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Panel: Higher Education Issues at Public sector Labor Boards

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Higher Education Issues at Public Sector Labor Boards

Marjorie F. Wittner
Chair, Commonwealth Employment Relations Board
National Center for Collective Bargaining in Higher Education
April 3, 2016
Collective Bargaining Law
MA Public Sector

Full rights granted to most employees in 1973
  • Include supervisors
No right to strike
No binding interest arbitration
  • Excludes public safety personnel

Hearing Officers conduct probable cause investigations, and ULP and rep. hearings

Dismissals and decisions appealable
  • Commonwealth Employment Relations Board (CERB)
  • Further appeal to state appellate courts

Allows certification by written majority authorization (2007)
1976: CERB first considers whether student status and employee status can coexist

“The fact that [medical interns and residents] may be students for some purposes and employees for others, should not deprive them of their rights under M.G.L. c 150E.”

Adopts case by case approach

QUESTION IS: Whether “employee status rises to a level significant enough to effect the policies of the Law and thereby come within the ambit of its protection.”

REASONING: “That house officers receive an educational benefit cannot overcome the fact that patient care functions are the services for which house staff are compensated and hospitals bill.”
Board of Trustees, 5 MLC 1896 (1979)

CERB addresses CB rights of graduate students performing academic related work at employing institution

**Dismisses** petition filed by Union to represent graduate assistants, et al. at UMass Amherst

CERB concludes:

- Collective bargaining over wages, hours and conditions of employment would necessarily impact directly on academic policy, financial aid policy and admissions policy
- Employment aspects outweighed by student aspects

"The extent of supervision and evaluation belies a contention that the purveyance of quality education by the teaching assistants is the primary University concern."
1991: UMass Amherst voluntarily recognizes, on the basis of an election, UAW/GEO as exclusive representative of a single campus unit of TA’s and RA’s at Amherst campus.

1994: UAW/GEO files petition to represent TA’s and RA’s at UMass Lowell. CERB revisits 1979 grad student decision. Concludes that TA’s and RA’s at UMass Lowell are public employees within the meaning of the Law and that a unit comprised of such employees is an appropriate unit.
I. Whether students fall within statutory definition of employee;

II. Whether students are casual/temporary employees;

III. Is proposed unit an appropriate bargaining unit;

IV. Does fact that they are students at same institution that employs them preclude them from exercising collective bargaining rights?
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<tr>
<th>Case Name/Unit Sought</th>
<th>Employee Status</th>
<th>Casual Employee</th>
<th>Appropriate Bargaining unit</th>
<th>Bargaining Rights Effectuate purpose of Law?</th>
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<td>1994: Grad students UMass Lowell 20 MLC 1453 (1994)</td>
<td>Yes Not contested. Reportable tax income, required job duties, close supervision. Subject to discharge and discipline.</td>
<td>No Work 18 hrs a week, 90% work at least two semesters</td>
<td>Yes Single Lowell campus. Based on bargaining history at Lowell, where f/t faculty organized into campus specific bargaining units.</td>
<td>Yes Declined to infer a negative impact on education policies where employer voiced no general opposition or cited specific examples. Relies on dichotomy between mandatory and permissive subjects to address bargaining concerns</td>
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| 2002: Undergrad Resident Assistants and Community Development Assistants. First undergrad unit in country. 28 MLC 1450 (2002) | Yes  
Not contested. Objective and subjective criteria include tax, workers comp., discipline, RA manuals, rigorous selection, supervision and evaluation process. Concluded that Univ. treated RAs primarily as employees, not students. | No  
RA's appointed for at least one year and work at least 20 hours a year. Renewed employment offered to approximately 360 RA's and CDA's a year. | Yes  
Campus specific unit is appropriate. Share a unique community of interest based on identity of virtually all terms and conditions of employment. | Yes  
Vast majority of terms and conditions of employment divorced from student’s academics. Need only be a student and maintain 2.2 (now 2.5) GPA. Relies on 1994 decision re: bargaining intruding into academic concerns. |
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<td>2015: “Peer Mentor” add-on to undergrad RA unit. 41 MLC 233 (2015)</td>
<td>Yes Like RA's, PM's perform work for compensation and with supervision.</td>
<td>No Found sufficient regularity of employment based on 15 hour workweek, for one or two academic semesters, and continued employment based on satisfactory academic and work performance.</td>
<td>Yes Share a community of interest with RA's. Differences in academic and compensation requirements not dispositive as identity of interest not required. Live in same residence halls, collaborate, similar goal of supporting students</td>
<td>Yes Academic duties relate to other students, not their own course of study. Fact that UMass had plans to change to more academic program found too speculative to warrant denying CB rights at this time.</td>
</tr>
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2000 – UAW/GEO files petition seeking to represent grad student CPE faculty as well as other unrepresented CPE faculty at UMass Amherst. Faculty unit (MSP) intervenes. University voluntarily recognizes MSP as exclusive representative of all existing MPS bargaining unit members who also teach CPE courses at UMass Amherst.

2001 - UAW/GEO amends petition to seek only grad student instructors at CPE. Embarks on campaign for UMass to voluntarily recognize it. Results in UMass filing a strike petition against UAW/GEO based on 5-hour delay in turning in of summer session grades, and alleged sick-out. Strike petition is dismissed. UAW/GEO and James Shaw, 28 MLC 91 (2002).

2010 – UAW/GEO files written majority authorization petition to represent part-time faculty at UMass Lowell. Part-time faculty expressly excluded from unit (unlike UMass Boston, Amherst). **UMass, Lowell, 36 MLC 2015 (2010)**. After CERB issues ruling on numerous objections, DLR certifies UAW/GEO as the exclusive representative of "regular part-time faculty who teach students on a less than full-time basis, including but not limited to adjunct faculty and lecturers, but excluding all faculty who hold full-time appointments..."

2014 – MPS files a unit clarification petition seeking to represent all CPE instructors not otherwise represented for purposes of collective bargaining. CERB dismisses petition. **UMass, Amherst, 41 MLC 25 (2015)**.
1976: CERB issues decision addressing composition of faculty bargaining unit at UMass, Amherst. Rejects assertion that Department Heads are supervisors and includes them in unit. UMass, Amherst, 3 MLC 1179 (1976).

• University tests certification by refusing to bargain.
• Parties settle by agreeing to hold self-determination election among supervisors.
• Department Heads vote not to be represented.
• All subsequent CBAs exclude them.
2014 – MSP files petition for add-on election for Department Heads at UMass Amherst and Boston. CERB dismisses petition. Finds that Department Heads have greater supervisory duties that they did not have in 1976 and, thus, including them in faculty unit would create conflicts that did not exist when unit first certified. UMass, Amherst and Boston, 41 MLC 277 (2015).

2015 – MSP files petition to represent Department Heads at UMass Boston in a separate unit. Parties enter into consent election agreement. Mail ballot election was held last month.
2015 – Is a contract provision stating that:

[Not more than 15% of an academic department's total number of three (3) credit courses and sections shall be taught by part-time employees during an academic year

enforceable in light of statute granting the Board of Higher Education (covering state and community colleges other than UMass) authority to "appoint, transfer, dismiss, promote and award tenure to all personnel of said institution?"
**Yes**

CERB affirms HO decision rejecting statutory argument.

**Board of Higher Education, 41 MLC 217 (2015) (on appeal).**

- Provision does not interfere with or limit appointment of specific person to specific position
- Provision does not prohibit colleges from employing part-time faculty
- Provision establishes a part-time to full-time ratio that CERB viewed as a procedural mechanism for establishing complement of faculty who will deliver educational services
- Comes into play only *after* making policy decision of how many students to admit and how many classes to offer
Questions?