

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of

CITY OF BOSTON

and

SALARIED EMPLOYEES OF NORTH  
AMERICA, LOCAL 9158

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Case No.: MUP-14-3514

Date Issued: June 18, 2015

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Hearing Officer:

Susan L. Atwater, Esq.

Appearances:

Jillian M. Ryan, Esq. - Representing the Salaried Employees of  
North America, Local 9158

Restilda Dhroso, Esq. - Representing the City of Boston

**HEARING OFFICER'S DECISION AND ORDER<sup>1</sup>**

**SUMMARY**

1 The issue is whether the City of Boston (City or Employer) violated  
2 Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General  
3 Laws, Chapter 150E (the Law) by unilaterally transferring bargaining unit work to  
4 non-unit personnel. For the reasons explained below, I find that the City violated  
5 the Law by transferring the duties previously performed by bargaining unit  
6 employee Cheryl Brown (Brown) to non-bargaining unit employee Meagan

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<sup>1</sup> I gratefully acknowledge the assistance of former DLR intern Christopher Blessing.

1 Seaman (Seaman) without giving the Salaried Employees of North America,  
2 Local 9158 (SENA or Union) prior notice and an opportunity to bargain about the  
3 decision and the impact of the decision on employees' terms and conditions of  
4 employment.

5 STATEMENT OF THE CASE

6 On February 26, 2014, SENA filed a charge of prohibited practice with the  
7 Department of Labor Relations (DLR), alleging that the City had engaged in  
8 prohibited practices within the meaning of Section 10(a)(5) and, derivatively,  
9 Section 10(a)(1) of the Law. The DLR investigated the Union's charge and issued  
10 a complaint of prohibited practice on June 5, 2014, alleging that the City failed to  
11 bargain in good faith by transferring bargaining unit work to non-unit personnel  
12 without giving the Union prior notice and an opportunity to bargain to resolution  
13 or impasse over the transfer and the impacts of the transfer on employees' terms  
14 and conditions of employment.

15 Nicholas Chalupa, Esq., a duly designated Hearing Officer formerly  
16 employed by the DLR, conducted a hearing on February 24, 2015, at which both  
17 parties had the opportunity to be heard, to examine witnesses and to introduce  
18 evidence. After the hearing, the Union filed a Motion to Re-open the record,  
19 which Hearing Officer Chalupa denied.<sup>2</sup> The parties filed post-hearing briefs on  
20 or about April 21, 2015. Based on the record evidence, which includes witness  
21 testimony, stipulations of fact, and documentary exhibits, and in consideration of

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<sup>2</sup> The Union did not appeal Mr. Chalupa's ruling.

1 the parties' arguments, I make the following findings of fact and render the  
2 following opinion.<sup>3</sup>

3 STIPULATIONS OF FACT

- 4 1. The City is a public employer within the meaning of Section 1 of the Law.
- 5
- 6 2. SENA is an employee organization within the meaning of Section 1 of the
- 7 Law.
- 8
- 9 3. SENA is the exclusive representative of middle managers throughout the
- 10 City of Boston.
- 11
- 12 4. Cheryl Brown is a member of the bargaining unit.
- 13
- 14 5. Prior to June 9, 2010, Brown held the position of Unit Manager in the
- 15 Boston Centers for Youth & Families (BCYF).
- 16
- 17 6. On June 9, 2010, the City notified Brown that it was eliminating her Unit
- 18 Manager position as a result of the cost saving measures that the City was
- 19 taking to address serious financial constraints.
- 20
- 21 7. On or around July 21, 2012, the City filled a non-unit Assistant Director of
- 22 Program Coordination position (ADPC).<sup>4</sup>
- 23

24 FINDINGS OF FACT

25 Background Information on BCYF

26 The Boston Centers for Youth & Families, a youth and human services  
27 agency located in Boston, Massachusetts, provides various types of educational

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<sup>3</sup> On April 3, 2015, the DLR notified the parties that Hearing Officer Chalupa would be leaving the DLR's employ and gave them the option to re-try the case or authorize the DLR to assign it to a different hearing officer for decision. Both parties subsequently agreed to allow a different hearing officer to decide the case based on the transcript, the hearing exhibits, and the parties' briefs.

<sup>4</sup> There are two BCYF positions with the title of ADPC. One position is located in the Programming Division (Programming ADPC); the other position is located in the Recreation Division (Recreation ADPC). The non-unit position filled on July 21, 2012 was the Programming ADPC.

1 and recreational programming for adults and children in Boston communities at  
2 approximately 35 sites. There are four separate divisions which make up BCYF:  
3 Administrative Services, Recreation, Youth Development & Family Services  
4 (Youth Services), and Programming.<sup>5</sup> The Division for Recreation and the  
5 Division for Programming are each managed by a Director who is not in SENA's  
6 bargaining unit.<sup>6</sup> There are non-unit ADPC positions in both the Recreation and  
7 Programming Divisions which report to the Director.

8 The Programming Division encompasses early childhood programs, the  
9 Girls' Program, Camp Joy,<sup>7</sup> the Tiny Tots Program, and after-school and out-of-  
10 school programming. The after-school programs that existed during the relevant  
11 events of this case were licensed by the Commonwealth of Massachusetts

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<sup>5</sup> The Recreation Division merged with the Parks and Recreation Department in or around February 2015.

<sup>6</sup> The responsibilities of each director center on different BCYF programs, and the job descriptions for the director positions list some very different duties. For example, the Director of Recreation uniquely develops public awareness campaigns related to improving quality of life through recreation programs, directs and coordinates the use of recreational facilities through a computerized permitting system, and expands the use of available technologies to create a more effective and efficient Recreation Division. The job description for the Director of Programming includes: "assess training needs of program staffs; develop, coordinate and implement training programs" and "ensure that all federal, state and city laws, regulations and policies regarding staff and program licensing and operations are implemented and adhered to," duties which are not included on the Director of Recreation job description.

<sup>7</sup> Camp Joy is a therapeutic recreation program for special needs students.

1 through the Department of Education.<sup>8</sup> Out-of-school programs do not have the  
2 same licensing limitations as the after-school programs did, and include a variety  
3 of programs such as a “drop-in” teen program, a tutoring program, a homework  
4 assistance program, or a recreational program.

5 BCYF has more than 400 employees, approximately 90 of whom are  
6 members of the SENA bargaining unit. There are two SENA stewards in BCYF,  
7 David Hinton (Hinton) and Robert Hickey (Hickey). Because BCYF is spread out  
8 over many different sites, the two stewards generally become aware of a labor  
9 issue once a SENA member brings it to their attention.

#### 10 **Brown’s Tenure and Duties at BCYF**

11 Brown has worked for the City since 1990. In 2001, the City promoted  
12 Brown to Unit Manager of after-school and out-of-school programs, a position  
13 which is located in the Programming Division and included in SENA’s bargaining  
14 unit. As Unit Manager, Brown had a variety of duties, including creating and  
15 increasing the capacity of quality after-school and out-of-school programs at local  
16 community sites; managing the licensing for the after-school programs;  
17 managing the budget, staffing, supplies and transportation issues for Camp Joy;  
18 and supervising the program managers in the Programming Division.

19 Brown’s duties increased and evolved during her tenure as Unit Manager.  
20 Between 2001 and 2008, she was assigned responsibilities including conducting  
21 staff trainings; overseeing Youth Services and supervising the Youth Services

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<sup>8</sup> Licensed after-school programs have various restrictions, i.e. staff/participant ratios and the square footage of the community site.

1 Unit Manager; and overseeing City Roots – an alternative educational program  
2 for high school students - and the City Roots Program Manager. In 2008, Brown  
3 was given additional duties and an additional job description for the Unit Manager  
4 Training and Compliance Officer position. In this capacity, Brown was  
5 responsible for coordinating City-wide staff trainings with the Office of Human  
6 Resources; maintaining a monthly calendar of various BCYF Academy trainings;<sup>9</sup>  
7 and ensuring that the BCYF's after-school, out-of-school, and summer programs  
8 followed their licenses, and the program staff complied with training and  
9 credentialing requirements. There is no evidence that Brown shared her specific  
10 duties in either of her titles with any non-unit employees.<sup>10</sup> Brown's job duties  
11 as Unit Manager and her additional duties as Unit Manager Training and  
12 Compliance Officer, as they appear on the City's job descriptions, are  
13 reproduced below:

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<sup>9</sup> Brown's calendar duties concerned the small BCYF training opportunities which occur throughout the year. These year-round trainings differ from the BCYF Academy itself, which is the annual, two-day training for BCYF staff. Many BCYF employees, including Brown, were involved in the annual two-day training. Brown's responsibilities during the annual two-day training involved receiving registrations and ensuring that BCYF employees found their way to the correct classrooms. Non-bargaining unit employee Carol Senter (Senter), who at that time was the Associate Director of Operations, had the overall responsibility for the annual two-day training, and her responsibilities including securing the facility, food, and trainers.

<sup>10</sup> As is detailed below, Brown had supervisory responsibilities over certain employees, i.e. the program managers in the Programming Division. Other BCYF positions at the director level also held personnel management responsibilities. However, the evidence does not show that the BCYF's non-unit directors performed the same management responsibilities as Brown, a bargaining unit level Unit Manager. Brown did not share duties with either of the ADPC positions because the City created those positions after Brown's layoff.

1 Unit Manager

2 Brief Job Description (essential functions of the job): The Unit Manager shall be  
3 responsible for developing and implementing activities to strengthen and expand  
4 BCC's<sup>11</sup> after-school programming, including:

- 5
- 6 • Hiring evaluation, supervision, and training of the After-School Program  
7 Managers;
- 8
- 9 • Developing and implementing after-school training and support program  
10 for BCC staff;
- 11
- 12 • Developing strategies for improving academic support provided by after-  
13 school programs;
- 14
- 15 • Developing support and technical assistance relationships with BCC sites  
16 around after-school program issues;
- 17
- 18 • Working in collaboration with partner organizations on issues of  
19 expansion, new programs, and quality improvements;
- 20
- 21 • Assisting in implementing a process to distribute BCC after-school  
22 funding; and
- 23
- 24 • Oversight of BCC's after-school budget and after-school program  
25 contracts.
- 26

27 Unit Manager Training and Compliance Officer

28  
29 Job Description:

30 Under the direction of the Executive Director or his/her designee, the Unit  
31 Manager-Training and Compliance Officer, will be responsible for developing and  
32 implementing trainings and workshops to strengthen and expand the  
33 Department's staff development and compliance needs. This will include  
34 developing and providing workshops and trainings to support BCYF staff,  
35 research and recruit outside trainers, tracking training and certifications, and  
36 implementing a recognition program for staff.

37  
38  
39 Basic Responsibilities:  
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<sup>11</sup> The record does not define the term BCC. However, the record discloses that BCYF previously had a different name, which may explain the acronym.

- 1 1. Develop a career lattice for BCYF positions; coordinate process for its  
2 approval;
- 3
- 4 2. Lead on-going Departmental Training Team;
- 5 3. Research and publish a regular calendar of training opportunities;  
6 coordinate and monitor enrollment;
- 7
- 8 4. Track staff trainings and trainers; work with appropriate staff to create and  
9 maintain Departmental database;
- 10
- 11 5. Track compliance with regulatory agencies (e.g. Office of Early Education  
12 and Care, Department of Education, Department of Public Health, City of  
13 Boston's Inspectional Services Department, and others);
- 14
- 15 6. Issue completion forms to staff who participate in trainings;
- 16 7. Coordinate and monitor job shadowing, job mentoring and City internships  
17 and training opportunities for BCYF staff;
- 18
- 19 8. Evaluate trainings held for BCYF staff;
- 20 9. Implement other aspects of the Staff Development and Training Plan; and
- 21 10. Oversee and support Divisional teams as they review job descriptions and  
22 identify credentials and necessary trainings for staff.
- 23

#### 24 **The City Eliminates Brown's Unit Manager Position**

25  
26 Beginning in 2009, following the market crash of 2008 and the resulting  
27 decrease in local aid from the state, BCYF entered into a two year period of  
28 layoffs. By the end of 2010, BCYF had eliminated nearly 40 positions, including  
29 Brown's position. Diane Joyce (Joyce), the BCYF Director of Programming,  
30 informed Brown on June 9, 2010 that the City was eliminating her position due to  
31 fiscal constraints. During their meeting, Joyce told Brown that the City was  
32 eliminating after-school and out-of-school time programming. Brown's layoff took  
33 effect on June 30, 2010.

1           Brown exercised her contractual right to “bump” into a different position  
2 within BCYF on July 1, 2010. The new position, Program Manager/Executive  
3 Assistant, was in the Recreation Division of BCYF, rather than the Programming  
4 Division, where Brown had worked as Unit Manager. The duties of the new  
5 position were different from Brown’s Unit Manager duties, and the salary was  
6 lower than the Unit Manager salary.

7           The City and SENA engaged in general impact bargaining following the  
8 2010 layoffs. At the time of those bargaining sessions, the City still had funding  
9 for the after-school division, but was planning to eliminate the licensed after-  
10 school programs. During conversations with the Union regarding Brown’s  
11 position, City representatives discussed eliminating the after-school programs,  
12 and stated that to close out the after-school division, Joyce would take on  
13 Brown’s duties and responsibilities to “finish off” whatever was left until the after-  
14 school program division was done. City representatives also informed SENA that  
15 they were “exploring a different model of programming” because of the strict  
16 guidelines in the after-school licensing process.<sup>12</sup>

17           As it was downsizing, the BCYF devised a new programming model to  
18 maximize its community services despite its newly limited resources. This

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<sup>12</sup> The record does not explain the extent to which the City advised the Union about its plans for changing its programming after eliminating the licensed after-school programs. BCYF’s former Director of Administration and Finance Noah Stockman (Stockman) testified that the BCYF wanted to continue to provide after-school programs through different models, but he did not specifically describe what the City told the Union about its plans.

1 involved, among other things, shifting the focus from licensed after-school  
2 programming toward a model of out-of-school programming. BCYF ceased  
3 licensing after-school programming at the five community sites which still  
4 maintained the required licenses. Individual sites could still retain the licenses for  
5 after-school programming, but BCYF would no longer pay the costs associated  
6 with them.

7       Some of Brown's duties ended with the elimination of her position,  
8 specifically, maintaining and disseminating a monthly calendar of BCYF  
9 Academy trainings, ensuring BCYF's compliance with City licensing and  
10 credentialing requirements for licensed after-school programs, and any  
11 responsibilities related to the after-school building capacity grant.<sup>13</sup> There is no  
12 evidence on the record detailing which of Brown's specific duties Joyce  
13 performed, or how long Joyce performed them. The record also does not  
14 describe whether Brown's duties that were not associated with the licensed after-  
15 school programs or the after-school capacity building grant continued to be  
16 performed between Brown's layoff and Seaman's hire into the Programming  
17 ADPC position.

18 **The City Eliminates the PAA Position and Creates the Recreation ADPC**  
19 **Position**

20  
21       In or about February of 2011, bargaining unit member David Burns  
22 (Burns) resigned his SENA Principal Administrative Assistant (PAA) position in

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<sup>13</sup> The record makes clear that the after-school building grant no longer exists, but contains few details regarding when or why it began and ended.

1 the BCYF's Recreation Division. The City did not fill his position, and it became  
2 vacant. Also in 2011, the City identified a need for an ADPC position for the  
3 Recreation Division. Because the SENA PAA position was vacant, the City  
4 decided to replace the PAA position with an ADPC position in the Recreation  
5 Division.<sup>14</sup>

6 By letter dated October 21, 2011, the City notified SENA of its intent to  
7 eliminate the PAA position and fund a new, non-unit ADPC position. Attached to  
8 the letter was the ADPC job description. SENA objected and, during a meeting  
9 on November 17, 2011, expressed its belief that the City was unlawfully  
10 transferring some of the PAA job duties to the new Recreation ADPC position.  
11 The City communicated its view that the PAA position should not have been  
12 classified as a SENA title, and that the ADPC position would be exempt because  
13 its duties were different than the duties of the PAA position.<sup>15</sup>

14 Union President John Zuccaro (Zuccaro) reiterated the Union's position to  
15 the City by letter dated November 28, 2011. The City expressed its disagreement  
16 by letter dated December 14, 2011, referencing the PAA position that was under

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<sup>14</sup> The City submitted a summary table during its opening statement to illustrate how it eliminated two existing positions and replaced them with two newly-created positions. The summary shows that the City eliminated the PAA position and created the ADPC position in the Recreation Division, and eliminated the non-unit Community Learning Coordinator position and created the ADPC position in the Programming Division. The summary was not introduced into evidence but is used here as a graphic aid. See generally, Goldstein v. Gontarz, 364 Mass. 800, 814 (1974).

<sup>15</sup> The record does not describe the job duties of the PAA position.

1 discussion. The City's December 14, 2011 letter states in pertinent part that:  
2 "...the department has reorganized and Program Managers are now in one  
3 division and all are expected to report to the Assistant Director of Program  
4 Coordination. This position is responsible for supervising the Program  
5 Managers, ensuring new programs are developed, serving as lead in addressing  
6 on-going personnel and labor issues and helping to create and implement  
7 standards and policies for department programs..." No further communication  
8 occurred between the parties regarding the proposed Recreation ADPC position  
9 and, in late January of 2012, the City moved forward to post the Recreation  
10 ADPC position. The record does not indicate when the City filled the Recreation  
11 ADPC position.<sup>16</sup>

12 SENA filed an unfair labor practice charge at the DLR on March 14, 2012,  
13 which the DLR docketed as Case No. MUP-12-1628, arguing that the City  
14 unilaterally transferred the bargaining unit work of the PAA position to the  
15 Recreation ADPC position. The Union withdrew its charge on August 22, 2012  
16 following an in-person investigation at the DLR.<sup>17</sup>

17 **Seaman transfers into the Programming ADPC Position**

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<sup>16</sup> It is clear from the testimony of BCYF Director of Operations Michael Sulprizio (Sulprizio) that the City filled the Recreation ADPC position at some point.

<sup>17</sup> The reason the Union withdrew the charge is in dispute. The Union contends that it withdrew the charge because the City decided not fill the position of Recreation ADPC position; the City asserts that the Union withdrew the charge because the Union could not produce the PAA job description. I need not resolve the dispute as it is immaterial to the resolution of this case.

1           On or about July of 2012, the City transferred Seaman into a new ADPC  
2 position in the Programming Division.<sup>18</sup> The job descriptions of the ADPC for  
3 Recreation and ADPC for Programming are identical, but the duties and  
4 responsibilities associated with those two positions are performed in two different  
5 divisions of BCYF.<sup>19</sup> By letter dated January 18, 2013, the City informed Erin  
6 Cunningham (Cunningham), a SENA member, that Seaman would be her new  
7 supervisor. The City copied three other individuals on the letter, but did not  
8 forward it to any SENA representative.

9           The City did not notify SENA of its intention to create a separate ADPC  
10 position in the Programming Division, it did not notify SENA of Seaman's transfer  
11 into that position, and it did not notify SENA that Seaman would be performing  
12 duties that Brown previously performed. Although the BCYF currently employs  
13 individuals in unit manager positions, there is no evidence that the City ever re-  
14 created Brown's Unit Manager position following its elimination on June 30, 2010.

15 **The Overlap between Seaman's Job Duties as Programming ADPC and**  
16 **Brown's Unit Manager Job Duties in 2010**

17  
18           The essential duties of the Programming ADPC, as identified by the  
19 official job description, are reproduced in the underlined headings below.

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<sup>18</sup> Seaman previously held the Programming Division position of Community Learning Coordinator (CLC). For some reason that the record does not explain, Seaman continued to use the CLC title in correspondence in October of 2012.

<sup>19</sup> For example, the Recreation ADPC oversees program managers in the Recreation Division, and the Programming ADPC oversees program managers in the Programming Division.

1 Following each job duty is a comparison of that duty to the work that Brown  
2 performed as Unit Manager prior to the elimination of the position in 2010.<sup>20</sup>

3 Assists the Director of Programming with Directing the Development and  
4 Implementation of Programs Citywide.

5  
6 Brown was the only BCYF employee in 2010 who was responsible for  
7 creating new after-school and out-of-school programs. Additionally, Brown was  
8 responsible for maintaining already existing after-school programs.

9 Brown's Unit Manager job description notes that the Unit Manager shall be  
10 responsible for developing and implementing activities to strengthen and expand  
11 after-school programming.

12 Supervises Program Managers in their Daily Duties including but not limited to  
13 Managing and Implementing Citywide and Site Based Programs.

14  
15 As Unit Manager, Program Managers in the Programming Division  
16 reported directly to her. As their supervisor, Brown directed Program Managers in  
17 the effort to create new programs and get local BCYF sites up and running.

18 The Unit Manager job description notes that Brown was responsible for  
19 hiring, evaluating, supervising and training the after-school program managers.

---

<sup>20</sup> Brown testified at the hearing and described how the duties listed on Seaman's job description are duties that she had performed as the Unit Manager prior to her layoff. The City did not call Seaman to testify at the hearing, and it produced no evidence to dispute Brown's testimony regarding how her job duties compared to the duties listed on the job description for the Programming ADPC. The City presented evidence that Seaman performs certain duties that are not listed on her job description, but it did not present other evidence that compared or distinguished the duties that Brown performed as Unit Manager from the duties that Seaman now performs as the Programming ADPC.

1 Serves as Lead in Addressing Ongoing Personnel and Labor Matters in the  
2 Program Division as it Relates to Employee Conduct.

3  
4 As the supervisor of Program Managers within the Programming Division,  
5 Brown was solely responsible for her personnel and worked on personnel and  
6 labor issues. Brown worked closely with the BCYF personnel officer<sup>21</sup> to oversee  
7 and resolve various issues relating to personnel and labor.<sup>22</sup>

8 Helps to Establish, and, as Necessary, Redefine Divisional Goals and  
9 Objectives; Evaluates Results and Adjusts Plans and Activities Accordingly;  
10 Oversees and Maintains a Set of Standards for Program Activities and Develops  
11 and Implements an Evaluation process; Evaluates Personnel Performance and  
12 Progress of Various Programs.<sup>23</sup>

13  
14 Brown created goals and objectives alongside the program managers she  
15 supervised within the Programming Division. The goals and objectives were fluid  
16 since each site had very different needs. Brown also created an evaluation tool,  
17 an assessment tool, and set standards though the National After School  
18 Standards.<sup>24</sup> Additionally, Brown was responsible for conducting performance

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<sup>21</sup> The record does not indicate whether the personnel officer position is in SENA's bargaining unit.

<sup>22</sup> The Director of Programming would occasionally sit in on meetings dealing with personnel and labor matters, however, the record did not indicate that Brown shared duties with the Director of Programming.

<sup>23</sup> This job duty is separated into three sections on the official job description. It is combined here to avoid redundancy in the comparisons.

<sup>24</sup> The National After School Standards were overarching standards that would provide quality programming in various programs, i.e. staff and children relationships.

1 evaluations of the staff that she supervised, including Roberta Smalls, who  
2 oversaw Camp Joy.

3 The Unit Manager job description notes that Brown was responsible for  
4 developing strategies for improving academic support provided by after-school  
5 programs.

6 Develops Public Awareness Campaigns and Marketing Tools to Create Visibility  
7 for BCYF Programming.

8  
9 After BCYF received an after-school capacity building grant, Brown  
10 appeared on “Boston Neighborhood Network News” (BNN) to discuss the grant  
11 and the differences between after-school and out-of-school programming, and  
12 licensed and unlicensed programming. Alongside Sandy Holden, a BCYF  
13 marketing employee,<sup>25</sup> Brown helped develop marketing tools for BCYF  
14 programming. In addition, Brown was part of the BCYF taskforce relating to any  
15 public awareness campaign. For example, Brown was the liaison for the  
16 Programming Division during the outbreak of the H1N1 virus. During that time,  
17 Brown was responsible for informing the general public regarding the virus and  
18 ways to mitigate risk.

19 Determines Resources Necessary for Various Citywide Recreation Programs  
20 through Program Budget Development.

21  
22 Every program needed a budget, and Brown worked with various BCYF  
23 programs to create budgets. She was the sole person responsible for  
24 determining the budget of Camp Joy, which involved, among other things,

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<sup>25</sup> The record does not indicate whether Holden is in SENA's bargaining unit.

1 ensuring that the site had the personnel, supplies, and transportation necessary  
2 to continue the program's operations.

3 The Unit Manager job description notes that Brown was responsible for  
4 assisting in implementing the request for proposal (RFP) process to distribute  
5 after-school funding and for oversight of the after-school budget and after-school  
6 contracts.

7 Develops Relationships and Partnerships that will Attract External Resources for  
8 Expanded and Enhanced Programming.

9  
10 In the early 1990s, Brown created an asthma program with Children's  
11 Hospital. An asthma swim part of the program was developed later. Brown has  
12 worked with Children's Hospital to expand the asthma swim program and use it  
13 in various BCYF sites. Though the initial partnership occurred prior to Brown  
14 becoming Unit Manager, two or three of the local BCYF sites continue to operate  
15 the program.

16 The Unit Manager job description indicates that Brown was responsible for  
17 working in collaboration with partner organizations on issues of expansion, new  
18 programs, and quality improvements.

19 Determines Necessary Changes in Program Emphasis and Goals to Achieve  
20 BCYF Youth Development Outcomes.

21  
22 In addition to creating an evaluation tool, evaluating the success of  
23 programs, and implementing changes based on those evaluations, Brown's team

1 created youth development outcomes using used standardized documents from  
2 the developmental assets.<sup>26</sup>

3 Recruits, Selects, Directs, and Evaluates the Activities of Subordinate Managers  
4 and Staff Assigned to Programs.

5  
6 At Camp Joy and in other programs, Brown had extensive influence over  
7 the activities of subordinate staff. Brown's involvement spanned from posting and  
8 filling job positions to transferring ineffective subordinate managers to sites  
9 where they could be more useful. As previously noted, Brown was directly  
10 responsible for evaluating their performance.

11 The Unit Manager job description notes that Brown was responsible for  
12 hiring, evaluating, supervising and training the after-school program managers.

13 Works with Representatives of the Business and Civic Community, Sports  
14 Organizations and the General Public to Solicit Their Participation in, and  
15 Support for, Programs Relating to Recreational Issues.

16  
17 Brown connected local organizations and community stakeholders with  
18 the programming done by BCYF. In early 2000, Brown integrated an organization  
19 called Outdoor Explorations, a therapeutic program for special needs adults and  
20 children, with BCYF's programming, and also worked with Waypoint Adventures  
21 and Spaulding Rehabilitation.<sup>27</sup>

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<sup>26</sup> The record does not define the term "developmental assets."

<sup>27</sup> The record does not describe the details of BCYF's relationship with Waypoint Adventures and Spaulding Rehabilitation.

1           The Unit Manager job description indicates that Brown was responsible for  
2 working in collaboration with partner organizations on issues of expansion, new  
3 programs, and quality improvements.

4 Makes or Recommends Changes in Recreation Programs in Response to Citizen  
5 or Community Needs.

6  
7           On several occasions, Brown surveyed various communities to determine  
8 what services those communities wanted BCYF to provide. Brown also attended  
9 council meetings as a representative of her department with the purpose of  
10 identifying and providing the resources necessary for the local sites to operate.

11 Performs Special Projects at the Request of Director of Programming.

12  
13           Brown frequently performed special projects at the request of the Director  
14 of Programming. At the Director's request, Brown sat on the Mayor's autism and  
15 H1N1 taskforces. She became a "quality advisor" under the National After School  
16 Association, and in that capacity, informed organizations of ways in which they  
17 could improve their after-school and out-of-school programming. Smaller, more  
18 day-to-day tasks, occurred frequently at the request of the Director of  
19 Programming.

20 Maximizes Use of Available Research, Studies, Statistical Information and  
21 Technologies to Inform Programming.

22  
23           Brown participated in BCYF's grant writing process by researching  
24 information and distilling statistical data to include into the grant proposal.

25 SENA Learns that Seaman is Performing Brown's Unit Manager Duties  
26

1 In September of 2013, the Program Manager for Camp Joy informed  
2 Brown that Seaman was supervising her. Brown called Hinton to convey this  
3 information, and Hinton contacted Zuccaro.

4 **Seaman's Additional Duties**

5 Seaman performs the duties listed on the job description for the ADPC.  
6 She also oversees the Programming Division's unit managers, including the unit  
7 manager of adult education, coordinates the annual two-day BCYF Academy  
8 training,<sup>28</sup> and is part of the BCYF "leadership team."<sup>29</sup>

9 **OPINION**

10 Section 10(a)(5) of the Law requires a public employer to give the  
11 exclusive collective bargaining representative prior notice and an opportunity to  
12 bargain before transferring bargaining unit work to non-bargaining unit personnel.  
13 Commonwealth of Massachusetts v. Labor Relations Commission, 60 Mass.  
14 App. Ct. 831 (2004). To establish that an employer unilaterally transferred  
15 bargaining unit work to non-unit personnel, the union must prove the following  
16 elements: 1) the employer transferred bargaining unit work to non-unit personnel;  
17 2) the transfer of work had an adverse impact on either individual employees or  
18 on the bargaining unit itself; and 3) the employer did not give the union prior

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<sup>28</sup> In her former Community Learning Initiative Coordinator position, Seaman had a role in the two-day annual BCYF Academy training. Seaman assumed the overall responsibility for the two-day annual BCYF Academy training that Senter held prior to Senter's layoff. The record does not disclose the date of Senter's layoff.

<sup>29</sup> The record does not disclose what specific duties Seaman performs as part of the leadership team.

1 notice or an opportunity to bargain over the decision and the impacts of the  
2 decision to transfer the work. Id.

3 To establish the first element of its prima facie case, the Union must show  
4 that the unit work at issue traditionally has been performed by bargaining unit  
5 employees. City of New Bedford, 15 MLC 1732, 1737, MUP-6488 (May 31,  
6 1989). When work is shared by bargaining unit members and non-unit  
7 employees, the Commonwealth Employment Relations Board (CERB) has  
8 determined that the work will not be recognized as exclusively bargaining unit  
9 work. Higher Education Coordinating Council, 23 MLC 90, 92, SUP-4090  
10 (September 17, 1996). In shared work cases, the employer is not obligated to  
11 bargain over every incidental variation in job assignments between unit and non-  
12 unit employees. Rather, bargaining must occur only if there is a calculated  
13 displacement of bargaining unit work. Id. Therefore, if unit employees traditionally  
14 have performed an ascertainable percentage of the work, a significant reduction  
15 in the portion of work performed by unit employees, coupled with a  
16 corresponding increase in the work performed by non-unit employees, may  
17 demonstrated a calculated displacement of unit work. Id.

18 The Union argues that the duties that Seaman began performing in 2012  
19 as the Programming ADPC were bargaining unit duties that Brown performed as  
20 Unit Manager prior to her 2010 layoff. It contends that the transfer of Brown's  
21 work to Seaman had an adverse impact on the bargaining unit, because the unit  
22 lost a position, and on Brown, because she suffered a layoff and reduction in

1 pay. The Union acknowledges that the City notified it when it created the  
2 Recreation ADPC position, but argues that the City did not give it prior notice and  
3 an opportunity to bargain over the decision to transfer Brown's former duties to  
4 Seaman, the Programming ADPC. To remedy the City's conduct, the Union  
5 seeks an order returning Brown's work to the bargaining unit, making the unit  
6 whole for losses suffered, and requiring an appropriate notice posting.

7 The City contends that the Union's allegations are meritless and untimely.  
8 Because the Union was on notice of the ADPC job duties over two years before it  
9 filed the charge, in the City's view, the case should be dismissed pursuant to the  
10 DLR's rule of limitations. If the charge is timely, the City contends that it should  
11 be dismissed because: the ADPC job duties are shared with other non-unit  
12 employees; the Union did not demonstrate a calculated displacement of  
13 bargaining unit work; and the City properly notified the Union of the ADPC job  
14 description and duties and bargained to impasse. For the reasons that follow, I  
15 am not persuaded by the City's arguments and find that the City violated the Law  
16 as alleged.

#### 17 **Bargaining Unit Work**

18 The duties that Brown performed as a Unit Manager are bargaining unit  
19 work, and there is no evidence that Brown shared her duties with any non-unit  
20 employee at the time that she worked as a Unit Manager. Although not all of  
21 Brown's responsibilities continue to be performed, the Union satisfied its burden  
22 to show that that the duties listed on Seaman's job description, i.e. supervising

1 the Programming Division program managers, are duties that Brown previously  
2 performed.

3 The City contends that the Union failed to prove that Brown performed the  
4 duties that Seaman is currently doing. It also argues that Seaman's work is not  
5 exclusive bargaining unit work because Seaman shares it with other non-unit  
6 managers and because Seaman does not perform Brown's "main" duties due to  
7 the demise of the licensed after-school programs. There is no merit to these  
8 arguments.

9 First, the City did not produce any evidence to refute Brown's detailed  
10 testimony showing that as a Unit Manager, she performed the duties listed on  
11 Seaman's Programming ADPC job description. Consequently, the City's first  
12 argument fails as a matter of fact.

13 Second, the City appears to misapply the concept of shared work in the  
14 transfer of unit work analysis. Shared work is work that bargaining unit  
15 employees share with non-unit employees prior to the transfer. In the case cited  
16 by the City, City of Lawrence, 23 MLC 213, MUP-9876 (March 31, 1997), the  
17 employer assigned laborer duties for many years to two different groups of  
18 people: bargaining unit members and prisoners incarcerated in the Correctional  
19 Alternative Center of Essex County. The city later assigned some of those same  
20 duties to individuals (non-employees), who were receiving what was then known  
21 as "welfare" benefits. When the union challenged the assignment of duties to the  
22 benefit recipients, the CERB compared the percentage of work performed by the

1 prisoners and bargaining unit members before the transfer with the percentage of  
2 work done by bargaining unit members after the transfer to see if the employer  
3 had reduced the percentage of duties that bargaining unit members were  
4 performing. Id. at 215. The purpose of the inquiry is to analyze whether the work  
5 transfer changed the pre-existing pattern of allocating work between bargaining  
6 unit and non-unit employees. See City of Boston, 26 MLC 144, 147, MUP-1085  
7 (March 10, 2000), aff'd sub nom., City of Boston v. Labor Relations Commission,  
8 58 Mass. App. Ct. 1102 (Rule 1:28 decision), further rev den'd., 440 Mass. 1106  
9 (2003).

10 Here, the City erroneously focuses on whether Seaman shares duties with  
11 non-unit employees. The correct analysis assesses Brown's Unit Manager  
12 duties, and whether Brown shared them with any non-unit employee(s) before  
13 the 2012 transfer. As previously noted, Brown did not share any of her duties  
14 with non-unit members prior to her layoff in 2010.<sup>30</sup> Consequently, I need not

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<sup>30</sup> To the extent that the City argues that Brown shared duties with non-unit employees at the Director level, the evidence does not support its argument. The City's evidence primarily compares Seaman's duties with the duties of other exempt employees. Further, the evidence does not show that the management responsibilities of the BCYF's director level positions are the same as the limited supervisory duties that Brown performed as a Unit Manager. Additionally, the City's argument that Seaman does not perform any of Brown's "main" duties does not exonerate its actions. It is undisputed that some of Brown's duties, like her monthly BCYF Academy calendar duties are no longer performed. However, the City was still obligated to notify the Union and bargain, upon request, over any of Brown's remaining duties that it did transfer to Seaman.

1 consider the City's calculated displacement argument. See Commonwealth of  
2 Massachusetts, 35 MLC 105, 108, SUP-04-5054 (December 10, 2008).

3 **Adverse Impact**

4 To establish the second element of its prima facie case, the Union must  
5 show that the transfer of unit work to non-unit personnel had an adverse impact  
6 on individual employees or the bargaining unit itself. The CERB has found an  
7 adverse impact where the bargaining unit loses an opportunity to perform work in  
8 the future and the opportunity to represent future job positions. City of New  
9 Bedford, 15 MLC at 1739; Commonwealth of Massachusetts v. Labor Relations  
10 Commission, 60 Mass. App. Ct. at 834. The Union argues that the transfer of unit  
11 work to Seaman adversely impacted the bargaining unit as a whole and Brown  
12 as an individual.

13 I am not persuaded that assigning Brown's former Unit Manager duties to  
14 Seaman adversely affected Brown. It is undisputed that the City laid off Brown  
15 and numerous other BCYF employees in the wake of an economic crisis. Two  
16 years later, the City created and filled the Programming ADPC position and  
17 assigned some of the Unit Manager position duties to the Programming ADPC.  
18 In the interim, the City revamped the delivery of certain services, i.e. by ceasing  
19 to provide licensed after-school programming. Consequently, there is no direct  
20 correlation between the elimination of Brown's Unit Manager position and the  
21 assignment of some of Brown's duties to Seaman. Further, although Brown had  
22 to bump into a position with a lower pay, the adverse impact she suffered

1 stemmed from the loss of her position, not the assignment of her duties to  
2 Seaman. There is no evidence on the record that shows that Brown's position  
3 would have been retained, but for the transfer of her work. Consequently, the  
4 transfer of work did not adversely affect Brown.

5 However, I agree that when the City created the Programming ADPC  
6 position and assigned Seaman to perform Brown's former Unit Manager duties,  
7 the bargaining unit lost the opportunity to perform supervisory work in a  
8 supervisory, promotional position.<sup>31</sup>

#### 9 **Notice and Opportunity to Bargain**

10 To establish the third element of its prima facie case, the Union must show  
11 that the City failed to give it notice and an opportunity to bargain to resolution or  
12 impasse over the decision and its impacts. Lowell School Committee, 28 MLC  
13 29, 31, MUP-2074 (June 22, 2001). The City did not notify SENA of its intention  
14 to create a separate ADPC position in the Programming Division, it did not notify  
15 SENA of Seaman's transfer into that position, and it did not notify SENA that  
16 Seaman would be performing duties that Brown previously performed. Indeed,  
17 the City asserts that it was not necessary for it to have additional meetings with  
18 the Union regarding the duties of the Programming ADPC position.

19 The City argues that it gave SENA the requisite notice and bargaining  
20 opportunity when it notified SENA that the City planned to eliminate the PAA  
21 position and fill the new ADPC position in the Recreation Division. Because it

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<sup>31</sup> There is no evidence that the City revived Brown's Unit Manager position.

1 attached the ADPC description to its October 21, 2011 letter, the City believes  
2 that the Union knew then what duties the ADPC would be performing. The flaw  
3 in the City's argument is that even though the job descriptions for the Recreation  
4 Division and Programming Division ADPC positions are identical, they are two  
5 separate positions, in two different divisions of the BCYF. There is no evidence  
6 that the duties they perform are the same, and most significantly, no evidence  
7 that the ADPC for Recreation would be performing Brown's former Programming  
8 Unit Manager duties.<sup>32</sup>

9 The City notes that the December 14, 2011 letter states specifically that  
10 the program managers were all expected to report to the new ADPC, and thus  
11 the Union had to know that the new ADPC position would be performing Brown's  
12 former duties. However, the parties were discussing the proposed Recreation  
13 ADPC and the similarities between the Recreation ADPC for Recreation and the  
14 PAA. The ADPC Programming position had not yet been created. Although the  
15 letter states that all program managers are now in one division, other evidence  
16 demonstrates that the ADPC Programming oversees the program managers in  
17 the Programming Division, and the ADPC Recreation oversees the program  
18 managers in the Recreation Division. Consequently, the Union could not have  
19 known from the December 14, 2011 letter that the City intended to transfer

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<sup>32</sup> Because the differences between the duties listed on the Director of Programming job description and the Director of Recreation job description show that those two jobs perform different duties, there is no reason to assume that the Assistant Director level positions in those different divisions would perform identical duties.

1 Brown's former supervisory responsibilities in the Programming Division to a new  
2 position in the Recreation Department, absent explicit clarification.<sup>33</sup>

3 The City's argument that the parties reached an impasse in the silence  
4 that followed the December 14, 2011 letter is similarly meritless because their  
5 discussions centered on the former PAA position and the Recreation ADPC  
6 position that the City planned to fill in its stead. The parties could not have  
7 reached impasse in negotiations over the Programming ADPC position that they  
8 did not discuss.

9 Likewise, none of the Union's actions regarding Case No. MUP-12-1628  
10 demonstrate that it had actual knowledge that the City intended to transfer  
11 Brown's work to Seaman. The unfair labor practice charge resulted from the  
12 parties' dispute over the PAA/Recreation ADPC position swap and had no  
13 connection to the work transfer that had not yet occurred.

14 Finally, the City argues that the Union had constructive notice when the  
15 City transferred Seaman into the Programming ADPC position and notified  
16 Cunningham that Seaman would be her new supervisor. This argument also

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<sup>33</sup> To the extent that the City suggests that the Union should have anticipated that the City would subsequently create a second ADPC position in the Programming Division and, nine months later, assign it duties that the parties did not discuss in October of 2011, the Law does not require that level of clairvoyance. Instead, the Law requires the City to notify the Union of the specific action that it intends to take, so the Union can present arguments and proposed alternatives, and the parties can bargain over those issues. See generally, Town of Hudson, 25 MLC 143, 148, MUP-1714 (April 1, 1999) (a public employer must notify the union of a potential change before it is implemented so that the bargaining representative has an opportunity to present arguments and proposals concerning the proposed alternatives).

1 misses the mark. The City is obligated to notify the Union of any changes that it  
2 plans to make in mandatory subjects of bargaining, because its bargaining  
3 obligation runs to the Union. Notifying employees does not fulfill its bargaining  
4 obligation unless the employees are representative of the union. See generally,  
5 Town of Ludlow, 17 MLC 1191, 1200, MUP-7040 (August 3, 1990) (bargaining  
6 unit member's knowledge of employer's planned health insurance plan changes  
7 not imputed to union where unit member did not represent the union and was not  
8 a high-ranking union officer). Accordingly, the City failed to satisfy its obligation  
9 to notify the Union that it intended to transfer Brown's duties to Seaman. Rather,  
10 the evidence demonstrates that the Union only became aware of the transfer in  
11 September of 2013 when the Camp Joy Program Manager advised Brown that  
12 Seaman was supervising her, and Brown relayed this information to the Union.<sup>34</sup>

### 13 **Timeliness**

14 DLR Rule 15.03, 456 CMR 15.03, states that, "except for good cause  
15 shown, no charge shall be entertained based upon any prohibited practice  
16 occurring more than six months prior to the filing of a charge with the [DLR]." It is  
17 well established that a charge of prohibited practice must be filed with the DLR  
18 within six months of the alleged violation or within six months of the date the

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<sup>34</sup> The unpublished Order of Dismissal that the City cites in its brief, Commonwealth of Massachusetts, SUP-06-5252, (June 12, 2008) is not persuasive because dismissal letters have no precedential value. See City of Taunton, 38 MLC 96, 98-99, n. 7, MUP-06-4836, MUP-08-5150 (November 2, 2011). Additionally, because Case No. SUP-06-5252 involved a union's knowledge of an employer's decision to reassign the same snow removal work that the bargaining unit members had been performing, the facts in SUP-06-5252 are distinguishable from the facts of this case.

1 violation became known or should have become known to the charging party.  
2 Felton v. Labor Relations Commission, 33 Mass. App. Ct. 926 (1992). The Union  
3 filed its charge on February 26, 2014. Thus, the Union's knowledge prior to  
4 August 26, 2013 of the unlawful transfer of bargaining unit work would render the  
5 charge untimely and would require a dismissal of the complaint.

6 The City argues that the Union had both actual and constructive  
7 knowledge of the transfer more than six month prior to the filing of the charge.  
8 Specifically, the City argues that the Union knew or should have known of the  
9 alleged violation on three dates: 1) October 21, 2011, when the City notified the  
10 Union of its plan to eliminate the PAA position and create a Recreation ADPC  
11 position; 2) March 14, 2012, when the Union filed an unfair labor practice charge  
12 contesting the transfer of bargaining unit work from the PAA position to the  
13 Recreation ADPC position; and, 3) January 13, 2013, when the City notified  
14 Cunningham that Seaman would supervise her.

15 As discussed above, none of these three events were sufficient to put  
16 SENA on notice of the transfer of work from the Unit Manager position to the  
17 Programming ADPC position. The October 21, 2011 letter and job description,  
18 and the charge in MUP-12-1628 all related to the Recreation ADPC position –  
19 not the Programming ADPC position. As such, SENA had no reason to know  
20 then of the work transfer that did not occur until July of 2012.

21 The January 18, 2013 letter fails to support a timeliness defense for the  
22 same reason that it fails to establish that the City gave SENA notice and an

1 opportunity to bargain. Cunningham was not a representative of SENA, nor was  
2 anyone else who received the January 18, 2013 letter, and any knowledge she  
3 possessed was not imputed to the Union. See Town of Ludlow, 17 MLC at 1200.  
4 Therefore, the first time that SENA knew or should have known of the alleged  
5 violation of the Law was in September of 2013 when Brown reported to Hinton  
6 that Seaman was doing bargaining unit work. Thus, the City's timeliness defense  
7 fails.

8 REMEDY

9 The CERB fashions remedies for violations of the Law by attempting to  
10 place charging parties in the positions they would have been in but for the unfair  
11 labor practice. Natick School Committee, 11 MLC 1387, 1400, MUP-5157  
12 (February 1, 1985). The traditional remedy where a public employer has  
13 unlawfully refused to bargain over a decision to transfer out unit work is an order  
14 to restore the status quo ante until the employer has fulfilled its bargaining  
15 obligation, and to make all affected employees whole for any economic losses  
16 they may have suffered. Commonwealth of Massachusetts, 35 MLC at 110.

17 As noted above, the City eliminated Brown's position as a cost saving  
18 measure aimed at addressing financial constraints that existed in 2010. Her  
19 layoff was not pleaded as a prohibited practice in the complaint underlying this  
20 case. Two years transpired between the City's elimination of Brown's Unit  
21 Manager position and its transfer of some of Brown's duties to Seaman. During  
22 that time, the BCYF reorganized certain programs and services, such as the



1 performed as a Unit Manager to the newly-created Programming ADPC position  
2 without giving SENA prior notice and an opportunity to bargain to resolution or  
3 impasse over the decision and the impacts of the decision.

4 ORDER

5 WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that  
6 the City of Boston shall:

7 1. Cease and desist from:

8 a. Transferring bargaining unit work to non-bargaining unit  
9 employees without first bargaining to resolution or impasse  
10 with SENA over the decision to transfer the work and the  
11 impacts of that decision on bargaining unit members' terms  
12 and conditions of employment;

13 b. In any like or similar manner, interfering with, restraining, or  
14 coercing any employees in the exercise of their rights  
15 guaranteed under the Law.

16  
17 2. Take the following affirmative action that will effectuate the  
18 purposes of the Law:

19  
20 a. Upon request, bargain in good faith with SENA to resolution  
21 or impasse concerning the decision and impact of the  
22 decision to transfer the Unit Manager duties that Cheryl  
23 Brown performed prior to her 2010 layoff to the  
24 Programming ADPC position and the impacts of the decision  
25 on bargaining unit members' terms and conditions of  
26 employment.

27 b. Restore to the bargaining unit the Unit Manager duties that  
28 bargaining unit employee Cheryl Brown performed prior to  
29 her 2010 layoff until the earliest of the following conditions  
30 are met:

31 i) The Union and the City reach agreement over the decision  
32 to transfer Brown's Unit Manager duties to non-unit  
33 personnel and its impacts; or

- 1                                   ii) Good faith bargaining results in a bona fide impasse.
- 2                   c.    Make whole any employee who suffered an economic loss as  
3                                   a result of the City's decision to transfer bargaining unit work  
4                                   to the Programming ADPC position, plus interest on any  
5                                   sums owed at the rate specified in M.G.L. c. 231, Section 6I  
6                                   beginning on July 12, 2012 until the earliest of the following  
7                                   conditions are met:
- 8                                   i) The Union and the City reach agreement over the decision  
9                                   to transfer Brown's Unit Manager duties to non-unit  
10                                  personnel and its impacts; or
- 11                                  ii) Good faith bargaining results in a bona fide impasse.
- 12                   d.    Post immediately in all conspicuous places where members  
13                                  of SENA's bargaining unit usually congregate and where  
14                                  notices to these employees are usually posted, including  
15                                  electronically, if the City customarily communicates with  
16                                  SENA employees via intranet or email, and display for a  
17                                  period of thirty (30) consecutive days thereafter, signed  
18                                  copies of the attached Notice to Employees; and,
- 19                   e.    Notify the Department within thirty (30) days of receipt of this  
20                                  Decision and Order of the steps taken to comply with it.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS



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SUSAN L. ATWATER, ESQ., HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for review with the Executive Secretary of the Department of Labor Relations within ten days after receiving notice of this decision. If a Request for Review is not filed within ten days, this decision shall become final and binding on the parties.



**THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS  
NOTICE TO EMPLOYEES**

**POSTED BY ORDER OF THE DEPARTMENT OF LABOR RELATIONS  
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

A hearing officer of the Department of Labor Relations has determined that the City of Boston (City) violated Sections 10(a)(5) and, derivatively, (a)(1) of Massachusetts General Laws, Chapter 150E (the Law) when it transferred bargaining unit work to non-bargaining unit personnel without giving the Salaried Employees of North America (SENA) prior notice and an opportunity to bargain over the decision to transfer the work and the impact of the decision on bargaining unit members' terms and conditions of employment.

Section 2 of M.G.L. Chapter 150E gives public employees the following rights: to engage in self-organization; to form, join or assist any union; to bargain collectively through representatives of their own choosing; to act together for the purpose of collective bargaining or other mutual aid or protection; and to refrain from all of the above.

The City assures its employees that:

**WE WILL NOT** fail to bargain in good faith by failing to give SENA prior notice and an opportunity to bargain over the transfer of bargaining unit work to non-bargaining employees;  
**WE WILL NOT**, in any like or related manner interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Law;  
**WE WILL**, upon request, bargain with SENA over the transfer of certain duties from Cheryl Brown's former Unit Manager position to a non-bargaining unit employee;  
**WE WILL** restore to the bargaining unit the Unit Manager duties that bargaining unit employee Cheryl Brown performed prior to her 2010 layoff until the City and SENA reach agreement over the decision and the impacts of the decision to transfer bargaining unit work to a non-bargaining unit employee; and  
**WE WILL** make bargaining unit employees whole for economic losses suffered as a result of the City's unlawful action until the City and SENA reach agreement over the decision and the impacts of the decision to transfer bargaining unit work to a non-bargaining unit employee.

\_\_\_\_\_  
City of Boston

\_\_\_\_\_  
Date

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED**

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, 19 Staniford Street, 1<sup>st</sup> Floor, Boston MA 02114 (Telephone: (617) 626-7132).