faculty, if any, of their particular athletic department.

Coaches are paid a lump sum for each sport that they coach, e.g., \$1250 for spring baseball, \$1890 for basketball, \$900 for golf. The sum varies according to the length of the sport season and may differ at each community college. Coaches' salaries derive from each college's athletic budget, which in turn is funded by a yearly activities fee charged to students. Coaches receive no benefits.

The only qualifications for coaches are knowledge of the sport, coaching experience at least on the high school level, and suitable personal characteristics. No formal academic credential is required and it does not appear that many possess any advanced degree. No college maintains a physical education degree program. Students receive no academic credit for participation in any sports activities conducted by the coaches, and are not required to participate in any sport.

Opinion

Part-Time Day Faculty

In Massachusetts Board of Regents (PCE), 13 MLC 1347, 1361 (1986) the Commission held that part-time day faculty at the state colleges shared a community of interest with full-time day faculty and ordered an election for the purpose of determining whether the part-time faculty wished to be included in the existing unit of full-time faculty. The Commission noted its traditional reluctance to establish separate units of part-time and full-time employees who performed the same job duties. See, e.g., Massachusetts Board of Regents (SMU), 11 MLC 1486 (1985); Boston School Committee, 7 MLC 2149 (1981); Town of Sterling, 4 MLC 1704 (1978).

There is little that distinguishes this case from the earlier Massachusetts Board of Regents cases. As do the full-time faculty, part-time faculty in the community colleges teach students. They often teach the same courses to the same students as the full-timers, and they operate under the common supervision of the

⁵ (from page 1592)

The part-time faculty who teach under special grants often work with distinct student populations.

⁶ (from page 1592)

There appear to be no full-time coaches.

⁷ Witness Dana Brown, men's head basketball coach at Massachusetts Bay Community College, estimated that he spent 20 to 25 hours per week on coaching duties in season and 10 hours per week off season.



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college administrators. Their credentials are often the same as the full-timers; indeed, the Employer has hired some of them into full-time positions. They interact with full-time faculty. While part-timers are not required to advise students or hold office hours, the record reveals that in fact they sometimes do; while they are not subject to a mandatory evaluation procedure, they are often evaluated informally. The Employer points out the discrepancies in part-timers' and full-timers' salaries and benefits, but these are not dispositive. Such discrepancies "may reflect only the gains achieved by unionized workers as a result of collective bargaining, rather than a fundamental divergence in their community of interest." Massachusetts Board of Regents (SMU), 11 MLC at 1498. In short, under well-established Commission precedent the part-time faculty at the community colleges are appropriately included in the existing unit of full-time faculty.

Coaches

The evidence presented does not establish that the coaches share a community of interest with the full-time and part-time day faculty and professional academic support personnel sufficient to warrant their inclusion in the unit. We have previously included athletic coaches who perform no college teaching but who hold academic rank in a faculty bargaining unit. Board of Trustees, University of Massachusetts, 3 MLC 1179, 1218 (1976). Here, however, the coaches are not required to, and there is no evidence that most possess any formal academic degree, in contrast to the degree requirements for the college faculty in the unit. Their coaching functions, moreover, are not part of any academic department or degree program, and students' participation in sports they coach neither earns academic credit nor satisfies any requirement for graduation. Cf. University of Miami, 213 NLRB 634 (1974). Based upon these distinctions between the coaches and the faculty and other professional employees included in the unit, we exclude them from the unit.

Direction of Election

We therefore conclude that a question has arisen concerning the representation of certain employees of the Board of Regents of Higher Education at the community colleges within the meaning of Section 4 of G.L. c.150E.

The unit appropriate for the purpose of collective bargaining consists of employees currently included within the full time professional bargaining unit at the community colleges as well as part-time faculty teaching credit courses who have taught any part of the academic year for each of the last three consecutive academic years or who are now teaching in their third consecutive academic year, and part-time daytime professional academic support personnel employed for any part of the fiscal year for each of the last three fiscal years or who are now employed in their third consecutive fiscal year, including employees holding the job classifications listed in Appendix A hereto.

IT IS HEREBY ORDERED that an election shall be held for the purposes of determining whether the part-time faculty described above wish to be included in the existing bargaining unit currently represented by the Massachusetts Teachers Association/NEA or represented by no employee organization.



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The eligible voters in the election shall consist of all part-time faculty teaching credit courses at the community colleges who have taught any part of the academic year for each of the last three consecutive academic years, or who are now teaching in their third consecutive academic year, and all part-time daytime professional academic support personnel employed for any part of the fiscal year for each of the last three fiscal years or who are now employed in their third consecutive fiscal year, including employees holding the job classifications listed in Appendix A hereto whose names appear on the payroll of the Board of Regents for the payroll period immediately preceding the date of this decision, and who have not since quit or been discharged for cause.

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 the Board of Regents file three (3) copies of an election eligibility list 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 directive 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
ELIZABETH K. BOYER, COMMISSIONER



MASSACHUSETTS LABOR CASES

CITE AS 14 MLC 1596

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ATTACHMENT A

Berkshire Community College

Teaching Assistant
Computer Lab Coordinator
Placement Officer
Comp. Lab Coordinator
Reference Librarian

Asst. Career Planning & Placement Officer
Lab Technician
Health Care Counselor
Academic Advisor
Theatre Arts Tech.

Bristol Community College

Counselor
Coordinator, Women's Service Center
Minority Recruiter

Client Services Coordinator, Allied Health
Coordinator, Fitness Center
Director, Fit for Life Program

Cape Cod Community College

Coordinator, Coaches and Mentors
Program for High Risk Students
Archivist

Assistant Librarian
Counselor

Greenfield Community College

Counselor
Writing Tutoring Specialist
Guidance Counselor

Math Lab Director
Assistant Librarian

Massasoit Community College

Job Developer
Evening Nurse
Professional Tutor

Coordinator - Center for Women
Educational Planner
Coordinator - Disability Student Center

Mass. Bay Community College

Learning Lab Facilitator

Middlesex Community College

Graphic Arts

Counselor

Mount Wachusett Community College

Counselor
Professional Tutor
Coordinator, Adult Basic
Education Grant

Special Projects Tutor
Coordinator, WAVE Project
Professional Teacher Aide
Coordinator, Prison Program
(continued)



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Mount Wachusett Community College

(continued)

Professional Instructional Aide
Advisor, Welfare Grant; Coordinator/Counselor, College Reentry Program
Coordinator

North Shore Community College

Counselor	Career Counselor
Professional Teacher Aide	Office Technology Lab Coordinator
Student Activities Coordinator	Preview Center Assistant
GED Staff Assistant	Assistant Coordinator, EMT Program
Teacher/Curriculum Developer	

Northern Essex Community College

Staff Assistant-Interpreter Clinical Nurse/Specialists	Staff Assistant-Guidence & Transition - DTMD Grant
Staff Assistant-Assessment Center	Staff Assistant-Hearing Impaired Program
Staff Assistant (Program Advisor/LEEP)	Staff Assistant-Soccer Coach
Staff Assistant-Lawrence Resource Room Program	Tutor
Substitute Nurse	Staff Assistant/Disabilities Coun. Consultant, Minority Enrichment Program
Staff Assistant-LEEP	Staff Assistant-Center for Business & Industry
Counselor	Staff Assistant-Coordinator Automated Office Skills Grant
Staff Assistant-Math Lab	Staff Assistant-Math Center
Staff Assistant-Academic Advisor/Job Developer-Automated Office Skills Activity Coordinator, Title III	Coordinator, English in the Workplace, DTMD Grant
Staff Assistant-Coordinator Minority Enrichment Program	Staff Assistant-Intensive Skills Hearing Impaired Program
Consultant, Life Long Learning Program	Staff Assistant-Evenings-Writing Center
Staff Assistant-Academic Support Center	Clinical Nurse Specialist-Health Services Coordinator, 12 Mo. Option, Registered Nurse Program
Program Advisor/Counselor	Coordinator/Counselor, Title III
Chem. Lab Assistant	Staff Assistant-Job Developer Coop Ed & Placement
Staff Assistant-Evening Coordinator LEEP	Staff Assistant Special Projects for Academic Support Center
Financial Aid Counselor	Assistant Librarian
Staff Assistant-Job Developer Automated Office Skills Grant	Coordinator, AHEC
Counselor for Learning Disabilities	Staff Assistant-Intramural Coordinator
Staff Assistant-Program Advisor/ Counselor-Leep	



MASSACHUSETTS LABOR CASES

CITE AS 14 MLC 1598

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Quinsigamond Community College

Counselor

Roxbury Community College

Tutor
Part-Time Librarian
Counselor & Tutor

Recruiter
Transcript Clerk

Springfield Technical Community College

Counselor
Coordinator/Counselor, Ronald E. McNair Program
Administrative Assistant/Counselor Mass. Educational Opportunities Program

