
**BOARD OF TRUSTEES/UNIVERSITY OF MASSACHUSETTS AND
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA/G.E.O.,
SCR-2215 (4/15/94).**

- 34.1 appropriate unit
- 34.2 community of interest
- 34.5 established practice
- 34.731 campus
- 35.12 students as employees

Commissioners Participating:

William J. Dalton, Chairperson
William G. Hayward, Jr., Commissioner
Claudia T. Centomini, Commissioner

Appearances:

- Richard S. Ong, Esq. - Representing the University of
Massachusetts
- Shelley B. Kroll, Esq. - Representing the International Union,
United Automobile, Aerospace and
Agricultural Implement Workers of
America/G.E.O.

DECISION AND DIRECTION OF ELECTION¹

On December 14, 1993, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America/G.E.O. (Union) filed a petition with the Labor

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This case has been redesignated "formal" pursuant to Commission Rule 13.02(1), 456 CMR 13.02(1).

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Relations Commission (Commission) seeking certification as the exclusive collective bargaining representative for a unit of graduate teaching and research assistants (TA's, RA's or assistants) at the Lowell campus of the University of Massachusetts (University). During the Commission's investigation of the petition, the parties agreed to present evidence through stipulated facts rather than at a hearing. The Union filed Proposed Findings of Fact and Legal Argument on March 78, 1994 and the University filed its response on March 22, 1994. The University took no position regarding the Union's legal representations and arguments, deferring instead to the Commission's expertise in structuring bargaining units. Specifically, the University did not challenge or otherwise contest issues concerning the appropriateness of the petitioned-for unit or the assistants' status as public employees. The parties filed final stipulations on April 11, 1994.

Findings of Fact

The parties stipulated to the following facts, which the Commission hereby adopts as findings of fact:

I. ORGANIZATIONAL STRUCTURE OF UNIVERSITY

- A. The University of Massachusetts is composed of separate campuses in Amherst, Lowell, Boston, Dartmouth and Worcester. U.Mass. Lowell, formerly the University of Lowell, became part of the state university system in 1990.
- B. Undergraduate and graduate degree programs are offered at the Amherst, Boston, Dartmouth and Lowell campuses. The University's Medical School is located at the Worcester campus.
- C. The greatest number of graduate students, approximately 5,600, are enrolled at the Amherst campus. There are approximately 2,563 graduate students at U.Mass. Lowell. Far fewer graduate students are enrolled at the other campuses.
- D. The University is governed by a Board of Trustees created by M.G.L. c.75, §1A. The Board has overall executive authority for the operation of the University and has been granted broad administrative powers by the legislature. The Board has ultimate control overall policy and personnel matters.

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E. Authority over day-to-day operations of the University is centralized in the office of the President. The President, Michael Hooker, is the University's chief executive. Reporting to the President are the Chancellors, who serve as the chief executive officers and administrators of the different campuses. Each campus also has vice-chancellors and, below this administrative level, deans, associate deans and assistant deans of the various schools and colleges on each campus.

F. A more detailed description of the administration of the U.Mass. system is contained in the record as Exhibit 1.

G. Each campus (with exception of Worcester) is divided into schools and/or colleges which are further subdivided into departments or clusters. Each department or cluster has a department chairperson elected by constituent faculty members and approved by the college dean. A chart illustrating the organization of U.Mass. Lowell is contained in the record as Exhibit 2.

H. The colleges at U.Mass. Lowell include Arts and Sciences, Engineering, Health Professions, Education, Fine Arts, and Management. The graduate programs offered at U.Mass. Lowell are listed in the record in Exhibit 3. The graduate school administers the various graduate programs. It has no departments or faculty of its own.

I. The number of TA's at U.Mass. Lowell is approximately 304. The number of RA's is approximately 44. The 44 RA's at U.Mass. Lowell are separated into two categories: a) 19 of these individuals are supported by extramural funding provided by principal investigators. These individuals sign a research assistantship agreement; b) 25 RA's are assigned to a number of different centers at U.Mass. Lowell. Although they support the university's research mission, the latter group are funded from Lowell's budget and sign the standard teaching assistant contract. When these 25 individuals are added to the 304 TA's, the total number of TA/RA's supported by U.Mass. Lowell during 1993-94 was 329.

The following is a list of the colleges, departments, and research centers which employ teaching and research assistants.

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<u>College</u>	<u>Department</u>
<u>Arts and Sciences</u>	
<u>Humanities and Social Sciences Division</u>	Psychology, Criminal Justice
<u>Science Division</u>	Biological Sciences, Chemistry Computer Science, Mathematics, Physics
<u>Education</u>	
<u>Engineering</u>	Chemical Eng., Civil Eng., Electrical Eng., Energy Eng., Engineering Technology, Mechanical Eng., Plastics Eng., Work Environment
<u>Fine Arts</u>	Music
<u>Health Professions</u>	Clinical Laboratory Sciences Health Services Administration Nursing, Physical Therapy
<u>Management</u>	Master of Business Administration Master of Management Sciences in Manufacturing
	<u>Centers</u>
	Center for Atmospheric Research Center for Health Promotion Computer Aided Engineering & Design Center Massachusetts Bioprocessing Development Center Center for Industrial Competitiveness Center for Field Services and Studies Demonstration School

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Advanced Biomaterial Institute
Center for Advanced Electronic Technology
Center for Advanced Materials
Center for Imaging and Optical Computing
Institute for Plastics Innovation
Institute for Visualization and Perception Research
Lorin Kerr Ergonomics Institute
Pinanski Energy Center/Radiation Laboratory
Polymer Degradation Research Center
Submillimeter Modeling Laboratory
Toxics Use Reduction Institute
Center for Sustainable Energy
Center for Environmentally Appropriate Materials
Center for Productivity Enhancement
Tsongas Industrial History Center
Center for Advanced Computation
Center for Tropical Diseases

II. **JOB DUTIES**

A. Teaching Assistants are graduate students employed by U.Mass. Lowell to assist faculty in classroom teaching, laboratory instruction, or other instruction-related activities such as grading papers, preparing, monitoring and grading exams, consulting with students, and servicing laboratories.

B. The responsibilities of TA's are varied. Some are assigned to reach undergraduate students, usually in small tutorial/laboratory sections and always under the supervision of a faculty member. Others support classroom/laboratory activities by grading papers and exams, preparing laboratory setups, overseeing computer laboratories, etc. In addition, there are TA's whose work supports the research mission of the University, the departments and centers.

C. A TA's employment is governed by the terms of an individual employment contract. The duration of the contract is usually one academic year (two consecutive

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semesters) but can also be limited to one semester. There were 33 TA contracts written for one semester in 1993-1994. Full-time TA's, whether employed for one or two semesters, are required to work 18 hours per week. A copy of the standard TA contract is contained in the record as Exhibit 6.

The University also employs half-time TA's who are required to work 9 hours per week for one-half of the compensation received by full-time TA's. Half-time TA's are employed for two consecutive semesters. TA's are not required to perform duties during intersession or during the Spring semester recess. During these periods and to a limited extent during the academic semester, they are allowed to further supplement their income with additional hourly wage jobs, or on off-campus.

D. Research assistants work on specific research projects under the direction of a faculty member who is known as the principal investigator. RA work is task oriented, ranging from servicing the professor's laboratory to performing experiments, conducting bibliographical research, and preparing drafts of articles. RA's are usually advanced graduate students, who have completed course work and exams, and are capable of shouldering significant responsibility and independence in conducting research activity.

E. TA's generally, but not always, work within their graduate departments. Research assistants generally work within their academic departments and fields. There is often a close relationship between the research performed by an RA and his/her dissertation topic. Such assignments provide an efficient manner in which to use scarce financial resources since the principal investigator is able to benefit from the RA's expertise in order to complete a grant or contract while simultaneously helping to reduce the "time to degree completion" for the RA.

III. SUPERVISION

A. Methods of supervision vary by department and by faculty member. TA's meet regularly with their supervising faculty who review student grading and make final decisions on course grades. In laboratory science courses TA's meet weekly with the faculty coordinator to whom they submit the weekly grades of the students they instruct. The faculty coordinator monitors the lab sections and provides feedback to the TA's.

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B. All TA's and RA's must fill out weekly time sheets which are reviewed by faculty and/or department heads and are the basis upon which their weekly pay is authorized. In some departments, such as nursing, any hours of work missed by a TA must be made up.

C. TA's may be disciplined and/or discharged for failure to satisfactory (sic) perform their job duties. For instance, failure to turn in weekly grades to faculty supervisors may result in warning letters. The teaching assistants' contract provides that a TA may be suspended or removed for just cause which includes "failure to perform duties and/or responsibilities." Failure to maintain satisfactory academic standing is also just cause for dismissal. There have been instances of TA's discharged during the terms of their contracts for unsatisfactory performance. In the event of discipline or discharge, a complaint procedure is available to TA's. If the assistantship committee recommends dismissal, the TA may appeal this decision to the Vice Chancellor for Academic Affairs. During the hearing procedure the TA's pay continues. If the ruling to dismiss the TA is sustained, he or she will continue to receive stipend payments during a thirty (30) day termination period.

VI. COMPENSATION

A. There are three levels of pay for TA's and RA's which correspond to departmental seniority. Seniority is associated with progress made in pursuit of graduate degrees. The TA/RA compensation package includes both taxable income and a nontaxable qualified tuition reduction equal to the cost of in-state tuition and fees. For the 1993-1994 academic year, full-time TA's and RA's (i.e., those employed for 18 hours a week) are paid as follows:

<u>Degree Level</u>	<u>Taxable Income</u>	<u>Tuition Reduction</u>	<u>Total Compensation</u>
1	\$ 9,995.66	\$3,737.56	\$13,733.22
2	\$11,414.16	\$3,737.56	\$15,152.00
3	\$12,414.66	\$3,737.56	\$16,152.00

B. Prior to the 1992-1993 academic year, TA's and RA's received full tuition waivers as part of their compensation packages. Since that time, TA's and RA's, in-state and

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out-of-state, receive the same tax free qualified reduction which corresponds to the cost of in-state tuition and fees.

C. Forty-four percent of the total TA's and RA's at U.Mass. Lowell have out-of-state status. Out-of-state tuition and fees for the 1993-1994 academic year was \$7,313.44. Because only \$3,737.56 of TA and RA compensation is treated as a tax-free scholarship, the balance of the pay received by non-resident TA's and RA's, including all additional amounts paid for tuition and fees, is taxable income.

D. Both full-time and half-time TA's receive the same qualified tuition reduction equal to nine credits of in-state tuition and fees.

F. TA's and RA's do not receive medical, retirement, or life insurance benefits. The University does, however, provide TA's with some funds for summer employment and has offered free workshops to TA's during the summers.

V. EMPLOYMENT LAWS

A. Because TA's and RA's are limited by contract to 18 hours of work each week, they are not eligible for overtime pay under state or federal law.

B. TA's and RA's are covered by the Workers' Compensation Act, M.G.L. c.152.

C. TA's and RA's are excluded from the coverage of the Commonwealth's unemployment compensation laws by virtue of M.G.L. c.151A, §6(k).

VI. SOURCES OF FUNDING

A. TA's are paid out of the University's general budget. Once the overall budget is prepared by the Administration the college deans allocate the dollar amount for TA's as well as the dollar distribution to each department. Approximately 25 RA's employed at the various University research centers are also paid out of the general budget.

B. The other 19 RA's are funded from outside grants derived from government or industry sources. Usually the faculty member/principal investigator writes a grant proposal for a research project which includes in its proposed budget funds for research assistants. The U.Mass. Lowell Research Foundation provides a central

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mechanism for the administration and fiscal management of these grants and contracts for research and training.

VII. APPOINTMENTS AND CONTINUITY OF EMPLOYMENT

A. TA's apply for appointments by completing the appropriate section of their graduate student applications. Departments advertise for TA positions by sending fliers to universities and businesses throughout the United States; publicizing the availability of positions in guides to colleges; and advertising in academic publications.

B. The hiring process varies by department but the following selection criteria are uniformly weighed: graduate and undergraduate grades, recommendation letters, GRE test scores, employment experience, telephone or in-person interviews. In addition, TA's must maintain satisfactory academic standing.

C. Research assistants may be hired directly by the faculty principal investigator or research group. Recruitment is carried out by means of formal announcements, posting, or direct solicitation of students. Academic ability is an important consideration but principal investigators often seek out graduate students with particular qualifications or expertise. Because RA's are generally advanced graduate students, many of whom have had TA experience, their prior job performance is also a consideration in hiring.

D. TA and RA contracts are renewable to a maximum of four years if funding is available. TA's and RA's may expect continued employment if their academic progress meets the criteria set out in their employment contracts and their prior work has been satisfactory.

E. TA and RA appointments are not based upon comparative financial need.

VIII. COLLECTIVE BARGAINING

A. The U.Mass. Lowell full-time faculty is organized in a single-campus bargaining unit of the Massachusetts Teachers Association. Part-time faculty are not organized.

B. U.Mass. Lowell non-faculty professional and clerical employees are organized in a single-campus bargaining unit of the Service Employees International Union.

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C. In December 1990 U.Mass. Amherst voluntarily recognized, on the basis of an election, the Petitioner union as the collective bargaining representative of a single campus unit of TA's and RA's at the Amherst campus. Negotiations commenced at that time resulting in a collective bargaining agreement for the period March 1992 - June 1993. A successor agreement has been negotiated but has not received final approval by the Board of Trustees.

Opinion

This petition raises the question whether M.G.L. c.150E (the Law) permits the teaching and research assistants at the University's Lowell campus to exercise collective bargaining rights.² It also raises a number of subsidiary issues like the assistants' status as "public employees," as "casual" employees, and whether the petitioned-for unit is appropriate. We discuss each of these issues seriatim.

First, we conclude that the assistants are public employees within the meaning of the Law. Section 1 of the Law defines an "employee" or "public employee" as:

any person in the executive or judicial branch of a government unit employed by a public employer except elected officials, appointed officials, members of any board or commission, representatives of any public employer including the heads, directors and executive and administrative officers of departments and agencies of any public employer and other managerial or confidential employees....

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In Board of Trustees, 5 MLC 1986 (1979) (plurality opinion), the Commission held that the teaching and research assistants and associates at the Amherst and Boston campuses of the University of Massachusetts were not entitled to collective bargaining rights under the Law. We revisit some of the issues raised in that decision in our discussion, infra.

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This definition is broad and encompassing, City of Fitchburg, 2 MLC 1123, 1135 (1975), and covers individuals other than regular full-time workers. Boston School Committee, 7 MLC 1947 (1981) (see cases cited).

It is undisputed that the University is a public employer, and the University does not argue that the graduate assistants are not "employees" within the meaning of the Law. The record establishes that the graduate assistants possess traditional indicia of employee status like reported taxable income, Workers' Compensation coverage pursuant to M.G.L. c152, required job duties, and performance standards. Specifically, the TA's assist faculty members by performing duties like classroom teaching, laboratory instruction, grading papers, preparing, monitoring and grading examinations, consulting with students, servicing laboratories, preparing laboratory set-ups or overseeing computer laboratories. RA's work on specific research projects under a faculty member's direction, and their duties include servicing a professor's laboratory, performing experiments, conducting bibliographical research and preparing drafts of articles. Faculty members supervise the assistants' work by reviewing time sheets and student grading, monitoring laboratory sections and providing feedback. TA's may be disciplined and/or discharged for unsatisfactory work performance.

Moreover, we find that the assistants' status as University students is not inconsistent with their status as public employees.³ In previous cases, we have allowed students to exercise collective bargaining rights. In City of Cambridge, 2 MLC 1450 (1976) we decided that the dual nature of the relationship of house officers to the hospital -- students and employees -- did not preclude all bargaining rights. Similarly, in City of Quincy, 3 MLC 1517 (1977), we held that part-time student library workers whose work was separate

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Although the University did not raise this issue, the fact that funding for certain research assistants stems from sources other than the University's general budget is not determinative of employee status or unit placement in this case. See Board of Regents, 11 MLC 1486 (1985); Walpole School Committee, 12 MLC 1015 (1985).

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from their educational responsibilities were public employees. Accordingly, we conclude that the assistants at issue are public employees within the meaning of the Law.⁴

We next consider whether the assistants are "casual" employees who, while still employees within the meaning of the Law, should be excluded from collective bargaining because they lack a sufficient interest in their wages, hours, and working conditions to warrant collective bargaining. In determining whether certain employees are too "casual" to bargain collectively, we examine factors that could affect the stability of the proposed bargaining relationship, like the employees' expectation of continued employment and the extent to which a significant proportion of the proposed unit works regularly over the course of a year or more. Massachusetts Board of Regents, 13 MLC 1173, 1183 (1986). The record demonstrates that TA and RA contracts are renewable to a maximum of four years, and that the assistants' continued employment is contingent on available funding, satisfactory work performance, and attaining established academic standards. The assistants work eighteen (18) hours per week in either one or two academic semesters per year.⁵ Close to 90% of the TA's worked two semesters in school year 1993-1994. Accordingly, we are persuaded that the assistants possess sufficient regularity in and expectation of continued employment to warrant participation in collective bargaining.

We turn our attention next to the question whether the proposed bargaining unit is an

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In cases differentiating between employees and "03" independent contractors, as well as in cases assessing the status of employees who are regulated by other governmental or private entities, the Commission has stated that, where individuals perform services for a public employer for compensation and with supervision, there is a rebuttable presumption that an employment relationship exists. Board of Regents, 11 MLC 1486, 1497 (1985). This analysis also supports our conclusion that the graduate assistants are public employees.

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The 18 hours per week may be spread over two consecutive semesters or worked in one semester.

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appropriate bargaining unit. As noted, this proposed unit will include only the graduate assistants employed at the Lowell campus and will exclude the graduate assistants employed at the Boston, Amherst and Dartmouth campuses. Although the University has not argued that this unit is underinclusive and should include the unorganized assistants in Boston and Dartmouth,⁶ Section 3 of the Law requires the Commission to structure bargaining units that foster stable and continuing labor relations. The Commission's treatment of its statutory mandate to consider the efficiency of operations and effective dealings has evolved into a policy of joining employees who share a community of interest in the largest practical unit and preferring broad, comprehensive units over units which are small and fragmented. See generally, Boston School Committee, 2 MLC 1557 (1976); City of Boston, 8 MLC 1835 (1982). As a result, the commission may seek to include employees with similar positions at different work locations in an overall unit, i.e. City of Boston, supra (Commission dismissed a petition seeking a unit of Boston Public Facility security guards because it did not include the security guards employed by the City's Department of Health and Hospitals). Within the statewide higher education system, this policy persuaded the Commission to require the faculty of the community colleges to be included in one overall unit rather than in individual units at each campus. See Massachusetts Board of Regional Community Colleges, 1 MLC 1426 (1975).

However, the Commission also assesses bargaining history and the extent of organization when structuring bargaining units. See Statement....Creating Statewide Occupational Units, 1 MLC 1318, 1333 (1975). Moreover, where a union's petition describes an appropriate unit, the Commission will not reject the unit because another more appropriate unit exists. Lynn Hospital, 1 MLC 1046, 1050 (1974). This record reflects that the full-time faculty at the Lowell campus, as well as the Non-faculty professional and clerical employees

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The parties stipulated that the U.Mass. Amherst voluntarily recognized the Union as the collective bargaining representative of a bargaining unit of TA's and RA's at the Amherst campus.

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are organized into campus-specific bargaining units.⁷ Consequently, although a unit containing all graduate assistants not presently organized may also constitute an appropriate unit, we find that the petitioned-for unit of the graduate assistants employed only at the Lowell campus is an appropriate bargaining unit.

The final issue we must consider is the question raised in Board of Trustees, 5 MLC 1986 (1979) namely, whether the fact that the assistants are students at the same institution that employs them should preclude them from exercising collective bargaining rights. In Board of Trustees, Commissioner Wooters stated that policies concerning financial aid, academics and admissions could not be separated from the employment relationship without restricting the scope of collective bargaining and that collective bargaining was an improper format for making determinations that could affect those policies. Both Commissioner Wooters and Chairman Cooper inferred that collective bargaining would negatively impact academic concerns. We do not share this view for the following reasons.

First, we decline to infer a negative impact on educational policies where the employer voices no general opposition to the petition and cites no specific examples of an adverse effect. The employer's neutral position is particularly significant where, as here, the University has engaged in negotiations resulting in a collective bargaining agreement with the graduate assistants at its Amherst campus. If the University's academic or other policies have suffered any detrimental effects from the collective bargaining process, the University could have brought those issues to our attention. Therefore, we can infer that the concerns

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We take administrative notice of the fact that we issued the following certifications for single campus bargaining units at the University's Lowell campus:

- 1) SEIU, Local 254 certified September 21, 1976 as the bargaining representative for all maintenance and custodial non-professional employees.
- 2) SEIU, Local 254 certified April 19, 1977 as the bargaining representative for all clerical-technical non-professional employees.
- 3) Massachusetts Society of Professors/MTA certified April 28, 1976 as the bargaining representative for all full-time faculty professional employees, including, inter alia, professors and librarians.

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expressed in Board of Regents have not materialized and their unfounded concerns should not preclude the teaching assistants and research assistants employed at the Lowell campus of the University of Massachusetts of the opportunity to exercise their statutory bargaining rights.

Second, the dichotomy in the Law between mandatory and permissive subjects of bargaining ensures that core management decisions, whether they concern academic, financial aid, admissions or other policies, which only marginally impact terms and conditions of the graduate assistants' employment, will not be subject to the collective bargaining process. See generally, Town of Danvers, 3 MLC 1559 (1977). In this manner, the Law itself shields certain educational policies from any potential negative effect that our predecessors feared. Section 6 of the Law further safeguards educational policies by providing that neither party is compelled to agree to a bargaining proposal or make a concession. Thus, the University's ability to reject any bargaining proposal can prevent the collective bargaining process from adversely affecting academic, admissions or financial aid policies.

Moreover, since Board of Regents issued, the Commission has favored giving employees the opportunity to decide for themselves whether to engage in collective bargaining when the subjects of bargaining are limited or otherwise affected by outside parties or requirements. See ITT Job Training Services, Inc., 19 MLC 1001 (1992) and cases cited; see also City of Boston, 16 MLC 1437 (1989) (Commission determined in an advisory opinion that Department of Health and Hospital house officers may bargain over subjects generally beyond the scope of mandatory subjects due to issues of legal and professional liability unique to their workplace). As we stated in ITT Job Training Services, 19 MLC at 1030, "[o]ur direction of representation election in this case guarantees to employees the freedom to choose whether to engage in collective bargaining, despite the constraints applicable here."

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Conclusion

For the foregoing reasons, we conclude that the petitioned-for teaching and research assistants employed at the Lowell campus of the University of Massachusetts are public employees within the meaning of the Law and that the petitioned-for unit is an appropriate bargaining unit.

Order and Direction of Election

A question has arisen concerning the representation of certain employees of the University of Massachusetts. The unit appropriate for the purpose of collective bargaining shall be:

All full-time and regular part-time teaching assistants and research assistants employed by the University of Massachusetts at its Lowell campus, who work 18 hours per week for at least one semester per academic year, or 9 hours per week for two consecutive semesters per academic year, and excluding all confidential, managerial and other employees.

IT IS HEREBY ORDERED that an election shall be held for the purpose of determining whether a majority of those employees in the above described unit wish to be represented by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America/G.E.O. or by no employee organization.

The eligible voters shall include all those persons in the above-described unit whose names appear on the payroll of the Employer for the last payroll period 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.

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Accordingly, IT IS HEREBY FURTHER ORDERED that three (3) copies of an election eligibility list be filed by the Employer with the Executive Secretary of the Commission, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, MA 02202, no later than ten (10) 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. Failure to comply with this directive may be grounds for setting aside the election should proper and timely objections be filed.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

WILLIAM J. DALTON, CHAIRMAN

WILLIAM HAYWARD, JR.,
COMMISSIONER

CLAUDIA T. CENTOMINI, COMMISSIONER