

In the Matter of UNIVERSITY OF MASSACHUSETTS
(BOSTON)

and

CLASSIFIED STAFF UNION, MTA/NEA

and

TEAMSTERS, LOCAL 25

Case No. CAS-12-2194 and CAS-13-2523

34.2	<i>community of interest</i>
34.8	<i>similarity of work (interchangeability)</i>
34.91	<i>accretion</i>
35.825	<i>police dispatchers</i>
35.826	<i>campus police</i>

May 1, 2014

Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member
Harris Freeman, Board Member

Ethan Mutschler, Esq.	Representing the University of Massachusetts
Ryan Dunn, Esq.	Representing Classified Staff Union, MTA/NEA
Jonathan Conti, Esq.	Representing Teamsters, Local 25

DECISION

SUMMARY

On August 24, 2012, the Classified Staff Union, MTA/NEA (CSU) filed a unit clarification petition (CAS-12-2194) seeking to accrete the title of Civilian Dispatcher (CD II) into its bargaining unit of all full-and part-time civilian classified (hourly) staff at the University of Massachusetts-Boston (Employer or UMB). On September 24, 2012, the Union amended the petition to include the Public Safety Dispatch Supervisor (CD III) position. Teamsters Local No. 25 (Local 25) filed a motion to intervene in this proceeding. The Department of Labor Relations (DLR) granted the motion on October 11, 2012. On January 3, 2013, Local 25 filed its own petition (CAS-13-2523) regarding the bargaining unit status of the two dispatcher titles.¹ The CSU intervened in Local 25's petition and the matters were consolidated for investigation.

On January 8, 2013, the DLR held an informal investigative conference to discuss the issues raised by both petitions. The parties submitted supporting documents, including affidavits, before and after the conference. Because it did not appear that there were any material facts in dispute, the DLR sent out a letter seeking some additional information and asking the parties to show cause why it should not resolve the matter based on the information contained in the letter. All parties responded. Based on their submissions, and

for the reasons set forth below, the Commonwealth Employment Relations Board (Board) concludes that the Civilian Dispatchers have a greater community of interest with Teamsters Local 25. The Board therefore denies the CSU's petition to accrete these titles to its unit and grants Local 25's petition.

FACTS

Bargaining Unit History Campus Police Officers

Before 1975, campus police officers on the UMB campus were unrepresented for purposes of collective bargaining. In 1974, the University of Massachusetts Boston Patrolmen's Association (BPA) filed a petition seeking to represent these titles. In 1975, the Employer filed a CAS petition to include the police officers in the certified bargaining unit represented by SEIU, Local 576. *UMass, Boston*, 2 MLC 1001, SCR-2022, CAS-2037 (1975). After investigation and hearing, the Board found that a separate unit comprised of "all campus police patrolmen employed at the University of Massachusetts-Boston, excluding sergeants and all other employees of the University of Massachusetts-Boston" constituted an appropriate bargaining unit. *Id.* at 1006. The Board dismissed the CAS petition on grounds that the certification of Local 576 was not so broad as to encompass the campus police officer positions and because the recognition clause in the parties' collective bargaining agreement (CBA) reflected that the parties had agreed to negotiate over including any newly-created classifications in their unit. *Id.* at 1004.

The BPA subsequently represented the campus police officers from 1975 until 1994. Local 25 has represented this unit since July 1994 when the BPA merged with Local 25. In the parties' most recent collective bargaining agreement, this unit is referred to as "Unit A." The recognition clause of the Teamsters 2009-2012 CBA states:

The University recognizes the Union as the sole and exclusive bargaining agent for the purposes of establishing wages, hours, standards of productivity and performance and other terms and conditions of employment for all full-time employees in the Unit as defined by MLRC Case Nos. SCR-2022 and CAS-2037. This unit shall henceforth be known as Unit A.

On December 12, 2008, the University voluntarily recognized Local 25 as the exclusive representative for all "full-time and regular part-time public safety sergeants employed by UMass Boston, specifically excluding all lieutenants and all other supervisory officers, managerial and/or confidential employees" (Unit B). The dispatchers have never been part of either Unit A or B. The salary grades in both units range from grade 15 for patrol officers to Grade 18 for sergeants.

CSU Unit

From 1969 until 2005, a local branch of the SEIU represented a bargaining unit of the classified employees on the UMB campus. In 2005, the Employer voluntarily recognized the CSU as the bargaining representative for certain former SEIU units, including the

1. Local 25 contends that the dispatch titles appropriately belong to its unit.

one at issue here. In 2005, the Employer and the CSU agreed to an affiliation process whereby the Employer would recognize the Massachusetts Teachers Association as the exclusive representative for the classified staff bargaining unit as it was then constituted. The bargaining unit includes a broad array of clerical, technical, maintenance and trades titles, including clerks, programmers, and Institutional Security Officers (ISOs). No dispatch titles have ever been included in the SEIU's or the CSU's UMB unit.²

Department of Public Safety, Generally

As of February 2014, the Department of Public Safety (DPS) staff consisted of one interim Director of Public Safety/Chief of Police, seventeen University Police Officers, three Lieutenants, seven Sergeants, five ISOs and one Administrative Assistant.³ The ISOs and Administrative Assistant are represented by the CSU. All of these employees work on campus at the Quinn Administration Building, which is open and staffed twenty-four hours a day, seven days a week (24/7).

Dispatchers - Creation of Title

James Overton became Chief of Police in the Department of Public Safety at UMass Boston on February 14, 2011. Soon thereafter, he determined that the assignment of police officers to the communications dispatch function was not an efficient use of police personnel. At that time, the dispatch function was performed by patrol officers who divided their shifts between spending four hours at the communications console and four hours in the field. Chief Overton believed that the position should be performed by specialized civilian personnel. He consulted with Sandra Knight (Knight), who works in the Employer's Human Resources department, for assistance in creating a job description. Knight consulted with her counterparts on other UMass campuses and reviewed state specifications for the Communications Dispatch position that were issued by the Human Resources Division of the Commonwealth. Knight and another colleague prepared a working draft of a job description and determined the appropriate grade levels for the titles of Communications Dispatcher (CD) II and CD III (supervisor).

On January 6, 2012, Knight sent a letter to Local 25's Business Agent Mark Lessard notifying him about the new classifications, their proposed grade, and indicating that UMB wanted the new classifications to be included in Local 25's unit. The letter states in pertinent part that the dispatchers' duties were:

[...]currently being performed by bargaining unit members. But as the campus needs increase and for a greater presence on campus of our police officers and sergeants, it has become necessary to create separate job responsibilities for Dispatchers, freeing up police offi-

cers and sergeants to fulfill their primary duties and relieve them from being scheduled to cover dispatcher duties.

The CD II and III titles were placed at grades 13 and 14, with annual starting salaries of \$33,641.14 and \$35,079.20, respectively.

Chief Overton supported the inclusion of the CD titles in Local 25's unit based on his belief that the patrol officers would train the CDs, have the same schedule as the CDs, fill in for uncovered or vacant shifts, and interact with them on routine patrols and other police work.

The positions were posted on March 12, 2012. Four CD II's were hired around September 2012. The CD III position was reposted in September 2012 and remained unfilled until January 2014, when it was filled by Alyxandria Lyn Strong (Strong).⁴

On July 10, 2012, before the positions were filled and just as Local 25 and the Employer were about to begin bargaining about these titles, a CSU representative notified the Employer that the CSU believed that the CD positions should be included in its unit. CSU subsequently filed this petition.

The CD Titles

The job posting for CD II summarizes the work duties as follows:

The Dispatcher Level II receives, reviews and transmits messages over a state and federal computer network; a fixed radio broadband system; a police records management system and telephone; all under the rules of the Federal Communications Commission. Employees in this class operate radio transmitting and receiving equipment, maintain records and logs of messages, search files to obtain information; coordinate radio communications; and perform related work as required.

Other duties listed include providing information via communications to law enforcement personnel who are engaged in major law enforcement actions. In addition, CDs conduct background checks on police personnel. They do not carry weapons as part of their job or have power of arrest.

Under "Stated Minimum Qualifications," CD II's must have the ability to be certified by the Association of Public Safety Communications Officials (APCO). CD II's report directly to the CD III. The CD II job description does not contain any firearms or physical or mental health fitness requirements.

The CD III job posting contains a similar summary of job duties except that it states that this position "oversees and monitors the work performed by Dispatcher Level I's," and that "incumbents in this position establish staffing schedules, coordinate and conduct employee trainings." In addition to the ability to become APCO-certified, the minimum qualifications include graduation from high school and/or possession of a high school diploma and at

2. The recognition clause of the most recent CSU agreement does not include a list of the titles in the unit. It recognizes the CSU as the exclusive representative of "all full time and regular part-time employees in the bargaining unit certified as of March 22, 1983, the date of the Agreement for Consolidated Bargaining between the Unions and the Board of Regents of Higher Education, and any and all amendments since that date."

3. At the time the petition was filed, there were two CSU administrative assistants in the unit. Since then, one of the administrative assistants has been given additional duties and reclassified into an exempt job classification in the Professional Staff Union. She continues to work in Public Safety.

4. Strong was originally hired in September 2012 as a CD II. She was made Interim CD III in June 2013.

least three years of work experience in the operation of emergency telecommunication systems, one year of which must have been in a supervisory capacity. The CD III reports directly to the Assistant Director/Commander, Bureau of Administrative Services and/or the Chief of Campus Police.

Under the oversight of a sergeant, the CD II's were trained by police officers on all aspects of their position including, but not limited to, using the DPS's various computer systems, accessing confidential databases, such as the Criminal Justice Information System and the Criminal Offender Record Information (CORI) system, handling 911 calls, conducting background checks and communicating with police officers. The dispatchers look up information at the request of officers and other law enforcement agencies, and record and relay it through various computer and communications networks.

The CDs are also trained in the use of the Computer Aided Dispatch system (CAD). The CAD is the main record keeping system within the DPS for all logged calls for assistance or general reports from the field. It is an internal recordkeeping system to which only officers, command safety staff, and dispatch personnel have access. All CAD records are confidential and password-protected. Such records may include records of calls or reports relating incidents in which UMB employees are involved.

The CDs, patrol officers, and sergeants work a 24/7, four and two (four days on, two days off) schedule. Since the Employer hired the four CD II's, police officers have continued to work dispatch shifts whenever there are not enough dispatchers to cover the open shifts. As of January 2013, police officers filled an average of two or three dispatch assignments per week per shift. As of January 2014, however, patrol officers no longer regularly cover shifts for Communication Dispatchers but fill in for lunch periods and on an emergency scheduling basis. Patrol officers also cover vacant shifts on an occasional basis. Neither Sergeants, nor Lieutenants, who are not part of Local 25's unit, fill in for dispatching positions.

When the CD titles were first created, the CD II's reported to Detective Parlon, who divided his time between his ordinary duties as a detective and overseeing dispatch operations as a working supervisor. Since October 13, 2013, when Strong was appointed CD III, she has exercised supervision over the CD II's in the nature of a working supervisor/senior specialist. Strong reports directly to Acting Chief Bayard. Strong is not directly responsible for the evaluation or discipline of lower-ranked dispatchers. Rather, since the CD titles were first created, all authority for hiring, firing, disciplining and evaluating their performance has rested with the Director of Public Safety/Chief of Police.

The CDs' main work area is in the Communications area of the Quinn Administration Building. The Sergeants' area and reception/lobby area are adjacent to the Communications area, which can be accessed only through a secure door. After hours or whenever there is not a receptionist, the CDs handle walk-ins, speaking to them through the window located between the lobby and the Communications area where the CDs work. At the beginning of a shift, the CDs meet in the Communications area for briefing by a shift sergeant and an off-going dispatcher.

Campus Police Officers and Sergeants

Campus police officers are responsible for enforcing the laws of the Commonwealth and the University's rules and regulations. Their job description contains the following examples of duties:

Full time state employee, performs full range of law enforcement functions, including: patrol of all buildings and grounds owned, used, leased or controlled by the Trustees of the University; related duties as required. Appointees who have not completed a Massachusetts Criminal Justice Training Council recruit academy must do so and must complete one year's probation. Must be available for all shifts.

As noted above, police officers also train dispatchers and fill in for them when a dispatch shift needs to be covered. They also work with dispatchers when responding to emergency calls. The minimum qualifications for campus police officers include being able to obtain a Class A license to carry firearms. The campus police officers report to the sergeants and lieutenants.

The campus police officers work a 24/7, four and two schedule. At the beginning of a shift, the officers gather in the squad room for shift briefing and training. The squad room is located off the lobby, adjacent to the Sergeants' area.

Institutional Safety Officers

ISOs have been in the CSU unit since its inception. The ISO job description summarizes the position as follows:

Incumbents of this position patrol an assigned area; make periodic rounds and security checks of buildings and grounds; conduct surveillance of assigned areas; determine the extent of violations and take appropriate action; take steps to remedy or control emergency situations; prepare and review a variety of information-gathering forms and reports; provide direction and general information to the public.

Examples of their duties include patrolling an assigned area on foot; making periodic rounds and security checks of buildings and grounds; conducting surveillance of assigned areas; taking steps to effectively handle or control emergency situations by administering first aid; summoning assistance; directing traffic and participating in searches. ISOs also perform key calls if students are locked out, and walk through building to lock them. They do not have any powers of arrest, nor are they armed. ISOs do not perform dispatch duties or have access to confidential criminal information databases. The ISO job description does not state any required minimum licensure or education requirements.

The ISOs report to a DPS shift supervisor. They may be scheduled to work on a traditional day, evening or overnight shift over a five-day period on a mixture of schedules, including part-time schedules, but they do not work a 24/7 shift. Police officers fill in for them when they are absent or call in sick. This occurs more frequently on weekend and overnight shifts. ISOs are rarely called in to perform overtime to fill in for an absent ISO.

The ISOs also work out of the Quinn Administration Building but do not have assigned stations. At the beginning of their shift, they meet with the shift Sergeants in the Sergeants' area for briefing.

The ISOs are not allowed in the Communications area unless an officer is present.

Administrative Assistants

There is one administrative assistant in the DPS who works for the Chief of Police. The job description for this title states, in part:

[P]erform administrative supports duties for the Director and staff members and will also act as the receptionist. . . . Responsibilities include, but are not limited to, answering telephones; opening and distributing daily mail; answering correspondence; maintaining files; acting as main timekeeper, i.e., preparing bi-weekly payroll The position involves interaction with students, faculty and staff, and the public, sometimes under pressure.

The minimum qualifications include a high school diploma. The Administrative Assistant can work in two locations within the Quinn Building: the reception area, which is off the Communications area, and outside of the Chief's office, which is at the other end of the building. The Administrative Assistant works a four and two schedule but not 24/7.

Unit Placement of Dispatchers at Other UMass Campuses

The unit placement of safety dispatchers varies within the UMass System. They are included in the public safety units at the Dartmouth and Lowell campuses.⁵ At UMass Amherst, they are in the trades unit, while at the UMass Medical School, where there are two separate public safety units for Police Officers and Sergeants, they are in the clerical/technical unit.

OPINION⁶

The issue before us is whether to accrete the dispatcher positions into the CSU unit or into Local 25's bargaining unit. In analyzing whether employees should be accreted into an existing bargaining unit, the Board uses a three-step test. First, the Board determines whether the position was included in the original certification or recognition of the bargaining unit. Second, if that examination is inconclusive, the Board will examine the parties' subsequent conduct, including bargaining history, to determine whether the employee classifications were considered by the parties to be included in the unit. Finally, if that inquiry is also inconclusive, the Board will examine whether the positions sought to be included in the unit share a community of interest with the existing positions. If the Board determines that the requisite community of interest exists, it will accrete the petitioned-for employee into the existing bargaining unit. *Town of Granby*, 28 MLC 139, 141, CAS-3477 (2001) (citing *Town of Dartmouth*, 22 MLC 1618, 1621 (1996); *Worcester School Committee*, 15 MLC 1178, 1180 (1988)).

Here, there is no dispute that the dispatcher petitions were created around July 2011. Because the disputed positions were not in existence when the Board certified either bargaining unit, the first prong of the three-part test is inconclusive. It is further undisputed that there is no material bargaining history with respect to these positions, so the second prong is inconclusive as well.⁷ We therefore turn to the third criteria, community of interest.

To determine whether employees share a community of interest, the Board considers factors such as similarity of skills and functions, similarity of pay and working conditions, common supervision, work contact, and similarity of training and experience. *Princeton Light Department*, 28 MLC 46, 48, MCR-4805 (2001); *Town of Bolton*, 25 MLC 62, 65, MCR-4562 (1998) (citing *Boston School Committee*, 12 MLC 1175, 1196 (1985) (other citations omitted)). No single factor is outcome determinative. *City of Springfield*, 24 MLC 50, 54, MCR-4602 (1998) (citing *City of Worcester*, 5 MLC 1108, 1111 (1978)). The Law requires that employees share only a community of interest rather than an identity of interest. *Id.* at 54. Where a position shares a community of interest with more than one bargaining unit, the position is placed in the unit with which it shares the greater community of interest. *Board of Trustees, University of Massachusetts*, 31 MLC 209, 215, CAS-04-3577 (2005).

The University argues that the CDs share a strong community of interest with the patrol officers. They stress that the CDs work in tandem with the patrol officers to respond to campus emergencies and that the patrol officers trained the CDs. The University also points to the positions' common supervision, overlapping four and two, 24/7 schedules, and mutual, exclusive access to confidential databases. Local 25 makes similar arguments, emphasizing that the CDs are an important part of the University's law enforcement process who are in frequent contact with patrol officers and sergeants and not merely call center employees. Local 25 also relies on the interchange of work between the dispatchers and the patrol officers.

The CSU argues that the CDs share a community of interest with its bargaining unit. It asserts that, like the clerical and office staff in its unit who perform administrative and support duties to various academic and operations departments, the CDs perform administrative and support duties to patrol officers and superior officers. By contrast, the CDs' duties are distinct from the patrol officers. The CSU points to the fact that, unlike the CDs, patrol officers are engaged primarily in law enforcement and have powers of arrest. Further, while acknowledging that the patrol officers used to perform dispatch duties and continue to do so on occasion, they claim that this was only because there were no other employees to per-

5. At the Lowell campus, the unit, which was created as a result of a severance representation petition, also includes ISOs and residence hall security officers. See *Board of Trustees, University of Massachusetts/Lowell*, 23 MLC 273, SCR-2226 (1996). The ISOs and dispatchers had previously been in a unit that included skilled and trades workers.

6. The Board's jurisdiction is not contested.

7. The CSU argues that Local 25's recognition clause "actually forbids" the inclusion of CDs in the patrol officer's unit to the extent it excludes "all other employees." The CSU does not claim, however, nor do we find, that this provision renders

the second prong conclusive as to Local 25's petition. Because there is no bargaining history as to those titles, which were not created until 2011, we do not treat the broad exclusionary language in the recognition clause as excluding these titles from the unit. See *Town of Somerset*, 25 MLC 98, 100, CAS-3145 (1999) ("Absent bargaining history to support a finding that the parties addressed and resolved the unit placement of the contested position, the [Board] will find that it is unable to determine whether the parties explicitly agreed to exclude the contested position from the bargaining unit.").

form these duties. The CSU also claims there is no common supervision because CD II's are supervised by a CD III, who is supervised by the Chief of Police while patrol officers are directly supervised by superior officers. Finally, the CSU argues that the Board has long followed the rule of placing public safety officials with the power to arrest in separate bargaining units and urges the Board to do the same here.

We agree with the University and Local 25 that the CDs share a greater community of interest with Local 25's unit than with the CSU's bargaining unit. We begin our analysis by recognizing that a separate unit of patrol officers is an appropriate unit within the meaning of Section 3 of the Law. However, the issue before us at this point in time is not whether to place the patrol officers in the CSU unit, as it was when the Board first certified the campus police officers at UMB. Rather, at issue is where the dispatchers are most appropriately placed. Because the dispatch positions were created only recently, we decline to treat either the 1975 certification or Local 25's current recognition clause as specifically excluding the titles at issue here.⁸

Further, contrary to the CSU's argument, this matter is not resolved by simply ruling that dispatchers can never be placed in a unit with law enforcement officers. There is no such *per se* rule. Rather, as the cases below indicate, the appropriate unit placement of dispatchers must be decided on a case-by-case basis.

Thus, while the Board placed dispatchers into their own bargaining unit instead of in a wall-to-wall city-wide unit in *City of Somerville*, 24 MLC 69, MCR-4517, CAS-3217 (1998), it also denied petitions seeking to sever dispatchers from civilian wall-to-wall units in *Town of Marblehead*, 27 MLC 142, MCR-4799 (2001) and *City of Worcester*, MCR-09-5360 (April 5, 2010). And, critical to this case, it granted a petition severing dispatchers and other security personnel from the skilled and trades workers unit at UMass Lowell, and ordered an election in a unit comprised of those titles and the campus police. *Board of Trustees, University of Massachusetts/Lowell*, 23 MLC at 273. Significantly, on at least two other occasions, the Board found that dispatchers and uniformed public safety personnel shared a community of interest and ordered an election in a unit consisting of both titles. See *Town of Falmouth*, 27 MLC 27, CAS-3319, MCR-4946, (2000) (ordering add-on election of fire dispatchers to fire department personnel and *Town of Newbury*, 13 MLC 1676, MCR-3669 (May 19, 1987) (including dispatchers in unit of patrol officers).

Accordingly, after careful review of the facts of this case, we conclude that the dispatchers share a greater community of interest with the patrol officers unit than with the clerical unit for all the reasons cited by the University and Teamsters, Local 25. We are particularly persuaded by the fact that the dispatchers and patrol officers interact on a frequent and daily basis on the same schedule and under the overall supervision of the Chief of Police to serve the common end of providing police protection to all those on the UMB campus. The patrol officers' training functions and job interchange also demonstrate a strong community of interest with the

CDs that is greater than that of any other titles in the CSU's unit, including the other civilian DPS titles. While there may be some community of interest between the ISOs and the dispatchers, to the extent that patrol officers fill in for both titles, the ISOs do not train CDs and there is no interchange of work. Further, ISOs and CDs have different schedules and there is no evidence that they interact with the CDs with the same level of frequency as the CDs and patrol officers. The same can be said of the DPS administrative assistant.

CONCLUSION

For the reasons set forth above, we conclude that the CD II and CD III titles share a greater community of interest with Local 25's unit. Accordingly, we dismiss the CSU's petition and grant Local 25's petition to accrete these titles into its unit.

SO ORDERED.

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8. See note 7, above.