

UNIVERSITY OF MASSACHUSETTS AND UNION OF STUDENT EMPLOYEES AND AFSCME AND
MASSACHUSETTS STATE EMPLOYEES ASSOC., SCR-2070 (10/18/77).

- (10 Definitions)
 - 17. Employee
- (30 Bargaining Unit Determination)
 - 34.2 community of interest
 - 34.731 campus
 - 35.1 casual and temporary employees
 - 35.12 students as employees

Commissioners Participating: James S. Cooper, Chairman; Garry J. Wooters,
Commissioner

Appearances:

- | | | |
|---------------------------|---|---|
| Steven D. Ostrowsky, Esq. |) | - Representing the University of Massa- |
| Martin E. Skoler, Esq. |) | chusetts |
| David R. Kaplan, Esq. |) | - Representing the Union of Student |
| William C. Newman, Esq. |) | Employees |
| Agustus J. Camelio, Esq. | - | Representing the American Federation |
| | | of State, County and Municipal Em- |
| | | ployees, AFL-CIO |
| Mark Dalton, Esq. | - | Representing the Massachusetts State |
| | | Employees Association |

Statement of the Case

On April 7, 1975, the Union of Student Employees (the Union) petitioned the Labor Relations Commission (the Commission) pursuant to Section 4 of General Laws Chapter 150E (the Law) seeking to represent all hourly and student employees of the Murray D. Lincoln Campus Center (the Center) at the Amherst campus of the University of Massachusetts (the University). Formal hearings were held before the Commission on June 23 and 24, July 21, and September 3, 1975. The American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME) and the Massachusetts State Employees Association (MSEA) intervened in the proceedings. All parties were afforded full opportunity to be heard, to examine and cross examine witnesses, and to introduce evidence. Briefs filed by the Union and the University have been carefully considered.

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

Findings of Fact

1. The Board of Trustees of the University of Massachusetts is a public employer within the meaning of Section 1 of the Law.
2. The Union of Student Employees is a labor organization within the meaning of Section 1 of the Law.



University of Massachusetts and Union of Student Employees et. al., 4 MLC 1384

This Commission has recently reviewed the history and structure of the University of Massachusetts system, making such review unnecessary here. See Board of Trustees, University of Massachusetts, 3 MLC 1179 (1976).

The purpose of the Center, which was completed in 1970, is to provide service to the University community and its guests. Toward that end, the Center maintains a variety of facilities and services, including hotel rooms, conference rooms, restaurants, a ballroom, an auditorium, a catering service, a bookstore, a bus ticket office, a laundry service, amusements, lounge facilities, a game and print shop, a barber shop, and a travel agency.

Policies for the Center are established by a Board of Governors, most of whom are students at the University. All policies set by the Board become legal and binding within fifteen days of adoption, unless specifically vetoed by the Chancellor. The Board also has responsibility for reviewing and approving the operating budget of the center before it is submitted to the Chancellor and to the Board of Trustees for approval, and must review and approve any significant modifications in the budget prior to its implementation. The Center budget is approximately \$8,000,000 per year. Much of the funding for the Center is derived from student fees and from revenue generated by the operation of the various enterprises within the complex.

Persons employed at the Center, like those employed elsewhere by the University, are hired in various categories. Classified employees are persons employed either full-time or part-time in regular, budgeted positions.¹ Hourly employees are those hired in temporary positions and are paid on an hourly basis. Student employees, as the term implies, are employees who are students at the University.

At the time of the filing of the petition in this case there were approximately 6900 student employees throughout the Amherst campus of the University. As of May 1, 1975, the Center employed a total of 770 persons, of whom 553 were student employees and 49 were hourly employees, the remainder being classified employees.

Student employees at the Center perform a variety of job functions in nearly forty different classifications, including clerical, administrative, custodial, maintenance, food service, and retail service positions. The student employees generally perform the same duties as regular classified employees in the same positions. Furthermore, many of the same jobs are performed elsewhere on the campus, both by students and by classified employees.

All student employees, including those at the Center, are eligible for unemployment compensation and worker's compensation and must be paid in accordance with Massachusetts overtime laws, G.L. c.149, §§30A and 30B. Wages paid to student employees are considered earnings for Internal Revenue Service purposes. Student employees are not eligible for any of the fringe benefits granted to other University employees, such as sick leave, vacation or holiday pay, or insurance.

Although student employees in some areas of the Center average as little as 12 to 15 hours per week, many average over 20 hours per week, and some work

¹ No such classified employees are included within the present petition.

University of Massachusetts and Union of Student Employees et. al., 4 MLC 1384

in excess of 40 hours per week. Student employees at the Center work an average of one and one-half years at the Center although some work as many as four years. Usually students do not continue their employment through the summer months unless they remain enrolled in school.

The University has a central Office of Student Employment with responsibility for coordinating and overseeing student employment throughout the Amherst campus of the University. Students seeking employment at the University are required to apply to the Student Employment Office and file a "Part-time Student Registration Form" with that office. The Student Employment Office establishes job classifications and wage rates for all student employees campus wide, including the student employees at the Center. The Center has its own Personnel Office with responsibility for hiring and firing student employees subject to the approval of the Student Employment Office. The Center Personnel Office has established grievance procedures, and issued job descriptions and documents such as its "Policies and Procedures" and "Orientation Brochure for Student Employees."

Student employment at the University is funded through various sources including "03" funds allocated to the University by the Commonwealth, grants, trust funds, and "work study" funds appropriated under the Federal College Work Study Act. Work-study employment is granted on the basis of financial need. Of approximately 1200 work-study students employed on the campus, a maximum of 150 are assigned to the Center. The remainder, and therefore the vast majority, of the student employees are hired without regard to their actual financial need.²

The Union also seeks to represent the non-student hourly employees at the Center. Approximately 50 such employees work at the Center, out of a total of about 450 campus-wide. These employees are hired on a temporary basis through the University employment office, rather than the Student Employment Office. Hourly employees work irregular hours, but typically 20 to 30 hours per week. These employees fill primarily clerical jobs. Hourly employees are paid on a higher scale than student employees, and are eligible to take courses at the University's Division of Continuing Education, although they receive no other fringe benefits.

The Commission has previously established seven campus-wide bargaining units for non-professional employees, excluding, among others, student employees. University of Massachusetts, SCR-3 and SCR-4 (1968). The Commission in that case was not presented with the question of whether student employees were "employees" within the meaning of the Law, nor did the Commission consider the proper unit placement of such persons, were they to be treated as employees under the Law.

²The Student Employment Office has had a policy of attempting to generally correlate financial need and non-work-study employment, but this policy has not been effectively implemented.



University of Massachusetts and Union of Student Employees et. al., 4 MLC 1384

Opinion

The Status of the Student Employees

The threshold question in this case is whether the student employees at the Center are employees within the meaning of G.L. c.150E, §1. That section defines an employee as:

any person employed by a public employer except elected officials, appointed officials, members of any board or commission, representatives of any public employer, including the head, directors and executive administrative officers of departments and agencies of any public employer, and other managerial employees or confidential employees, and members of the militia or national guard and employees of the Commission, and officers and employees within the departments of the State Secretary, State Treasurer, State Auditor and Attorney General.

Initially, I note that this Commission was confronted with the question of whether student status and employee status may "coexist" under the Law in City of Cambridge, 2 MLC 1450 (1976). The Commission decided that "The fact that house officers may be students for some purposes and employees for others, should not deprive them of all rights under Massachusetts General Laws Chapter 150E." Id. at 1463. In deciding that medical interns and residents should not be denied protection of the Law because of their dual status as students and employees, this Commission explicitly rejected the holding of the National Labor Relations Board (NLRB) in Cedars-Sinai Medical Center, 223 NLRB No. 57, 91 LRRM 1398 (1976).

The Commission recognized that student employees should not be precluded from coverage of the Law. In reaching this result we carefully examined the nature of the employment involved, to determine,

...if the employee status rises to a level significant enough to effectuate the policies of the Law and thereby come within the ambit of its protection. City of Cambridge, supra, at 1461.

In applying the above test, the Commission considered objective factors such as the applicability of statutory controls, including those of the Internal Revenue Service and the Worker's Compensation program. The Commission also considered other objective indicia of employee status, such as the provision of employee benefits, the issuance of employee identification cards, and the establishment of a competitive salary structure. Also relevant is the way in which the employer perceives the relationship, i.e. whether the employer places primary emphasis on the services rendered, rather than the educational benefit derived by the employees.

After applying the above criteria and considering that "educational benefits obtained through the house officer programs may be extremely important to the individual house officer...", the Commission concluded:

University of Massachusetts and Union of Student Employees et. al., 4 MLC 1384

That house officers receive an educational benefit cannot overcome the fact that patient care functions are the services for which house staff are compensated and hospitals bill. Cambridge City Hospital, supra, at 1463.

The Commission recently approved a similar result in affirming a Hearing Officer's Decision which had extended coverage of the Law to part-time library pages, even though they were full-time high school students who averaged less than twenty hours a week and had no expectation of long-term employment beyond graduation. City of Quincy Library Department, 3 MLC 1326 (H.O. 1976) aff'd 3 MLC 1517 (1977).

Generally, the NLRB has extended collective bargaining rights to students who are employed in traditional work places other than where they are enrolled in school. Hearst Corporation, 221 NLRB No. 67, 90 LRRM 1468 (1975); St. Elizabeth's Hospital, 220 NLRB No. 61, 90 LRRM 1420 (1975); Barnet Memorial Hospital Center, 217 NLRB No. 132, 89 LRRM 1083 (1975). Under established NLRB law the determination of whether student or other part-time employees are entitled to collective bargaining representation depends upon whether the nature of their employment gives them a sufficient interest in wages, hours, and other working conditions to justify such representation. The sufficiency of interest will ordinarily turn upon such factors as continuity of employment, regularity of work, the relationship of the work performed to the needs of the employer, and the substantiality of their hours of work. However, when students work as University employees the NLRB has concluded that they do not share a community of interest with other regular part-time employees, as well as finding that students were not "employees" within the meaning of the National Labor Relations Act (Act). Georgetown University, 200 NLRB 215 (1972); Cornell University, 202 NLRB 290 (1973); Barnard College, 204 NLRB 1134 (1973); Long Island University (C. W. Post Center), 189 NLRB 905 (1971), Long Island University (Brooklyn Center), 189 NLRB 909 (1971); Adelphi University, 195 MLRB 639 (1972); The Leland Stanford Jr. University, 214 NLRB No. 82, 87 LRRM 1519 (1974); San Francisco Art Institute, 226 NLRB No. 204, 93 LRRM 1505 (1976).

Professor Daniel Pollit and Congressman Frank Thompson, Jr. have criticized the NLRB's reasoning:

Despite the holdings in the Cornell, Georgetown and Barnard opinions, the Board represents no convincing rationale for distinguishing the situation simply because the place of employment moves to the campus and the employee is a student.... But the status of the employee as a student is irrelevant to this issue. Daniel H. Pollitt and Frank Thompson, Jr. "Collective Bargaining on the Campus: A Survey Five Years After Cornell" Industrial Relations Law Journal 191, 217-218 (1976).

In a recent case, the NLRB denied student employees coverage under the Act where the students averaged 20 hours a week and worked up to three and one-half years at their jobs. Members Fanning and Jenkins stated in dissent:

The sufficiency here of the student janitors' interest in their employment conditions is not diluted by their primary interest in their studies nor by the fact that, for



University of Massachusetts and Union of Student Employees et. al., 4 MLC 1384

the most part, their employment will terminate upon their graduation...[O]ur colleagues assert that the interest in employment conditions of students working at the institution they attend is less substantial than that of students working for "a commercial employer." The rationale for this attempted distinction is not explicated nor can we perceive any. San Francisco Art Institute, supra, at 1509.

The Commission is not alone in facing this problem. Recently the Michigan Employment Relations Commission (MERC) confronted a similar issue when 8,000 student employees at Michigan State University petitioned for a representation election pursuant to the Michigan Public Employees Relations Act. MERC made the following findings which we quote at length because of the pertinence to the instant case.

Student employees involved in this proceeding work out of the student employment office and are subject to the Employer's 'Student Employment Policy Manual' and its 'Student Rates and Job Description Manual'. The student employees perform duties similar to those assigned to the regular clerical, technical, and maintenance employees of the University, and their employment is designed to only supplement the regular work force of the University, and to provide students with jobs which help defray the cost of their education. Student employees must have as their primary purpose the achievement of a degree, diploma, or certificate, and their employment is considered interim or temporary and incidental to their educational pursuits.

* * *

Employees are limited to a maximum of 29 hours per week under University policy, but the record indicates that they average approximately 11 hours per week, although thirty percent may work from 20-29 hours per week. An individual's status as a student worker can continue indefinitely, if his or her academic schedule permits and work is available, but most student workers who wish to continue employment are rehired when they return to school in the Fall. Each department of the University has its own budget for student employment, but hires its student workers through the central student employment office which attempts to maintain uniformity of treatment in regard to wage rates, working conditions, and similar matters.

* * *

In summary, the fact that the student workers involved in this case are primarily students employed by the University as a means of economic survival in order to complete their education does not preclude their being employees within the meaning of Michigan Public Employees Relations Act...[T]he student workers in the unit requested herein are an identifiable work force under the general supervision of the student employment office, that they average approximately 11 hours work per week, and that many of these students are employed throughout a major portion of their college career. Accordingly, we conclude that there is sufficient



University of Massachusetts and Union of Student Employees et. al., 4 MLC 1384

stability and identity of the proposed bargaining unit to entitle the petitioner herein to an election as provided by Section 12 and 14 of PERA. Michigan State University, Case No. R75 D-197 (1976) P. 5, 9, 10.

I recognize the dual nature of the student employees in this case. However, the fact that the employees are students whose employment may contribute substantially to their financial ability to complete their education does not sufficiently vitiate their interest in their wages, hours and working conditions. This is particularly true where, as here, the work they perform for the University is of substantial importance to the University, and is performed regularly and continuously. As indicated in the Student Employment Manual, student jobs exist primarily to fill the needs of the employer:

A student on payroll is the end result of the conceptualization of an idea or a need. The job process consequently begins with the establishment and definition of a need. Someone is needed to do some computer work, gather some data, correct some papers, type some letters, do some filing, clean a room, serve some food, answer some phones, draw a map, drive a bus, distribute some books, sell some tickets, conduct a tour, analyze some figures, do general staff work, etc. Student Employment Manual, P. 4.

Since students fill so many, varied and crucial functions for the University, their role as employees is a significant one. Employment at the Center is divorced from the academic pursuits of the student employees and benefits such pursuits only indirectly. Overall, the nature of the employment of the student employees is such that they are entitled to the protections of the Law.

There is no reason to reach a different result merely because the majority of the petitioned-for student employees work part-time. The Commission has routinely granted collective bargaining rights to regular part-time employees. County of Plymouth, 2 MLC 1106 (1975). The number of hours worked per week does not control the determination whether an employee is an employee within the meaning of the Law. Town of Burlington, 3 MLC 1350 (1976).

G.L. c.150E, §1 is all encompassing; its terms in no way suggest that the existence of rights under the law can be conditioned on an arbitrary number of hours worked per week, much less on a full-time employment standard. Pittsfield School Committee, 2 MLC 1523, 1525 (1976).

Similarly, we have recently held that part-time employees (who were also students) should be considered regular part-time employees even though they may work less than 20 hours per week. City of Quincy Library Department, *supra*. In County of Plymouth, *supra*, part-time matrons who usually worked one and one-half to two days per week were held to be regular part-time employees. In Grafton School Committee, 2 MLC 1271 (1976) substitute cafeteria workers employed an average of twelve and one-half hours or more per week were included in a bargaining unit with all regular cafeteria workers.

That some of the student employees in the present case may average less than 20 hours per week is insufficient to exclude them from the coverage of



University of Massachusetts and Union of Student Employees et. al., 4 MLC 1384

the Law. That most students terminate their employment upon graduation, with an average length of employment of one and one-half years, is also insufficient to exclude them from coverage.

Student employees constitute a substantial part of the University workforce, work with sufficient regularity and continuity, and have a sufficient interest in wages, hours and working conditions to justify their being afforded the protections of the Law as regular part-time employees.³

The Status of Hourly Employees

The University maintains that the hourly employees covered by the present petition are casual employees who are not entitled to collective bargaining rights under the Law. The evidence indicates that hourly employees are hired on a temporary basis, ranging from three or four weeks to a year, and that a number of hourly employees are rehired at the end of the initial hiring period, depending on the availability of funding. There was no evidence relative to the average length of employment for these employees, nor was there evidence regarding the proportion of employees who began their employment as student employees, or the proportion who continued their employment with the University in more permanent positions after serving in an hourly position.

Additionally, there was some indication that the University intends to gradually eliminate the hourly job classification, utilizing student employees instead, or creating permanent positions where feasible.

Given the inconclusive nature of the evidence presented, and in light of our final disposition of the petition in this case, there is no need to make a finding concerning the status of hourly employees at the University.

The Appropriateness of the Bargaining Unit

The Union of Student Employees seeks a bargaining unit consisting of all hourly and student employees of the Center. In determining units appropriate for collective bargaining, the Commission is guided by General Laws, Chapter 150E, Section 3, which provides, in part, that,

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

³The fact that some of the student employees are involved in the federal work-study program should not adversely effect the conclusion that such students are "employees" within the meaning of the Act. Although the Federal Program places limitations on wages and hours of work for such employees, such considerations more appropriately pertain to the bargaining process, rather than to the determination of coverage under the Act. See Michigan State University, supra, at P. 11.

University of Massachusetts and Union of Student Employees et. al., 4 MLC 1384

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. Board of Trustees, University of Massachusetts, 3 MLC 1179, 1186 (1976). The Commission has continued to follow the guidance of Jordan Marsh Company v. Labor Relations Commission, 316 Mass. 749 (1944) in creating broad, comprehensive units compatible with the public interest, rather than small, fragmented and conflicting units which may destroy stable labor relations. The Massachusetts Supreme Judicial Court, discussing appropriate bargaining units, stated:

...Stress 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.... Jordan Marsh Company v. Labor Relations Commission, supra, at 751.

This preference for broad comprehensive bargaining units is balanced by the Commission's concern that the unit should not include employees with employment interests so diverse as to produce inevitable conflicts, which will be irreconcilable through effective negotiation at the bargaining table or subsequently during the administration of the collective bargaining agreement. Board of Trustees, University of Massachusetts, supra, at 1186.

The Commission recently reviewed some of the factors considered in determining the appropriate bargaining unit for faculty and related professionals at the University of Massachusetts:

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 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 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 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

University of Massachusetts and Union of Student Employees et. al., 4 MLC 1384

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. Board of Trustees, University of Massachusetts, 3 MLC at 1187 (1976).

The Commission has recently re-emphasized that while a group of employees may comprise a coherent and homogeneous group, they do not necessarily possess a substantially distinct and separate community of interest from other employees to warrant their separate representation. City of New Bedford, 3 MLC 1159 (1976); see also Lynn Hospital, 1 MLC 1046, 1050 (1974); Town of Athol, 2 MLC 1062 (1975); Fitchburg School Committee, 2 MLC 1251 (1975).

The determinative issue presented by this case is whether the petitioned-for employees have interests sufficiently distinct from those of other students and hourly employees employed throughout the campus so as to exempt them from the Commission policy of creating broad, comprehensive bargaining units. On the facts presented, we conclude that the community of interest of the employees at the Center is not sufficiently unique to warrant the establishment of a separate bargaining unit apart from other student and hourly employees.

I recognize that the Campus Center enjoys a certain degree of autonomy. The Center has its own Board of Governors and its own Personnel Office, with substantial responsibility in the area of hiring and firing employees. The Campus Center has also issued its own job descriptions and has its own grievance procedure. Because the Campus Center's function is primarily non-academic, the Center has an institutionally distinctive functions.

However, the Center does not operate with complete autonomy, and the employees of the Center share much in common with their counterparts elsewhere on the campus. All hourly employees, at the Center and elsewhere, are hired through the central University personnel office, and perform the same functions at the same wage scales, regardless of their placement. The wages, hours and terms and conditions of employment of the hourly employees at the Center are virtually indistinguishable from those of the hourly employees working in other departments, except for their physical separation in the Center complex.

Although there are several factors distinguishing the student employees at the Center from their counterparts in other departments, the differences are not significant when weighed against the similarities. All students seeking employment must file an application with the central Office of Student Employment, and must be enrolled for at least six credits in pursuit of a continuous course of study at the University. Although the Campus Center Personnel Office has the power to hire, fire, promote and grant raises, such decisions must be cleared with the University Office of Student Employment. The fact that the University has chosen to delegate substantial authority to the Center does not

University of Massachusetts and Union of Student Employees et. al., 4 MLC 1384

vitate the University's ultimate power to make policy in critical areas of employee relations.⁴ For example, the Student Employment Office issues a "Student Employment Manual" that reflects the University's role in student employment as both a coordinator and policy maker. The preface to that document states,

The following document contains all pertinent data relating to student employment on the Amherst campus. It represents the official manual of university policies and practices governing student employment at all levels...regardless of the source of funds under which the student is employed....There are no exceptions....

The purpose of the manual is to establish a uniform code of student employment practices in conformity with all applicable university, state, and federal rules, regulations, and laws.

All departments are requested to instruct appropriate members of its staff to become familiar with the manual and use it as a reference source for anything relating to student employment...Since your student employment problems become our problems, and ours yours, we are conjoined to work together in resolving them.

The University, because of its substantial size, has delegated substantial authority to different institutions and individuals throughout the campus. Nonetheless, in the area of student employment, all student employees, campus-wide, including those at the Center, fall into one of the numerous job classifications established centrally by the Office of Student Employment. Moreover, the Office of Student Employment sets the wage rates for all such job classifications. Although there is generally little employee interchange between the Center and other institutions on the campus, during certain, specific times of the academic year, such as the beginning of the semester, an influx of employees from outside the Center is required to handle the rush of business.

I recognize the unique institutional qualities of the Center and of the services the Center provides. However, I conclude that the student and hourly employees of the Center do not possess a substantially distinct and separate community of interest from other comparable employees at the Amherst campus of the University of Massachusetts. Creating a unit comprised of only the student and hourly employees at the Center would necessitate the creation of other similar units for the thousands of other student employees, if they choose to organize. The creation of the petitioned-for unit, and the consequences that would

⁴The fact that the Student Center issues its own "Policies and Procedures" and an "Orientation Brochure for Student Employees" is not determinative of their authority over such employees. The fact that considerable authority remains with the Student Employment Office is reflected in the degree to which the Campus Center documents duplicate the policies and guidelines promulgated by the Student Employment Office.

University of Massachusetts and Union of Student Employees et. al., 4 MLC 1384

flow from such a determination, would neither be consistent with the fundamental statutory objective of "stable and continuing labor relations," nor with the rights of the University and the public to "efficiency of operations." Such a unit of employees of the Center would also violate our policy of creating broad and comprehensive units including the largest number of employees.

I therefore DISMISS the petition in this matter.

I note that there are serious difficulties in devising an appropriate unit for student and hourly employees who are performing duties identical to those performed by regular, classified employees currently represented in a collective bargaining unit. Placing these employees in a single, overall unit might jeopardize the interests of the classified employees, who may be seriously outnumbered by student and hourly employees who would necessarily have different interests. Although student employees have strong concerns relative to their wages and working conditions, their limited tenure and youthfulness are likely to substantially diminish their interest in such benefits as health insurance, life insurance and pensions, matters which may be of vital concern to regular employees. These and other similar conflicts of interest tend to indicate that a combined unit might be inappropriate in that it would adversely affect the rights of regular employees to effective representation. However, there are also major difficulties presented by the possible establishment of a separate campus-wide unit of student and/or hourly employees, inasmuch as they are engaged in the same work as regular employees in existing units. The University would be placed in a difficult, if not impossible, bargaining position if it were required to bargain with separate units regarding identical work to be performed by distinct groups of employees. I am not prepared to determine, in the face of the record before us, that there can be no appropriate unit for the petitioned-for employees. I would be reluctant to deny bargaining rights to large numbers of employees, because there may be difficult and unique problems posed due to the nature of their employment. In any event, I need not decide the question here, but merely note that the issues raised are difficult, and may require creative solutions.

James S. Cooper
Chairman

Concurring Opinion:

I concur with the Chairman that the petitioned-for unit is inappropriate, and therefore the petition must be dismissed.

Insofar as that opinion also indicates that he would find appropriate some broader unit of student employees, I am compelled to distinguish my views.

Legislatures cannot foresee all possible ramifications of a particular law, especially the creation of a comprehensive and complex system such as public employee collective bargaining. For this reason, I believe the legislature included in G.L. c.150E a definition of employee which is broad enough to encompass all who are paid by a public employer in return for their services. The legislature then vested this Commission with discretion to fashion appropriate bargaining units. In the past we have exercised that discretion to dismiss petitions filed on behalf of prisoners, Commonwealth of Massachusetts



University of Massachusetts and Union of Student Employees et. al., 4 MLC 1384

Department of Correction, SCRX-2 (9/24/73); summer employees, City of Gloucester, 1 MLC 1170 (1974); call firefighters, Town of Lincoln, 1 MLC 1422 (1975).

Other labor relations agencies have similarly exercised discretion by refusing to mandate collective bargaining between certain employers and employees. See Goodwill Industries, 231 NLRB No. 49, 96 LRRM 1061 (1977) where the National Labor Relations Board refused to certify a unit of "clients" at a sheltered workshop.

I do not believe that the legislature contemplated mandatory bargaining between the University of Massachusetts and its student employees, and until such intent is demonstrated, I would find inappropriate any unit of "student employees."

Garry J. Wooters
Commissioner