

COMMONWEALTH OF MASSACHUSETTS  
BEFORE THE LABOR RELATIONS COMMISSION

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In the Matter of

UNIVERSITY OF MASSACHUSETTS

and

INTERNATIONAL BROTHERHOOD OF  
POLICE OFFICERS

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Case No. CAS-03-3563

Date Issued:  
June 29, 2005

Commissioners Participating:

Allan W. Drachman, Chairman  
Helen A. Moreschi, Commissioner  
Hugh L. Reilly, Commissioner (Dissenting)

Appearances:

Richard Ong, Esq. - Representing the University of Massachusetts  
Robert Dickson - Representing the International Brotherhood of  
Police Officers, NAGE, AFL-CIO

DECISION<sup>1</sup>

1 Statement of Case

2 The International Brotherhood of Police Officers, NAGE, AFL-CIO (Union or  
3 IBPO) filed the above-referenced petition with the Labor Relations Commission  
4 (Commission) on December 15, 2003 seeking to accrete police cadets (Cadets) into an  
5 existing bargaining unit of employees that it represents at the University of  
6 Massachusetts, Amherst campus (University or Employer).



1 Local 432 of the Union and the Employer are parties to a collective bargaining  
2 agreement (Agreement) that was effective by its terms from July 1, 2000 to June 30,  
3 2003. The Agreement covers both Units A and B. Article I of the Agreement, titled  
4 "Recognition," states in pertinent part:

5 The Employer recognizes the Union as the sole and exclusive bargaining  
6 agent for the purposes of establishing wages, hours, standards of  
7 productivity and performance and other terms and conditions of  
8 employment for all full-time and regular part-time employees in the  
9 bargaining units presently certified by the Labor Relations Commission or  
10 consented to by the parties.

11  
12 Should any new classified classifications(s) be added to the work force,  
13 the Employer shall notify the Union of such new classification(s). The  
14 Employer and Union shall consult to mutually determine if such new  
15 classification(s) shall be added to the bargaining unit. If the parties cannot  
16 agree, the matter may be referred to the State Labor Relations  
17 Commission by either party, with a request that the Commission make that  
18 determination.

19  
20 There are at least two other non-academic bargaining units on the Employer's  
21 Amherst campus. AFSCME Council 93 (AFSCME) represents a bargaining unit of  
22 approximately 850–900 trade, maintenance and security employees including the  
23 position of Institutional Security Officer (ISO) II.<sup>4</sup> SEIU Local 888 (formerly Local 509)  
24 represents a bargaining unit of exempt employees, including those employees who  
25 supervise ISO II's.

26 Police Cadet Program

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<sup>4</sup> The Commission certified AFSCME Council 93 as the exclusive representative of that bargaining unit in Case No. SCR-2231. Other titles in that unit include Animal Caretaker, Electrician, Launderer, Cook, Plumber and Steamfitter, Painter, Trades Worker, Maintainer, and Metal Worker. On August 23, 2004, the Commission notified AFSCME of the pendency of the instant petition and requested that it notify the Commission by September 10, 2004 if it had an interest in the positions at issue in the petition. AFSCME did not respond.

1           On an unspecified date in 2002, the University laid off two of the three ISO II's,  
2 leaving only one ISO II on the Amherst campus. In or around November 2002, the  
3 Employer's Department of Public Safety announced the creation of a new policing  
4 initiative, the "Police Cadet Program" (the Program). The purpose of the Program was  
5 to train and employ college students majoring in law or law enforcement to assist  
6 campus police officers in their daily duties. These students did not need to matriculate  
7 at the University.

8           Chief of Police Barbara O'Connor (Chief O'Connor) implemented the Program.  
9 .The University issued a working draft of the Program's policies and procedures  
10 (Working Draft) on or about November 27, 2002. The University also issued a Fact  
11 Sheet regarding the Program on some unspecified date and two Forms 30 for the  
12 position. Although both the Form 30's are dated November 30, 2002, their contents are  
13 slightly different, as discussed in more detail below.

14           The Fact Sheet and the Working Draft state that the purpose of the Program is  
15 "to help ensure the safety of the campus, to serve the community in assuring their  
16 personal welfare, to reduce the impact of crime and to assist the University's police  
17 officers as their 'eyes and ears' while on patrol." Cadets are appointed pursuant to, and  
18 have police powers under, M.G.L. c. 75, §32A, including certain limited arrest powers.<sup>5</sup>

19           Cadets must be at least 18 years old and high school graduates enrolled in a  
20 college or university pursuing a degree in law enforcement. Cadets must hold and

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<sup>5</sup> M.G.L. c. 75, §32A states in pertinent part that: "The trustees may appoint as police officers persons in the employ of the university who in the enforcement of said rules and regulations and throughout university property shall have the powers of police officers, except as to service of civil process."

1 maintain a 2.5 Grade Point Average (GPA) throughout their employment and provide  
2 proof of their GPA before the beginning of each semester.

3 Cadets must be able to successfully pass a Criminal History (CORI) and Registry  
4 of Motor Vehicle (RMV) background investigation, a detailed personal background  
5 investigation and possess an active driver's license for passenger vehicles. Once hired,  
6 Cadets must obtain certifications in Automatic External Defibrillator and First Aid and  
7 CPR, as required under M.G.L. c. 111, §201. Cadets receive 160 hours of in-house  
8 training.<sup>6</sup>

9 The University hires all Cadets as "CC/03" or hourly employees. The starting  
10 hourly rate for all Cadets, regardless of experience, is \$12.00 an hour. They receive no  
11 health insurance or retirement benefits. Under the terms of the Working Draft, Cadets  
12 who work more than eight (8), continuous hours are paid time and a half their hourly  
13 wage (\$18.00 an hour). Cadets work only when the University is in session, i.e. not  
14 during school vacations or summer recess.

15 Cadets wear a uniform provided by the University and carry handcuffs, pepper  
16 spray and a baton. They are not otherwise armed. They are expected to conduct all  
17 patrols on foot and are prohibited from asking for, or accepting rides from, campus  
18 Police Officers. They are permitted to use campus radios.

19 The University has hired twenty-six (26) Cadets since the Program's inception in  
20 April 2003. Seventeen (17) of those Cadets were still employed as of January 2005.

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<sup>6</sup> The first class of Cadets also received training from the Intermittent Police Officer Training Program established by the Massachusetts Municipal Police Training Committee. However, a supplementary affidavit provided by Chief O'Connor states that all outside training was subsequently eliminated due to cost considerations.

1 They work an average of 8 to 16 hours a week. One Cadet, who assists Chief  
2 O'Connor in administering the Program, works 20 hours a week. The University plans  
3 to employ thirty (30) Cadets in fall 2005.

4 As a rule, the Cadets receive daily supervision and direction from Lieutenants or  
5 Sergeants. Chief O'Connor assigns the Cadets to different shifts and assignments,  
6 taking into account their class schedule. Chief O'Connor also forwards e-mails to the  
7 Cadets or the shift supervisors if she needs the Cadets to perform a specific  
8 assignment.

9 Once Cadets graduate, they are no longer eligible to be Cadets and are  
10 terminated. Cadets who fail to maintain a 2.5 GPA are also subject to termination or  
11 non-renewal. Three Cadets have been terminated and/or suspended for cause by Chief  
12 O'Connor since the Program began.<sup>7</sup>

13 The second Form 30<sup>8</sup> for the Cadets states in pertinent part:

14

15 Supervision Received

16

17 Works under the direct supervision of an employee of higher grade who  
18 assigns and reviews work for proper performance and conformance with  
19 State and University laws, rules, regulations, instructions and procedures.

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<sup>7</sup> A supplementary affidavit provided by Chief O'Connor in response to the Commission's show cause letter indicates that Lt. Thomas O'Donnell, who is a member of Local 432 B, disciplines the Cadets. Chief O'Connor does not otherwise dispute that she has terminated and/or suspended three Cadets.

<sup>8</sup> As noted above, the University prepared two slightly different Form 30's, both dated November 30, 2002, describing the Cadet position. The "Detailed Statement of Duties and Responsibilities" contained in the first Form 30 is identical to that set forth in the Police Officer Form 30, with only one exception. Unlike Cadets, Police Officers "safeguard monies and securities from University and Federal repositories to and from the bank, and furnish escort services as required." The differences between the first and second Cadet Form 30's (and, by extension, between the second Cadet Form 30 and the current Police Officer Form 30) are set forth in notes 9-14, infra.

1 The senior most police officer may act as Officer-in-Charge of a shift, in  
2 the absence of a person of higher grade.

3 General Statement of Duties and Responsibilities

4  
5 Patrols assigned areas of property used, owned or occupied by the  
6 University of Massachusetts and areas adjacent to the University to  
7 provide a safe and secure environment for all members of the University  
8 community by means of an alert and vigilant preventive patrol;  
9 investigates crimes and enforces State laws as well as the rules and  
10 regulations of the University; delivers a wide variety of service consistent  
11 with the needs of the University, its students, staff and visitors,<sup>9</sup> performs  
12 related work as required.

13  
14 Detailed Statement of Duties and Responsibilities

- 15  
16 1. Exercises police powers under M.G.L. c. 75, §32A in the detection and  
17 apprehension of law violators; investigates crimes and complaints; by  
18 policy, arrest powers are limited.<sup>10</sup>  
19  
20 2. Patrols lands of the University ensuring the protection of persons and  
21 property, being observant for criminal activity, or anything which might  
22 endanger life, health and safety or result in theft or damage to property  
23 and reports same to police for the appropriate action to be taken.<sup>11</sup>  
24  
25 \* \* \*  
26 6. Maintains order at the scene of special events, whether scheduled or  
27 unscheduled, upon the lands of the University, in limited  
28 circumstances, as directed by a Police Supervisor.<sup>12</sup>  
29  
30 7. Conducts limited investigations and submits necessary accurate  
31 reports as related to the enforcement of State, local laws and  
32 University rules and regulations.<sup>13</sup>  
33

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<sup>9</sup> The first Cadet Form 30 included the phrase “may provide emergency coverage in various classifications.”

<sup>10</sup> The first Form 30 omitted the phrase “by policy arrest powers are limited.”

<sup>11</sup> The first Form 30 omitted the phrase “to police.”

<sup>12</sup> The first Form 30 prepared for this position omitted the phrase, “in limited circumstances, as directed by a Police Supervisor.”

<sup>13</sup> The first Form 30 omitted the word “limited.”

1 8. Identifies criminal offenders, makes apprehensions as limited by policy  
2 when required and participates in court proceedings as needed.<sup>14</sup>  
3

4 \* \* \*

5 12. Ensures that all prisoners in their care are processed in accordance  
6 with departmental Policies/Procedures.  
7

8 13. May provide emergency first aid and other calls for professional  
9 assistance as required.  
10

11 14. Acquires and demonstrates specialized law enforcement skills; may  
12 participate in various community crime prevention programs,  
13 departmental outreach programs.  
14

15 As of March 2005, the Cadets' duties include conducting foot patrol and prisoner  
16 watches; providing assistance in the police station as needed; issuing summonses for  
17 simple misdemeanors; watching cruisers; checking doors; entering buildings (as far as  
18 the lobby) to speak with dormitory staff; monitoring doors for search warrants; providing  
19 first aid (appropriate to their level of training) outside buildings, unless directed by a  
20 supervisor.

21 The University also states that the Cadets' duties are changing and that, at some  
22 unspecified future date, the Cadets will be assigned to conduct dormitory security, a  
23 function that neither the Police Officers nor the ISO II's perform.

#### 24 Bargaining History

25  
26 On December 4, 2002, Union National Representative Robert Dickson (Dickson)  
27 wrote a letter to University Labor Relations Administrator Nicholas Marshall (Marshall)  
28 stating that Dickson had recently met with members of Locals 432A and B

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<sup>14</sup> The first Form 30 prepared for this position omitted the phrase "as limited by policy."

1 regarding the Program. Dickson expressed the Union's concern over this staffing  
2 change and asked to negotiate over its impact on unit members' terms and conditions of  
3 employment, if any, as well as the possibility of accreting the Cadets into Local 432.

4 Dickson wrote a second letter to Marshall on December 4, 2002 summarizing  
5 Local 432A & B's position with respect to the Program. The letter set out six proposals  
6 regarding the Program's impact on the bargaining units, including proposals relating to  
7 overtime, layoffs, and compensation for the bargaining unit members who would train  
8 Cadets. The sixth and final proposal states: "The University (U-Mass) will recognize  
9 these cadets as Unit C of Local 432 IBPO."<sup>15</sup> Marshall replied to Dickson's letter on  
10 December 18, 2002. With respect to whether Cadets should be included in the Union,  
11 Marshall wrote:

12 The Police Cadets will be college students majoring in Criminal Justice,  
13 who will work about 10 (ten) hours per week. This position is intended to  
14 provide a degree of supplemental Public Safety protection on campus.  
15 However, the main focus of the program is to provide a ready and known  
16 group of recruits for future police officer positions. We believe these  
17 employees, given their relatively low weekly hours, are not appropriate for  
18 the unit.

19  
20 On January 30, 2003, Dickson wrote to Marshall asking to impact bargain over  
21 four matters relating to the implementation of the Program: overtime, reduction-in-force,  
22 supervision and training.

23 On February 24, 2003, the Union sent a memo to Chief O'Connor and Marshall  
24 regarding the Program. Handwritten notes at the bottom of the memo indicate that a

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<sup>15</sup> At the informal conference, the Union provided a marked-up copy of this letter, on which the word "okay" is handwritten next to four out of five of the Union's proposals. Handwritten next to the Union's proposal that the University recognize the Cadets in Unit C are the letters "LB", purportedly standing for "Labor Board."

1 meeting was held on March 7, 2003 at which the parties reached agreement as to  
2 certain layoff and overtime issues. Next to the handwritten agenda item, "unionize as  
3 unit C" were the letters "LRC."

4 The parties ultimately agreed to certain conditions surrounding the start-up and  
5 implementation of the Program, as reflected in an unsigned, undated Memorandum of  
6 Agreement, which states:<sup>16</sup>

- 7 1. No overtime opportunity will be created or filled by a cadet, nor shall  
8 cadet assignments be made to reduce overtime opportunities for  
9 regular, full-time officers.
- 10 2. Generally, the cadets will work no more than 16 hours per week.
- 11 3. There shall be no reduction in force, reduction of hours, nor demotions  
12 due to budgetary constraints for any regular full-time patrolmen,  
13 sergeants, and lieutenants so long as the cadet program exists. All  
14 cadet work will cease, and the program abolished if a reduction in  
15 force of regular full-time officers occurs.
- 16 4. Training of cadets will be conducted on a primarily overtime basis for  
17 the instructors who are regular full-time officers of the U-Mass Police  
18 Department.
- 19 5. One unit-A (patrolman) member will be assigned as a liaison for the  
20 cadets and the department on an overtime basis for 8 hours on every  
21 Friday and Saturday night from April 1, 2003 (approx.) to the end of  
22 the semester, May 15, 2003 (approx.)
- 23 6. The cadet program will be reviewed by the University and the Union  
24 as needed and at the end of the program (May 15, 2003 – approx.)  
25  
26  
27  
28  
29

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<sup>16</sup> Although the Memorandum of Agreement was never signed, the University does not dispute that it accurately reflects the terms of the parties' agreement.

1 Duties and Responsibilities of ISO II's and Police Officers

2

3 ISO II's

4

5 The University contends that the Cadets' functions are similar to those of the ISO

6 II's. The Form 30 for the ISO II states in pertinent part:

7 General Statement of Duties and Responsibilities

8 Patrols and protects University buildings, grounds, equipment and  
9 personnel as well as students, visitors, against possible loss or damage  
10 from such causes which may endanger public safety . . .

11

12 Detailed Statement of duties and responsibilities

13

14 1. Patrols University buildings, property and parking lots in order to  
15 ensure their security, detects and prevents fire or other hazards and  
16 prevents theft and damage to property. Notifies University police  
17 officers of presence of known trespassers. Calls for assistance as  
18 necessary and ensures that responsible parties are notified.

19

20 2. Performs regular campus patrol in assigned areas and takes proper  
21 steps in calling for assistance when criminal activity or anything that  
22 would endanger the University community is observed. Documents  
23 observations of noteworthy incidents occurring during tours of duty.

24

25 3. Directs automobile traffic on University property, enforces parking  
26 regulations, issues parking tickets and prevents unauthorized use of  
27 parking facilities.

28

29 4. Searches University property, both on campus and at remote locations  
30 . . . and assists University police officers.

31

32 5. Provides emergency first aid to victims, other University personnel,  
33 students, and general public and calls for assistance as necessary.  
34 Provides assistance to employees, students, and general public as  
35 required during adverse weather conditions and other emergency  
36 situations.

37

38 6. Operates a motor vehicle in order to transport employees, students,  
39 general public and materials as necessary. Assists University police  
40 officers with transportation observation and care of prisoners . . .

41

42 7. Assists University police officers at immediate scene of motor vehicle  
43 or other accidents and/or complaints, as necessary. Appears in court

1 to testify for the University as a witness to certain criminal acts or  
2 parking violations which have occurred . . . .

3  
4 8. Controls crowds during emergencies or special events, by maintaining  
5 order among staff, students and visitors; may evacuate areas and  
6 directs traffic as necessary. Assists University police with bomb scare  
7 evacuations as required.

8  
9 9. May exercise functional supervision over a few student employees  
10 assigned to work in an emergency situation.

11  
12 ISO II's must be high school graduates and have some knowledge of first aid at  
13 hire. Within one year after appointment, they are required to obtain certification in First  
14 Aid and CPR. ISO II's must also possess a valid Class D Massachusetts License to  
15 operate vehicles.

16 Police Officers

17  
18 The Union contends that the Cadets should be accreted into the Police Officer  
19 unit.<sup>17</sup> University Police Officers are full-time employees that are on duty at the  
20 University 365 days a year. Under the provisions of Chapter 467 of the Acts of 2004,  
21 Police Officers must be at least 21 years of age. There are approximately forty-two (42)  
22 members of Unit A.<sup>18</sup>

23 The Form 30's for University Police Officers (dated 1/28/85) and Cadets, set forth  
24 above, contain identical descriptions under the headings, "General Statement of Duties  
25 and Responsibilities" and "Supervision Received." Under the heading "Direct Reporting

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<sup>17</sup> At the informal conference, the Union stated that it would prefer the Commission to place the Cadets into a separate "Unit C." However, in a letter dated January 7, 2005, the Union states that it would be "far easier to absorb the Cadets into the existing unit of patrol officers at the University of Massachusetts."

<sup>18</sup> There are approximately ten (10) members of Unit B - two (2) lieutenants and eight (8) sergeants.

1 Staff”, the Police Officer Form 30 states: “Institutional Security Officers, Student  
2 Security.”<sup>19</sup>

3 As set forth in footnote 8, above, the “Detailed Statement of Duties and  
4 Responsibilities” contained in the original Cadet Form 30 is identical to the Police  
5 Officer Form 30, with one exception relating to safeguarding and transporting money.  
6 The differences between the second Cadet Form 30 and the Police Officer Form 30 are  
7 set forth in notes 9-14, above.

8 Under the heading “Qualifications Required at Hire,” the Police Officer Form 30  
9 states as follows:

- 10 1. Successful completion of the requirements of Physical Agility testing;
- 11 2. Oral interview and recommendation by the Community Review Board;
- 12 3. Recommendation upon completion of psychological evaluation test;
- 13 4. Certification of medical physical examination as set by the standards of  
14 the Massachusetts Criminal Justice Training Council;
- 15 5. Physical ability and alertness necessary to perform duties;
- 16 6. Ability to maintain good order and acceptable personal demeanor  
17 under periods of stress, verbal and physical abuse, danger and  
18 emotional tension;
- 19 7. Ability to deal effectively with all members of the University community  
20 and with the public;
- 21 8. Ability to work in all types of weather conditions/climates;
- 22 9. Ability to recognize fire, health and safety hazards;
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30

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<sup>19</sup> The Commission takes administrative notice of the fact that, as described in Board of Trustees of the University of Massachusetts, 28 MLC 225, 229 (2001), the University employs a number of University students who provide security in the dormitories. Because the Police Officer Form 30 predates the creation of the Cadet position, the Commission presumes that the reference to Student Security refers to the student dormitory security officers and not to the Cadets at issue here.

- 1 10. Ability to follow verbal and written instructions;  
2  
3 11. Possession of a valid Massachusetts License to operate motor  
4 vehicles;  
5  
6 12. Completion of a background investigation; No conviction record of a  
7 felony;  
8  
9 13. Oral interview by the Executive Director of the Division of Public  
10 Safety.  
11

12 Under the heading "Skills Acquired on the Job," the Form 30 states that Police  
13 Officers must obtain certification in firearms proficiency twice a year and graduate from  
14 an approved police academy or the Massachusetts Criminal Justice Training Council.

15 **Police Officers attend the Police Academy for 22 weeks.** In addition to carrying  
16 handcuffs, a baton and pepper spray, they are authorized to carry a handgun, shotgun,  
17 and taser. Police Officers also perform the following duties not specifically set out in the  
18 Form 30:

19 Assist Federal Bureau of Investigation; Accident investigation; Drunk-  
20 driving arrests; Issues motor vehicle citations; Evidence maintenance;  
21 Detective duties; Computer crimes; Hate crimes; Weapon call; Felony  
22 investigations; Arrest for all offenses; Drug investigations; Crime scene  
23 fingerprints; Undercover investigations; Mounted police; Bike patrol; Traffic  
24 duty; Crowd control; Special weapons; Patrol remote campus property;  
25 Computer aided dispatch & dispatch function; Desk duty; K-9 officer;  
26 Arrest warrants and search warrant execution; Rape aggression instructor;  
27 Operate cruiser including high-speed pursuits; Response to large  
28 disturbances; Identification kit investigation; Rape investigation; Overtime  
29 details including large-scale concerts; Write policy;<sup>20</sup> Child safety seat

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<sup>20</sup> The University provided no details regarding what policies, if any, Police Officers have written.

1 technician; Firearms training and instruction in firearms, baton, and O.C.<sup>21</sup>  
2 defensive tactics.<sup>22</sup>

3 The Chief of Police or Deputy Chief of Police disciplines the Police Officers.  
4 Police Officers are also eligible to be promoted to sergeant, lieutenant and/or deputy  
5 chief.

6 Opinion

7 A CAS petition is a procedural vehicle that permits the Commission to clarify or  
8 amend the scope of an existing bargaining unit. To determine whether a position  
9 should be accreted into an existing bargaining unit, the Commission traditionally  
10 considers three factors: 1) whether the position was included in the unit at the time it  
11 was originally recognized or certified; 2) whether subsequent bargaining history reflects  
12 that the parties considered the position to be included in the unit; and 3) whether the  
13 position shares a community of interest with other positions in the existing bargaining  
14 unit. Randolph School Committee, 27 MLC 25, 26 (2000); Town of Somerset, 25 MLC  
15 98, 100 (1999); Hanover School Committee, 24 MLC 83, 87 (1998). The purpose of  
16 this test is to ascertain and give effect to the mutual intent of the parties.  
17 Massachusetts Port Authority, 5 MLC 1844, 1851 (1979). However, where the position  
18 sought to be accreted did not exist at the time of the original certification, and the parties  
19 have not otherwise agreed to include or exclude that position since it was created, the  
20 Commission attempts to ascertain the presumed intent of the parties by examining the  
21 nature of the work performed by unit employees and determining whether this is the

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<sup>21</sup> The record does not reflect what "O.C." means.

<sup>22</sup> The University provided the information contained in this and the preceding paragraph in response to the Commission's show cause letter.

1 kind of work that the parties reasonably would have included in the unit at the time of  
2 certification. Id., citing Boston School Committee, 5 MLC 1628 (1979).

3 Here, the Cadet position was created in November 2003, approximately 27 years  
4 after the Commission first certified the Union's bargaining units. Accordingly, the first  
5 prong of the accretion test is inconclusive.

6 Next, we must examine whether subsequent bargaining history reflects that the  
7 parties considered the position as included in the unit. Absent bargaining history to  
8 support a finding that the parties addressed and resolved the unit placement of the  
9 contested position, the Commission will find that it is unable to determine whether the  
10 parties explicitly agreed to exclude the contested position from the bargaining unit.  
11 Town of Somerset, 25 MLC at 100. Here, the record reveals that on several occasions  
12 when the parties were impact bargaining over the Program, the Union proposed that the  
13 University accrete the Cadets into its existing unit. The record reveals that the parties  
14 did not reach agreement on this issue, and that the Union chose instead to have the  
15 Commission decide the unit placement issue. Because the parties did not resolve the  
16 unit placement of the Cadets, the analysis under the second portion of the accretion test  
17 is also inconclusive.

18 We must therefore decide whether the Cadets share a community of interest with  
19 the Police Officers represented by Local 432A of the Union. Preliminarily, we address  
20 the University's suggestion that, as a matter of policy, the Commission should avoid  
21 creating units that consist of, or include, 03 employees, because 03 employees are not  
22 eligible for the health insurance or retirement benefits available to public employees  
23 under M.G.L. c. 32 and 32A. The Commission will not deprive 03 personnel, as a class,

1 of collective bargaining rights based solely on the fact that they are paid from an 03  
2 account. Board of Regents of Higher Education Southeastern Massachusetts  
3 University (Board of Regents), 11 MLC 1486 (1985). Rather, the Commission  
4 presumes that individuals who perform services for a public employer for compensation  
5 and with supervision are public employees as defined in Section 1 of M.G.L. c. 150E  
6 (the Law), regardless of the source of their compensation. Id. at 1497. This  
7 presumption may be rebutted by evidence that the employer does not retain control  
8 over the individual worker. Id.

9 In the present case, there is no dispute that the Cadets perform services for a  
10 public employer for compensation and that their work is supervised daily by lieutenants  
11 and/or sergeants, with oversight by the Chief of Police. As stated in the prior  
12 paragraph, the fact that the Cadets may not be eligible for certain benefits that other  
13 employees receive from the University does not negate their status as statutory  
14 employees. Board of Regents, 11 MLC at 1496. We therefore conclude that the  
15 Cadets are employees within the meaning of M.G.L. c. 150E and turn to the issue of  
16 whether the Cadets share a community of interest with the Police Officers.

17 To determine whether employees share a community of interest, the Commission  
18 considers factors like similarity of skills and functions, similarity of pay and working  
19 conditions, common supervision, work contact and similarity of training and experience.  
20 Waltham School Committee, 25 MLC 137, 139 (1999). The Commission traditionally  
21 favors broad, comprehensive units over small, fragmented units. Higher Education  
22 Coordinating Council, 23 MLC 194, 197 (1997). No single factor is outcome  
23 determinative. Town of Ludlow, 27 MLC 34 (2000) citing City of Worcester, 5 MLC

1 1108, 1111 (1978). Community of interest does not require an identity of  
2 interest, provided there is no inherent conflict among consolidated groups  
3 of employees. Town of Somerset, 25 MLC at 100 citing Franklin Institute of Boston, 12  
4 MLC 109 (1985). The Commission has consistently found a community of interest  
5 among employees who share a similarity of interests and working conditions based  
6 upon common supervision and similar work environment. Springfield Water and Sewer  
7 Commission, 24 MLC 55, 59 (1998) (citations omitted).

8 As described above, there are notable differences in the hours, pay benefits and  
9 training of Cadets and Police Officers. Police Officers work year-round, while Cadets  
10 work during the school year only, for an average of 8-16 hours weekly. Cadets are not  
11 eligible for University health insurance or retirement benefits or for promotion to  
12 positions in Unit B or above. Police Officers are required to attend a 22-week Police  
13 Academy, while Cadets receive 160 hours of in-house training. Cadets do not carry  
14 guns, nor do they use cruisers to patrol University lands.

15 The University argues that these differences, particularly the differences in  
16 benefits, will inevitably lead to conflicts in the bargaining unit, as the Cadets will become  
17 frustrated by the inability of the University to provide them with certain benefits due to  
18 their 03 status. However, a difference in benefits, standing alone, does not demonstrate  
19 a "fundamental divergence in community of interest." Board of Regents, 11 MLC at  
20 1498. Rather, they may merely reflect the gains achieved by unionized workers as a  
21 result of collective bargaining. Id.

22 Moreover, the Commission has placed part-time or hourly employees in units  
23 with their full-time or salaried counterparts where there is other evidence that both

1 groups share a community of interest. See, e.g., Town of Seekonk, 30 MLC 121, 127  
2 (2004) (part-time high school library pages included in library employee unit); Town of  
3 Milford, 22 MLC 1625, 1630 (1996) (same); Town of Sturbridge, 29 MLC 156 (2003)  
4 (part-time firefighters included in firefighter unit); Worcester County, 17 MLC 1352, 1360  
5 (1990) (temporary employees held to have a community of interest with permanent  
6 employees despite differences in training and lack of benefits and step increases);  
7 Town of Sterling, 4 MLC 1704 (1978) (regular part-time hourly police officers shared a  
8 community of interest with regular full-time police officers). **Accordingly, we do not find**  
9 **that the foregoing differences in working conditions between the Cadets and Police**  
10 **Officers are so significant as to produce inevitable conflicts in the bargaining unit. We**  
11 **therefore turn to the similarities in the Cadets' and Police Officers' working conditions to**  
12 **determine whether they otherwise share a community of interest.**<sup>23</sup>

13 As reflected on their respective Form 30's, the general duties and responsibilities  
14 of both positions, and the supervision they receive, are identical. Both positions are  
15 charged with performing a variety of patrol and security functions to ensure the safety of  
16 the University's property, employees and students, under the direction and supervision  
17 of lieutenants or captains. Both positions are subject to discipline by the Chief of Police  
18 and are appointed pursuant to M.G.L. c. 75, §32A. Moreover, the Cadets necessarily  
19 have frequent and regular contact with the Police Officers, because the Cadets function  
20 as the Police Officers' "eyes and ears" while on patrol. **Although the extent of the**  
21 **Cadets' police powers are more limited than those of the Police Officers, at their core,**

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<sup>23</sup> Because AFSCME has not intervened in this proceeding, we need not address the University's argument that the Cadets are more similar in function to the ISO II's who are members of AFSCME Council 93's unit.

1 both positions provide a variety of security functions that protect the University's  
2 property, employees, and students, under similar, if not identical supervision and  
3 working conditions.

4 This case is therefore analogous to Board of Trustees, University of  
5 Massachusetts/Lowell, 23 MLC 273 (1997), where the Commission concluded that  
6 campus ISO's, police officers, residence hall security officers, and dispatchers formed  
7 an appropriate unit for bargaining because of their shared roles in providing campus  
8 security, although in a variety of different ways. We similarly conclude that, based on  
9 their common security functions and work environment, the Cadets share a community  
10 of interest with the Police Officers sufficient to justify their accretion into Unit A.

11 In so holding, we reject the University's argument that accreting the Cadets into  
12 the unit would cause them to bargain with their supervisors. There is no evidence, and  
13 the University does not contend, that the Police Officers who are members of Unit A  
14 supervise the Cadets. Moreover, assuming without deciding that the police sergeants  
15 and lieutenants who comprise Unit B are true supervisors, the Union seeks to accrete  
16 the Cadets into Unit A, not Unit B. The Commission's traditional concerns about placing  
17 supervisors in the same unit with the employees that they supervise therefore do not  
18 apply in this situation. See, e.g., Town of Bolton, 25 MLC 62, 67 (1999).

19 We also reject the University's argument that the Cadets should be given the  
20 opportunity to express their intentions in an election because they have not indicated to  
21 the University that they wish to be represented in any bargaining unit. The Commission  
22 has recognized that some proposed accretions will involve groups of employees whose  
23 number or other characteristics may raise a question concerning representation such as

1 to warrant election. See, e.g., Waltham School Committee, 25 MLC 137, 140 n. 17  
2 (1999); Massachusetts Laborers' District Council, 15 MLC 1178, 1180-1181 (1988),  
3 citing City of Worcester, 11 MLC 1363, 1366 (1986). However, where there is no  
4 evidence that a question of representation exists, employees in newly-created positions  
5 properly may be accreted without first having an election into an existing bargaining unit  
6 with which they share a community of interest, and are properly governed thereafter by  
7 the unit's choice of exclusive representative. Massachusetts Laborers' District Council,  
8 15 MLC at 1180.

9       The Commission has previously found a question of representation to exist  
10 where: 1) the number of employees sought to be accreted exceeds the number of  
11 employees in the existing unit, see, e.g., Massachusetts Bay Transportation Authority,  
12 20 MLC 1330 (1993); or 2) the positions sought to be accreted either existed,  
13 unchanged, at the time of the original certification or recognition, and/or the positions  
14 have been intentionally excluded from the unit by the parties since they were created.  
15 See, e.g., Waltham School Committee, 25 MLC at n. 17, citing Town of Agawam, 2  
16 MLC 1367 (H.O. 1976) (discussing Ladish Co., 176 NLRB 150 (1976)). See also City of  
17 Worcester, 11 MLC at 1366. Because neither of those circumstances is present in the  
18 instant case, the University has failed to demonstrate that the accretion of the Cadets

1 raises a question concerning representation sufficient to warrant an election.<sup>24</sup>

2 Conclusion

3 Based on the foregoing, we determine that Cadets are appropriate for inclusion  
4 in Unit A of the bargaining unit currently represented by the Union and we hereby direct  
5 that they be included in that unit. The Unit A bargaining unit description shall be  
6 amended to include the Cadets.

7 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

\_\_\_\_\_  
ALLAN W. DRACHMAN, CHAIRMAN

\_\_\_\_\_  
HELEN A. MORESCHI, COMMISSIONER

8 Commissioner Reilly's Dissent

9  
10 On December 15, 2003, the International Brotherhood of Police Officers (IBPO)  
11 filed the Petition For Clarification Or Amendment (Petition) in this case. The Petition

\_\_\_\_\_  
<sup>24</sup> In City of Worcester, supra, the city filed a unit clarification petition seeking to accrete fire alarm operators into a unit of police dispatchers. The Commission dismissed that petition partly because the fire alarm operators had not had the opportunity to vote on whether they wanted to be included in the police dispatchers' union. 11 MLC at 1366. The Commission also dismissed the petition, because the fire alarm operators existed at the time the police dispatchers' unit was certified. The Commission specifically held that dismissal of the petition would be appropriate on those grounds alone. Id. at 1366. Here, because the Cadets did not exist at the time the Police Officers were certified as a bargaining unit, City of Worcester is materially distinguishable from the instant case. Therefore, the fact that the Cadets have not expressed their position regarding this petition does not, without more, alter our conclusion that this petition fails to raise a question concerning representation.

1 describes the existing bargaining unit as “Full time police officers, sergeants (sic),  
2 lieutenants, and captains”. Employees excluded are “Deputy Chief, Chief and all other  
3 employees”. It identifies the “disputed position(s)” as “Police Cadets (Student Officer)”.  
4 The reason stated for including the Police Cadets in the IBPO’s existing bargaining unit  
5 is that they are “performing police duties on or about the UMASS campus under the  
6 supervision of regular full time officers.”

#### 7 The Investigation

8  
9 The Commission, through its agent, conducted an investigation of the Petition.  
10 The investigation produced the following information. There are two bargaining units at  
11 UMASS represented by the IBPO, Unit A and Unit B. In Unit A, there are approximately  
12 42 Patrol Officers. In unit B there are ten employees, two lieutenants and eight  
13 sergeants. As of January 2005, there were 17 Police Cadets; UMASS intends that, by  
14 the Fall of 2005, the Police Cadets would number about 30.

15 The investigation shows that UMASS and the IBPO negotiated a Memorandum  
16 of Understanding (MOU) which states:

- 17 1. No overtime opportunity will be created or filled by a cadet, nor shall  
18 cadet assignments be made to reduce overtime opportunities for  
19 regular, full-time officers.  
20
- 21 2. Generally, the cadets will work no more than 16 hours per week.  
22
- 23 3. There shall be no reduction in force, reduction of hours, nor demotions  
24 due to budgetary constraints for any regular full-time patrolmen,  
25 sergeants, and lieutenants so long as the cadet program exists. All  
26 cadet work will cease, and the program abolished if a reduction in force  
27 of regular full-time officers occurs.  
28
- 29 4. Training of cadets will be conducted on a primarily overtime basis for  
30 the instructors who are regular full-time officers of the U-Mass Police  
31 Department.  
32

- 1           5. One unit-A (patrolman) member will be assigned as a liaison for the  
2           cadets and the department on an overtime basis for 8 hours on every  
3           Friday and Saturday night from April 1, 2003 (approx.) to the end of the  
4           semester, May 15, 2003 (approx.)  
5  
6           6. The cadet program will be reviewed by the University and the Union as  
7           needed and at the end of the program (May 15, 2003-approx.)  
8

9           There is no information in the record suggesting that the Cadets were represented when  
10          the MOU was negotiated between UMASS and the IBPO, that they represented  
11          themselves, or otherwise participated in the negotiation of the MOU in any way.

12          For present purposes, a detailed side-by-side comparison of the job duties of the  
13          regular full-time patrol officers (Patrol Officers) and the Cadets is not necessary. In  
14          general, though, it is accurate to say that the Cadets are students, and not, like Patrol  
15          Officers, full-time employees; Cadets are paid on an hourly basis and work about 16  
16          hours per week, and are not, like Patrol Officers, full-time salaried employees; Cadets  
17          receive no compensation beyond their hourly rate and, unlike Patrol Officers, do not  
18          receive non-salary benefits such as health insurance and pensions; Cadets receive  
19          initial orientation and training that is similar to Patrol Officers, but do not have as much  
20          training or experience; that some of the more basic duties of Cadets and Patrol Officers  
21          overlap, but that more substantial duties are reserved for Patrol Officers; and that while  
22          ultimate supervision is the same for Cadets and Patrol Officers, Cadets report to Patrol  
23          Officers on a day-to-day basis; and Cadets' schedules accommodate the UMASS  
24          holiday and vacation schedule, unlike Patrol Officers, who work full-time year-round.<sup>25</sup>

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<sup>25</sup> These differences, contrary to the conclusion of the majority, must be analyzed to determine whether an accretion is appropriate. Town of Wenham, 26 MLC 41, 42 (1999). When they are analyzed here, it is apparent that there is "no community of interest", and that "accretion" is, therefore, not appropriate.

## 1 Issue Presented and Answer

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3

4 The issue presented is: should the Cadets be “accreted” into the bargaining unit  
5 of Patrol Officers represented by the IBPO. The majority answers that question “yes”,  
6 but for reasons that follow, I answer “no”.

7

8

## Reasons To /Answer “No”

9 “Accretion” is the practice of merging or absorbing one group of employees into  
10 an existing bargaining unit without the employees’ vote. It is not required by any  
11 provision of c. 150E, M.G.L., but is justified only by certain policy reasons said to  
12 support it. Accretion is not the rule, but an exception to the rule.

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Because I think that employees have the right to decide for themselves whether  
or not to be represented by an employee organization or deal directly with their  
employer on employment issues, and, if they decide to be represented, to select that  
organization, I dissent from the majority’s decision to accrete the Cadets into the unit of  
Patrol Officers.

There are a number of subsidiary points that will be treated separately.

25

## Employee Free Choice

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<sup>26</sup> 10 MLC 1016 (1983).

1 employees by secret ballot or other means which guarantee employee free choice.<sup>27</sup>  
2 Similarly, where a sample ballot modification could have been construed as the  
3 Commission's support for an election outcome, the Commission overturned the election  
4 because "the Commission seeks to 'ensure . . . that employees voting in a  
5 representation election exercise free and informed choice.'<sup>28</sup> And the Commission  
6 evaluates election campaign materials against their having "a reasonable tendency [for  
7 the document] to interfere with employee free choice."<sup>29</sup> One might reasonably wonder  
8 why the Commission has all of this concern about the niceties of the conduct of an  
9 election, but not with whether employees get an election at all.

#### 10 Accretion Analysis

11 The Commission does employ/allow accretions of unrepresented employees to  
12 existing bargaining units. The general standard appears to take three steps, proceeding  
13 one to the other only if the prior step is "inconclusive":

- 14 1) Examine the original certification and determine whether the sought  
15 employee classifications were included in the original certification.  
16
- 17 2) If that examination is inconclusive, examine the parties' subsequent  
18 conduct including successive collective bargaining agreements to  
19 determine whether the employee classifications were considered by  
20 the parties to be included in the bargaining unit.  
21
- 22 3) Failing that, examine the community of interest between the  
23 employees sought and the employees already in the unit.<sup>30</sup>  
24

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<sup>27</sup> Id. at 1019 (emphasis added).

<sup>28</sup> Commonwealth, Administration & Finance, 10 MLC 1053, 1056 (1983).

<sup>29</sup> Commonwealth, Administration & Finance 7 MLC 1293, 1295 (1980).

<sup>30</sup> City of Lowell, 8 MLR 1328, 1329-1330 (1981).

## Missing Element

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3 The employee “free choice” concerns reflected above are simply missing from  
4 the three stage accretion analysis listed in City of Lowell. Nevertheless, the  
5 Commission has been uneasy with such a serious and substantial omission. In City of  
6 Lowell, itself, the Commission dismissed the petition because “[s]uch an accretion  
7 clearly would deprive the majority of the members of the proposed unit of the  
8 opportunity to select the bargaining representative of their choice.”<sup>31</sup> That possible  
9 exception to the three-step test would appear to be limited to cases where the  
10 “accreted” group is larger than the existing unit.

11 That is not so under another statement of the exception, however. In City of  
12 Worcester,<sup>32</sup> the Commission stated the rule more generally and with no restriction:

13 We are ordinarily cautious in placing disputed employees in a bargaining  
14 unit through the vehicle of an accretion because we are reluctant to  
15 impose a bargaining representative on employees who have not elected to  
16 be so represented. Massachusetts Port Authority, 5 MLC 1844, 1851  
17 (1979). The Fire Alarm Operators have not had the opportunity to vote on  
18 whether they want Local 495 to represent them. We decline to make that  
19 decision for them.<sup>33</sup>

## Analysis and Conclusion

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23 As has been shown, “accretion” is a doctrine of uncertain limits that that  
24 undermines that premise of the Law that employee organizations become exclusive  
25 representatives through employees’ free choice. Nothing presented during the

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<sup>31</sup> Id. at 1331.

<sup>32</sup> 11 MLC 1363 (1985).

<sup>33</sup> Id. at 1366.

1 Commission's investigation gives an indication, one way or the other, how the Cadets  
2 would vote on representation, for the IBPO, for another employee organization, or for no  
3 representation.<sup>34</sup> Where, as here, the Cadets have not voted, and where, as here, the  
4 IBPO and UMASS negotiated a MOU that can be read as having adverse impact upon  
5 the Cadets, a question concerning representation is unavoidably presented. In such a  
6 situation, accretion is not the answer, but, upon a sufficient showing of interest, an  
7 election is.<sup>35</sup>

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Hugh L. Reilly, Commissioner

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<sup>34</sup> There is simply no factual basis here for the majority's presumption that each Cadet's vote can be presumed to be the same as each Patrol Officer's, or that the Cadets in the aggregate would vote the same as the Patrol Officers in the aggregate. No one would suggest that political elections should be decided by the vote count at the end of the first hour's voting. Neither should employees' elections for bargaining representatives be determined by how others vote. How one person or group of people vote is a demonstrably unreliable indicator of how another person or group of people will vote. Moreover, here, not a single Patrol Officer or Cadet has voted or will vote on their wishes regarding a bargaining unit that includes both Patrol Officers and Cadets; the Patrol Officers arrived too soon, and the Cadets arrived too late.

<sup>35</sup> "In appropriate cases, employees may be given the choice of being represented by the incumbent in an existing unit, or not being represented by any union, in an 'add on' election." City of Worcester at 1366 n. 3.