

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

In the Matter of

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Case Nos. CAS-16-5404

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BOARD OF TRUSTEES,
UNIVERSITY OF MASSACHUSETTS,
DARTMOUTH

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Date Issued: August 30, 2018

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and

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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

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

1 with ESU's bargaining unit than it does with AFSCME's unit and dismisses AFSCME's
2 petition.

3 **Statement of the Case**

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

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

14 On July 30, 2018, DLR sent the parties a letter asking them to show cause
15 (Show Cause letter) why the unit placement dispute should not be resolved based on
16 the information summarized therein. The Show Cause letter also requested some
17 additional information. Neither party disputed the facts contained in the Show Cause
18 letter. Both parties provided information in response to the DLR's questions. The
19 Employer also provided updated information about the Financial Aid Office, where the
20 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.

1 has determined that there are no materially disputed facts and decides this matter
2 based on the following information.

3 **Background**

4 **AFSCME, Council 93, Local 507, Generally**

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

14 According to a "Functional Comparison Chart" submitted by the Employer,
15 AFSCME's bargaining unit also includes Financial Aid Office employees with the
16 following titles: Administrative Assistant I (Grade 15),² Administrative Assistant II (Grade
17 17), and EDP Programmer II (Grade 16). The AFSCME positions in the Financial Aid
18 Office do not require a college degree, but they do require experience with either office
19 management or data processing. The AFSCME bargaining unit is composed entirely of
20 hourly staff.

21

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.

1 ESU, Generally

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

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

20 The job descriptions as well as the Functional Comparison Chart submitted by
21 the Employer reflect that all the ESU bargaining unit positions in the Financial Aid Office
22 require a college degree in addition to anywhere from three to seven years of

1 experience working in Financial Aid. A majority of ESU unit members are salaried, but
2 a small group of them, not at issue here, are non-exempt and hourly.

3 Financial Aid Office

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

13 The Employer's response to the Show Cause letter reflects that there have been
14 several organizational changes to the Financial Aid Office since 2016. There are still
15 two Associate Directors, but their titles have changed to Associate Director, Counseling
16 and Communications (Associate Director, Counseling), and Associate Director of
17 Operations and Quality Assurance (Associate Director, Operations). The SLM now
18 reports to the Associate Director of Operations, instead of directly to the Director of
19 Financial Aid. Two AFSCME titles also report to the Associate Director of Operations:
20 the still-vacant Administrative Assistant II position and an EDP Programmer. Four ESU
21 titles report to the Associate Director, Counseling: the Financial Aid Counselor for
22 Scholarships (formerly, the Assistant Director for Scholarships, discussed below), the
23 Assistant Director, and two Financial Aid Counselors.

1 In 2016, all Financial Aid Office ESU bargaining unit members had their own
2 office except for the SLM. The SLM worked in the cubicle formerly occupied by the
3 Administrative Assistant I. As of the date of this decision, however, the workspace of all
4 financial aid counseling staff, including the SLM, had been moved to a centrally located
5 group of cubicles.

6 Job Descriptions of Specific Titles within the Financial Aid Office

7 Assistant Director of Financial Aid for Scholarships/Financial Aid Counselor for
8 Scholarships

9 During the investigation, the Employer contended that the Assistant Director of
10 Financial Aid for Scholarships, a Category 13 ESU position, was most comparable to
11 the SLM in terms of duties, and thus justified the SLM's placement in the ESU. In 2016,
12 the incumbent in this position reported to the Director of Financial Aid and managed all
13 scholarships administered by UMass Dartmouth. The Employer's response to the Show
14 Cause letter indicates that after the incumbent vacated the position, the position was
15 retitled to Financial Aid Counselor for Scholarships (Scholarships position), a Category
16 12 position, which reported to the Associate Director, Counseling. The job description
17 otherwise remained intact. Christine Mullen (Mullen) was hired in the Scholarships
18 position in May 2018. Mullen has an MBA in Finance, and a BA in Business.

19 The job description indicates that the incumbent in the Scholarships position is
20 responsible for maintaining a scholarship policy and procedure manual, which involves
21 researching current regulations. This employee also develops scholarship applications
22 and scholarship selection criteria. Additionally, the employee fulfills an educational

1 function by conducting financial workshops and seminars for stakeholders and providing
2 financial counseling to students.

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

7 AFSCME Administrative Assistant II

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

17 The job description lists a number of qualifications required at hire. Some of
18 these qualifications include the: “Ability to understand, explain and apply the laws, rules,
19 regulations, policies, procedures, specifications, standards and guidelines governing
20 assigned unit activities;” “Ability to write concisely, to express thoughts clearly and to
21 develop ideas in a logical sequence;” and “Ability to exercise sound judgment.” Under
22 “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.

1 Like other Administrative Assistant I titles, this position was categorized on the
2 AFSCME pay scale as a Grade 15.³ The last person to occupy this position, Linda
3 Sumner (Sumner), was at Step 14 and earned \$58,000 per year. Sumner did not have
4 a college degree.

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

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

³ There are fifty-six Grade 15 Administrative Assistant I's at UMass Dartmouth.

1 business administration or office management experience, but do require at least three
2 years of office work or clerical data entry experience.

3 Creation of the SLM Position

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

8 In her affidavit, the Director of Financial Aid Audra Callahan (Callahan) indicated
9 that she had observed that advances in technology had made some of the
10 Administrative Assistant I's functions obsolete by the time of Sumner's retirement on
11 June 18, 2016. In a May 31, 2016 email to Michele Berube, the Vice President of Local
12 507, the Employer's Director of Labor Relations, Kim Sylvia (Sylvia), similarly indicated
13 that software developments allowed staff and student to independently complete some
14 of the tasks that had previously required the assistance of the Administrative Assistant I.
15 For instance, whereas the Administrative Assistant I had supported other office
16 members by processing attendance forms and preparing travel arrangements, staff
17 members now manage their own attendance and travel-related documentation through
18 PeopleSoft. Furthermore, whereas the Administrative Assistant I had generated
19 promissory notes and transmitted them to the Department of Education, students now
20 complete an online application that is automatically sent to the Department of
21 Education.

22 Callahan also believed that compliance with new Federal regulations
23 necessitated replacing the Administrative Assistant I with a position requiring greater

1 student lending expertise. More specifically, before the creation of the SLM, the
2 Financial Aid Office did not have anyone to counsel students on loan indebtedness
3 pursuant to the College Cost and Reduction Act of 2007; provide status updates on
4 loans in repayment to the national credit bureaus pursuant to the Higher Education
5 Opportunity Act of 2008; or communicate the Pay-As-You-Earn repayment plan to
6 students pursuant to the Health Care and Education Reconciliation Act of 2010.
7 Therefore, Callahan, according to her affidavit, drafted the SLM job description using
8 similar exempt positions at other University of Massachusetts' campuses as models.

9 Human Resources reviewed the preliminary SLM job description and concluded
10 that the position was an exempt position under the Fair Labor Standards Act. Also
11 believing that the SLM was a professional level position that paralleled the Scholarships
12 position in terms of scope of responsibility and independence, Human Resources
13 concluded that the position should be placed in ESU's bargaining unit. After this, the
14 ESU Classification Committee, consisting of two ESU and two management members,
15 determined that the new position should be designated "Category 12." On May 27,
16 2016, the Employer and ESU executed a Memorandum of Understanding that placed
17 the SLM (as well as a second position not at issue here) in the ESU bargaining unit.

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

21 SLM Duties

22 According to the summary contained in the job description, the SLM is
23 responsible for administering all educational loans processed through the Financial Aid

1 Office. This employee also manages all functions of loan programs, including loan
2 origination, certification, disbursement, reconciliation, compliance and program integrity.
3 The SLM also exercises functional supervision of clerical staff and student employees.
4 The listed minimum qualifications for this position are a bachelor's degree and over
5 three years of work experience in either Financial Aid or loan operations/systems. At the
6 time of this investigation, the SLM was earning \$50,000 at Step 1 of this Category 12
7 position.

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

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

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

- 23 • Administer federal and private student loan programs in accordance with
24 federal/state financial aid regulations, program guidelines issued by the United

1 States Department of Education, and established institutional policies and
2 procedures.

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

22 Modified, Additional and New SLM Duties

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

30 Furthermore, according to this job duties comparison chart, the SLM position
31 assumed several duties that had previously been performed by the Director of Financial
32 Aid, including responsibility for financial aid informational activities and overseeing loan
33 reconciliation.

1 The same job duties comparison chart indicates that the SLM assumed several
2 newly-created tasks such as serving as the campus representative for private loan
3 request information; reviewing students who are close to the federal loan aggregate cap
4 and Subsidized Loan Eligibility Limits; developing and maintaining a default
5 management program; and initiating financial literacy workshops with students. Korinne
6 Peterson, the Director of Financial Aid at the time of the investigation, provided an
7 affidavit stating that the development and implementation of both the Subsidized Loan
8 Eligibility Limits (SULA) and the Loan Default program were new functions that required
9 the Student Loan Manager to exercise his discretion based on his knowledge of federal
10 regulations.

11 SLM Incumbent

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

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

⁴ The Employer’s response to the Show Cause letter indicates that Gentile is now known as Joseph Novinson.

1 accessing information through a variety of channels such as reading the U.S.
2 Department of Education's "Dear Colleague" letters.⁵

3 Gentile remained in this position until the winter of 2017, when he was promoted
4 to an Assistant Director role under the Associate Director, Counseling. As of the date of
5 this decision, the SLM title is vacant and its functions are currently being shared by two
6 ESU bargaining unit members: Amy Jones (Jones), whose title is Financial Aid
7 Counselor, and Sharon Gannon (Gannon), who is the Associate Director, Operations.
8 Both employees are paid extra compensation to perform these functions. Jones
9 oversees the Private Education Loan Functions that the SLM previously performed.
10 Gannon manages the Federal Director Loan functions. The University expects to fill the
11 SLM position in early September 2018.⁶

12 SLM Work Contacts

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."

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 Town of Athol, 36 MLC 188, 190, n. 5, CAS-10-3752 (May 7, 2010) (citing 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).

1 The SLM works directly and on a regular basis with other ESU bargaining unit
2 members in the Financial Aid office. The Director of Financial Aid, Associate Directors,
3 Scholarships position and SLM meet weekly to discuss changes to policy and
4 procedures as well as office operations. The SLM also meets with these ESU members
5 as needed to address loan processing questions and troubleshoot system issues as
6 well as to collaborate on the implementation of new policies and procedures. As
7 indicated above, the SLM also shares centralized cubicle office space with the ESU
8 financial aid counseling staff.

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

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

14 Grade 12 ESU Bargaining Unit Positions

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

20 The Outreach Counselor is responsible for "coordinat[ing] identified outreach
21 activities for selected federal Student Support service grant project participants [as well
22 as] assist[ing the] program director with research for program reports." The job
23 description explicitly mentions administering diagnostic tests, conducting orientation

1 sessions, and providing academic advising. The minimum qualifications for this position
2 include a bachelor's degree, but a master's degree is preferred.

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

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

19 The Staff Associate "provides expertise on Student Records functions in
20 PeopleSoft to produce an overall high quality academic record." This position is
21 responsible for managing academic and jeopardy processes and well as processes
22 associated with registration. The Staff Associate also manages all aspects of re-
23 admission and works with the AVCAA/Graduate Studies to resolve issues related to

1 graduate program transcript matters. The minimum qualifications for this position
2 include a bachelor's degree.

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

13 SLM Positions at Other University of Massachusetts Campuses

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

20 The UMass Lowell Student Loan Manager is a member of the professional staff
21 bargaining unit represented by SEIU, Local 888. The incumbent devotes approximately
22 45% of her time to matters such as administering programs in accordance with the
23 relevant United States Department of Education guidelines, managing loan processing,

1 resolving student eligibility issues, reconciling disbursements between the U.S.
2 Department of Education Common Origination and Disbursement (COD) and the
3 University's Student Information System (iSiS) databases, documenting institutional
4 policies, and serving as the campus representative of the annual Boston-Dartmouth-
5 Lowell (BDL) Private Loan Request for Information (RFI) process to select lenders for
6 the University's preferred lender list. This employee devotes 10% of her time to
7 developing a default program and another 10% of her time to conducting financial aid
8 informational activities (including literacy sessions). The Student Loan Manager also
9 supervises one to two staff members as well as three to five student employees.

10 At UMass, Boston, the Assistant Director of Student Financial Aid/Private Loans
11 Manager is a member of the professional staff bargaining unit (PSU, MTA/NEA). This
12 employee performs similar duties to the UMass Lowell Student Loan Manager.
13 According to the Private Loans Manager job description, the employee in this role is:

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

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

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

1 Student Loan Manager positions described above. According to the job description, this
2 employee

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

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

13 Opinion⁷

14 A unit clarification petition is the appropriate vehicle to determine whether newly-
15 created positions should be included in a bargaining unit. Sheriff of Worcester County,
16 30 MLC 132, 136, CAS-03-3543 (April 7, 2004). In analyzing whether a position should
17 be accreted into an existing bargaining unit, the CERB considers: 1) whether the
18 position was included in or excluded from the unit at the time the unit was originally
19 recognized or certified; 2) whether the parties' subsequent conduct, including bargaining
20 history, discloses that the parties considered the position to be in the bargaining unit;
21 and 3) whether the position shares a community of interest with other positions in the
22 existing bargaining unit. Town of Granby, 28 MLC 139, 141, CAS-3477 (October 10,
23 2001).

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

⁷ The CERB's jurisdiction is not contested.

1 unit's clerical and technical workers in 1997, the first prong of the three-part test is
2 inconclusive. The second prong of the accretion analysis is similarly inconclusive
3 without bargaining history or other conduct demonstrating that the parties considered
4 the SLM position as either included or excluded from AFSCME's bargaining unit. Town
5 of Somerset, 25 MLC 98, 100, CAS-3145 (January 6, 1999). Therefore, the third prong
6 of the three-factor test, community of interest, will be determinative in this matter.

7 Community of Interest

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

14 Where a position shares a community of interest with more than one bargaining
15 unit, the CERB places the position in the unit with which it shares the greater community
16 of interest. Board of Trustees, University of Massachusetts, 31 MLC 209, 215, CAS-04-
17 3577 (June 22, 2005). Here, the Employer's argument that the SLM is more
18 appropriately placed in ESU is persuasive because of the greater similarity of education,
19 training and experience, as well as similarity of skills and functions, between the SLM
20 and ESU members than with members of AFSCME's bargaining unit.

21 In particular, despite some overlap in duties between the SLM and the
22 Administrative Assistant I, the SLM position was created to ensure that UMass
23 Dartmouth, like its counterparts at UMass Boston and Lowell, had an employee with

1 sufficient expertise and experience to ensure compliance with new Federal regulations
2 arising out of student loan legislation that was enacted from 2007 – 2010. Thus, the
3 SLM position, like the other ESU positions in the Financial Aid Office, requires a college
4 degree as well as prior experience in financial aid or loan systems. By contrast, none of
5 the AFSCME titles require college degrees, and the two administrative assistant titles in
6 the Financial Aid office were not required to have any specialized background in loan
7 processing or financial aid. Moreover, while the Administrative Assistant I and II in the
8 Financial Aid Office were responsible for implementing *existing* policies and procedures,
9 the SLM is responsible for developing *new* procedures based on new federal
10 regulations and programs, such as SULA and the Loan Default program. The level of
11 discretion and expertise needed to perform these duties is like that exercised by the
12 incumbent in the Scholarships position when maintaining the scholarship policy and
13 procedure manual in accord with current regulations

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

1 the position is filled also demonstrates this position's congruence of expertise, skill level
2 and duties with other ESU titles.

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

6 Conclusion

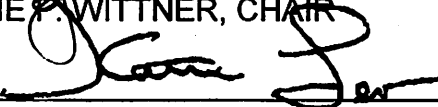
7 In sum, other than the fact that the SLM performs some of the same duties that
8 Sumner performed as the Administrative Assistant I in the Financial Aid office, there is
9 no evidence that the SLM shares a stronger community of interest with AFSCME's unit
10 than with ESU's unit. Rather, the evidence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

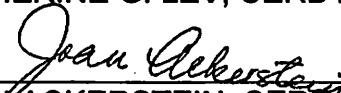
⁸ Because the analysis of community of interest is determinative, it is unnecessary to reach the question of whether the SLM is a professional employee within the meaning of M.G.L. c. 150E, §1.

1 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD


MARJORIE F. WITTNER, CHAIR


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