

BOARD OF TRUSTEES, UNIVERSITY OF MASSACHUSETTS AND MASSACHUSETTS SOCIETY OF PROFESSORS/FACULTY STAFF UNION, MTA/NEA AND AMHERST AND BOSTON CHAPTERS OF THE AMERICAN ASSOC. OF UNIVERSITY PROFESSORS, SCR-2079, 2082 (10/15/76)

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 - 15. Supervisory and managerial
 - 17.1 confidential employees
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 - 34.2 community of interest
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 - 38. State employee unit

Commissioners participating: James S. Cooper, Chairman; Madeline H. Miceli, Member.

Appearances:

Arthur P. Menard, Esq.) - Counsel for the Employer
Nicholas DiGiovanni, Jr., Esq.)	Counsel for the Employer
Joan G. Dolan, Esq.	- Counsel for Petitioners
Carolyn I. Polowy, Esq.	- Counsel for Intervenors

DECISION, ORDER AND
DIRECTION OF ELECTION

Statement of the Case

On May 13, 1975, and May 22, 1975, affiliates of the Massachusetts Teachers Association, National Education Association, (hereinafter referred to as the "Petitioner") petitioned the Labor Relations Commission, (hereinafter referred to as the "Commission") in Case Nos. SCR-2079 and SCR-2082 for certification as the exclusive representative for the purposes of collective bargaining for faculty and related professionals at the University of Massachusetts (hereinafter referred to as the "Employer" or "University").¹ Thereafter, on May 30, 1975 and June

¹The Massachusetts Society of Professors/MTA filed the May 13, 1975 petition seeking to represent all instructors; assistant, associate and full professors; and librarians I-V at the University's Amherst Campus (an estimated 1350 employees). The Faculty Staff Union/MTA filed the May 22, 1975 petition seeking to represent all full and part-time lecturers; instructors; assistant, associate, and full professors; staff assistants, associates and administrators; librarians I-V; and adjunct and visiting professors at the University's Boston Campus (an estimated 650 employees).

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17, 1975, respectively, the Amherst and Boston Chapters of the American Association of University Professors (hereinafter referred to as the "AAUP" or "intervenor") formally intervened.²

On September 13, 1975, the Commission consolidated the petitions for the purpose of hearings;³ and ordered an Expedited Hearing under Section 11 of Article 11 of the Commission's Rules and Regulations.

On November 3, 1975, pursuant to notice, hearings upon the consolidated petitions commenced. The twenty-fifth and final day of the hearings was held on March 24, 1976⁴ All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Briefs filed by the parties have been carefully considered.

Accordingly, the Commission, on the basis of the testimony and the evidence presented at the hearings makes the following:

Findings of Fact

A. Jurisdiction

1. The University of Massachusetts is a public institution created by the Massachusetts General Court pursuant to General Laws Chapter 75.
2. The University is governed by a Board of Trustees (hereinafter referred to as the "Trustees") established pursuant to General Laws Chapter 15, s. 20;
3. The Board of Trustees is a "public employer" within the meaning of General Laws Chapter 150E, s. 1 (hereinafter referred to as the "Law").
4. The Massachusetts Society of Professors, MTA/NEA is an employee organization within the meaning of Section 1 of the Law.

²Pursuant to General Laws Chapter 150E, Section 4, the Commission investigated the petitions and interventions and found that a substantial question of representation existed concerning faculty and related professionals of the University.

³The Commission approved Intervenor's Motion To Intervene; See Article 11, Section 6 of the Commission's Rules and Regulations.

⁴On January 28, 1976, during the hearings, the Commission allowed a motion of the Employer to redesignate the hearing as a Formal Hearing. The decision as set forth herein is that of the full Commission rather than a hearing officer. See Board of Trustees, University of Massachusetts, 2 MLC 1315 (1976).

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5. The Faculty-Staff Union, MTA/NEA is an employee organization within the meaning of Section 1 of the Law.
6. The American Association of University Professors (Amherst and Boston Chapters) is an employee organization within the meaning of Section 1 of the Law.
7. All employees sought in the instant petitions are professional employees within the meaning of Section 1 of the Law.

B. Stipulations of the Parties

During the course of the hearing the parties entered stipulations concerning the scope and composition of the appropriate bargaining unit. The parties agreed to a single geographical unit which would include the Amherst and Boston Campuses, but exclude the Worcester Campus. The parties further stipulated to inclusions and exclusions of certain job titles in the proposed unit. When the parties stipulate to specific issues raised by a petition it is the Commission's policy to adopt the stipulations of the parties, provided that they are not in conflict with the Law, or the Commission's Rules or the established practices of the Commission.

Accordingly, the Commission accepts the following stipulations:

The following job titles or classification are to be included in the bargaining unit:

- Full Professors;
- Associate Professors;
- Assistant Professors;
- Instructors;
- Faculty of Stockbridge College;
- Program Directors who are not excluded on another ground;
- Part-time faculty who were formerly full-time and who have right to return to full-time status.

The parties have also stipulated that staff associates and staff assistants employed by the University shall be excluded except those employed in the following programs (at the specified locations) shall be eligible to vote in the election as directed herein subject to challenge.

At Boston: Tutorial Program; Academic Advisors; University Year for Action; Vocational Counseling; Evaluation-Instructional Specialists; Media Services; Cooperative Education; Spanish-Speaking Student Advisor; Center for Alternatives; Foreign Student Academic Advisor.



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At Amherst: University Without Walls; Communications Skills Program; Women's Studies; Student Development Center; Center for Instructional Resources and Improvement; Student Center for Educational Research; Language Laboratory; University Year For Action; Center for Outreach; Bilingual Collegiate Program; Special Students' Program; Media Center; Cassiac; Inquiry Program.

The parties further agreed to the following exclusions:

Deans, Associate and Assistant Deans, Provosts,
Assistant and Associate Provosts;
Teaching Fellow, Teaching Associates, and
Students;
Professors emeriti who are not eligible in
another category;
Director and Associate Directors of the
Amherst Library;
University Librarian and Associate University
Librarian of the Boston Library;
Extension Specialists;
County Extension Agents;
Visiting faculty employed by the federal
government;
Director of Control Services;
Director of Athletics;
Trainers and Physiotherapists;
Director of Public Health;
Director of Nursing;
Clinical nursing faculty and preceptors;
Professor Adam Yarmolinsky and Professor
Franklin Patterson

The inclusion or exclusion of the following job titles remain in dispute and are addressed seriatim in the decision below:

Non-tenure track full-time faculty;
Lecturers;
Faculty on terminal contract;
Full-time faculty whose titles have been changed;
Visiting faculty in their second year;
Part-time faculty;
Adjunct faculty;
Department Chairmen;
Cluster chairpersons;
Faculty Members of Campus Governance and
Personnel Committees;
Librarians, Coaches who hold faculty rank;
Director of the Center for International
Agriculture.



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Positions of the Parties

With the exception of two titles, the Petitioner and Intervenor are in agreement that the above-named positions should be included in an overall faculty bargaining unit. Petitioner and Intervenor part company over the inclusion or exclusion of part-time faculty and the Director of the Center for International Agriculture.

While Petitioner and Intervenor agree that part-time faculty who share a sufficient community of interest with full-time faculty and who maintain a commitment to the University should be included in the faculty unit, they do not agree on which classes of part-time faculty satisfy those standards. Petitioner seeks the inclusion of part-time lecturers, instructors, assistant, associate, and full professors who have taught one or more courses for two consecutive semesters. Intervenor would include both part-time faculty who hold seven-eighths appointments and faculty who have taught one or more courses for four consecutive semesters.

With respect to the Director of the Center for International Agriculture, Petitioner seeks to include this job title and AAUP seeks to exclude the position from the bargaining unit.

The University urges that the faculty bargaining unit be limited to tenure track faculty, thus excluding part-time faculty, lecturers and adjunct faculty, visiting faculty, terminal contract faculty and professional librarians. Moreover, the Employer would exclude department chairmen as well as Library Associate Directors and Library Department Heads on the ground that they are managerial or confidential employees under the Law. Alternatively, the Employer urges that persons employed as department chairmen or their equivalent are supervisors and that the Commission should establish a bargaining unit for supervisors separate from the unit faculty.

Opinion

The University of Massachusetts: Background and Structure

The University of Massachusetts was founded in 1663 under the provisions of the Morrill Land Grant Act as the Massachusetts Agricultural College. It was located in Amherst and admitted its first class in 1867. In 1931, the college became the Massachusetts State College. The General Court created the University of Massachusetts in 1947. A Boston campus of the University was founded in 1965. Today there are approximately 19,000 undergraduates enrolled in Amherst and 6900 in Boston. By Chapter 787 of the Acts of 1962, the Legislature created the University of Massachusetts Medical School at Worcester. The Medical School enrolled its first class in 1970.⁵

⁵By agreement of the parties, the faculty at the University's Worcester campus were excluded from any unit found appropriate.



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Although the Amherst program is significantly larger than the Boston campus, both offer programs leading to undergraduate and graduate degrees. There are approximately 450 full-time faculty positions in Boston and approximately 1500 in Amherst.

Statutory authority for governing the University rests in a Board of Trustees created by General Laws Chapter 20, s. 15. The Board has overall executive authority for the operation of the University, and has been granted broad administrative power by the legislature. The Board has control over policies involving physical facilities, policy, personnel, compensation, budget, and planning. The Board executes its responsibilities through its own committee structure and through the University president who is appointed by the Trustees. Although the Board has delegated much of its authority to the President, it retains ultimate control over all policy and personnel matters.

Authority for the day-to-day operations of the University is centralized in the office of President Robert Wood, the University's chief executive officer. Responsible to President Wood are a number of assistants, vice-presidents, and other officials. Also reporting to the President are the Chancellors, the chief executive officers and administrators of each of the University's three campuses. Each campus has a Vice-Chancellor, as well as other Vice-Chancellors and administrative officials. Below this administrative level are the deans, associate deans, and assistant deans of the schools and colleges.

Each campus is divided into schools and/or colleges which are subdivided into departments or clusters.⁶ Each department or cluster, with the exception of College IV in Boston, has a department chairman or individual with a similar title. The department chairman reports to the dean of their School or College, and is appointed by the dean, after consultation with the faculty of the department. Cluster chairpersons are elected by the faculty and graduate students of each cluster, with the approval of the dean.

Faculty at the University are classified by their professional rank (i.e. in ascending order of position: instructor, lecturer, assistant professor, associate professor, or full professor), by their eligibility for tenure ("tenure track" or "non-tenure track"), by their workload (full time or part-time), by the source of their salary funding (regular or "soft" money),⁷ by the termination date of their contract (terminal contract), and by other titles which generally indicate temporary affiliation with the University. Each of these faculty classifications shall be discussed in greater detail.

Also within the departments are support staff, hourly wage teaching assistants and tutors, student research assistants, and, of course, students.

⁶ A "cluster" is the term used to denote a department subdivision in the School of Education.

⁷ The term "soft money" means payment from a source other than the University's regular source of funding, the General Court. Soft money usually comes from the federal government or a private foundation.



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The University maintains libraries at the Amherst and the Boston campuses. The administrators who head each library report to the Provost. The libraries are subdivided into divisions, each headed by an Associate Director or Associate University Librarian. At Amherst the divisions are further subdivided into departments, each of which are directed by a department head. The Boston campus library has no department heads.

The University also has a Center for International Agriculture which is staffed by one professional employee. The Center is within the College of Food and Natural Resources at Amherst, and the director reports to the dean of the college.

Two standing multi-campus committees, composed of faculty, student and administration representatives, advise the President on budgetary and planning matters. Each campus has its own representative governance structure which is authorized by the Board of Trustees. On the Amherst campus there is a Faculty Senate, to which faculty are elected by their peers from each School or College. At the Boston campus, all colleges elect faculty representatives to the University Assembly. Librarians are eligible for membership in the Senate or the Assembly. Proposals of the Senate or Assembly are submitted, through the President, to the Trustees, who act upon them.

At the individual school, college, or department level, numerous committees have been elected by the faculty. These committees advise the dean on personnel, policy, curriculum and various other matters which affect the operation of the school or department. The committees act by formulating recommendations which are submitted to the dean. In addition, the personnel committee prepares all faculty evaluations.

The participation of faculty in governance structures through committees within the University is a factor which permeates all consideration of the employment relationship. The Trustees expressed the University's commitment to faculty governance through the exercise of "joint effort" (also referred to as "Collegiality,") in its "Academic Personnel Policy of the University of Massachusetts;" (Document T75-175, hereinafter referred to as Academic Personnel Policy):

Section 3.2 In matters of faculty status, such as appointments, reappointments, promotions, tenure, and salary adjustments, all components shall observe the principle of joint effort as stated in Trustee policy T73-098. The Faculty has primary responsibility in these matters. The Trustees have the authority to make decisions in matters of faculty status and by statute may delegate this authority only to appropriate administrative officials.

General Considerations

Before turning to the numerous issues presented in this case, it is worthwhile acknowledging that the parties are in agreement about the general contours of the bargaining unit. The parties themselves have recognized, to a large extent, the importance and function of collective bargaining in higher education.



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Thus, despite the numerous days of hearing, the dozens of witnesses, the hundreds of pages of briefs and the bitter arguments on both sides, their dispute focuses on the periphery of the bargaining unit. They agree wholeheartedly that persons who participate in the active academic life of a major university must have some representation at the bargaining table. It is only a very few job titles over which there is any litigation. With this in mind, we now turn to our opinion about the disputed job titles.

In determining units appropriate for collective bargaining, the Commission is guided by General Laws, Chapter 150E, Section 3, which provides, in part, that

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

Thus, the Commission shall establish units which are predicated upon a substantial "community of interest" to best safeguard the rights of employees to "effective representation", the rights of employers and the public to "efficiency of operations", and which will serve the fundamental statutory objective of "stable and continuing labor relations." Accordingly, the Commission favors, and the Courts have approved,⁸ the creation of broad, comprehensive units compatible with the public interest, rather than small, fragmented and conflicting units which may destroy stable labor relations.

This preference is balanced by the Commission's concern that the unit should not include employees with a diversity of employment interests so adverse as to produce inevitable conflicts, which will be irreconcilable through effective negotiation at the bargaining table or subsequently during the administration of a collective bargaining agreement.

In assessing a unit's potential effect upon "efficiency of operations and effective dealings", the Commission considers the impact on the public employer's performance of its primary mission. Massachusetts Board of Regional Community Colleges, 1 MLC 1426 (1975). Central to such an analysis is scrutiny of the

⁸ In Jordan Marsh Company v. Labor Relations Commission, 316 Mass. 749 (1944), the Supreme Judicial Court said about appropriate bargaining units: "...[S]tress must be laid not only upon securing groups of employees who, as business is conducted, have common interests in the more important matters which are likely to become the subjects of collective bargaining...but also upon gathering together into each of such groups the largest number practically possible of employees having such common interests...." 316 Mass. at 751.

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effect on the public employer's delivery of services and fiscal administration. The Commission recognizes the potential for administrative disruption which could result from the certification of a unit which includes employees with irreconcilable interests. Such a unit would be deleterious to both the employer's efficient operations, and the employee's right to effective representation. Accordingly, the key factor in the Commission's determination of an appropriate unit is the community of interest which the employees of the unit will share.

Community of interest may be shown by such factors as: similarities of employee skills and functions; similarity of work environment; similarity of salary structure; employee interchange and contact; similarity of personnel procedures; and centralization of management. Massachusetts Board of Regional Community Colleges, supra. Community of interest does not require an identity of interest - the employees need only be similarly situated, not identically situated, so long as there is no inherent conflict among consolidated groups of employees; See Labor Relations Commission Notice of Determination of State Bargaining Units, 1 MLC 1318 at 1339 (1975) (hereinafter Notice).

Where there exists a community of interest among employees which will guarantee effective representation to employees, while at the same time not inhibit the efficiency of the employer's operations, or protection of the public interest, then the Commission will find a unit to be "appropriate". See Notice, supra.

Disputed Titles of Full-Time Faculty

There are several disputed subgroups of full-time faculty. The Employer urges the exclusion from the faculty bargaining unit of each of the following classifications:

- full-time faculty who hold "non-tenure track" appointments⁹
 - (instructor through full professor);
 - lecturers;
 - terminal contract faculty;
 - faculty whose titles have been changed recently;
 - visiting faculty in their second year.

Petitioner and Intervenor both seek inclusion of each of the above classes in the faculty unit.

⁹Full-time faculty at the University hold either regular academic appointments on "tenure track," regular academic appointments on "non-tenure track," or "special" appointments. Regular academic appointments on "tenure track" are those held by full-time instructors, assistant professors, associate professors, and full professors. These faculty serve a probationary period, and are evaluated for tenure. Faculty appointed to regular faculty rank (instructor through full professor) without eligibility for tenure, are described as being in "non-tenure track" positions. Faculty with "special" appointments, including faculty with the title of "lecturer," and faculty of any rank holding the title of "adjunct" or "visiting," are also ineligible for tenure.

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Non-tenure Track Faculty

It is clear from the record that, with the exception of eligibility for tenure, there is no appreciable difference between "non-tenure track" and "tenure track" faculty. The former are required to fulfill all the duties of regular faculty; they are evaluated in the same manner as other full-time faculty; they participate in many of the governance structures that are a part of regular full-time faculty status; and their salaries, fringe benefits, terms and conditions of employment do not differ significantly from those of other full-time faculty.

For example, a "non-tenure track" full professor serves as Chairman of the Department of General Business and Finance on the Amherst campus. He has the same duties and responsibilities as other members of the department, including a full teaching load. Like probationary "tenure track" faculty, his contract may be renewed after review through the personnel committee peer review process. The sole distinguishing characteristic is that his appointment will terminate after five years.

The Employer seeks to differentiate "non-tenure track" faculty from "tenure track" faculty without tenure by an individual's expectation of award of tenure. However, the Trustees' regulations specifically dampen such expectations:

No regular academic appointment without tenure shall carry with it any assurance, explicit or implicit, of a reappointment, a promotion, or the eventual award of tenure...."
Section 4.8, Academic Personnel Policy.

Nor is the designation "non-tenure track" directly related to the source of salary funds. The record is clear that "soft" money -- funding from non-University sources such as foundations -- is used to pay at least part of the salaries of both "tenure track" and "non-tenure track" faculty. In any event, the source of salary funds is not dispositive.¹⁰

The Employer's position, urging separation of full-time "tenure track" faculty from "non-tenure track" faculty, is unsupported by case precedent. The National Labor Relations Board, (the Board), for instance, has never separated full-time "tenure track" from "non-tenure track" faculty. The Board's¹¹ analysis as set forth in University of Miami, 213 NLRB No. 64, 87 LRRM 1634 (1974) is particularly appropriate:

¹⁰ City of Springfield, 2 MLC 1233 (1975); City of Everett, MCR-997 (1972).

¹¹ The NLRB asserted jurisdiction over private non-profit colleges and universities in Cornell University, 183 NLRB 329, 74 LRRM 1269 (1970). Since that time it has had an extensive opportunity to examine the unit structure of colleges and universities. See cases cited infra. While this Commission has not always agreed with the Board, City of Cambridge, 2 MLC 1450 (1976), Foley, Hoag & Eliot, 2 MLC 1302 (1976); and Commonwealth of Massachusetts, 3 MLC 1067 (1976), we respect their expertise and follow their precedent where appropriate.

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As set forth in the faculty manual the University has three types of faculty appointments - regular, term, and indefinite. Full-time faculty in the latter two categories do not have, and cannot normally earn, tenure, but - except for the award of tenure - are otherwise entitled to most, if not all, of the prerogatives and fringe benefits possessed by faculty members holding regular appointments, have equal academic qualifications, and teach classes or perform research work of equal stature. Further, they generally participate in the affairs and deliberations of their respective academic departments, and, in the University's bulletins, their names are under the heading of "faculty," together with the names of faculty members holding regular appointments. We conclude from the record that they are professional employees who have a close community of interest with their fellow faculty members holding tenured or tenure earning positions. Accordingly, we shall include them.... 87 LRRM at 1640.

The Community of interest among faculty is not destroyed by the single fact that some are ineligible for permanent job security; accordingly, we include full-time "non-tenure track" faculty in the bargaining unit.

Lecturers

Lecturers are "non-tenure track" faculty. As with the full-time "non-tenure track" faculty (instructors through full professors), the Employer urges their exclusion from the faculty bargaining unit because of their ineligibility for tenure.

As discussed above, the Commission finds that ineligibility for tenure is not determinative of community of interest. The record indicates that lecturers teach graduate students, and that they are evaluated for reappointment in a collegial manner very similar to that of other faculty. Although lecturers are usually appointed for annual terms, many serve five years or more, and 35 out of 38 have taught at the University for at least two years.

In view of the above, we are persuaded that lecturers share a community of interest with full-time faculty and thus should be included in the bargaining unit.

Faculty on Terminal Contract

Full-time "tenure track" faculty who have received notice that their contracts will not be renewed or that they will not receive tenure are termed "faculty on terminal contracts." Because of the University's personnel procedures, these individuals receive notice of termination months in advance of the effective date. Faculty who have been employed for two years are entitled to one year's notice of nonrenewal. Non-renewed faculty may appeal the decision through an established grievance procedure.



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The Employer seeks to exclude terminal contract faculty on the ground that their interest in the University and its employment practices and benefits will cease at the end of the terminal contract year. Petitioner and Intervenor counter with two primary reasons for inclusion. First, terminal contract faculty continue during their lame-duck period to fulfill all the functions and responsibilities of returning faculty. Second, about 5% of unfavorable renewal and tenure decisions are reversed on appeal; in fact, one contract was extended to permit the grievance procedure to run its course.

Faced with the issue in Fordham University (II), 214 NLRB No. 137, 87 LRRM 1643 (1974), the NLRB included terminal contract faculty, following the rationale set forth in Whiting Corporation, 99 NLRB 117, 30 LRRM 1046 (1952), where it permitted an otherwise eligible employee to vote despite his imminent termination. The Board affirmed its position in Yeshiva University, 221 NLRB No. 169, 91 LRRM 1017 (1975), noting:

After due consideration, we have decided to adhere to our longstanding position with regard to terminal employees, since while their employment continues, they have a substantial community of interest with their colleagues. 91 LRRM at 2021.

We find persuasive the arguments for inclusion, particularly in light of the extended advance notice of termination afforded the affected faculty members, and therefore will include the terminal contract faculty in the faculty unit.

Full-time Faculty Whose Titles Have Been Changed

Some faculty members, principally in the School of Education, have recently had their job titles changed without a corresponding change in function. These 12 to 15 individuals have regular full-time teaching, research and service responsibilities, and held regular academic titles until the 1975-76 academic year. These faculty members are not eligible for tenure, and the title change was apparently intended to denote that fact. Most appear to be funded with soft money.

We have already determined that soft money funding and lack of tenure track status do not significantly differentiate some faculty from others. After a review of the record, it is clear that the sole distinguishing characteristic of these 12 to 15 individuals is that their titles have changed; such does not destroy the otherwise existing community of interest and accordingly, we include them in the faculty bargaining unit.

Visiting Faculty

The Employer seeks to exclude from the bargaining unit all "visiting" faculty. The term "visiting" actually encompasses two categories of faculty. Some faculty fit the traditional model and come to the University for a specified time, usually one year or less, as part of an exchange program with another institution. Others accept visiting positions while awaiting the availability of a permanent tenure track opening. Petitioner and Intervenor agree that those who stay at the



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University for one year or less are properly excluded, but urge that full-time visiting faculty be included in the bargaining unit in their second or subsequent consecutive year.

The record indicates that the title "Visiting" is occasionally given to faculty even though it is anticipated that they will remain at the University as regular faculty for two or more years. Visiting professors are ranked and are hired through the departments in the same manner as regular full-time faculty. Testimony revealed that visiting faculty function as regular full-time faculty and are evaluated like other full-time faculty if they remain longer than one year. Visiting professors receive the same fringe benefits as regular full-time faculty. Those who stay at the University for longer than one year have a right to participate in the Faculty Senate.

The National Labor Relations Board, in Goddard College, 216 NLRB No. 81, 88 LRRM 1228 (1975), excluded visiting faculty after concluding that visiting faculty at Goddard had no reasonable expectancy of re-employment with the college. The Goddard College case is distinguishable, and the NLRB's rationale inapplicable here. Unlike the visiting faculty at Goddard, visiting faculty at the University of Massachusetts include professors who do not have regular appointments at other institutions or who do not anticipate returning to their former university. Moreover, visiting faculty at the University of Massachusetts may participate in governance and carry full faculty responsibilities. We accept Intervenor's suggestion that faculty who have remained beyond the traditional one year evidence heightened interest and expectation in continued employment. Therefore, we find that full-time faculty bearing the title "visiting," who are serving in their second or subsequent consecutive year, share a community of interest with other full-time faculty sufficient to include them in the faculty bargaining unit.

Part-time Faculty

The Petitioner seeks to include all part-time faculty including lecturers, instructors, assistant professors, associate professors and full professors who have taught one or more courses for two semesters.¹² The University seeks to exclude all part-time faculty without regard to rank. The Intervenor seeks the inclusion of all part-time faculty who hold a seven-eighths appointment¹³ and all part-time faculty who have taught one or more courses for four or more consecutive semesters.¹⁴

¹²The record indicates that petitioner's intent is to include those part-time faculty who have taught for two consecutive semesters.

¹³A seven-eighths appointment may be held by a faculty member who receives, as the name suggests, seven-eighths of the benefits of an equivalent full-time faculty member. This circumstance is described more completely infra at p. 1193.

¹⁴The parties have stipulated to include in an appropriate unit those faculty members in a temporary part-time status who have a right under university reappointment procedures to return to full-time status. The parties have also stipulated to exclude preceptors and clinical nursing faculty.

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A complete description of the terms and conditions of all part-time faculty members employed by the University would require a treatise. We do not and need not undertake such a heavy task. Instead, an examination of the general characteristics of part-time faculty at both campuses leads us to the conclusion that at least some part-time faculty should be included within the overall faculty unit and thus the more difficult question arises of drawing the line for exclusions of that portion of the part-time faculty who do not share a community of interest with the remainder of the faculty.

Our rationale for reaching this conclusion begins with Section 4.12 of the Academic Personnel Policy:

Section 4.12 Special academic appointments include appointments with the titles of lecturer, adjunct (all ranks), clinical (all ranks), and visiting (all ranks). Each campus may develop definitions, criteria, and procedures for making special academic appointments subject to the concurrence of the Board of Trustees and within the following University-wide guidelines:¹

- a) Special academic appointments are not considered probationary and holders cannot be awarded tenure.
- b) The responsibilities of a faculty member on a special academic appointment need not include the three functions of teaching; or research, creative or professional activity; and of service; but may be limited to any of these areas as determined by mutual agreement between the faculty member, the Department Chairperson/Head and the Dean.
- c) In most cases, appointments to special academic positions shall be made on an annual basis.
- d) Full-time, salaried, special academic appointments cannot usually extend beyond six years.
- e) In the event that the holder of a special academic appointment shall apply for a regular academic appointment, the criteria for initial appointment to that rank shall apply. In that case, full-time and/or part-time service, subsequent to the award of the terminal degree, or equivalent professional experience, may count toward the tenure decision year.
- f) The prerogatives of holders of special academic appointments shall be determined on each campus.

¹ Until the Trustees adopt a specific policy on part-time status, all part-time appointments shall be governed by the provisions of Section 4.12.



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Part-time faculty are special academic appointments. Accordingly, they are subject to the above-quoted policy. The policy on each campus must conform to the very general guidelines enumerated in Section 4.12.

On both campuses, the implementation of the guidelines for special academic appointments with respect to part-time faculty has been greatly decentralized. In most instances the terms and conditions of employment for part-time faculty have been left to the individual departments, or, in some instances, individual colleges. Thus, the actual operation of these guidelines must be examined with an eye toward drawing some general parameters which may not precisely describe the actual operation in every department or in every college or school.

Turning first to the Amherst campus, it is obvious that seven-eighths faculty should be included in an appropriate faculty unit. A faculty member on seven-eighths appointment performs exactly the same duties, maintains the same responsibilities and participates to the same degree in faculty affairs as the eight-eighths faculty, although such individuals, as required by the Academic Personnel Policy, are ineligible for tenure. The seven-eighths position was designed to avoid the University's anti-nepotism policy. Under that policy, only one member of a family could hold an academic rank above instructor or hold tenure. Thus, where a family member already held tenure, a second member of the family was placed on an seven-eighths appointment. Such individuals have progressed through the academic ranks and become full professors. During their careers these individuals teach a full course load (both graduate and undergraduate), advise students, serve on departmental Personnel Committees and chair other faculty committees. They vote on all departmental matters. They subject themselves to the same evaluation process, and, if warranted, receive full merit increases. In addition, the seven-eighths faculty maintain offices and schedules which do not vary from the full-time faculty members. The distinction between these individuals and the other faculty is that they remain non-tenured and must be reappointed annually or biannually and receive seven-eighths of all financial benefits.¹⁵

Employees on both the Amherst and Boston campuses are faculty with special academic appointments for fractions ranging from one-sixth time to five-sixths time. These individuals usually receive compensation at a rate which is proportionate to the number of courses taught. They teach regular courses to full-time students. These courses are taught during the daytime. The part-time faculty possess essentially the same qualifications as the full-time faculty to teach courses at various levels. Part-time faculty teach many if not most of the same courses taught by full-time faculty.¹⁶

¹⁵Dr. Grace Follason, for example, holds a PhD in Zoology and has been a seven-eighths member of the faculty since the Fall semester of 1966. She currently is an Associate Professor of Zoology at seven-eighths time. She has been continuously reappointed at one or two-year intervals.

¹⁶Thus, for example, of the 58 part-time faculty who responded to the Petitioner's questionnaire, 27 held a PhD and 28 others held degrees beyond a Bachelor's Degree.



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The departments within the University obtain part-time positions by dividing the funds allocated for a full-time faculty member.¹⁷ This process termed "fractionalizing", allows individuals to teach one-sixth time, two-thirds time and so forth to five-sixth time. A full-time faculty member is usually responsible for teaching six classes per year or three classes per semester. Persons employed on reduced fractions teach a reduced class load. Testimony indicated, however, that part-time faculty may be hired on a fractional salary which does not correspond to the number of classes taught.

Part-time faculty perform the same qualitative duties as full-time faculty.¹⁸ The difference in duties is quantitative and depends upon the fraction of the position held. Thus, part-time faculty teach, advise, participate on departmental committees and carry on their own scholarly or quasi-scholarly research activities. The recruitment of part-time faculty is usually less formal than for full-time faculty. A recruitment committee, upon proper authorization, secures the names of available and interested candidates. It screens the candidates and arranges for interviews with other members of the department. The recruitment committee recommends appointments to the department chairman. The chairman obtains authorization from the dean to make an offer and further obtains a salary range to be offered.¹⁹

Many of the other University benefits available to full-time faculty are also available to the part-time faculty. Thus, for example, part time faculty enjoy library privileges, tuition benefits, sick leave, bereavement leave benefits²⁰ and are eligible for merit increases. Part-time personnel are eligible for sabbatical leave and leaves of absences on the same basis as full-time faculty members. The major difference between part-time faculty and full-time faculty with respect to benefits concern eligibility for retirement and insurance benefits. Thus, for example, an employee must work at least one-quarter time in order to be eligible for the state-retirement system. The University's medical

¹⁷The dean of a college must give permission to divide a full-time position into fractions.

¹⁸A part-time lecturer in the English Department at the Boston campus, Linda Hunt, for instance, teaches two courses per semester. She advises students, supervises independent study, and attends departmental meetings. She has served on the Personnel Committee and was elected by the members of the department. She also serves on the Women's Studies Board and has previously enjoyed a sabbatical leave and merit increases.

¹⁹In some departments, the record indicates that the procedure for hiring part-time faculty is substantially less rigorous than for full-time faculty. Nevertheless, the same quality of personnel is generally maintained.

²⁰Sick-leave and bereavement leave are allocated to part-time faculty on a proportional basis. Thus, half-time faculty are allowed one-half of the full-time faculty's sick-leave and bereavement leave.



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insurance program is contingent upon the part-time faculty member working at least one-half time. The disability income program is available only to those individuals who are eligible for the state-retirement system.

In the area of accountability, part-time faculty are subject to personnel evaluations by the departmental personnel committees. Full-time faculty are subject to the same procedure. Identical administrative forms are utilized for full-time and part-time personnel. Part-timers are also subject to student evaluations in exactly the same manner as full-timers.

In the area of University governance, part-time faculty participate at the departmental and college levels, but do not sit on the University Assembly or Faculty Senate.²¹ On the departmental level it is clear that part-time faculty, depending on the department, participate in the every day affairs of the department. Thus, for example, the constitution of the College One English Department (Boston campus) specifically recognizes the right of the part-time faculty to vote "on all matters that concern them."²² Participation in departmental matters at the Amherst campus by part-time faculty was fully described by Dr. Grace Rollason who testified that she participated in their committees and has chaired them. She also stated that she has served on university-wide committees.

The National Labor Relations Board, upon asserting jurisdiction over private universities, included part-time faculty in the same unit with full-time faculty. University of New Haven, Inc., 190 NLRB 478 77 LRRM 1273 (1971). In New York University, (1) 205 NLRB 4, 83 LRRM 1549 (1973) the Board reversed its policy on part-time faculty and excluded them for five reasons. Four reasons, as listed in the opinion, are differences between part-time and full-time faculty with respect to (1) compensation, (2) participation in university government,

²¹There was some confusion among the witnesses on this issue. Everyone agreed that part-time personnel were excluded from the Senate on the Amherst campus, but the record does not reveal a definite exclusion from the University Assembly on the Boston campus.

²²The constitution states, in pertinent part:

1. Department Meetings.

All members of the English Department who hold full-time and regular part-time appointments shall be eligible to vote at a Department Meeting.

A quorum of 50% shall be reckoned from the number of full-time and regular part-time faculty who are actually teaching during the semester in which the Department Meeting occurs. Any full-time or regular part-time faculty member who is on leave may vote at any meeting that he attends. Temporary part-time teachers and representatives of students majoring in English may vote on all matters that concern them, except on the vote for chairman, and new faculty appointments. The chairman shall rule whether an issue concerns temporary part-time teachers and student representatives. The chairman's ruling may be overruled by a majority vote of the full-time and regular part-time faculty in attendance.

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(3) eligibility for tenure, and (4) working conditions. The fifth reason, although not specifically identified as a reason for exclusion but which influenced the Board in arriving at its conclusion was set forth in a footnote:

We have also been influenced by the Board's inability to formulate what we regard as a satisfactory standard for determining the eligibility of adjuncts in Board elections.
83 LRRM at 1552 n. 9.

Our examination of the rule of New York University (1), *supra*, leaves us unconvinced that part-time employees at the University of Massachusetts would be excluded under its rationale. Thus, an examination of the Board's criteria, as applied to the case at hand, reveals that the compensation for part-time personnel is related to the number of classes taught per semester or per year. Furthermore, this compensation is more than a "respectable honorarium". The University's policy, as thoroughly developed on the record, has been to divide full-time positions into fractions and to hire part-time personnel for each of the fractions. At Amherst, a seven-eighths faculty position has existed for many years in order to avoid the anti-nepotism rule. Under these circumstances, the money paid to these part-time faculty is acknowledged to be salary.

Part-time faculty at the University of Massachusetts participate in departmental governance. They vote at departmental meetings; participate in departmental committees; evaluate other members of the faculty; and participate in the development of curriculum. Although the part-time faculty may be excluded from the University Assembly and the Faculty Senate, this fact alone would not destroy their otherwise extensive participation in university life. In sum, we find that part-time personnel share the responsibilities of the full-time faculty in the development of departmental policies of the University.

With respect to working conditions, we find that part-time personnel work under the same or substantially the same working conditions as the full-time faculty. Thus, for example, the part-time personnel teach and grade students, advise students, engage in scholarly activities, write books and participate in university affairs.

The only significant difference between part-time and full-time faculty is that part-time faculty are ineligible for tenure. On this subject we fully concur with dissenting Member Fanning's analysis of the significance of tenure in New York University (1):

All these preceding factors aside, however, the majority has one major argument left: only full-time faculty are eligible for tenure. The attainment of tenure is an important consideration in a faculty member's professional life and many of his activities may be shaped by it. Nonetheless, the significance of this factor, too, is questionable. The simple truth is that not all full-time faculty, who the parties have agreed belong in the unit, are on a tenure track. But even if all those



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included in the unit were eligible for tenure, it would not follow that those who were not had no comparable interest in the unit.

Part-time faculty members may be appointed for a semester at a time, but over half teach in both semesters of the academic year, and the same proportion return the succeeding year. It was uncontested at oral argument that some part-time faculty members have taught at the University for more than 20 years. That should be sufficient to demonstrate a legitimate continuing interest in any unit. Tenure itself is no more than a measure of continuity of interest, and an extreme one at that, not whether such interest exists. It insures a member of the faculty that in normal circumstances his job is guaranteed; it does not insure that the employee himself will not sever the employment relationship. I suspect that many tenured members of the faculty have come and gone while part-time members have stayed and maintained their relationship with the University. But we are not even concerned with tenure, only tenure eligibility, and that, as many faculty members can attest, is no guarantee that it will be accorded. 205 NLRB at 12. (Footnote omitted).

Although the figures mentioned by Member Fanning may be different for the University of Massachusetts, the principle remains the same; part-time personnel without tenure or the opportunity for tenure maintain a sufficient continuing interest in their working conditions to warrant their inclusion in the unit.²³

We now turn to the fifth criteria, the development of an adequate standard for determining the eligibility for inclusion within the unit and eligibility for voting in the election. Our basic concern is to insure an adequate and continuing interest in the wages, hours and other terms and conditions of employment. The Board has held that "a regular pattern of continuing employment in past academic years can be indicative of the type of expectation of future employment necessary to establish a continuing interest in the unit." C. W. Post Center of Long Island University, 198 NLRB 453, 454, 80 LRRM 1938 (1972) supplementing 189 NLRB 904, 77 LRRM 1001 (1971). It is our opinion that part-time faculty who have taught at least one course²⁴ for three consecutive semesters or who have taught one course for two consecutive semesters and who are teaching their third consecutive semester shall be included within the unit. Our decision is based upon the reasonable expectation that persons who have taught with the above-described regularity maintain a sufficient and continuing interest in their working conditions to warrant their inclusion within the unit.

²³For example, Dr. Rollason has been employed continuously on a part-time basis for ten years. Lecturer Linda Hunt has been employed for nine years.

²⁴Our use of the term "course" is meant to include regular academic courses (not summer school courses) without regard to the number of credit hours assigned by the University to that course.



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Adjunct Faculty

Adjunct faculty fall into two classifications. First, adjuncts may be full-time faculty in one department or college of the University who teach as adjuncts in another department or college. Employees in this classification would be included within the bargaining unit on the basis of their regular University appointment, not their adjunct appointment. For this reason, no further discussion of their status is necessary. Their inclusion is based upon their regular appointment.

The second class of adjunct faculty consists of individuals who teach at the University for the honor and privilege of participating in academic life. They receive no compensation, they do not participate in university governance; they receive no fringe benefits except library privileges; they do not maintain offices on campus; and they are not eligible for tenure.

Adjuncts may be evaluated, but such is left for each department to decide. The record indicates that occasionally, if an adjunct is called in to the University from far away, there "might be an honorarium and expenses involved."

It is our opinion that, unlike the part-time faculty, the adjunct professors who do not otherwise qualify as members of the unit should be excluded from the unit. The function, nature and character of their employment is such that they do not share a community of interest with members of the unit. Adjuncts are more akin to the part-time faculty in New York University (I), supra. Therefore they are excluded.

Chairmen²⁶

Position of the parties

The Employer urges the Commission to exclude academic department chairmen from participation in collective bargaining because the chairmen are either managerial or confidential employees. Alternatively, the Employer seeks the separation of the chairmen from the faculty bargaining unit because of their supervisory status. The Petitioner and the Intervenor urge the Commission to include the chairmen in the faculty bargaining unit.

²⁶ Throughout these proceedings the Petitioner referred to Department chairmen as "chairmen", while the Employer insisted on calling them Department "Heads". This semantic warfare left us in the uncomfortable position of either using "Heads/Chairmen" or choosing one term over the other. Our selection of the term chairmen was done solely on the basis of writing style. Our decision as to inclusion or exclusion within the faculty unit or the creation of a separate supervisory unit is based upon the actual job duties and responsibilities of the individuals involved. The job title, per se, despite Counsel's concern, is neither relevant nor determinative.



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Department chairmen are appointed by the dean of their school or college after consultation with department faculty. The University has no official written policy describing the selection process; but the record indicates that departments generally follow a procedure similar to that outlined in the "Morris Report".²⁷ The informal selection process usually involves appointment of a department Search Committee, which is responsible for nominating a chairman after consultation with the full department. Chairmen are usually selected from faculty within the department,²⁸ although outside faculty have also been appointed. The nomination of the department Search Committee (or its equivalent) is not binding on the dean, but witnesses testified that deans do not reject department recommendations.

There is no tenure in the position of chairman and individuals may resign or be removed by the dean. The "Morris Report" proposes a review, by the department, of the chairmen every three years, and in practice this recommendation is followed.²⁹

Although chairmen do not technically serve at the pleasure of department faculty, the record indicates that chairmen are unlikely to retain their positions without the support of the department faculty. Upon completion of their service as chairmen most return to full-time teaching, while some enter administrative positions at the University.

Like other faculty, chairmen teach, advise students, and perform research. These responsibilities are reduced in rough proportion to time spent on administrative duties.³⁰

A chairman's administrative duties include the following tasks: assigning and scheduling department courses; coordinating the hiring of new faculty; participating in the departmental evaluation of faculty; coordinating the assignment of students to faculty advisors; transmitting information between the department and the administration; preparing the department's annual budget request; assigning work to department support staff; supervising student assistants; recommending the disbursement of travel, equipment and supply budgets; and generally contributing to the smooth operation of the department. Chairmen are assisted by departmental faculty in fulfilling these administrative responsibilities pursuant to the University policy of "joint effort". The manner in which chairmen perform these tasks is discussed in greater detail below.

²⁷The "Morris Report" is a written, but unofficial document used by departments to guide or supplement department personnel and governance procedures.

²⁸Approximately 25% of the chairmen at the Amherst Campus of the University are non-tenured faculty. No evidence was presented to indicate the percent of non-tenured faculty serving as chairmen at the Boston Campus.

²⁹In addition, chairmen are evaluated annually by the faculty personnel committee to the same degree as are other faculty of similar rank and tenure.

³⁰Faculty who spend an extraordinary amount of time performing research, administrative duties or other services are similarly accorded a proportional reduction in teaching load.



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Because job functions are uniformly defined by the Academic Personnel Policy, departments employ a relatively uniform method of selecting their chairmen, and because the record does not indicate significant distinctions between individual chairmen, the Commission will follow its customary practice of treating all employees of a single job category as a class.

Managerial

Section 1 of Massachusetts General Laws Chapter 150E mandates the exclusion of managerial employees from public employee collective bargaining. The Law establishes three criteria by which to determine managerial status. If employees:

(a) participate to a substantial degree in formulating or determining policy, or (b) assist to a substantial degree in the preparation for or the conduct of collective bargaining on behalf of a public employer, or (c) have a substantial responsibility involving the exercise of independent judgment of an appellate responsibility not initially in effect, in the administration of a collective bargaining agreement or in personnel administration

They shall be designated as managerial. Exercise of any one of the criteria is sufficient to exclude an employee as managerial.

(a) Policy Formulation

In determining whether an employee "participates to a substantial substantiality [sic.] of the employee's participation in relationship to the whole of the employer's operation. "Although, we do not necessarily believe that the authority of a managerial employee must be systemwide (such an interpretation in state government would lead to untenable results) the scope of discretion should be significant when considered in relation to the mission of the public enterprise." Town of Wellesley School Committee, 1 MLC 1389, 1401 (1975).

We have also examined the effective exercise of authority as an indication of managerial status. Where ultimate decision-making authority may rest at a higher administrative level, we have considered the employees' access to that level. Taunton School Committee, 1 MLC 1480 (1975). If the employee's decisions are screened by intermediate administrators for final approval, then authority is not exercised and managerial status is absent.

At the University of Massachusetts, the major involvement of chairmen in the University policy formulation process includes the following responsibilities:

solicitation of policy recommendations from department faculty;

discussion with faculty about intra-departmental policy changes (ie. regarding course offerings, or student advising procedures);

recommendation of policy, on behalf of faculty and on behalf of self, to the dean;



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participation in Faculty Senate, University Assembly, or other faculty advisory body which makes policy recommendations; and

participation with department faculty in faculty personnel recommendations, which may influence the direction of the department.

Chairmen have no authority to make policy decisions. Such authority rests with the Board of Trustees and the administrative officials to whom the Trustees delegate their authority. No such delegation has been made to the chairmen; rather, they serve as the conduit for faculty recommendations to the administration, and from the Trustees to the department faculty. Chairmen do not enjoy direct access to the Trustees. Instead, their recommendations are screened by the deans and other administrators. Although, chairmen meet with their deans more frequently than do other faculty, these meetings are primarily informational and advisory and serve to further communication between the deans and their departments. Employees who serve as "conduits" of information, policy recommendations and decisions are not managerial within the meaning of the Law. Holbrook School Committee, 1 MLC 1468 (1975). In their capacity as regular faculty members, chairmen share with all faculty access to the University administration through the Faculty Senate and University Assembly.

Furthermore, the evidence that chairmen may add their personal recommendations to those of the faculty does not establish them as managerial. While we do not require a showing of system-wide impact in this case, even at the college or school level, the chairman's voice is but one among many. In one case, at the School of Business Administration, chairmen are specifically excluded from the primary policy-making committee. The collegial method of decision-making diffuses responsibility at the department level, and at the school or college level, the deans rather than the chairmen wield substantial authority.

Chairmen serve as the focal point of much activity, yet a review of the record, makes clear that chairmen lack broad discretion, do not have direct access to decision-makers, and otherwise do not play a role significantly, if at all, greater than other members of the faculty in the development of policy. Accordingly, we will not exclude department chairmen as participating to a substantial degree in formulating or determining policy.

(b) Conduct of Collective Bargaining

Because there has been no collective bargaining between the faculty and the University, the chairmen have not been involved in assisting to a substantial degree in the preparation for, or the conduct of, collective bargaining on behalf of the University. There is no evidence that the chairmen have had any involvement in collective bargaining conducted on behalf of the Employer with other employees at the University.

The Commission will not exclude, as managerial, employees who might, at some future date, become involved in collective bargaining on behalf of the Employer. Wellesley School Committee, supra at 1407-8. Consequently, the Commission does not exclude chairmen as managerial on the basis of the second statutory criterion.



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(c) Independent Judgment in Personnel Administration

The third statutory ground for excluding employees as managerial relates to participation in the administration of a collective bargaining agreement or in personnel administration. The Law establishes a two-part test, requiring a finding (1) of substantial responsibility involving the exercise of independent judgment; and (2) that such exercise is of an appellate nature not initially in effect. Department chairmen satisfy neither requirement.

The Commission, in applying the first aspect of this exclusionary criterion, has found that the exercise of "independent judgment" requires "more than a coincidence of recommendation and acceptance by higher authority. If the judgment is considered to be 'independent' it must lie within the discretion of the employee to make without consultation or approval." Wellesley School Committee, supra, at 1408. An employee's authority to set personnel administration standards may establish him as managerial. City of Worcester, 2 MLC 1041, 1044 (1975).

In the instant case, the chairmen have no authority either to make independent personnel judgments or to establish personnel administration standards. The academic Personnel Policy limits the role of department chairmen to coordination of departmental administrative matters, and to review and formulation of recommendations. Personnel standards are established by the Board of Trustees, acting through the president and other executive officers, or by the faculty acting as a group through the peer review process. The record establishes that department chairmen lack substantial authority to set personnel standards or take personnel action without the consultation or approval of either department faculty, the dean or higher administrative officials.

Whatever authority the chairmen do possess is not of an appellate nature. The chairmen participate in the resolution of grievances, but their role is that of the first step in the grievance process. Testimony indicated that they would be the first person to whom a faculty member with a complaint would turn. For example, Dr. Arless Spielman, Dean of the College of Food and Natural Resources, described the chairmen as the "first line of inquiry, or the first place where the grievance is normally filed." As we said in Wellesley School Committee, supra, "It is clear that an individual who functions for management at the first step of the grievance procedure may not be considered to be exercising 'appellate' authority." 1 MLC at 1408.

Accordingly, we find that department chairmen at Amherst and Boston are not managerial employees as defined by any of the three criteria of General Laws Chapter 150E, Section 1.³¹

³¹ We find it unnecessary to consider at length the construction of the definition of the word "employer" which the Employer seeks to impose upon General Laws Chapter 150E, Section 1. The Employer contends that department chairmen should be excluded from participation in employee collective bargaining because they act in the interest of the employer. The Law specifies that an "employer" includes "any individual who is designated to represent it [the employer] and (cont'd.)"



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Confidential

Section 1 of the Law requires the exclusion from collective bargaining of "confidential employees:

Employees shall be designated as confidential employees only if they directly assist and act in a confidential capacity to a person or persons or otherwise excluded from coverage under this chapter.

The Employer argues that department chairmen are confidential employees because of their relationship to their deans.³²

As discussed above, department chairmen participate at college-level meetings with their deans. At such meetings, the deans may inform the chairmen of changes in University policy, apprise them of issues raised in higher echelon meetings, and solicit from them the recommendations of each department as a whole, and of the chairmen as individuals. Faculty do not normally attend these meetings, although they may substitute for absent chairmen. Information received at these meetings is transmitted back to the department faculty.

Chairmen maintain faculty personnel files in their offices. Access to such information is generally restricted to the chairman and the appropriate personnel committee. There is no evidence that chairmen have access to "confidential" information which would not also be accessible to department faculty on the various personnel committees.

We must determine whether the chairmen "directly assist or act in a confidential capacity to" the deans. G.L. c. 150E, s. 1. We have previously held that "access to sensitive financial data, personnel records or similar 'non-labor relations' material" does not, by itself, render an employee confidential. Silver Lake Regional School District, 1 MLC 1240, 1243 (1975). Instead, we look to determine the nature of the relationship between the employee and an excluded employee. "[T]he statutory exclusion is designed to protect certain personal relationships, which must exist if a collective bargaining system is to function

31 (cont'd.)

act in its interest in dealing with its employees". The Employer's construction of this phrase would necessarily encompass all managerial, confidential, supervisory and loyal employees within the statutory meaning of "employer", thereby excluding such employees from participation in collective bargaining. Such a construction of the definition is abhorrent to the Law. It is self-evident that the definition refers to individuals who operate as "agents" of the employer.

³²Neither Petitioner nor Intervenor sought to include deans in the bargaining unit, so their managerial status was not directly in issue. We find sufficient evidence on the record, however, to exclude deans as managerial.



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at the cost of denying bargaining rights to individuals who are themselves in no sense managerial." Wellesley School Committee, *supra*, at 1410. Obviously, an employee who, as a matter of course, has access to all or substantially all of the collective bargaining proposals prior to their submission to the bargaining agent should be excluded as confidential.

We find the chairman's access to sensitive files, without the requisite 'confidential' relationship to an excluded employee, to be insufficient to warrant a finding of confidential status. Nor does the reliance, by a dean, upon the recommendations of a chairman, or the use, by the dean, of a chairman as a conduit of information to and from the faculty, render the chairman 'confidential' within the meaning of the Law. Furthermore, there is no indication that chairmen would gain advance knowledge of the Employer's collective bargaining proposals prior to submission at the bargaining table. It is helpful to recognize that employees may directly assist excluded employees without assisting them in a 'confidential' capacity.

Accordingly, the Commission finds that the chairmen do not assist and act in such a way toward the deans as to qualify them as 'confidential' employees within the meaning of the Law.

Chairmen As Supervisory Employees

Massachusetts General Laws Chapter 150E, unlike the National Labor Relations Act, does not exclude supervisory employees from participation in collective bargaining. Nonetheless, the Commission considers the supervisory status of employees to be relevant to a determination of whether such employees are appropriately placed in the same bargaining unit with other employees. If the Commission finds an "inherent conflict" between the supervisory employees and other members of the proposed bargaining unit, the Commission will place the supervisory employees in a separate unit. City of Chicopee School Committee, 1 MLC 1195 (1974).

In determining the supervisory status of employees, the Commission is guided by the definition of supervisor contained in the National Labor Relations Act (NLRA), 29 U.S.C. 152 (11). The NLRA defines as a supervisor:

[A]ny individual having authority in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

While the National Labor Relations Board's application of the term "supervisor" assists the Commission in defining the term supervisor, the Board's decisions must be examined with full cognizance of the very different purpose for



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which the NLRB analyzes supervisory status. Because the NLRA excludes supervisory employees from participation in collective bargaining, the Board's application of the definition is, of necessity, more disjunctive and technical than the Commission's analysis. The Commission is concerned with the potential for 'inherent conflicts', not with the mere possession of specific supervisory power. Thus, the manner in which supervisory authority is exercised, and the total relationship between the employees is highly relevant to the Commission's examination.

The NLRB has examined whether department chairmen are supervisors in numerous private university decisions. Its analysis has involved consideration of several factors including: the chairmen's authority to make personnel decisions, the chairmen's authority effectively to recommend personnel actions, the chairmen's authority responsibly to direct faculty, and the chairmen's possession of certain supervisory prerequisites.

The Commission has frequently applied some or all of these standards to an examination of the supervisory status of public K-12 school system principals. See e.g., Town of Sharon School Committee, MCR-1349 (1974), where the Commission created a separate supervisory unit for principals, and similar administrators. The supervisory authority exercised by principals and other kindergarten through twelfth grade administrators, however, generally includes the authority to hire, fire, discipline, reward and perform other significant personnel actions with after-the-fact concurrence from the superintendent of schools or school committee. The department chairmen do not have authority to unilaterally perform any such major personnel action. At the University, the authority to implement personnel decisions rests with the Trustees or the President and their delegates, the chancellors, provosts and deans.

Therefore, the Commission's practice in K-12 school systems is not dispositive of the instant case.

(1) The chairmen's authority to make personnel decisions.

The Board has considered "most important" to a determination of supervisory status "the undisputed authority of the department chairmen to allocate total dollar amounts for merit increases among faculty members in the department." Rensselaer Polytechnic Institute, 218 NLRB No. 220, 89 LRRM 1844 (1975), (excluding the chairmen from the bargaining unit as supervisors). In Adelphi University, 195 NLRB No. 107, 79 LRRM 1545 (1972), the Board also excluded department chairmen as supervisors because they had authority to hire and re-appoint all part-time faculty, and to allocate merit increases without approval of department faculty.

In contrast, University of Massachusetts department chairmen do not have authority to make personnel decisions regarding the hiring, transfer, suspension, lay-off, recall, promotion, or discharge of other faculty. All such personnel



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decisions are made by higher administrative officials, in consultation with the faculty.³³

(2) Chairmen's authority "effectively to recommend" personnel actions.

Although chairmen do not have authority to make personnel decisions, if they exercise authority to make "effective" recommendations, their recommendations may be tantamount to the actual decision. The NLRB has analyzed the effectiveness of chairmen's recommendations concerning faculty hiring and change of status. C. W. Post Center of Long Island University, 189 NLRB 904, 77 LRRM 1001 (1971), (department chairmen excluded as supervisors). However, when the chairman exercises this authority in conjunction with other department faculty, so as to reduce the weight of the chairman's recommendation, or when the effectiveness of the chairman's recommendation is attributable to his or her greater experience or knowledge, the Board has found chairmen non-supervisory. Fordham University, 193 NLRB 134, 78 LRRM (1971).

At the University of Massachusetts, chairmen have authority to make personnel recommendations which may affect the hiring, termination, promotion, or approval for tenure, of faculty. Chairmen do not make their recommendations in a vacuum, however. Department faculty either advise the chairman on his recommendation; or, as is more usual, submit their own recommendations to accompany that of the chairman.³⁴ The process of "joint effort" is employed to make recommendations in all major personnel areas.

Professor Gerald McFarland, Chairman of the History Department at Amherst, described the process:

[By Mr. Menard]

Q. Now, you said that the personnel committee played a primary role in these personnel matters. Would you describe for us what the primary role is?

A. Well, there are a variety of things that happen yearly, including annual evaluation of every person on the faculty within the department; so, each person submits an annual report. Each of these

³³Pursuant to the policy of "joint effort", faculty participate in personnel decisions through operation of faculty personnel committees which exist at the school/college and often at the department level. They are representative bodies with responsibility to evaluate their peers, and to make recommendations concerning all faculty personnel decisions. Chairmen are eligible to participate either in an ex officio capacity, or as regular faculty representatives. See, Academic Personnel Policy, Section 3.2.

³⁴Personnel recommendations are made to the dean in a manner prescribed by the Academic Personnel Policy. This document appears to place greater weight upon the recommendation of the faculty personnel committee than upon that of the chairman. Section 3.10, which specifies the dean's responsibilities in (cont'd.)



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is read by the personnel committee. All individuals read them. We then together -- and I say we because I am the chairman of the committee at their choice. They have chosen me as chairman of the personnel committee; non-voting member of all discussions.

They then come up with anything from a paragraph to a few sentences evaluation of the individual.

We have a similar kind of screening process for promotion; and, of course, we're obligated at certain times to review contracts and tenure decisions and make tenure decisions. So, the committee is involved in each of these decisions and essentially writes the departmental recommendation as a body.

Q. In the areas of creation of positions, recruitment of new faculty, initial appointments, the annual evaluation, promotion and reappointment, what authority does the chairman have that the personnel committee does not have?

A. Well, my role is exactly the same, as I perceive it, that is, making recommendations.

Other testimony indicated that the chairman and the faculty personnel committee are usually in agreement when they submit their recommendations; and that such recommendations are highly effective. Because the record does not offer evidence that the chairman's recommendations are weighed more heavily than those of the faculty personnel committee, we find that the chairmen's recommendations are no more effective than those of the faculty in areas of significant personnel actions.

We note, however, that there is at least one type of personnel recommendation which the chairmen make without the involvement of the faculty.³⁵ Chairmen may, when negotiating starting salaries within a range established by the dean, recommend to the dean an increase in the authorized maximum amount. The faculty do not usually participate in such negotiations. This is not a personnel activity which creates conflict within the bargaining unit.

Therefore, we find that chairmen do not exercise an authority to make unilateral personnel recommendations, which would establish them as supervisors of the faculty. Rather, the chairmen exercise their authority substantially in conjunction with the other faculty.

³⁴(cont'd.)

academic personnel matters, mandates that the dean shall formulate his or her own recommendation to accompany that of the faculty personnel committee. The Academic Personnel Policy does not require that the dean forward the recommendation of the chairman to higher administrative officials.

³⁵The chairmen also evaluate faculty sabbatical requests without the participation of the faculty. We discuss this authority infra.



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(3) The chairmen's authority "responsibly to direct" faculty.

Although, academic professionals require an independence of judgment and activity which is antithetical to the concept of day-to-day supervision, the Board has identified several job functions which may be indicia of authority "responsibly to direct" faculty. The Board's notice of these factors has been fleeting, however, and they seem to supplement other evidence of supervisory status. Among such factors are the following: the chairmen's authority to administer department budget, University of Vermont and State Agricultural College, 223 NLRB No. 46, 91 LRRM 1570 (1976); the chairmen's authority to assign and schedule courses, Northeastern University, 218 NLRB No. 40, 89 LRRM 1863 (1975); the chairmen's authority to discipline or reward faculty, University of Vermont, supra, and the chairmen's authority to adjust grievances, Fordham University, supra.

At the University of Massachusetts, the annual budget is appropriated by the General Court. The Trustees approve the broad outlines of the budget, and specific allocations are made in greater detail by offices of the chancellor, provost and deans. Specific allocations may or may not conform to budget requests which are submitted by earlier department chairmen to deans. Chairmen prepare this proposal in consultation with the department faculty, and departments generally follow their previous year's budget.

Department budgets are generally divided into 90% for salary items and 10% for non-salary items. Chairmen have virtually no involvement in the administration of the 90% of the budget which accounts for salary items. They are responsible for the administration of the non-salary item accounts, but they do not have authority to unilaterally approve the expenditure of that remaining 10% of the budget.

For example, the University's "Travel Authorization" form indicates that the department chairman must "recommend" the travel, while authority for approving it lies with the dean (the assistant provost and controller must also sign the form). In contrast, the department chairmen at the University of Vermont, whom the NLRB found to be supervisors, had authority, after the department budget had been approved, to unilaterally approve disbursement of money for travel, supplies, and similar items.

The Commission considers the chairmen's responsibility to recommend disbursement of 10% of the department's budget to be quite distinct from the authority to administer the budget. The budgetary responsibility vested in chairmen is not synonymous with supervisory authority.

Chairmen may demonstrate supervisory status if they have authority to assign and schedule courses. Northeastern University, supra. University of Massachusetts chairmen are responsible for ensuring that each course to be offered is assigned to a faculty member, and for overseeing the scheduling of all department classes. But, because faculty are hired to teach a specialized subject matter, the chairman's role in assignment of classes is usually a clerical one, coordinating the voluntary self-assignments of the faculty. When



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conflicts in preferences arise between faculty, or when no one offers to teach a particular course, the chairman attempts to persuade faculty to agree to an amiable resolution of the matter. If the matter cannot be resolved through persuasion, the chairman must make a decision for the faculty. While the record indicates that chairmen have the authority to "order" a faculty member to teach a particular course, such authority is rarely, if ever, exercised, and there is no evidence a chairman in such a situation would have the authority to make the order effective.

The Board found a similar situation in Northeastern University, supra, where chairmen were found non-supervisory. The "formal obligations of a department chairman include, primarily, the assignment of faculty to courses ...[but] the role of a departmental chairman is, as Dean Shepard testified, 'one more of power through persuasion than power through decree.'" 89 LRRM at 1868.

Similarly, we find that the same method is employed by the chairmen at the University when they schedule courses. This rather clerical task often devolves upon a secretary, administrative assistant, or other faculty member within the department. Where conflicts develop, however, the chairmen will attempt to resolve them. For example, Dr. Gerald McFarland, Chairman, History Department at Amherst, outlined the scheduling process in his department as follows:

A. We circulate a questionnaire essentially to faculty for a given semester or in some cases for a year and solicit their suggestions about their preferences. That's screened by the chairman and the scheduling officer together. Then we consult with faculty, ask them occasionally if they'll be willing to change from one course to another.

Q. [By Mr. Menard]
Would you as chairman have the authority to make course assignments if there was conflict what was unresolvable any other way?

A. Yes, I think that is one of my very few prerogatives.

The Commission, therefore, finds that, as in Northeastern University, supra, the department chairmen assign and schedule courses through persuasion rather than decree; and, exercise of such a tactic in fulfilling clerical tasks is not evidence of supervisory status.

The NLRB found, in University of Vermont, supra, that chairmen could unilaterally issue verbal or written reprimands, remove office space, or withhold travel funds from faculty, and the authority to discipline faculty in such a way indicated that the Vermont chairmen were supervisors.

At the University of Massachusetts, however, chairmen lack any unilateral authority to reward or discipline faculty different from that of the faculty personnel committee. Both the chairmen and the personnel committee may issue reprimands to faculty. Because of the professional independence, and the sense of collegial responsibility, shared by faculty, neither the chairman nor the



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faculty personnel committee have much occasion to exercise this authority. In any event, the possession of such unilateral disciplinary authority by the faculty as a group, suggests that it is not an appropriate index of supervisory status. Yeshiva University, 221 NLRB No. 169, 91 LRRM 1017 (1975).

The chairmen may recommend action to discipline or reward faculty. Such rewards may be given through favorable recommendations for approval of travel money, or sabbatical leave, while discipline could be meted out through refusal to recommend such benefits. The record indicates, however, that chairmen do not generally employ such tactics; and, assuming they did, their action would be limited to making a recommendation.

We find that the chairmen's ability to recommend travel authorization or sabbatical applications is neither sufficiently unilateral, nor exercised in such a fashion as to indicate that chairmen hold supervisory authority through discipline or reward of faculty.

In the past, faculty at the University receive merit increases for commendable performance of their duties. These, like other personnel actions, were given upon the recommendation of the chairman and the faculty personnel committee. During the past few years, however, no merit increases have been given because of the austerity budget at the University.

The National Labor Relations Board has also analyzed the authority of chairmen to adjust grievances as an index of supervisory status. As we noted in our discussion of grievance resolution as an index of managerial status, the chairmen serve as the first line in attempting to resolve faculty grievances. The chairmen have no authority to resolve significant personnel grievances, such as salary inequities, tenure refusals, or non-renewal of contracts, but they do have authority to resolve minor intradepartmental problems, such as scheduling conflicts. For example, Dr. Glen Gordon, Acting Dean of the Faculty of Social and Behavioral Sciences at Amherst, testified, "whatever the chairman has the power to do he has the power to undo." At Fordham University, where the NLRB found that they were not supervisors, the chairmen performed a similar function. For example, Fordham chairmen discussed salary grievances with faculty, but grievances were referred to the dean or academic vice-president for resolution. Fordham University, *supra*.

The authority of a chairman to "undo" what he has "done" is not equivalent to supervisory authority to adjust grievances. In their capacity as the first line in the grievance resolution process, chairmen have no authority to resolve grievances which have arisen because of University action. Their role is to serve as a conduit of faculty dissatisfaction, and to try to provide a forum for faculty expressions of discontent. Such a role does not, in our opinion, render the chairman supervisory.

The National Labor Relations Board also examines the possession, by chairmen, of certain perquisites, such as private offices, stipends, access to support staff and equipment, or reduced teaching load, to be indicative of supervisory status.



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The perquisites which the University accords chairmen are minimal. All chairmen have their own offices,³⁶ but most faculty also enjoy their own office space. Because of the additional clerical responsibilities of the chairmen, they have greatest access to department support staff. Nonetheless, support staff are also available to assist all other faculty in the department. Department chairmen, like other faculty who have assumed extraordinary administrative, research or student advisory responsibilities, are usually authorized, by the dean, to engage in reduced teaching activities.

Prior to the recent approval of salary stipends for certain chairmen, they received the salary dictated by their professional rank and term of employment. This salary could be supplemented, pursuant to University policy, by a merit increase. President Wood has outlined a University-wide merit increase policy for fiscal year 1974 in a memorandum to the Board of Trustees. Merit increments were authorized not for status as a department chairman, but in recognition of service to the University. Such service could include acting as a chairman as well as:

- (1) Teaching; (2) research, scholarship or other creative work; (3) professional and scholarly activities and recognition; (4) counseling, advising, special programs, residential college and honors program activities; (5) service on departmental, college and university committees, and other administrative duties; and (6) uncompensated extension work, continuing education teaching and professional public service.³⁷

Chairmen also have the option of accepting either a twelve-month contract, or the standard nine-month contract. Certain other faculty whose job responsibilities require summer work also have this option.

Without deciding whether the NLRB's examination of perquisites might be helpful to an analysis of supervisory status in other contexts, we find that enjoyment of some or all of these benefits is not indicative of supervisory status at the University of Massachusetts. What privileges the chairmen enjoy with limited exceptions, are accorded them because of their professorial status, their tenure at the University, or because of their professional responsibilities.

³⁶Despite the Employer's contention that "each Head at the University has his own private office. Moreover, these are Department Head offices per se", Brief of the Employer at 13, the record reveals that only in the College of Physical Education are the offices per se Chairman offices. The office enjoyed by the Chairmen appear to be accorded them on the basis of their professorial rank, not on the basis of their Chairman status.

³⁷Memorandum of September 27, 1973 re "Merit Increment Policy (Employer's Exhibit 16 (b)).



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Other faculty are accorded the same benefits for the same reasons. Therefore, we see no supervisory distinction in the enjoyment of certain perquisites by chairmen.

Thus, we find that the department chairmen do not have authority to make personnel decisions. Nor do the chairmen have authority to make significant personnel recommendations which is any different, or more effective, than that of the faculty.

While we find that the chairmen exercise some authority to "responsibly direct" faculty, within the meaning which the NLRB has given to that term, such authority and the manner in which they exercise it, is not sufficiently "supervisory" to warrant their exclusion from the unit. Further, we find the enjoyment, by chairmen, of certain perquisites to be neither attributable to their positions as chairmen, nor to indicate a supervisory status.

Role Of Chairman With Respect To Non-unit Personnel

Although the chairmen are not supervisors of faculty, they do exercise some supervisory authority over non-unit personnel, such as department support staff. Chairmen are responsible for recommending support staff for hire and usually have principal responsibility for supervising day-to-day work of such staff.

The National Labor Relations Board has found that chairmen may be excluded from collective bargaining if more than 50% of their time is spent supervising non-unit staff. Adelphi University, supra. The rationale of the so-called 50% rule is that the supervisory functions of the chairmen cause these employees to ally themselves with the interest of management. Such an alliance, the Board has reasoned, destroys the requisite community of interest with other unit employees.

Without deciding whether such a rule is appropriate in its application to unit determinations under General Laws Chapter 150E (given the Law's own definition of 'managerial'), the Commission finds no evidence on the record that chairmen spend 50% or more of their time supervising support staff. Moreover, other faculty also supervise certain support staff. The exercise of occasional supervisory authority is not equivalent to status as a supervisor. Faculty are hired to perform professional tasks, not to supervise support staff.

Higher education faculty enjoy an independence of judgment and activity in the teaching, research, or student advising, which is not found in most other employment situations. The discretion of the individual faculty member is broad, and, the supervision exercised over him or her is correspondingly reduced. As a consequence, we must examine the total relationship between the employees, and the manner in which policies are recommended and administrative tasks performed at the department level.

The University's policies and procedures distribute department-level authority among the faculty rather than centralize it with the chairman. While the



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chairman has greater administrative responsibilities than other individual faculty, these responsibilities are not sufficient to destroy the community of interest which chairmen share with their colleagues in the faculty bargaining unit.

Accordingly, the Commission finds the University of Massachusetts chairmen to be neither managerial nor confidential, and thus entitled to participate in collective bargaining, pursuant to General Laws Chapter 150E. The Commission finds further that the chairmen share a community of interest with other faculty; that they are not supervisors; and that they are appropriately placed in the faculty unit.

Cluster Chairpersons

Unlike other Schools and Colleges throughout the University, the School of Education at Amherst is subdivided into "clusters" instead of departments. Clusters, which are similar to departments, are headed by chairpersons. The Petitioner and the Intervenor seek inclusion of the cluster chairpersons in the faculty unit. The Employer takes no position with regard to cluster chairpersons.

The cluster chairpersons are selected by a 2/3 vote of the cluster faculty and graduate students, with approval of the dean. Chairpersons may receive an additional stipend, reduced teaching load, and/or twelve-month contract in return for their increased administrative duties. Cluster personnel recommendations and evaluations are performed by both the cluster faculty and chairperson. In most other respects, cluster chairpersons function in a manner similar to department chairmen.

Accordingly, the Commission finds the cluster chairpersons, like the chairmen, to be neither managerial nor confidential. Further, the Commission finds that the chairpersons are not supervisors, but rather share a community of interest which mandates their inclusion within the faculty unit.

Faculty Members of Campus Governance and Personnel Committees

The Petitioner and Intervenor both urge inclusion of faculty governance and personnel committee members in the faculty unit. The Employer has taken no position on the inclusion of these faculty.

Faculty elect representatives to serve on campus governance bodies and school, college or department personnel committees. The faculty members of these committees participate in formulation of policy recommendations as well as in faculty personnel evaluation. In all other respects they perform functions identical to other faculty.

The authority to make recommendations on behalf of the faculty, exercised collectively through these elected committee members, does not elevate these individuals to managerial, confidential or supervisory status.



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The NLRB has held, in Adelphi University, *supra*, that the ultimate decision-making authority of the Trustees and the collective nature of the committee's advisory power, refute any contention that committee members are managerial or supervisory.

At the University, the Trustees are committed to involving the faculty in policy and personnel recommendations. There is no evidence to support a conclusion that committee members are confidential. Administrative convenience dictates that the faculty elect certain of their peers to represent them; but, election to such status does not render committee members managerial or supervisory.

Accordingly, the Commission includes faculty members of campus governance and personnel committees in the faculty unit.

Librarians I-V

Petitioner and Intervenor seek the inclusion of professional librarians in the faculty bargaining unit. The Employer seeks to exclude librarians on grounds that they lack a community of interest with the faculty. The Employer takes the further position that if librarians are included in the unit, department heads should be excluded as managerial or confidential; alternatively, it argues that they should be placed in a separate supervisory unit.

The Amherst and Boston campuses have distinct library systems. The Amherst library is headed by a Director of Libraries, who is assisted by three Associate Directors, each of whom has responsibility over one of the three main divisions: Bibliography, Public Services and Technical Services. The parties agree to the exclusion of the Director and Associate Directors. The library is further divided into 15 departments, such as Special Collections, Circulation Services, Acquisitions and Archives, each of which has a department head. Over 50 librarians work at Amherst; they are eligible for promotion and hold ranks ranging from Librarian I (the lowest) to Librarian V (the highest).

The Boston library system is less formally organized than Amherst. The University Librarian and the Associate University Librarian, whom the parties have stipulated to exclude, preside over 23 librarians scattered through 10 departments. Unlike at Amherst, no Boston librarians hold the title "department head." The librarians on both campuses function similarly; thus, except where specific differences appear, both groups of librarians shall be considered together.

The libraries perform a basic service to the academic community, facilitating teaching and research. As such, the librarians are in frequent contact with faculty and students. Some librarians, such as in the Reference and Bibliography Departments, experience constant contact with faculty members because they assist in course preparation and research. Others, such as catalogers, have infrequent contact, although according to the Director of Libraries, such contact may be "intense" when a professor or a student is particularly



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interested in a problem. Many of the librarians, of course, are constantly advising students on the proper use of the collections, and often, at the invitation of a faculty member, they will instruct the students in the classroom.

The "Personnel Policy for Professional Library Staff," disseminated by the Director of Libraries in February, 1975, quoted the Chancellor of the Amherst Campus: "...[P]ast policy actions by the University ...formally establish the identity of librarians as a professional group which is recognized as having academic functions, requirements and interests closely allied with those of the faculty...." The record developed herein confirmed the chancellor's statement. Librarians have the same fringe benefits as faculty. Like faculty, they are encouraged to improve their professional skills and standing through attendance at various conferences and professional gatherings. Travel money and research grants are available for such purposes. Librarians are also eligible for sabbaticals. Librarians are guaranteed academic freedom to the same extent as the teaching faculty.

The Employer seeks to differentiate librarians from faculty noting that they are largely interchangeable, unlike faculty. The record indicates otherwise. While it is true that on the Boston campus librarians cover for each other, this is due to a severe staff shortage. The Amherst Director indicated that he substitutes librarians "to meet our operational needs, but maintained that "you can't replace one skill with another. They are not interchangeable."

Librarians at both campuses are included in the University's governance structures. At the Amherst campus, librarians above the rank of Librarian I are eligible to participate fully in the Faculty Senate. On the Boston campus, librarians are eligible for the Assembly, although their role is more limited than that of faculty. No University policy prohibits librarians from serving on campus committees. The libraries are integrated into the University structure in the same manner as are the other academic departments and both libraries are under the jurisdiction of the Vice-Chancellor for Academic Affairs.

The Amherst library has two major standing committees, the Administrative Council and the Executive Committee. The Administrative Council, composed of the Director, the three Associate Directors and the department heads, meets about twice a month to discuss problems and issues facing the library. The Director testified that he tried to use the Council as a "vehicle for communication," and stressed that it did not have a policy formulation role but rather an "advisory role." The minutes of the Council meetings are disseminated to the library staff.

The Executive Committee, a subset of the Council, is comprised of the Director, the Associate Directors and the Business and Personnel Manager. It meets at least once a month to deal with many of the same issues as the Council, but in greater detail, reflective of its greater responsibility. The Executive Committee is authorized to act in the Director's absence.

The Faculty Senate appoints a Library Committee to advise the Director on the operation of the Library. The Committee organizes various ad hoc



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subcommittees to deal with current library plans or problems. These subcommittees have an Associate Director or other professional librarian assigned as staff, and meets with the Director and staff as needed to consider the subject matter. The Director has most recently relied on the Library Committee to assist the library in coping with budget problems, both to build faculty support for an increased allocation from the University and to advise him on the use of available funds. Faculty-library cooperation is further enhanced through liaisons from the various academic departments who relay their colleague's interests to the library staff and generally promote two-way communication.

Librarians have their own grievance procedure, but may also engage the University-wide grievance procedure used by faculty. At Boston, personnel matters, including hiring, discipline, evaluation and promotions, are handled by the University Librarian and his Associate. At Amherst, the librarians have personnel committees like those of the faculty. As the Amherst Director of Libraries stated, "We have tried to analogize the library to the Morris Document." A major difference between librarians and faculty is that the librarians are not eligible for tenure. However, until recently, when the budgetary problems of the University led the Trustees to insist on one-year commitments, the librarians were eligible for contracts ranging up to five years, with job security in the interim similar to that of tenured faculty. Librarians salaries are set competitively and are not related to faculty salaries. Most librarians work on a twelve-month basis, while only 25% of the faculty do so.

Of some interest is that the librarians, at least on the Amherst campus, feel a community of interest with the faculty. The Amherst Chancellor informed them by letter in the fall of 1975 that the University would seek to exclude librarians from the faculty unit. Eighty percent of the Amherst librarians responded by signing a letter to the Chancellor protesting what they perceived as a change in University policy and requesting reconsideration of the University's position.

We have long followed a policy of including allied professional employees in units of teachers. Chicopee School Committee, 1 MLC 1195 (1974); City of Worcester, 1 MLC 1034 (1974). Some such "satellite" positions have included adjustment counsellors, guidance counsellors, instructional media specialists and librarians. In dealing with similar questions at the university level, we included in a faculty unit all administrative and support personnel. Community Colleges, supra. We see no reason to depart from that practice now.

The library is the center for much of the University's activity. The librarians assist faculty and students in their work and maintain regular contact with them. They participate in many of the University governance structures and, particularly at Amherst, handle their affairs much like the academic departments. The differences between the librarians and the faculty, including lack of tenure and somewhat less collegiality, do not destroy the community of interest.

The National Labor Relations Board for similar reasons has uniformly found a community of interest among faculty and librarians and thus included them in



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a faculty bargaining unit. Rensselaer Polytechnic Institute, 218 NLRB No. 220, 89 LRRM 1844 (1975). The Board views librarians as:

A closely allied professional group whose ultimate function, aiding and furthering the educational and scholarly goals of the University, converges with that of the faculty, though pursued through different means and in a different manner. New York University, 205 NLRB at 8.

The Board has included librarians despite restricted (or non-existent) governance procedures, and, as stated in New York University, "more basically, the fact that they are not considered faculty." 205 NLRB at 8. The Board reaffirmed its position recently in University of Vermont, *supra*, when, faced with less appealing facts than those present here, it included librarians despite the opposition of all parties. For all the above reasons, we include Librarians I-V in the faculty bargaining unit.

The question remains whether department heads should be included in the faculty bargaining unit. The Employer argues that library department heads should be excluded as managerial or confidential employees, or alternatively placed in a separate supervisory unit. Petitioner and Intervenor seek their inclusion.

In light of the evidence outlined above, it is clear that the department heads in Boston should be included. The University librarian and his Associate, already excluded by agreement of the parties, wield all the authority in matters of policy and personnel. The Boston Library has not formally designated "department heads." There is no evidence of any supervisory authority sufficient to create conflict within the unit; in fact, some departments have only one librarian, who presumably is the "head," but who lacks another employee to supervise.

The situation of Amherst library department heads is akin to that of faculty department chairmen and requires the same result on even more compelling facts. The record indicates that the heads are often appointed from the ranks of librarians, and when their service as heads ceases, they frequently revert to regular status. Department heads have not, in recent memory, been promoted to higher administrative positions within the University. Department heads do not receive any additional compensation and are not always the highest ranking librarian in the department. They continue to perform routine librarian duties.

Department heads play no substantial role in the formulation or determination of policy other than that enjoyed by all Amherst librarians through their collective governance structures. It is the Executive Committee, comprised wholly of excluded employees, which makes the decisions and acts in the Director's absence. The Administrative Council, which is the crux of the Employer's argument for exclusion, is strictly an advisory group established to discuss operations and procedures for the benefit of the Director and the Executive Committee, and to serve as a communications conduit between management and the staff. The wide dissemination of the Administrative Council minutes is illustrative of this role. We have long considered participation in such a council, without more, insufficient



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to render department heads managerial. The discussion of operations and procedures is not equivalent to the determination of policy which significantly impacts the mission of the employer. Town of Wellesley, supra. Nor does such a role constitute acting in a confidential capacity to otherwise excluded employees.

Furthermore, we see nothing in the record sufficient to warrant placing department heads in a separate supervisory unit. As at Boston, some of the departments contain only one librarian, the head. Nor is it evident that department heads spend a substantial amount of time supervising non-unit personnel. And supervision of unit members is primarily in the nature of professional advise and critique. Our rationale regarding the inclusion of faculty department chairmen is equally applicable to librarian department heads, and accordingly, we include them and Librarians I-V in the faculty bargaining unit.

Coaches Who Hold Faculty Rank:

The Employer seeks to exclude from the faculty bargaining unit athletic coaches who hold academic rank, but perform no classroom teaching. Petitioner and Intervenor urge inclusion of all members of the School of Physical Education, including the coaches, who hold academic rank, regardless of whether they perform classroom teaching.

Five coaches at the University hold academic rank, but do no classroom teaching. All are in the Athletic Department of the School of Physical Education on the Amherst campus and all are tenured faculty. The record indicates that each participates in the governance of the School of Physical Education. As faculty, they are paid the same salaries as other faculty of similar rank and experience. Like other faculty, they have full access to the regular University grievance procedure, and enjoy the University-wide academic personnel policies.

The five coaches at issue resemble faculty in qualifications, share similar responsibilities, and enjoy similar personnel policies. Although these faculty do not teach in the classroom, they contribute to the University's educational process through their "non-academic" teaching.³⁸ Accordingly, the five coaches who hold faculty rank, but do not perform classroom teaching, are included in the faculty bargaining unit.

The Director Of The Center For International Agriculture

Petitioner is the only party seeking the inclusion of the Director of the Center for International Agriculture in the faculty bargaining unit. Intervenor, and, by inference, the Employer urge exclusion of the Director because of an absence of community of interest between the Director and the remainder of the bargaining unit.

³⁸ See Rensselaer Polytechnic Institute, supra; and Manhattan College, 195 NLRB 65, 79 LRRM 1253 (1972).

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The Center is a department within the College of Food and Natural Resources. The Director holds professional staff rank, rather than faculty rank, and works on an eleven-month contract. He has no teaching responsibilities currently, and has not taught in the last fourteen years. His primary function, according to the Dean of the College, is one of "organization, developing programs, taking care of protocol forms, [and] regulations," for the benefit of foreign students or foreign visitors who may be at the University for "anywhere from a day to a four-year program." He does not advise foreign students as to their academic programs. That function is handled by faculty advisors in the same manner as it is for other students. The Director, because he is not associated with an academic department or discipline, does not serve as a faculty advisor. He does, however, assist in alleviating language, cultural or financial problems which foreign students may experience.

There is little evidence of any regular interaction between the Director and faculty members. If a faculty member were planning to take a leave of absence to visit a foreign country or enter the Peace Corps, the Center would assist in making the necessary arrangements. In addition, the conference room attached to the Director's office doubles as a resource library for students of international agriculture. If an instructor were helping his students use the resource materials, he may have some contact with the Director.

Petitioner suggests that the Director be included in the bargaining unit because his activities are "clearly associated with the educational process." We find, however, that this association is so tangential as not to form a basis for a real community of interest. His contact with students is purely in a counselling or assisting capacity, without the instructional component inherent in the function of, for instance, a librarian. His contact with faculty is intermittent in the extreme, with the most intense contact occurring just when the faculty member is about to take up residence in another country. We do not include the Director as an allied professional in the bargaining unit.

Order and Direction of Election

Now, therefore, in accordance with the evidence and the stipulations of parties, the Commission concludes:

1. That a question has arisen concerning the representation of certain employees of the University of Massachusetts within the meaning of Section 4 of the Law;
2. That the unit appropriate for collective bargaining is as follows:

All faculty including:

Full Professors;
Associate Professors;
Assistant Professors;
Instructors;
Faculty of Stockbridge College;



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Program Directors (not otherwise excluded)
Non-tenure track faculty;
Lecturers;
Faculty on terminal contract;
Full-time faculty whose titles have been changed;
Visiting faculty in their record year of teaching
at the University;
Part-time faculty who have taught at least one course
for three consecutive semesters or who have taught
at least one course for two consecutive semesters
and who are teaching their third consecutive semester;
Department chairmen;
Cluster chairpersons;
Faculty members of Campus Governance and Personnel
Committees;
Staff Associates and Staff Assistants in the
following programs
(at the specified locations:

At Boston: Tutorial Program; Academic Advisors;
University Year for Action; Vocational
Counseling; Evaluation-Instructional
Specialists; Media Services; Cooperative
Education; Spanish-Speaking Student
Advisor; Center for Alternatives; Foreign
Student Academic Advisor.

At Amherst: University Without Walls;
Communications Skills Program;
Women's Studies; Student
Development Center; Center
for Instructional Resources
and Improvement; Student
Center for Educational Research;
Language Laboratory; University
Year For Action; Center For
Outreach; Bilingual Collegiate
Program; Special Students'
Program; Media Center; Cassiac;
Inquiry Program.

Excluding: Deans, Associate and Assistant Deans,
Provosts, Assistant and Associate
Provosts;
Teaching Fellows, Teaching Associates,
and Students;
Professors emeriti who are not eligible
in another category;
Director and Associate Directors of the
Amherst Library;



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Director and Associate Director of the
Boston Library;
Extension Specialists;
County Extension Agents;
Visiting faculty employed by the
federal government;
Director of Control Services;
Director of Athletics;
Trainers and Physiotherapists;
Director of Public Health;
Director of Nursing;
Clinical nursing faculty and preceptors;
Adjunct faculty;
Director of the Center for International
Agriculture;
Professor Adam Yarmolinsky and Professor
Franklin Patterson and all other
employees.

3. That an election shall be held for the purpose of determining whether or not a majority of the employees in the aforesaid unit desire to be represented by the Massachusetts Society of Professors/Faculty Staff Union/Massachusetts Teachers Association/National Education Association or the Amherst and Boston Chapters of the American Association of University Professors or by no employee organization, for the purposes of collective bargaining.
4. That the election shall be conducted by secret ballot on site, but that the mail ballots shall be sent to members of the bargaining unit who are on sabbatical leave for the Fall Semester of 1976 or who are absent from the campus because of official University business for the Fall Semester of 1976, provided that the Employer shall submit a list agreed upon by the Petitioner and the Intervenor of persons eligible for absentee ballots on or before October 26, 1976.
5. That 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 Employer for the week ending October 15, 1976 and who have not since quit or been discharged for cause.

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



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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 this decision unless otherwise extended by order of the Commission.

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.

IT IS FURTHER DIRECTED that the parties shall convene at the offices of the Commission for the purpose of scheduling dates and locations for the election on October 22, 1976 at 1 o'clock p.m.

James S. Cooper, Chairman

Madeline H. Miceli, Commissioner

