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

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In the Matter of * Case Nos. CAS-16-5404  
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BOARD OF TRUSTEES, * Date Issued: August 30, 2018  
UNIVERSITY OF MASSACHUSETTS, *  
DARTMOUTH *  
and *  
AFSCME, COUNCIL 93, AFL-CIO *  
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CERB Members Participating:  

Marjorie F. Wittner, Chair  
Katherine G. Lev, CERB Member  
Joan Ackerstein, CERB Member  

Appearances:  

Ethan Mutschler, Esq. Representing UMass, Dartmouth  
Diane Byrnes, Esq. Representing AFSCME, Council 93  

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CERB DECISION  

Summary  

The issue in this unit clarification (CAS) proceeding is whether the newly-created position of Student Loan Manager (SLM) at the Dartmouth campus of the University of Massachusetts (Employer or UMass Dartmouth) should be accreted into a bargaining unit represented by AFSCME, Council 93, AFL-CIO, Local 507 (AFSCME) or remain in the bargaining unit represented by the American Federation of Teachers, Education Services Unit (ESU). For the reasons set forth below, the Commonwealth Employment Relations Board (CERB) concludes that the SLM shares a greater community of interest
with ESU’s bargaining unit than it does with AFSCME’s unit and dismisses AFSCME’s petition.

Statement of the Case

On August 1, 2016, AFSCME filed a unit clarification petition with the Department of Labor Relations (DLR) seeking to accrete the SLM into its existing bargaining unit at the University of Massachusetts, Dartmouth. The ESU currently represents the SLM for purposes of collective bargaining.

On November 4, 2016, AFSCME and the Employer participated in an informal conference at the DLR’s offices.¹ Through position statements and exhibits submitted before and after the conference, AFSCME argued that the petitioned-for position shares a community of interest with other positions in its bargaining unit of clerical and technical employees. The Employer contended that the SLM is a “professional” position that is appropriately placed in the ESU.

On July 30, 2018, DLR sent the parties a letter asking them to show cause (Show Cause letter) why the unit placement dispute should not be resolved based on the information summarized therein. The Show Cause letter also requested some additional information. Neither party disputed the facts contained in the Show Cause letter. Both parties provided information in response to the DLR’s questions. The Employer also provided updated information about the Financial Aid Office, where the SLM works. After reviewing the responses and supplementing certain facts, the CERB

¹ ESU was given notice of this proceeding but did not file a motion to intervene. The DLR therefore investigated this matter without the ESU’s participation.
has determined that there are no materially disputed facts and decides this matter
based on the following information.

**Background**

AFSCME, Council 93, Local 507, Generally

Since 1997, AFSCME, Local 507 has been the exclusive bargaining
representative for a bargaining unit of non-professional employees at UMass
Dartmouth. At the time the SLM position was created, AFSCME and the Employer were
parties to a collective bargaining agreement that was in effect from July 1, 2014 through
June 30, 2017 (AFSCME CBA). Appendix G of the AFSCME CBA reflects that this unit
includes the following titles: Accountant I-III, Administrative Assistant I and II,
Bookkeeper I and II, Buyer I, Clerical III-V, EDP Entry Operator II-IV, EDP Programmer I
and II, EDP Systems Analyst I-IV, Librarian I, Librarian Assistant II-IV, Medical
Assistant, and Reproduction Service Supervisor.

According to a “Functional Comparison Chart” submitted by the Employer,
AFSCME’s bargaining unit also includes Financial Aid Office employees with the
following titles: Administrative Assistant I (Grade 15), Administrative Assistant II (Grade
17), and EDP Programmer II (Grade 16). The AFSCME positions in the Financial Aid
Office do not require a college degree, but they do require experience with either office
management or data processing. The AFSCME bargaining unit is composed entirely of
hourly staff.

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2 AFSCME job descriptions use the term “Grade” to designate positions, e.g., Grade 15,
Grade 16, etc.; ESU job descriptions designate by “Category.” This decision retains
that nomenclature.
ESU, Generally

The Employer and ESU are parties to a collective bargaining agreement that became effective on July 1, 2014 and expired on June 30, 2017. (ESU CBA). Article I of the ESU CBA recognizes the ESU as the "sole and exclusive bargaining agent" for all employees in the ESU unit. Additionally, this portion of the contract reflects that the ESU unit includes the following representative positions: Academic Advisor, Admissions Counselor, Bursar, CAD Drafter, Computer Administrator, Digital Multimedia Specialist, Director of Athletics, Emergency Management Coordinator, Event and Technical Services Manager, Field Services Manager, Fitness Center Director, Grant and Contract Coordinator, Graphic Designer, Health Educator, Instructional Designer, IT Access Management Specialist, IT Service Center Technician, Leadership Coordinator, Mental Health Counselor, Network Systems Specialist, Nurse Practitioner, One Card Coordinator, PeopleSoft Project Manager, Senior Writer, Staff Associate to Budget Director, Strategy Director for Assessment and Evaluation, Civic Engagement Grant Coordinator, and Director of Learning Assessment.

As of 2016, ESU's bargaining unit also included Financial Aid office employees with these titles: Director of Financial Aid (Category 19), Associate Director of Financial Aid (Category 16), Associate Director of Financial Aid Operations and Compliance (Category 15), and Assistant Director of Financial Aid (Category 13).

The job descriptions as well as the Functional Comparison Chart submitted by the Employer reflect that all the ESU bargaining unit positions in the Financial Aid Office require a college degree in addition to anywhere from three to seven years of
experience working in Financial Aid. A majority of ESU unit members are salaried, but a small group of them, not at issue here, are non-exempt and hourly.

Financial Aid Office

According to a 2016 Enrollment Management Organizational Chart that the Employer provided, the Director of Financial Aid typically supervises ten employees. This chart indicates that six of these employees are members of ESU and four of them are members of AFSCME. At the time of the investigation, one AFSCME position, the Administrative Assistant II role, was vacant. The organizational chart also showed that five members of ESU (two Associate Directors, the Associate Director of Financial Aid, the Assistant Director for Scholarship, and the SLM) and the vacant Administrative Assistant II AFSCME position reported directly to the Director of Financial Aid, which is also an ESU position.

The Employer’s response to the Show Cause letter reflects that there have been several organizational changes to the Financial Aid Office since 2016. There are still two Associate Directors, but their titles have changed to Associate Director, Counseling and Communications (Associate Director, Counseling), and Associate Director of Operations and Quality Assurance (Associates Director, Operations). The SLM now reports to the Associate Director of Operations, instead of directly to the Director of Financial Aid. Two AFSCME titles also report to the Associate Director of Operations: the still-vacant Administrative Assistant II position and an EDP Programmer. Four ESU titles report to the Associate Director, Counseling: the Financial Aid Counselor for Scholarships (formerly, the Assistant Director for Scholarships, discussed below), the Assistant Director, and two Financial Aid Counselors.
In 2016, all Financial Aid Office ESU bargaining unit members had their own office except for the SLM. The SLM worked in the cubicle formerly occupied by the Administrative Assistant I. As of the date of this decision, however, the workspace of all financial aid counseling staff, including the SLM, had been moved to a centrally located group of cubicles.

**Job Descriptions of Specific Titles within the Financial Aid Office**

**Assistant Director of Financial Aid for Scholarships/Financial Aid Counselor for Scholarships**

During the investigation, the Employer contended that the Assistant Director of Financial Aid for Scholarships, a Category 13 ESU position, was most comparable to the SLM in terms of duties, and thus justified the SLM’s placement in the ESU. In 2016, the incumbent in this position reported to the Director of Financial Aid and managed all scholarships administered by UMass Dartmouth. The Employer’s response to the Show Cause letter indicates that after the incumbent vacated the position, the position was retitled to Financial Aid Counselor for Scholarships (Scholarships position), a Category 12 position, which reported to the Associate Director, Counseling. The job description otherwise remained intact. Christine Mullen (Mullen) was hired in the Scholarships position in May 2018. Mullen has an MBA in Finance, and a BA in Business.

The job description indicates that the incumbent in the Scholarships position is responsible for maintaining a scholarship policy and procedure manual, which involves researching current regulations. This employee also develops scholarship applications and scholarship selection criteria. Additionally, the employee fulfills an educational
function by conducting financial workshops and seminars for stakeholders and providing financial counseling to students.

The job description indicates under “minimal qualifications” that applicants should possess a bachelor’s degree and “demonstrated experience (over three years) in financial aid operations and systems, acquired by administrative work in a post-secondary financial aid office.”

**AFSCME Administrative Assistant II**

The job description for the vacant Administrative Assistant II position reflects that it reports to the Associate Director of Financial Aid and “provide[s] substantial administrative services for a large number of Professionals.” As part of this work, the Administrative Assistant II is responsible for reconciling program funds, producing reports for various financial aid programs, creating documentation for office procedures, “exercise[ing] judgement in applying and interpreting office policies and procedures,” “plan[ning] and organiz[ing] proper implementation of office rules, policies and procedures,” and “answer[ing] non-routine questions and solv[ing] complex problems to maximize effectiveness within the department.”

The job description lists a number of qualifications required at hire. Some of these qualifications include the: “Ability to understand, explain and apply the laws, rules, regulations, policies, procedures, specifications, standards and guidelines governing assigned unit activities;” “Ability to write concisely, to express thoughts clearly and to develop ideas in a logical sequence;” and “Ability to exercise sound judgment.” Under “minimal entrance requirements,” the job description indicates that applicants should:
[H]ave at least (A) three years of full-time, or equivalent part-time experience in office management, office administration, business administration or business management, the major duties of which included one or more of the following functions: purchasing, personnel management, budgeting, accounting, records management, work simplification, grants management, contract administration or program management, or (B) any equivalent combination of the required experience and the substitutions from the Massachusetts State Classification Specifications.

This position is listed as a Grade 17 in the job description.

AFSCME Administrative Assistant I

AFSCME contends that the Administrative Assistant I, which was replaced with the SLM, is most analogous to the newly-created position. According to the Form 30 Position Description (Form 30), it was the responsibility of the Administrative Assistant I to:

Manage loan processing function for over $40 million in Federal, state and private loan funds annually. Work with external vendors to ensure timely and accurate data processing, transmission and disbursement to student accounts. Perform reconciliation function on loan funds on a regular basis. Manage PeopleSoft loan processing functions and provide advice and assistance to UITS teams. Provide excellent customer service as a primary goal. Constant contact with the public and campus community.

Additionally, the Administrative Assistant I was responsible for supervising work-study and other student employees. To be minimally qualified for this position, applicants were expected to:

[H]ave at least (A) two years of full-time, or equivalent part-time experience in office management, office administration, business administration or business management, the major duties of which included one or more of the following functions: purchasing, personnel management, budgeting, accounting, records management, work simplification, grants management, contract administration or program management, or (B) any equivalent combination of the required experience and the substitutions from the Massachusetts State Classification Specifications.
Like other Administrative Assistant I titles, this position was categorized on the AFSCME pay scale as a Grade 15. The last person to occupy this position, Linda Sumner (Sumner), was at Step 14 and earned $58,000 per year. Sumner did not have a college degree.

The Employer provided separate Form 30’s for the Administrative Assistant I positions who worked in the IT Service Center, the Honors Program and the Office of Faculty Development. All three positions require a minimum of two years of full-time or equivalent part-time experience in office management, office administration, business administration or business management, grants management, but no college degree. All three positions are responsible for supporting the operations of their respective departments by performing both clerical tasks, e.g., answering phones; greeting visitors; arranging meetings; etc., and higher level administrative tasks, e.g., organizing University Honors Convocations and student thesis poster exhibitions; maintaining spreadsheets, databases and budgets; processing invoices; coordinating with outside vendors for grant and requisitions processing; creating and editing letters, flyers, brochures, articles, etc.

Other AFSCME Grade 15 titles at UMass Dartmouth include Accountant I and Clerk V. AFSCME titles in Grades 13 and 14, such as the Clerk IV in the College of Nursing (Grade 13) and the Electronic Data Processing Entry Operator IV for the Office of University Registrar, (Grade 14) provide general clerical and administrative support to their respective offices. These positions do not require a college degree or prior

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3 There are fifty-six Grade 15 Administrative Assistant I’s at UMass Dartmouth.
business administration or office management experience, but do require at least three
years of office work or clerical data entry experience.

Creation of the SLM Position

The creation of the SLM position was precipitated by Sumner's retirement. Sumner, a member of AFSCME since 1999, was initially an EDP Operator, but she was promoted to an Administrative Assistant I in 2007. As an Administrative Assistant I, she reported to the Director of Financial Aid.

In her affidavit, the Director of Financial Aid Audra Callahan (Callahan) indicated that she had observed that advances in technology had made some of the Administrative Assistant I's functions obsolete by the time of Sumner's retirement on June 18, 2016. In a May 31, 2016 email to Michele Berube, the Vice President of Local 507, the Employer's Director of Labor Relations, Kim Sylvia (Sylvia), similarly indicated that software developments allowed staff and student to independently complete some of the tasks that had previously required the assistance of the Administrative Assistant I. For instance, whereas the Administrative Assistant I had supported other office members by processing attendance forms and preparing travel arrangements, staff members now manage their own attendance and travel-related documentation through PeopleSoft. Furthermore, whereas the Administrative Assistant I had generated promissory notes and transmitted them to the Department of Education, students now complete an online application that is automatically sent to the Department of Education.

Callahan also believed that compliance with new Federal regulations necessitated replacing the Administrative Assistant I with a position requiring greater
student lending expertise. More specifically, before the creation of the SLM, the Financial Aid Office did not have anyone to counsel students on loan indebtedness pursuant to the College Cost and Reduction Act of 2007; provide status updates on loans in repayment to the national credit bureaus pursuant to the Higher Education Opportunity Act of 2008; or communicate the Pay-As-You-Earn repayment plan to students pursuant to the Health Care and Education Reconciliation Act of 2010. Therefore, Callahan, according to her affidavit, drafted the SLM job description using similar exempt positions at other University of Massachusetts’ campuses as models.

Human Resources reviewed the preliminary SLM job description and concluded that the position was an exempt position under the Fair Labor Standards Act. Also believing that the SLM was a professional level position that paralleled the Scholarships position in terms of scope of responsibility and independence, Human Resources concluded that the position should be placed in ESU’s bargaining unit. After this, the ESU Classification Committee, consisting of two ESU and two management members, determined that the new position should be designated “Category 12.” On May 27, 2016, the Employer and ESU executed a Memorandum of Understanding that placed the SLM (as well as a second position not at issue here) in the ESU bargaining unit.

AFSCME learned the Employer was planning not to replace Sumner and to leave the Administrative Assistant I position vacant around May 30, 2016. On June 3, 2016, the Employer posted the SLM position.

**SLM Duties**

According to the summary contained in the job description, the SLM is responsible for administering all educational loans processed through the Financial Aid
Office. This employee also manages all functions of loan programs, including loan
origination, certification, disbursement, reconciliation, compliance and program integrity.
The SLM also exercises functional supervision of clerical staff and student employees.
The listed minimum qualifications for this position are a bachelor's degree and over
three years of work experience in either Financial Aid or loan operations/systems. At the
time of this investigation, the SLM was earning $50,000 at Step 1 of this Category 12
position.

The job description further indicates that the SLM's primary responsibility is to
administer all the educational loan programs processed by the Financial Aid Office.
Some of the other listed duties include: reviewing and adjusting financial aid packages
for students close to the limits of their eligibility for federal aid; documenting all
institutional policy related to educational loan programs; acting as a liaison between
student loan recipients and the Department of Education loan servicing/origination
center; developing and maintaining a comprehensive default management program;
and conducting financial aid informational activities. Along with other positions in the
Financial Aid department, including the Scholarships position and the Associate
Directors, the SLM maintains a portfolio of student clients. As of November 7, 2016, the
SLM had a portfolio of 2,303 students.

SLM Duties Formerly Performed by Administrative Assistant I in the Financial Aid
Office

According to AFSCME, the Administrative Assistant I performed the following
duties listed on the SLM's job description

- Administer federal and private student loan programs in accordance with
  federal/state financial aid regulations, program guidelines issued by the United
States Department of Education, and established institutional policies and procedures.
- Work closely with the Bursar's Office to ensure cash receipts are credited to student accounts and reconciled appropriately.
- Responsible for the management of all private education loan funds including certification with lender, awarding, disbursement, and reconciliation.
- Serve as the University's subject matter expert related to all loan processing. Maintain a solid and expanding knowledge of financial aid rules, regulations, policies, procedures, guidelines, and best practice to ensure compliance with federal, state and institutional rules and regulations pertaining to student eligibility and loan processing.
- Act as a liaison between student loan recipients and the Department of Education loan servicing/origination center and private lenders to troubleshoot issues and concerns.
- Maintain auditable student files and program records in accordance with federal and state regulations, as well as institutional policies and procedures.
- Collaborate with Financial Aid Office report writer to develop and maintain reports to effectively manage and enhance loan processing and reconciliation.
- Assist with customer service functions including phones, front desk, and email interactions.
- Perform other duties as required by supervisor.

Modified, Additional and New SLM Duties

According to the job duties comparison chart submitted by the Employer, some of the above duties that are performed by the SLM have been modified. For instance, while the Administrative Assistant I coordinated the disbursement of private loans, the SLM does that task as part of developing new procedures that implement federal regulations. Also, while the Administrative Assistant I reconciled accounts between Lenders and the Bursar, the SLM now completes a three-way reconciliation of student accounts with the Bursar and Lending Parties.

Furthermore, according to this job duties comparison chart, the SLM position assumed several duties that had previously been performed by the Director of Financial Aid, including responsibility for financial aid informational activities and overseeing loan reconciliation.
The same job duties comparison chart indicates that the SLM assumed several newly-created tasks such as serving as the campus representative for private loan request information; reviewing students who are close to the federal loan aggregate cap and Subsidized Loan Eligibility Limits; developing and maintaining a default management program; and initiating financial literacy workshops with students. Korinne Peterson, the Director of Financial Aid at the time of the investigation, provided an affidavit stating that the development and implementation of both the Subsidized Loan Eligibility Limits (SULA) and the Loan Default program were new functions that required the Student Loan Manager to exercise his discretion based on his knowledge of federal regulations.

**SLM Incumbent**

The first individual to serve as SLM was Joseph Gentile (Gentile).\(^4\) Gentile was hired on October 11, 2016 at a salary of $50,000. He received a Bachelor of Arts in Communications with a concentration in Journalism. Before working for the Employer, Gentile worked two years as a Loan Officer/Financial Aid Counselor at Anna Maria College in Paxton, Massachusetts and two years as a Financial Aid Advisor at Maria College in Albany, New York. Gentile received benefits in accordance with the ESU CBA.

In the affidavit he provided, Gentile described his job as "more than data entry – it's the ability to communicate clearly about how to finance a college degree." He explained that he is responsible for staying informed on evolving federal regulations by

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\(^4\) The Employer's response to the Show Cause letter indicates that Gentile is now known as Joseph Novinson.
accessing information through a variety of channels such as reading the U.S. Department of Education's "Dear Colleague" letters.\textsuperscript{5}

Gentile remained in this position until the winter of 2017, when he was promoted to an Assistant Director role under the Associate Director, Counseling. As of the date of this decision, the SLM title is vacant and its functions are currently being shared by two ESU bargaining unit members: Amy Jones (Jones), whose title is Financial Aid Counselor, and Sharon Gannon (Gannon), who is the Associate Director, Operations. Both employees are paid extra compensation to perform these functions. Jones oversees the Private Education Loan Functions that the SLM previously performed. Gannon manages the Federal Director Loan functions. The University expects to fill the SLM position in early September 2018.\textsuperscript{6}

\textbf{SLM Work Contacts}

\textsuperscript{5} The Employer submitted samples of NASFAA (National Association of Student Financial Aid Administrators) newsletters that the SLM would be expected to read and digest. These newsletters point practitioners to a wide variety of professional development and educational resources. More specifically, the newsletters include a student aid index term of the week, information about upcoming webinars, opportunities to submit questions to the NASFAA Board of Directors, and material regarding U.S. Department of Education publications. The newsletters also contain articles and opinion pieces with titles such as "Addicted to Debt," "The Need to Validate Vocational Interests," and "Majors That Don't Typically Pay Well Made a Significant Jump This Year."

\textsuperscript{6} Although the SLM position was unfilled as of the date of this decision, its material duties are not in dispute and are still being performed by two ESU members. We therefore reach the merits of the petition. Compare \textit{Town of Athol}, 36 MLC 188, 190, n. 5, CAS-10-3752 (May 7, 2010) (citing \textit{Upper Cape Cod Regional Vocational-Technical School Committee}, 9 MLC 1503, 1506, 1507, MCR-3327 (December 14, 1982)) (declining to process CAS petition for positions that are unfilled unless the parties to the petition stipulate to the material job duties of position).
The SLM works directly and on a regular basis with other ESU bargaining unit members in the Financial Aid office. The Director of Financial Aid, Associate Directors, Scholarships position and SLM meet weekly to discuss changes to policy and procedures as well as office operations. The SLM also meets with these ESU members as needed to address loan processing questions and troubleshoot system issues as well as to collaborate on the implementation of new policies and procedures. As indicated above, the SLM also shares centralized cubicle office space with the ESU financial aid counseling staff.

The SLM also has contact with AFSCME bargaining unit members when the financial aid staff has a bi-weekly meeting.

Additionally, the SLM has professional contact with people who do not work in the Financial Aid Office. Namely, the SLM meets with students for financial counseling and communicates with lenders to resolve loan disbursement issues.

Grade 12 ESU Bargaining Unit Positions

As noted above, the SLM is classified as a Category 12 employee; other Category 12 ESU bargaining unit members include: Outreach Counselor, Assistant Operations and Services Manager, Program/Retention Counselor, Staff Associate, and Staff Assistant. The Employer submitted job descriptions that provided the following information about these positions.

The Outreach Counselor is responsible for “coordinat[ing] identified outreach activities for selected federal Student Support service grant project participants [as well as] assist[ing the] program director with research for program reports.” The job description explicitly mentions administering diagnostic tests, conducting orientation
sessions, and providing academic advising. The minimum qualifications for this position include a bachelor's degree, but a master's degree is preferred.

The Assistant Operations and Services Manager "is responsible for the supervision, management and delivery of quality services to students, staff and guests of the university." Additionally, this role involves providing the branding for conferences as well as analyzing guest/attendee feedback for such events. According to the job description, the Assistant Operations and Services Manager "functions as the data custodian for the Conference and Event office." The minimum qualifications for this position include a bachelor's degree.

The Program/Retention Counselor "recruits, counsels, and instructs the economically, educationally, or socially disadvantaged students admitted to UMass Dartmouth through Alternative Admissions." The job description of the Program/Retention Counselor states that this position provides bi-weekly individual counseling to a group of approximately 20-25 students and delivers as needed group counseling workshops. In addition to working with UMass Dartmouth students, the Program/Retention Counselor devotes time to visiting high schools to recruit students. The minimum qualifications for this position include a bachelor's degree, but a master's degree is preferred.

The Staff Associate "provides expertise on Student Records functions in PeopleSoft to produce an overall high quality academic record." This position is responsible for managing academic and jeopardy processes and well as processes associated with registration. The Staff Associate also manages all aspects of re-admission and works with the AVCAA/Graduate Studies to resolve issues related to
graduate program transcript matters. The minimum qualifications for this position include a bachelor's degree.

The Staff Assistant “manages, develops, projects, analyzes, monitors and coordinates all budget functions for the Facilities and Physical Plant Department including the processing of purchase orders, contracts, and invoices.” As part of this work, the Staff Assistant must verify that applicable state regulations relating to contracting, bidding, prevailing wage requirements, etc., are being followed. This position is also expected to submit license renewals and other necessary reports. The minimum qualifications for this position include either a “bachelor's degree or an equivalent combination of education, training and related experience necessary to successfully perform the essential functions of the position.” However, a bachelor's degree is preferred.

SLM Positions at Other University of Massachusetts Campuses

As previously mentioned, the job descriptions of similar positions at other University of Massachusetts's campuses influenced the SLM job description. The Employer provided three job descriptions, one from the University of Massachusetts, Lowell (UMass, Lowell) and two from the University of Massachusetts, Boston (UMass, Boston). These positions all require a bachelor's degree and either two or five years of experience working in an automated financial aid office.

The UMass Lowell Student Loan Manager is a member of the professional staff bargaining unit represented by SEIU, Local 888. The incumbent devotes approximately 45% of her time to matters such as administering programs in accordance with the relevant United States Department of Education guidelines, managing loan processing,
resolving student eligibility issues, reconciling disbursements between the U.S.
Department of Education Common Origination and Disbursement (COD) and the
University’s Student Information System (iSiS) databases, documenting institutional
policies, and serving as the campus representative of the annual Boston-Dartmouth-
Lowell (BDL) Private Loan Request for Information (RFI) process to select lenders for
the University’s preferred lender list. This employee devotes 10% of her time to
developing a default program and another 10% of her time to conducting financial aid
informational activities (including literacy sessions). The Student Loan Manager also
supervises one to two staff members as well as three to five student employees.

At UMass, Boston, the Assistant Director of Student Financial Aid/Private Loans
Manager is a member of the professional staff bargaining unit (PSU, MTA/NEA). This
employee performs similar duties to the UMass Lowell Student Loan Manager.

According to the Private Loans Manager job description, the employee in this role is:

[R]esponsible for all aspects of the private student loan program, which currently
totals over $8.5 million, including, but not limited to: loan certification, payment
authorization, and program reconciliation. . . . The Private Loan Manager must
stay abreast of private loan issues and annually review private loan program
options to recommend to the Director for program participation. This person also
works closely with the Controller’s and Bursar’s Office to establish fund accounts
and to insure cash receipts are credited to student accounts and reconciled
appropriately.

The Private Loans Manager also supervises one to two student employees.

The second UMass Boston position, the Assistant Director of Student Financial
Aid/Student Loan Manager (Assistant Director/SLM), is also a member of the PSU,
MTA/NEA bargaining unit. The employee in this role is tasked with similar duties to the
Student Loan Manager positions described above. According to the job description, this employee 

Responsible for all aspects of the student loan programs including, but not limited to: loan certification, payment authorization, and program reconciliations.... The [Assistant Director/SLM] works closely with the Bursar's Office to establish fund accounts and to insure cash receipts are credited to student accounts and reconciled appropriately. The Assistant Director is also responsible for implementing new federal regulations and insuring these regulations are communicated throughout the University community to maximize student participation. Other duties include caseload management for approximately 2500 student aid recipients.

The Assistant Director/SLM supervises one to two non-student employees.

Opinion

A unit clarification petition is the appropriate vehicle to determine whether newly-created positions should be included in a bargaining unit. Sheriff of Worcester County, 30 MLC 132, 136, CAS-03-3543 (April 7, 2004). In analyzing whether a position should be accreted into an existing bargaining unit, the CERB considers: 1) whether the position was included in or excluded from the unit at the time the unit was originally recognized or certified; 2) whether the parties' subsequent conduct, including bargaining history, discloses that the parties considered the position to be in the bargaining unit; and 3) whether the position shares a community of interest with other positions in the existing bargaining unit. Town of Granby, 28 MLC 139, 141, CAS-3477 (October 10, 2001).

In examining the first prong of the accretion test, the record establishes that the Employer created the SLM position in 2016. Because the position was not in existence when the CERB certified AFSCME as the exclusive bargaining representative for the

7 The CERB's jurisdiction is not contested.
unit's clerical and technical workers in 1997, the first prong of the three-part test is inconclusive. The second prong of the accretion analysis is similarly inconclusive without bargaining history or other conduct demonstrating that the parties considered the SLM position as either included or excluded from AFSCME's bargaining unit. Town of Somerset, 25 MLC 98, 100, CAS-3145 (January 6, 1999). Therefore, the third prong of the three-factor test, community of interest, will be determinative in this matter.

Community of Interest

To determine whether employees share a community of interest, the CERB considers factors like similarity of skills and functions, similarity of pay and working conditions, common supervision, work contact and similarity of training and experience. Town of Granby, 28 MLC at 141. Additionally, members of a bargaining unit need share only a community of interest rather than an identity of interest. Springfield Water and Sewer Commission, 24 MLC 55, 59, MCR-4603 (January 15, 1998).

Where a position shares a community of interest with more than one bargaining unit, the CERB places the position 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 (June 22, 2005). Here, the Employer's argument that the SLM is more appropriately placed in ESU is persuasive because of the greater similarity of education, training and experience, as well as similarity of skills and functions, between the SLM and ESU members than with members of AFSCME's bargaining unit.

In particular, despite some overlap in duties between the SLM and the Administrative Assistant I, the SLM position was created to ensure that UMass Dartmouth, like its counterparts at UMass Boston and Lowell, had an employee with
sufficient expertise and experience to ensure compliance with new Federal regulations arising out of student loan legislation that was enacted from 2007 – 2010. Thus, the SLM position, like the other ESU positions in the Financial Aid Office, requires a college degree as well as prior experience in financial aid or loan systems. By contrast, none of the AFSCME titles require college degrees, and the two administrative assistant titles in the Financial Aid office were not required to have any specialized background in loan processing or financial aid. Moreover, while the Administrative Assistant I and II in the Financial Aid Office were responsible for implementing existing policies and procedures, the SLM is responsible for developing new procedures based on new federal regulations and programs, such as SULA and the Loan Default program. The level of discretion and expertise needed to perform these duties is like that exercised by the incumbent in the Scholarships position when maintaining the scholarship policy and procedure manual in accord with current regulations

The SLM, like other ESU titles, also has educational and advising functions that the AFSCME titles lack. For instance, the SLM assumed the Director of Financial Aid’s responsibility of conducting financial aid informational activities, developing and maintaining a default management program and initiating financial literacy workshops with students. Similarly, the Scholarships position conducts financial workshops and seminar for stakeholders, provides financial counseling for students and develops scholarship applications and selection criteria. Other Category 12 ESU titles like the Outreach Counselor and the Program/Retention Counselor also counsel and instruct students. The fact that two ESU members temporarily assumed the SLM’s duties until
the position is filled also demonstrates this position's congruence of expertise, skill level
and duties with other ESU titles.

The SLM also has greater contact with other ESU members in the Financial Aid
office due to their shared office space and weekly meetings with the Director of
Financial Aid, the Associate Directors and the Scholarships position.

Conclusion

In sum, other than the fact that the SLM performs some of the same duties that
Sumner performed as the Administrative Assistant I in the Financial Aid office, there is
no evidence that the SLM shares a stronger community of interest with AFSCME's unit
than with ESU's unit. Rather, the evidence shows that the SLM shares a greater
community of interest with other ESU titles based on similarity of duties, level of
discretion exercised, work contact, and requisite training and experience.⁸ We therefore
decline to accrete the SLM position into AFSCME's bargaining unit and dismiss the
petition.

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⁸ Because the analysis of community of interest is determinative, it is unnecessary to
reach the question of whether the SLM is a professional employee within the meaning
of M.G.L. c. 150E, §1.
SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

MARJORIE F. WITTNER, CHAIR

KATHERINE G. LEV, CERB MEMBER

JOAN ACKERSTEIN, CERB MEMBER