

COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF LABOR RELATIONS  
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

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In the Matter of

LOWELL SCHOOL COMMITTEE

and

GREATER LOWELL UNIONIZED  
EMPLOYEES

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Case Nos.: MCR-07D-5302  
MCR-07D-5303

Date Issued:

March 13, 2009

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In the Matter of

LOWELL SCHOOL COMMITTEE

and

INTERNATIONAL UNION OF  
PUBLIC EMPLOYEES

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Case No.: MCR-08-5335

Date Issued:

Board Members Participating:

Marjorie F. Wittner, Chair  
Elizabeth Neumeier, Board Member

Appearances:

James P. Hall, Esq.	-	Representing the Lowell School Committee
Ryan P. Dunn, Esq.	-	Representing the Greater Lowell Unionized Employees
Diane S. Byrnes, Esq.	-	Representing the International Union of Public Employees

DECISION AND DIRECTION OF ELECTIONS<sup>1</sup>Statement of the Case

1 On December 5, 2007, the Greater Lowell Unionized Employees (Union)<sup>2</sup> filed  
2 two petitions with the Division of Labor Relations (Division) seeking to represent certain  
3 employees of the Lowell School Committee (School Committee). In Case No.: MCR-  
4 07D-5302, Lowell School Committee, the Union seeks to represent all school cafeteria  
5 employees, excluding the cafeteria director, who were represented by Local 888,  
6 Service Employees International Union (Local 888). In Case No.: MCR-07D-5303,  
7 Lowell School Committee, the Union seeks to represent buildings and grounds  
8 employees who also were represented by Local 888. On January 14, 2008, Local 888  
9 filed an unopposed request to intervene in both petitions. On October 29, 2008, the  
10 Division received Local 888's unequivocal disclaimer of interest in representing the  
11 employees sought by the Union in both petitions.

12 On June 13, 2008, the International Union of Public Employees (IUPE) filed a  
13 petition with the Division seeking to sever the school security guards employed by the

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<sup>1</sup> Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the Labor Relations Commission." References in this decision to the Commonwealth Employment Relations Board (Board) include the former Labor Relations Commission (Commission).

<sup>2</sup> On September 11, 2008, the Division allowed the Greater Lowell Unionized Employees' unopposed Motion to Amend Filings to Reflect Change to Petitioner's Name in Case No.: MCR-07D-5302, Lowell School Committee and in Case No.: MCR-07D-5303, Lowell School Committee.

1 School Committee from the existing bargaining unit of building and grounds  
2 employees.<sup>3</sup> The Division consolidated all three petitions.

3 On June 27, 2008, the Division issued a Notice to Parties (Notice) to show cause  
4 why the Division should not decide the issues raised in all three petitions based on the  
5 facts contained in the Notice. No party to the three petitions challenged the facts  
6 contained in the Notice. However, in its July 25, 2008 response to the Notice, IUPE  
7 requested that the Division include other facts as part of the investigation of the  
8 petitions.

9 On September 11, 2008, Hearing Officer Ann T. Moriarty, Esq. (Hearing Officer)  
10 notified the parties that the Division had reassigned the petitions to her to conduct a  
11 further investigation of the issues raised in the cases and, if necessary, to conduct a  
12 hearing.<sup>4</sup> Because neither the School Committee, nor the Union and Local 888 had an  
13 opportunity to accept, reject, and/or propose modifications to the facts provided by the  
14 IUPE in its response to the Notice, the Hearing Officer requested that the parties work  
15 to reach agreement on relevant, material facts for the Board to decide the issues in the  
16 severance petition. The parties did not reach an agreement prior to October 29, 2008.

17 On October 29, 2008, the Hearing Officer conducted a hearing. Prior to opening  
18 the hearing and following receipt of Local 888's disclaimer of interest, the School  
19 Committee, the Union, and IUPE signed procedural and factual stipulations. The

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<sup>3</sup> On July 29, 2008, the Union filed a Motion to Intervene and Dismiss IUPE's severance petition. In light of the Board's decision, it is unnecessary to rule on this motion.

<sup>4</sup> The Division reassigned the cases following the resignation of the hearing officer originally assigned to investigate the petitions.

1 parties also entered into further stipulations during the hearing. Following the close of  
2 the hearing, the Hearing Officer confirmed with the parties that, to decide the unit  
3 determination issues raised in all three cases, the Board would consider: 1) the parties'  
4 stipulations entered into the record orally during the hearing; 2) the facts contained in  
5 the parties' written stipulations executed October 29, 2008; and 3) the undisputed facts  
6 contained in the Notice.

7 The sole issue in dispute is whether the security guards should be severed from  
8 the existing, historical bargaining unit of the buildings and grounds employees. By its  
9 petition, the IUPE seeks to represent the security guards in a separate bargaining unit.  
10 The Union and the School Committee oppose the severance.

#### 11 Findings of Fact

##### 12 Stipulations During the Hearing

13 The School Committee, the Union, and IUPE stipulated to the following facts  
14 during the hearing:

- 15 1. The City of Lowell is a public employer within the meaning of  
16 Section 1 of M.G.L. c. 150E (the Law).
- 17 2. The Lowell School Committee is the representative of the City for  
18 the purposes of dealing with school employees.
- 19 3. The Greater Lowell Unionized Employees is an employee  
20 organization within the meaning of Section 1 of the Law.
- 21 4. The International Union of Public Employees is an employee  
22 organization within the meaning of Section 1 of the Law.
- 23
- 24
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- 26

27 In Case No.: MCR-07D-5302, Lowell School Committee,<sup>5</sup> the School Committee  
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<sup>5</sup> The IUPE did not intervene under Division Rule 14.18, 456 CMR 14.18. Therefore, IUPE is not a necessary party to this food services' bargaining unit stipulation.

1 and the Union stipulated that the unit appropriate for the purposes of collective  
2 bargaining is the existing, historical bargaining unit described as:

3 All full-time and regular part-time school cafeteria employees, including  
4 drivers, café workers, and cook managers, but excluding the Food Service  
5 Director and the Food Service Supervisor, and all supervisory,  
6 managerial, confidential, or casual employees, and all other employees of  
7 the Lowell Public Schools  
8

9 The School Committee and the Union also stipulated that the above-described food  
10 services employees' bargaining unit does not include any employees who exercise a  
11 significant level of supervisory authority that would create a conflict of interest in the  
12 bargaining unit, effectively precluding their inclusion in the same bargaining unit as the  
13 employees they supervise.

14 In Case No.: MCR-07D-5303, Lowell School Committee,<sup>6</sup> the School Committee  
15 and the Union stipulate that the unit appropriate for the purposes of collective  
16 bargaining is the existing, historical bargaining unit described as:

17 All full-time and regular part-time buildings and grounds employees,  
18 including security guards, HVAC technicians, and junior and senior  
19 custodians, but excluding the Supervisor of Buildings and Grounds and  
20 the Supervisor of Custodians, and all supervisory, managerial,  
21 confidential, or casual employees, and all other employees of the Lowell  
22 Public Schools  
23

24 The School Committee and the Union also stipulated that the above-described buildings  
25 and grounds employees' bargaining unit does not include any employees who exercise  
26 a significant level of supervisory authority that would create a conflict of interest in the

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<sup>6</sup> The IUPE seeks to sever the security guards from this bargaining unit. The IUPE does not seek to represent any other employees in this buildings and grounds employees' bargaining unit and it has not intervened under Division Rule 14.18, 456 CMR 14.18.

1 bargaining unit, effectively precluding their inclusion in the same bargaining unit as the  
2 employees they supervise.

3 Undisputed Facts contained in the Notice

4 Lowell Public Schools consist of Lowell High School, seven 5-8 middle schools,  
5 two K-8 schools, eleven K-4 elementary schools, two alternative high schools, an  
6 alternative middle school, and an alternative elementary/middle school.<sup>7</sup> Children are  
7 assigned to one of 22 elementary and middle schools using a centralized, controlled  
8 choice plan. Parents choose schools within their attendance zone or a citywide zone.  
9 The Lowell High School and its satellite alternative schools serve all 3,700 high school  
10 students.

11 Besides the two petitioned-for units, the School Committee has five other  
12 bargaining units:

- 13 • A teachers bargaining unit represented by the United Teachers of Lowell,  
14 Local 495, AFT MA, AFT, AFL-CIO). The current collective bargaining  
15 agreement is effective by its terms from July 1, 2006 to June 30, 2009.  
16
- 17 • A paraprofessionals bargaining unit represented by the United Teachers of  
18 Lowell — Paraprofessionals Unit, Local 495, AFT MA, AFT, AFL-CIO. The  
19 current collective bargaining agreement is effective by its terms from July 1,  
20 2006 to June 30, 2009.  
21
- 22 • An administrators bargaining unit represented by the Lowell School  
23 Administrators Association. The current collective bargaining agreement is  
24 effective by its terms from July 1, 2006 to June 30, 2009.  
25

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<sup>7</sup> Many of these schools are recently built or renovated. In 1989, the School Committee began a \$275 million school construction and renovation program. By 2008, this program has led to the construction of eleven new elementary and middle schools, the renovation and expansion of two elementary schools, and the complete renovation of four middle schools and Lowell High School.

- 1 • A bargaining unit of clerks represented by SEIU Local 888. The current  
2 collective bargaining agreement is effective by its terms from July 1, 2006 to  
3 June 30, 2009.
- 4
- 5 • A bargaining unit of educational support personnel represented by SEIU  
6 Local 888. The current collective bargaining agreement is effective by its  
7 terms from July 1, 2006 to June 30, 2009
- 8

9 The Assistant Superintendent of Finance and Operations, Jay Lang (Lang),  
10 reports directly to the Superintendent and handles collective bargaining and support  
11 services for school operations. The department heads for Buildings & Grounds and for  
12 Food Services report directly to him.

13 The petitioned-for positions are Civil Service positions. Accordingly, the School  
14 Committee does not conduct performance evaluations for these positions. Furthermore,  
15 only provisional appointments are possible because all applicant lists have expired.  
16 The School Committee's central administrative office screens and handles all  
17 provisional appointments.

18 Buildings & Grounds

19 The Commission previously certified this unit in Case No. MCR-35. The most  
20 recent collective bargaining agreement contains the following recognition language: "all  
21 school custodians, both male and female, watchmen, electricians, carpenters, firemen,  
22 engineers, and security guards, excluding all employees of the School Department."

23 The Supervisor of Buildings and Grounds is Brian Curley (Curley), and Jeff Goor  
24 (Goor), the Supervisor of Custodians, works closely with Curley in overseeing custodial  
25 and maintenance operations. Both Curley and Goor advise Lang about proposals to  
26 present at the bargaining table during negotiations with Local 888. Once negotiations  
27 are underway, these individuals continue to advise Lang on proposals and counter-

1 proposals, and they review for Lang the programmatic impact and costs of these  
2 proposals and counter-proposals. Neither Curley nor Goor are members of a  
3 bargaining unit.

4 Curley is responsible for overseeing the work of Buildings & Grounds employees.

5 His specific job duties include, in relevant part:

6 4. In collaboration with the City of Lowell's Department of Public  
7 Works, schedules and implements a detailed short and long-term  
8 program of repair and maintenance of school buildings and  
9 grounds.

10 \* \* \*

11 6. Inspects school buildings and grounds on a regular basis and  
12 confers regularly with school principals regarding the effectiveness  
13 of custodial maintenance and cleaning personnel.

14 7. Assigns and supervises crews of craftspeople and custodians for  
15 maintenance and custodial work.

16 8. Establishes and recommends priorities on school building and  
17 grounds repair projects.

18 \* \* \*

19 12. In collaboration with the City of Lowell Department of Public Works,  
20 ~~schedules and implements a preventative maintenance program~~  
21 ~~associated with the operation of school buildings and grounds.~~

22 13. Recruits, interviews, recommends for hiring, and trains individuals  
23 necessary for the maintenance and cleaning of school buildings  
24 and grounds.

25 \* \* \*

26 18. Serves as the school principal's designee for custodial supervision  
27 at all school buildings during school recess and vacation periods.

28 \* \* \*

29 20. Supervises and instructs building custodians.



21. Supervises craftsman and mechanics employed to effect repairs to buildings.

\* \* \*

31. Evaluates employee performance and makes recommendations for change of status.

32. Either directly or through subordinate supervisors, utilize staff services to maintain satisfaction in the areas of staffing, discipline, and other day-to-day procedures.

Goor has many of these same job duties, including items 6, 7, 8, and 18, above.

At present, the building services unit consists of the following titles:

Junior Custodians	89 employees
Senior Custodians	23 employees
HVAC Technician	1 employee
Security Guards	11 employees
TOTAL	124 employees

Except for Lowell High School, these employees work during the school day. At Lowell High School, there are two shifts available to custodians: a school day shift and an afternoon shift. One custodian also works a night shift at the high school, 11 PM to 7 AM. Because activities occur at school buildings during and after school days, there are numerous overtime opportunities available to the members of this bargaining unit.

Senior Custodians are responsible for making work assignments, training new employees, inspecting work in progress, and ordering supplies. The job description for the Senior Custodian states:

Under the supervision of an employee of higher grade, inspects buildings and/or grounds for safety, security, cleanliness and fire hazards to determine and report the need for maintenance and repairs; maintains, adjusts, and performs preventative maintenance on the heating, ventilating, refrigerating and air conditioning equipment, machinery and/or buildings and grounds; opens and/or secures buildings; determines the amount of supplies to be kept on hand; requisitions and issues supplies and/or takes inventory of supplies, accepts delivery of sorts and stores supplies and/or equipment, and inspects storage areas for proper

1 placement; orders fuel and checks delivery; evaluates and tests the  
2 performance of custodial products and outside services; contacts the  
3 police and fire departments in emergency situations; checks fluid in  
4 batteries of emergency lightning equipment; sets up furniture and  
5 equipment, replaces light bulbs and fuses; replenishes rest room supplies,  
6 collects and disposes of building trash; sweeps, mops, waxes and/or seals  
7 floors, and maintains carpets, washes walls, furniture, windows and  
8 equipment, and brass; cleans and/or lubricates tools and equipment; cuts  
9 grass and rakes leaves; shovels snow and/or sands, and salts building  
10 grounds, catch basins, overpasses, etc.; operates or uses hand tools and  
11 cleaning equipment; supervises directly or indirectly one or more  
12 custodians, handymen, maintenance workers or laborers; prepares work  
13 schedules and assigns work; provides in-service training and performs  
14 related duties as required.

15  
16 Senior Custodians usually participate in interviewing applicants for Junior  
17 Custodian positions. While a Senior Custodian's input is important, the hiring decision  
18 remains entirely a school principal's. Senior Custodians have the general authority to  
19 issue verbal or written warnings to Junior Custodians and to recommend more serious  
20 disciplinary action to school principals, Curley, or Goor. No actual examples of such  
21 action have been provided. In the scenario offered of a Junior Custodian swearing in  
22 front of a student, the Senior Custodian's responsibility is the same as any other School  
23 Committee employee: to report the incident to the school principal who would  
24 investigate and determine the appropriate level of discipline. Senior Custodians have  
25 no responsibility for adjusting grievances and do not set work schedules. Junior  
26 Custodians' requests for time off go through a Senior Custodian to a school principal,  
27 Curley, or Goor. While Goor is responsible for the general training of Junior  
28 Custodians, Senior Custodians train new employees for the cleaning techniques and  
29 priorities at a particular school. The Senior Custodian at each school is also  
30 responsible for developing a work plan that sets forth designated areas of responsibility

1 for each custodial position at a school. The school principal annually approves of these  
2 plans.

3 Junior Custodians are responsible for performing custodial duties in a small  
4 building or specific areas of a large building. While the job description for Junior  
5 Custodians indicates that they work under "under the supervision of a Senior Building  
6 Custodian," the principal for the school where the custodian works, along with Curley  
7 and Goor, handle any disciplinary or personnel matters.

8 Security Guards walk patrol routes on an assigned basis or stand guard at  
9 particular areas. Their primary responsibility is to protect against fire, theft, vandalism,  
10 and unlawful entry, and they will sometimes require visitors at a school building to  
11 identity themselves. Security guards are not sworn police officers and are identified by  
12 a specialized golf shirt. All but two security guards are stationed at the high school (the  
13 two not at the high school are at the two alternative high schools). The security guards  
14 have no role in the security or discipline of employees, as their efforts are primarily  
15 centered around students. To that end, the security guards work closely with school  
16 principals and the administrators charged with handling student discipline.

17 The HVAC Technician performs "miscellaneous maintenance and repair tasks on  
18 municipal buildings and property requiring journeyman skill in at least two of the  
19 following areas: carpentry, painting, plumbing, plastering, and other trades." The  
20 HVAC technician has no supervisory job responsibilities.

Parties' Stipulations of Material Facts<sup>8</sup>

1. At the time the above-petitions were filed, the building services unit consisted of the following titles: Junior Custodian, Senior Custodian, HVAC Technician and Security Guard.
2. The Collective Bargaining Agreement expired June 30, 2006.
3. Security Guards walk patrol routes on a regular basis and stand guard at designated areas.
4. Security Guards' primary responsibility is to protect the safety of all students and staff and to protect against fire, theft, vandalism, and unlawful entry. Security Guards often require visitors to a school building to identify themselves.
5. Security Guards are not sworn police officers.
6. Security Guards are required to respond to situations when a staff member(s) or a student(s) is injured. Security Guards are mandated to respond to any and all emergencies, such as bomb threats and fires, in accordance with the building plan which sets forth duties for all school personnel in emergency situations. They are required to remain in the building(s) at all times to assist public safety personnel, including fire and police. Custodians also have duties set forth in the emergency action plan.
7. Security Officers work closely and interact with the Lowell Police School Safety Officers as well as school principals and the administrators charged with handling student discipline.
8. Security Guards have no role in the discipline of employees.
9. Article XXXII.3 of the collective bargaining agreement between the School Committee and Local 888 provides that Security Guards may elect to work as temporary custodians from July 1 through August 31<sup>st</sup> of each year. If a Security Guard wishes to elect to work in such a position he/she shall notify the (Acting) Supervisor of Custodians on or before May 15<sup>th</sup> of each year. If a Security Guard shall fail to work during July and August, his/her weekly pay shall be suspended and he/she shall be paid for only those weeks worked.

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<sup>8</sup> The parties' stipulations of material facts, in part, mirror certain undisputed facts contained in the Notice and they are not repeated here.

10. Both Custodians and Security Guards may be interviewed by administrators investigating issues pertaining to student discipline.

11. There are no Security Guards at the elementary and middle schools in the Lowell Public School system at the present time.

The parties provided two recent job postings for security guard positions. Those postings include information in bold that states: This position is for transfer for current bargaining unit employees and then open applications. These job postings contain the following information:

Duties and responsibilities include being responsible for the general security of a particular area or building as a primary function; walks security patrol route on an assigned basis; may stand guard (or sit) at a particular spot; checks the validity of individuals' credentials; protects against fire, theft, vandalism, and unlawful entry; work is performed under general supervision in accordance with standard procedure and prior instructions; exercises independent judgment to handle emergency situations; generally wears a uniform. Security guard will be a first responder in emergency situations; therefore the employee must have the aptitude to successfully complete first responder training. A background in criminal justice, sociology or security related field is preferred. Employees work one additional week after the close of school and one additional week before the opening of school.

#### Opinion

#### MCR-08-5335, Lowell School Committee

The issue before the Board is whether to sever the security guards from the existing buildings and grounds employees' bargaining unit. To sever a group of employees from an existing bargaining unit, the IUPE "must demonstrate that the petitioned for employees constitute a functionally distinct appropriate unit with special interests sufficiently distinguishable from those of other unit employees, and that special negotiating concerns resulting from those differences have caused or are likely to cause conflicts and divisions within the bargaining unit." City of Boston, 25 MLC 105, 119 (1999)

1 (quoting Northeast Regional Metropolitan Regional Vocational School District, 7 MLC  
2 1743, 1744 (1981)). The Board does not favor severance petitions and has declined to  
3 sever employees from a bargaining unit to fix imperfectly constructed bargaining units.  
4 City of Fall River, 32 MLC 162, 169 (2006) and cases cited. Where the facts fail to  
5 demonstrate serious divisions and conflicts within a bargaining unit, the Board has  
6 maintained the historical bargaining unit structures that are not fully consonant with the  
7 general principles of initial bargaining unit determinations. New Bedford School  
8 Committee, 12 MLC 1058 (1985) (Board declined to sever clerical employees from an  
9 existing bargaining unit that included both clerical employees and maintenance  
10 employees, because the record established a long history of stable labor relations, and  
11 there was no evidence that serious intra-unit conflicts existed).

12 The Board considers many factors in determining whether the petitioned-for  
13 employees constitute a functionally distinct, appropriate unit with special interests  
14 sufficiently distinguishable from those of the existing unit of employees, including  
15 whether the petitioned-for unit of employees: 1) have specialized skills that are acquired  
16 through a required course of study; 2) maintain and enhance their skills through  
17 continuing education; 3) perform significantly different job functions compared with the  
18 existing unit of employees; share work locations or common supervision; and 5) interact  
19 with or share duties with any other bargaining unit member. Massachusetts Board of  
20 Higher Education, 35 MLC 81 (2008) (Board declined to sever campus police from a  
21 bargaining unit of maintenance and security personnel); City of Somerville, 28 MLC 60,  
22 63 (2001) (Board declined to sever security guards from a bargaining unit that included  
23 maintenance employees).

1        Here, the information demonstrates that the eleven security guards' primary and  
2 exclusive function during the school year is to protect against fire, theft, vandalism, and  
3 unlawful entry into the school buildings where they are located. Although the security  
4 guards are not sworn police officers, unlike the custodians, they work closely and  
5 interact with the Lowell Police School Safety Officers in the performance of their duties.  
6 Furthermore, although both the custodians and the security guards have duties that are  
7 specified in the school department's emergency action plan, the School Committee has  
8 designated the security guards as the first responders in their respective work locations.

9        However, the information also establishes that the security guards share work  
10 locations and a level of general supervision with the custodians. Organizationally, the  
11 security guards, the custodians, and the HVAC technicians all fall under the direction of  
12 the Supervisor of Buildings and Grounds, who reports to the Assistant Superintendent  
13 of Finance and Operations. Like the custodians, the security guards have no role in the  
14 discipline of employees, but, like the custodians, the security guards may be interviewed  
15 by school personnel investigating issues relating to student discipline. Finally, and most  
16 critical to the first prong of the Board's severance analysis, the information establishes  
17 that the applicable collective bargaining agreement expressly provides the security  
18 guards with the option to work as temporary custodians during the school summer  
19 recess, thereby continuing their employment and compensation for a full calendar year.  
20 Therefore, based on these facts, we are not persuaded that the security guards  
21 constitute a functionally distinct, appropriate unit with special interests sufficiently  
22 distinguishable from those of the custodians and the HVAC technician to satisfy the first  
23 prong of the Board's severance analysis.

1 Even if we did find that the security guards constituted a functionally distinct  
2 group, the facts must also establish that the security guards' special negotiating  
3 concerns resulting from their differences with the custodians and the HVAC technician  
4 have caused or are likely to cause conflicts and divisions within the existing buildings  
5 and grounds bargaining unit that will effectively interfere with collective bargaining.  
6 Massachusetts Board of Higher Education, 35 MLC at 87-88 (citing City of Boston, 25  
7 MLC at 120). The petitioned-for employees' inability to achieve their bargaining goals  
8 within a larger unit or their dissatisfaction with their exclusive representative's  
9 accomplishments is insufficient to establish the irreconcilable conflict necessary to warrant  
10 severance. Id. (citations omitted); see also City of Somerville, 27 MLC 62, 66 (2000) (fact  
11 that eleven school nurses and three nurse practitioners were unable to achieve all their  
12 bargaining goals does not warrant severance from a diverse unit of about 250 employees)  
13 and cases cited. This part of the severance analysis ensures that "severance will not be  
14 granted based merely upon transient disputes, discontent, or personality conflicts." City of  
15 Boston, 25 MLC at 120 (quoting Town of East Longmeadow, 14 MLC 1555, 1556 (1988)).  
~~16 Here, the information fails to demonstrate that the security guards have any special~~  
17 negotiating concerns that have caused or are likely to cause serious conflicts and  
18 divisions within the existing buildings and grounds bargaining unit. Accordingly, we  
19 decline to sever the security guards from the existing buildings and grounds employees  
20 bargaining unit and IUPE's petition is dismissed.



1 MCR-07D-5302, Lowell School Committee  
2 Stipulated Appropriate Bargaining Unit

3       When issues raised by a representation petition are resolved by the parties'  
4 stipulations, the Board will adopt those stipulations if they do not conflict with the Law or  
5 established Board policy. North Attleborough Electric Department, 32 MLC 66, 71  
6 (2005) (citations omitted). Here, the School Committee and the Union stipulated that  
7 the existing bargaining unit consisting of all full-time and regular part-time school  
8 cafeteria employees, including drivers, café workers, and cook managers, but excluding  
9 the Food Service Director and the Food Service Supervisor, and all supervisory,  
10 managerial, confidential, or casual employees, and all other employees of the Lowell  
11 Public Schools constitutes an appropriate bargaining unit. Because the parties'  
12 stipulations do not appear to conflict with the Law or established Board precedent or  
13 policy, we adopt them.

14 MCR-07D-5303, Lowell School Committee  
15 Stipulated Appropriate Bargaining Unit

16       The School Committee and the Union stipulated that the unit appropriate for the  
17 purposes of collective bargaining is the existing, historical bargaining unit consisting of  
18 all full-time and regular part-time buildings and grounds employees, including security  
19 guards, HVAC technicians, and junior and senior custodians, but excluding the  
20 Supervisor of Buildings and Grounds and the Supervisor of Custodians, and all  
21 supervisory, managerial, confidential, or casual employees, and all other employees of  
22 the Lowell Public Schools constitutes an appropriate bargaining unit. Because the  
23 parties' stipulations do not appear to conflict with the Law or established Board  
24 precedent or policy, we adopt them.

1                                    Conclusion and Direction of Elections

2            Based on the record and for the reasons stated above, we decline to sever the  
3 security guards from the existing buildings and grounds employees bargaining unit.  
4 Therefore, IUPE's petition is dismissed.

5            Based on the record and for the reasons stated above, we conclude that a question  
6 of representation has arisen concerning certain employees of the Lowell School  
7 Committee and that the following constitute appropriate units for collective bargaining  
8 within the meaning of Section 3 of the Law:

9            Case No. MCR-07D-5302 – Food Services

10           All full-time and regular part-time school cafeteria employees, including  
11 drivers, café workers, and cook managers, but excluding the Food Service  
12 Director and the Food Service Supervisor, and all supervisory,  
13 managerial, confidential, or casual employees, and all other employees of  
14 the Lowell Public Schools  
15

16           Case No. MCR-07D-5303 – Buildings and Grounds

17           All full-time and regular part-time buildings and grounds employees,  
18 including security guards, HVAC technicians, and junior and senior  
19 custodians, but excluding the Supervisor of Buildings and Grounds and  
20 the Supervisor of Custodians, and all supervisory, managerial,  
21 confidential, or casual employees, and all other employees of the Lowell  
22 Public Schools  
23

24           IT IS HEREBY DIRECTED that an election shall be held for the purpose of  
25 determining whether a majority of the employees in the above-described bargaining units  
26 desire to be represented by the Greater Lowell Unionized Employees or by no employee  
27 organization.

28           The eligible voters shall include all those persons within the above-described  
29 units whose names appear on the Lowell School Committee's payroll for the payroll  
30 period for the week ending the Saturday preceding the date of this decision and who

1 have not since quit or been discharged for cause. This list must be either electronic (e.g.  
2 Microsoft Access or Excel) or in the form of mailing labels.

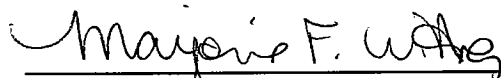
3 To ensure that all eligible voters shall have the opportunity to be informed of the  
4 issues and the statutory right to vote, all parties to these elections shall have access to  
5 a list of voters and their addresses which may be used to communicate with them.

6 Accordingly, IT IS HEREBY FURTHER DIRECTED that an election eligibility list  
7 containing the names and addresses of all eligible voters separated by bargaining units  
8 must be filed by the Lowell School Committee with the Executive Secretary of the  
9 Division, Charles F. Hurley Building, 19 Staniford Street, 1<sup>st</sup> Floor, Boston, MA 02114  
10 not later than fourteen days from the date of this decision.

11 The Executive Secretary shall make the lists available to all parties to the  
12 elections. Failure to submit the lists in a timely manner may result in substantial  
13 prejudice to the rights of the employees and the parties; therefore, no extension of time  
14 for filing the lists will be granted except under extraordinary circumstances. Failure to  
15 comply with this direction may be grounds for setting aside the elections, should proper  
16 and timely objections be filed.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF LABOR RELATIONS  
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

  
MARJORIE F. WITTNER, CHAIR

  
ELIZABETH NEUMEIER, BOARD MEMBER