

UNIVERSITY OF MASS., BOSTON AND U. OF MASS. BOSTON PATROLMEN'S ASSN, AND
SEIU LOCAL 576, SCR-2022, CAS-2037 (7/3/75).

- (30 Bargaining Unit Determination)
 - 34.1 appropriate unit
 - 34.2 community of interest
 - 34.91 accretion
- (40 Selection of Employee Representative)
 - 45.1 contract bar

Commissioners participating: Alexander Macmillan, Chairman; Madeline H. Miceli
Henry C. Alarie.

Appearances:

- | | |
|---------------------|---|
| Kathryn M. Noonan | - Counsel to the Commission |
| Henry Wise | - Counsel to University of Massachusetts
Boston Patrolmen's Association |
| Joseph G. Sandulli | - Counsel to Service Employees Inter-
national Union, Local 576, AFL-CIO |
| Steven D. Ostrowski | - Counsel to the University of Massachu-
setts, Boston |

DECISION AND ORDER

Statement of the Case

On September 11, 1974, the University of Massachusetts - Boston Patrolmen's Association ("the Association") filed a petition (SCR-2022) with the Labor Relations Commission ("the Commission") pursuant to the provisions of Chapter 150E of the General Laws ("the Law") seeking certification as the exclusive representative for purposes of collective bargaining of twenty-five (25) police patrolmen at the University of Massachusetts - Boston.

The petition and notice of hearing were duly served on all interested parties pursuant to the Rules and Regulations of the Commission and a pre-investigation conference was conducted by an agent of the Commission on October 8, 1974. Subsequently, pursuant to notice, formal hearings were held on December 27, 1974 and January 28, 1975 before Commissioner Henry C. Alarie. All parties were given full and fair opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence.

On January 23, 1975 the University of Massachusetts - Boston ("the University") filed a petition (CAS-2037) seeking clarification or amendment of the certified bargaining unit represented by Service Employees International Union, Local 576, AFL-CIO (SEIU) to include the patrolmen within the SEIU unit. The petition was duly served on all interested parties and a pre-investigation conference was held on February 19, 1975. After investigation the Commission determined that the issues raised by the clarification petition were identical to those raised by the Association's petition in SCR-2022 and therefore consolidated the cases for ruling. Briefs were timely filed by the Association and the University and have been considered.



University of Mass., Boston, SCR-2022, CAS-2037

Upon the record as a whole, the Commission makes the following findings of fact:

Findings of Fact

1. The Board of Trustees of the University of Massachusetts is a "public employer" within the meaning of Section 1 of the Law.
2. The University of Massachusetts - Boston Patrolmen's Association and Service Employees International Union, Local 576, AFL-CIO are "employee organizations" within the meaning of Section 1 of the Law.
3. The Association sought a unit of all patrolmen at the University of Massachusetts - Boston. The University initially contended that the petition should be dismissed because of a contract bar, claiming that the employees sought were included within the unit covered by a contract between SEIU and the University. In the alternative, the University contends that patrolmen should be accreted to the existing non-professional unit represented by SEIU.¹

The University further submitted that a separate unit of patrolmen is inappropriate.

A. University Operations

The Harbor Campus of the University of Massachusetts - Boston is bounded by the Columbia Point housing project, Morrissey Boulevard and the ocean. On the campus are seven buildings, two garages and two and one-half miles of road. In addition to the Harbor Campus the University of Massachusetts - Boston also owns and operates a 12-story building located at 100 Arlington Street in Boston.

The University employs approximately 1,025 persons of whom 375 are non-professional employees. In April, 1973 the University received authorization for 30 campus police officer positions, 25 of which are presently filled. The campus police are members of the Public Safety Department of the University. The department is headed by the Director of Security. Under him are a Chief, four sergeants and the campus police positions. The police are charged with maintaining the security of the personnel and property at the two locations and exercise full police powers including the power of arrest. They perform their duties by both foot and car patrol. The department provides 24 hour coverage by three shifts. The patrolmen work a five-day week including weekends and rotate to a different shift every two weeks.

¹ Although it had received notices, SEIU did not appear at the formal hearings held in SCR-2022. It did appear at the pre-investigation conference held for CAS-2037 and submitted that it was prepared to represent the campus police if the Commission placed them in the existing unit.

University of Mass., Boston, SCR-2022, CAS-2037

The only other non-professional employees who regularly work more than one shift and provide weekend coverage are those assigned to the physical plant including technical specialists and utility plant operators. Neither they nor the patrolmen receive a shift differential.

The patrolmen are classified as Grade 11 employees, enter the service at Step 1 and receive annual increments as do other non-professional employees. Other non-professional employees of the University classified as Grade 11 include Carpenter, Library Research Assistant and Painter. Patrolmen also receive the same benefits package -- vacation, sick leave, insurance etc. -- as do the other non-professional employees.

B. Bargaining History

On November 18, 1969 SEIU was certified by the Director of Personnel and Standardization as the bargaining representative of certain classified employees. SEIU and the University negotiated a contract in April, 1973 to expire April 30, 1974 which contained the following recognition clause:

The Employer recognizes the Union as the sole and exclusive bargaining agent for the purposes of improving conditions of employment for all classified employees in the classifications listed on Appendix A of the Agreement, as stipulated in certification or recognition (ER-63) dated November 18, 1969. Should any new classification in a classified title be added to the University quota, the Union and the Employer shall negotiate to determine if such new classification shall be added to the bargaining unit.

The classifications listed on Appendix A are:

"Carpenter, Electrician, Electronics Technician, Junior Clerk and Stenographer, Junior Clerk and Typist, Junior Library Assistant, Library Reference Assistant, Mechanical Handy Man, Painter, Principal Bookkeeper, Principal Clerk, Senior Clerk, Senior Clerk and Stenographer, Senior Clerk and Typist, Senior Library Assistant, Storekeeper, Storeroom Helper, Technical Assistant, University of Massachusetts".

The termination clause of the Agreement provides that "[d]uring the negotiations [for a new Agreement], the terms of this Agreement shall remain in full force and effect".

On February 7, 1974 SEIU, pursuant to the provisions of the recognition clause, sought to add 20 named job titles to the bargaining unit and "all other non-professional employees in all classifications not previously listed". (Employer's Exhibit #2, p. 2) The named positions did not include campus police officer.

In April, 1974 at a bargaining session the University presented SEIU with a list of all 61 non-professional titles at the University. (Employer's Exhibit #3) At subsequent bargaining sessions the parties did not reach agreement on the inclusion or exclusion of campus police officers as members of the bargaining unit. Presently, SEIU represents about 100 of the 375 non-professional employees.



University of Mass., Boston, SCR-2022, CAS-2037

OPINION

A. Contract bar and accretion

There is no question that the employees sought by the petition are not presently represented by SEIU or covered by the contract which expired in April, 1974. The parties never reached agreement on the issue of expanding the bargaining unit. Furthermore an expired contract does not bar a representation petition even though the parties agree to continue its terms during negotiations. Therefore, the contention that the petition should be dismissed because of a contract bar is without merit. See Section 4 of the Law and Section 5 of Article 11 of the Rules and Regulations Relating to the Administration of an Act Providing for Collective Bargaining for Public Employees.

Because the accretion/clarification petition process results in the inclusion of employees within an existing bargaining unit without providing the employees with an opportunity to vote for the designated bargaining agent, the Commission carefully scrutinizes the mutual intent of the parties at the time of recognition or certification or their subsequent conduct so as to both protect the rights of employees to freely choose their bargaining representative and also give effect to the parties' clearly expressed intention as to the unit structure. See City of Somerville, CAS-2008 (Jan. 7, 1975) at 8-9, 1 MLC 1234, 1236. Compare City of Boston School Committee, MUP-2084 (Feb. 20, 1975) at 13-14, 1 MLC 1287, 1293.

Although the University contends that the campus police positions should be accreted to the existing non-professional unit represented by SEIU, the certification here is not so broad as to encompass the positions petitioned for. In addition, the recognition clause of the agreement between the University and SEIU, rather than substantiating the claim by the University that the parties intended the unit as certified to be an amalgamation of all non-professional employees, expanding as new classifications were created, clearly indicates that although the parties anticipated new classifications would be added to the non-professional complement at the University, these new positions would not automatically be considered part of the bargaining unit.²

B. Appropriateness of unit

Dismissal of the clarification petition does not dispose of the University's further contention, properly raised in the representation petition, that the unit sought by the Association is inappropriate and the campus police are appropriately placed in the SEIU unit.

We have recently examined in detail the statutory criteria provided in Section 3 of the Law for determining appropriate bargaining units. In Community

² Compare University of Massachusetts Medical School SCR-2006, 1 MLC 1245 (Jan. 16, 1975) wherein the unit description included the general category of "all maintenance and supply employees" and in addition the testimony indicated that the parties intended, when the original petition was filed, that power plant operators would be accreted to the maintenance and supply unit.

University of Mass., Boston, SCR-2022, CAS-2037

Colleges, SCR-11 et al (May 16, 1975) at 16 we recognized that "[n]o coherent unit structure...can fully accommodate the conflicting statutory influences". While we concluded that "broad, comprehensive rather than smaller, fragmented, units will better serve the public interest and the overriding legislative policy" in most instances, this view was tempered by the caveat that "'appropriate' units may not include employees with a diversity of employment interests so broad as to produce inevitable conflicts irreconcilable with effective negotiation or administration of collective agreements". Id. at 17-18.

We conclude that the campus police have distinct employment interests sufficient to warrant separate representation. Pursuant to our authority under Section 3 of the Law, we amended our Rules and Regulations on March 3, 1975 with respect to bargaining units for employees of the Commonwealth so as to provide that "all employees with power to arrest, whose work involves primarily the enforcement of statutes, ordinances and regulations, and the preservation of public order" would be designated as a bargaining unit separate from all other non-professional employee units. In our Statement in Support of Adoption of Amendment to Rules and Regulations of the Commission Creating Statewide Occupational Units (March 3, 1975) at 37-39 the unique character and bargaining concerns of law enforcement personnel were described. As campus police at University of Massachusetts - Boston have responsibilities similar to members of the law enforcement personnel of the Commonwealth, no extended discussion is necessary to justify establishing a separate unit.

Contrary to the University's contention, "community of interest" is not determined by common placement on a pay classification schedule. The fact that carpenter, painter and library research assistant -- all members of the unit represented by SEIU -- are classified as Grade 11 employees for purposes of remuneration, has little bearing on the finding of a requisite community of interest. "Community of interest requires rather a similarity of interests and working conditions predicated upon, inter alia, common supervision, similar work conditions, similar job requirements, education, training and experience, as well as interchange and work contact". Statement at 25-26. Grade and pay scales developed prior to the passage of bargaining laws for purposes unrelated to collective bargaining are not evidence of "community of interest". That all non-professional employees receive identical benefits is equally not persuasive in view of the fact that prior to July 1, 1974 all state employees, including non-professional employees of the University system, were permitted to bargain only as to working conditions. G. L. c. 149, sec. 178F.³

We cannot reasonably predict that the wage and benefits proposals of campus police will continue to parallel those of other non-professional employees now that all groups may engage in bargaining on economic items.

Although the Law does not require that security personnel be placed in a separate unit, contrary to the National Labor Relations Act, the Commission

³On July 1, 1974, state employees received the right to bargain as to "wages, hours, standards of productivity and performance, and other terms and conditions of employment". G. L. c. 150E, sec. 6.



University of Mass., Boston, SCR-2022, CAS-2037

has been delegated broad powers to determine appropriate bargaining units by section 3 of the Law. We reject the conclusion that the Legislature's failure to include a similar mandate in the Law compels the placement of campus police in a unit with other non-professional employees. (Similarly, we reject the conclusion that all employees engaged in security or guard functions must be separated from other employees.) In any event, we conclude that on the basis of the record before us, University of Massachusetts - Boston campus police have evidenced a mutuality of interest, measured by standards identical to and applied by the Commission in determining appropriate unit questions presented by other groups of employees, sufficient to be termed an appropriate unit.⁴ That we may have placed campus police at other institutions in overall units is not controlling, particularly where no employee organization was petitioning for a separate unit of campus police and no party presented evidence to justify the exclusion of campus police from an overall unit of non-professional employees. See Holyoke Community College, SCR-114 (June 5, 1974). Compare University of Massachusetts (Amherst) SCR-3, SCR-4 (April 15, 1968).

Conclusions

Upon all of the evidence and the record as a whole we find that:

1. A question has arisen concerning the representation of certain employees of the University of Massachusetts - Boston;
2. The unit appropriate for collective bargaining consists of "all campus police patrolmen employed at University of Massachusetts - Boston, excluding sergeants and all other employees of the University of Massachusetts - Boston";
3. An election shall be held for the purpose of determining whether or not the majority of the employees in said unit have designated or selected University of Massachusetts - Boston Patrolmen's Association or no employee organization;
4. The list of eligible voters shall consist of all those persons included within the above-described unit whose names appear upon the payroll of the Public Employer for the week ending June 28, 1975 and who have not since quit or been discharged for cause.

Direction of Election

By virtue of and pursuant to the power vested in the Commission by Chapter 150E of the General Laws as aforesaid,

IT IS HEREBY DIRECTED, as part of the investigation authorized by the Commission, that an election by secret ballot shall be conducted under the direction and supervision of representatives of the Commission among the employees in the aforesaid bargaining unit at such time and place and under such

⁴The University relied upon the community of interest test without presenting any evidence dealing with the remaining statutory criteria of efficiency of operations, effective dealings and employee rights to effective representation. Consequently we express no opinion on the appropriateness of the unit as measured by these criteria.

University of Mass., Boston, SCR-2022, CAS-2037

conditions as shall be contained in the Notice of Election issued by the Commission and served on all parties on the premises of the Public Employer together with copies of the specimen ballot.

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

Accordingly, IT IS HEREBY FURTHER DIRECTED that three (3) copies of an election eligibility list, containing the names and addresses of all the eligible voters must be filed by the Employer 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 the 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.

