

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

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In the Matter of

TOWN OF NATICK

and

MASSACHUSETTS LABORERS' DISTRICT  
COUNCIL

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Case No. CAS-19-7239

Date Issued: June 26, 2020

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CERB Members Participating:

Marjorie F. Wittner, Chair  
Joan Ackerstein, Member

Appearances:

Michael Maccaro, Esq. - Representing Town of Natick  
Nelson Carneiro - Representing Massachusetts Laborers' District  
Council

1 Summary

2 On March 28, 2019, the Massachusetts Laborers' District Council, Laborers'  
3 International Union of North America (Union or Laborers) filed a unit clarification petition  
4 with the Department of Labor Relations (DLR) seeking to accrete the position of Library  
5 Bookkeeper into its existing bargaining unit of full-time and regular part-time employees  
6 employed by the Town of Natick (Town) at the Morse Institute Library (Library).

7 On May 22, 2019, the Union and the Employer participated in an informal  
8 conference at the DLR's offices. The parties submitted position statements before and

1 after the conference. The Union argues that the Library Bookkeeper is performing duties  
2 formerly performed by a Library Associate, which is a bargaining unit position. The Town  
3 opposes accreting the Bookkeeper position to the Library unit on grounds that it is a  
4 confidential position or, alternatively, because it is more appropriately placed in the  
5 Laborers' Clerical unit.

6 On June 12, 2020, the DLR sent the parties a letter asking them to show cause  
7 why the unit placement dispute should not be resolved based on the information  
8 summarized therein and requesting some additional information. Neither party disputed  
9 the facts contained in the letter. The Union filed a response indicating that it did not have  
10 the requested information and the Town did not file any response. Accordingly, the CERB  
11 has determined that there are no materially disputed facts and accretes the Library  
12 Bookkeeper position into the unit because it is a non-confidential position that shares a  
13 community of interest with other Library bargaining unit members.

### **Background**

#### Morse Institute Library

15 The Library is located in the center of Town. A five-member Board of Trustees  
16 oversees the Library's operations. The Library Director oversees its daily operations. As  
17 of 2018, the Library employed approximately 55 employees.

#### Union

19 Local 1116 of the Union represents four separate Town bargaining units, including  
20 the Library and Clerical units described below. It also represents a Department of Public  
21 Works (DPW) unit and a DPW supervisors' unit.

1 Library Unit

2 On October 10, 2000, in Case No. MCR-4820, the DLR<sup>1</sup> certified the following  
3 bargaining unit:

4 All full-time and regular part time library employees employed by the Town  
5 of Natick, including library supervisors, professional librarians, library  
6 associates, bookmobile librarians, library assistants, reference librarians,  
7 library clerks and library pages, but excluding the library director, the  
8 assistant library director, the community relations/grant coordinator, all  
9 managerial, confidential and casual employees and all other employees of  
10 the Town of Natick.<sup>2</sup>

11  
12 The Town and Local 1116 of the Union were parties to a collective bargaining  
13 agreement (CBA) that was effective by its terms from July 1, 2015 to June 30, 2018.<sup>3</sup> The  
14 recognition clause of the CBA states:

15 The Town of Natick hereby recognizes the Union as the exclusive  
16 collective bargaining representative of all Morse Institute Library  
17 employees employed by the Town exclusive of the Library Director,  
18 Assistant Director, Community Relations/Grants Coordinator,  
19 Executive Assistant, Pages and Grant funded employees.

20 As of 2018, there were approximately forty employees in the Library bargaining  
21 unit, including approximately twenty-five Library Assistants and Associates, and  
22 approximately ten Librarians with various titles.<sup>4</sup> In addition to the Librarian titles, the

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<sup>1</sup> References to the DLR include the former Labor Relations Commission.

<sup>2</sup> The certification indicates that the professional employees voted separately on whether they desired to be included in an overall collective bargaining unit consisting of both professional and non-employees. Eight out of nine employees voted that they did.

<sup>3</sup> As of May 2019, the parties had not entered into a successor agreement.

<sup>4</sup> E.g., Children's Librarian, Reference Librarian, Bookmobile Librarian, and Teen Librarian.

1 bargaining unit includes several other titles that require a Master's Degree in Library and  
2 Information Science, including Children's Programmer, Children's Services Supervisor,  
3 Circulation Supervisor, Materials Management Supervisor, and Reference Services  
4 Supervisor. The record does not reflect the schedule of all the different titles, but as of  
5 June 18, 2019, three Reference Librarians worked on a regular, part-time basis.<sup>5</sup>

## 6 Library Bookkeeper

### 7 History

8  
9 From April 1997 to June 2015, Jeanne Kriger (Kriger) performed basic  
10 bookkeeping functions for the Library, and the Town used an outside contractor to  
11 perform additional bookkeeping and accounting functions, including reporting functions.  
12 Town personnel forms reflect that Kriger was originally hired as a Library Assistant, but  
13 at some point, she became a Library Associate, which was the title she held upon her  
14 separation from employment. As reflected on a grievance that Kriger filed on July 1, 2015  
15 regarding her separation, Kriger considered herself part of the Union's bargaining unit,  
16 but the Town did not recognize her as such.

17 Kriger's primary bookkeeping duties included:

- 18 • Matching invoices to bills and submitting them to the Town for payment;
  - 19 • Writing checks for vendors and balancing multiple checking accounts for the  
20 Library;
  - 21 • Preparing and submitting payroll;
  - 22 • Cashing out the register and maintaining all money the Library collected;
  - 23 • Making weekly bank deposits;
  - 24 • Reconciling Library account balances with Town balances.
- 25

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<sup>5</sup> Under the terms of the CBA, a regular work week for full-time employees is five days, 37.5 hours.

1 Kriger performed no duties pertaining to labor relations or collective bargaining. As of  
2 July 1, 2014, Kriger was an hourly employee, earning \$18.87/hour.

3 After Kriger stopped working at the Library, the Library hired Rebecca Stacy  
4 (Stacy) as Library Bookkeeper. Stacy worked in this capacity from September 2015 to  
5 February 2017. After Stacy stopped working for the Library, the Town hired Lisa Kingsley  
6 (Kingsley) to fill this position.<sup>6</sup>

7 Lisa Kingsley

8 Kingsley has been employed as the Library Bookkeeper since February 1, 2017.  
9 Her offer letter reflects that the Town classified the position as a Grade 2 in the Town's  
10 Hourly Personnel Board Classification and Pay Plan. Kingsley was hired as a regular part-  
11 time employee, working 25 hours a week at a rate of \$21.00/hour.<sup>7</sup> As of May 2019, her  
12 hourly rate had not changed, but her hours had increased to 27.50/week. Kingsley's  
13 benefits include prorated sick leave and vacation and fifteen hours of personal leave per  
14 year. She reports to the Library Director and has no direct reports.

15 In January 2019, Kingsley signed a Union card expressing her desire to join Local  
16 1116. The Town initially agreed to recognize the Bookkeeper position as a bargaining

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<sup>6</sup> Although Library organization charts from 2006-2018 reflect a Bookkeeper reporting directly to the Library Director, the Town provided no evidence that the Bookkeeper position was filled, or that a Town employee ever held the position until it hired Stacy in 2016. The Town's Annual Reports from 2013-2015, which list the Town's employees by name, title and salary, contain no listing for a Library Bookkeeper. In contrast, the 2016 Annual Report lists Stacy as the Library Bookkeeper, and the 2017 and 2018 Annual Reports list Kingsley in this title.

<sup>7</sup> According to the 2018 Town Report, Kingsley had a base and gross annual salary of \$27,300.

1 unit position but indicated that Kingsley should be in the Clerical unit, not the Library unit.  
2 During subsequent discussions with the Union, the Town contended that Kingsley  
3 performed confidential duties and thus should not be part of any bargaining unit.

4 Kingsley had over twenty years of experience as a Bookkeeper when she was  
5 hired. She has a Bachelor of Science degree in education.

6 Duties

7 The Library Bookkeeper position has evolved since 2015, when the job description  
8 summarized its duties as providing “work of a diverse nature, serving as bookkeeper,  
9 purchasing materials and equipment, conducting invoice activities, paying vendors,  
10 preparing payroll and other clerical administrative functions.” Under “Accountability,” the  
11 2015 job description states that this employee is responsible for “correct reporting of fund  
12 balances, for submission of accurate payroll and recordkeeping, for timely submission of  
13 invoices.”<sup>8</sup>

14 According to a job description dated May 15, 2019, the Bookkeeper’s duties now  
15 include:

16 Biweekly payroll preparation for 55 employees; make [General Ledger]  
17 entries for payroll; accounts payable – processing invoices between town  
18 warrant and trustee funds, processing billing of monies due from various  
19 grants; accounts receivable – weekly bank deposit of Trustee funds and  
20 weekly Town receipts deposit; reconciling monthly bank statements for 4  
21 accounts, preparing financial reports, report and enter all time off for 55  
22 employees in Munis software.<sup>9</sup> May purchase materials and equipment.  
23 Preparation for annual CPA audit.

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<sup>8</sup> This information is taken from the first page of a 2015 Library Bookkeeper job description that the Union provided as part of a document titled “History of Job Descriptions.”

<sup>9</sup> The Town provided two Bookkeeper job descriptions: one dated 5/15/19 and one dated 5/16/19. The one dated 5/16/19 contained an additional duty that Kingsley asserts that

1 Kingsley performs many duties that her predecessor did not, including:

- 2 • Making monthly Library budget presentations to staff;
- 3 • Working with reference staff daily who have budget or grant account
- 4 questions;
- 5 • Daily budget preparation and analysis for municipal Library directed budget
- 6 lines (expenses and salaries) and private corporate budget lines;
- 7 • Entering fund transfers from Trustee endowment accounts;
- 8 • Managing \$40,000 annual Friends of the Library budget;
- 9 • Managing \$30,000 annual Veterans Oral History Project budget;
- 10 • Preparing monthly financial reports for the Trustees of the Library;
- 11 • Annual Report Information Survey (ARIS) preparation to the Massachusetts
- 12 Library Association

### 13 Confidentiality

14 Under the heading “Confidentiality,” the 2019 job description states: “Discretion  
15 and integrity are required, especially in matters involving personnel, trustees, library  
16 patrons and library business and other partners.” Most of the other Library unit job  
17 descriptions, including those of the Library Assistant and Library Associate, described  
18 below, contain similar, if not identical language.

19 Since starting the position, Kingsley has not performed any duties relating to  
20 collective bargaining, including costing out collective bargaining proposals. The Town  
21 does not dispute this but stated its intention to have her perform these duties during the  
22 next round of collective bargaining negotiations.

### 23 Qualifications

24 The “Recommended Minimum Qualifications” contained on the 2019 job  
25 description are an Associate’s degree in Accounting or related field, courses in

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she performs: Prepare yearly ARIS reporting for the Massachusetts Board of Library Commissioners, including the tracking for materials purchased by collection and genre.

1 bookkeeping/accounting, 2-3 years of experience in bookkeeping and accounting or any  
2 equivalent combination of education, training and experience which provides the required  
3 knowledge, skills and abilities to perform the essential functions of the job.”<sup>10</sup>

4 Library Assistants and Library Associates

5  
6 As noted above, the Town employs about twenty-five Library Assistants and  
7 Library Associates. As of June 2019, twenty employees in these titles were permanent  
8 part-time employees.

9 The Town provided job descriptions for a number of different Associate and  
10 Assistant positions, including those of the Library Assistant and the Library Associate who  
11 report to the Supervisor of Circulation. Those job descriptions were identical except for  
12 a difference in grade level (Library Assistant (S12); Library Associate (S14)) and a slight  
13 difference in their duties. According to the Library Associate’s job description, “this  
14 employee is responsible for staffing the main service point of the Library, the Circulation  
15 Desk, and providing excellent customer service to the community of Natick.” The Library  
16 Assistant job description adds that “Library Assistants are also assigned specific off-desk  
17 duties due to their designation as benefitted employees” but does not reflect what those  
18 duties are. Both Library Assistants and Associates report to the Circulation Supervisor  
19 who, in turn, reports to the Assistant Library Director. The minimum education  
20 requirement on both job descriptions is a high school degree or equivalent. In FY 18, the

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<sup>10</sup> The Recommended Education requirement on the May 15, 2019 job description was a Bachelor’s degree in Accounting or other related field. All other requirements were the same.



1 hourly rate for Library Assistants ranged from \$20.18-\$23.9791 (Steps 1-6). Library  
2 Associates' hourly rate ranged from \$16.7555 to \$20.0420.

3 The Town also provided a 2012 job posting for the Children's Room Associate who  
4 has both circulation and children's programming responsibilities that s/he performs in  
5 conjunction with the Children's Room Supervisor and the Children's Programmer. This  
6 posting indicates that the position requires a Bachelor's degree and is a full-time  
7 benefitted position. In FY 2018, the Children's Room Associate's hourly rate ranged from  
8 \$26.7350 to \$31.8384.

9 The Library bargaining unit also includes the title of Materials Management  
10 Assistant. The job description for this title reflects that the position reports to the  
11 Supervisor of Materials Management and is responsible for keeping the library's physical  
12 collection and database current, organized and retrievable. The incumbent must have a  
13 high school degree or equivalent. This position is classified as Grade S13.<sup>11</sup>

#### 14 Clerical Unit

15 As indicated above, the Union also represents a unit of clerical employees. The  
16 unit consists of approximately 25 employees. The recognition clause of the 2016-2018  
17 Clerical CBA describes the unit as "all clerical employees employed by the Town,  
18 including those employees who work more than 20 hours per week."

19 The Clerical unit includes the title of Administrative Assistant. A 2018 job  
20 description for this title generally describes the title as coordinating the administrative  
21 functions of the office and performing a variety of complex financial, personnel and other

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<sup>11</sup> The Town provided salary tables showing that the hourly rate of reference staff classified as Grade S13 ranged from \$22.0253 (Step 1) to \$26.4464 (Step 6).

1 administrative tasks. The job description's list of illustrative essential functions includes  
2 some bookkeeping functions such as:

- 3 • Produces accurate budget documents and presentation materials. Assists in  
4 gathering budget information, compiling and reviewing data and tracking budget  
5 changes.
- 6 • Reconciles monthly revenue and expenditure reports and indicates appropriate  
7 adjustments as necessary.
- 8 • Performs payroll for the Department.

9 The required education and experience include an Associate's degree preferred and  
10 three to five years of record keeping and customer service experience or an equivalent  
11 combination of education and experience.

12 In FY 18, the Administrative Assistants' hourly wage rate ranged from \$22.4721  
13 (Step 00) to \$26.4265 (Step 4).

14 Opinion<sup>12</sup>

15  
16 A unit clarification is the appropriate procedural vehicle to determine whether  
17 newly-created positions should be included in or excluded from a given bargaining unit or  
18 to determine whether substantial changes in the job duties of an existing position warrant  
19 inclusion or exclusion from a bargaining unit. Town of Athol, 32 MLC 50, 52, CAS-04-  
20 3567 (June 29, 2005).

21 The Union seeks to accrete the position of Library Bookkeeper to its existing unit  
22 of Library employees. In deciding whether an employee should be accreted into an  
23 existing bargaining unit, the CERB applies a three-step analysis. First, the CERB  
24 determines whether the position existed when the DLR originally certified the unit. City  
25 of Boston, 35 MLC 137, 140, CAS-07-3669 (December 31, 2008). If the position existed

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<sup>12</sup> The CERB's jurisdiction is not contested.

1 at the time of the original certification but was not included in the unit and has not since  
2 changed, the DLR will not accrete it to the unit using the CAS process. University of  
3 Massachusetts, 41 MLC 205, CAS-14-3424 (April 10, 2015). Here, the DLR certified the  
4 Library unit in 2000, but there is no evidence that the Library Bookkeeper existed until  
5 2006 or that it was filled until 2015. The first step of the CAS analysis is therefore  
6 inconclusive.

7         Second, the CERB examines the parties' subsequent bargaining history to  
8 determine whether a particular employee classification was considered by the parties to  
9 be included in the unit. City of Boston, 35 MLC at 140. Under the second prong of the  
10 accretion analysis, the CERB examines how the parties have treated the disputed  
11 positions in their dealings with each other and in collective bargaining. City of Malden, 32  
12 MLC 97, 100, CAS-04-3599 (November 2, 2005). Absent bargaining history to support  
13 a finding that the parties addressed and resolved the unit placement of the contested  
14 position, the CERB will find that it is unable to determine whether the parties explicitly  
15 agreed to exclude the contested position from the bargaining unit. Town of Somerset, 25  
16 MLC 98, 100, CAS-3145 (January 6, 1999). Here, although a comparison of the original  
17 certification and the current recognition clause demonstrates that the parties have  
18 modified the original certified unit,<sup>13</sup> there is no evidence that the parties ever expressly  
19 agreed to include or exclude the Library Bookkeeper or other bargaining unit positions  
20 that perform bookkeeping duties from the unit. Without such evidence, the second prong  
21 is inconclusive.

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<sup>13</sup> Since 2000, the parties have agreed to exclude the Executive Assistant, and the Library Pages, who were part of the original certified unit.

1 Under the third and final step, the CERB examines whether the disputed position  
2 shares a community of interest with others in the bargaining unit. City of Boston, 35 MLC  
3 at 140. To determine whether employees share a community of interest, the CERB  
4 considers such factors as similarity of skills and functions, similarity of pay and  
5 working conditions, common supervision, work contact, and similarity of training and  
6 experience. Boston School Committee, 12 MLC 1175, 1196, CAS-2598 (August 30,  
7 1985) (citations omitted). No single factor is outcome determinative. Town of Ludlow, 27  
8 MLC 34, 36, CAS-3435 (October 17, 2000).

9 The Town claims that the Library Bookkeeper does not share a community of  
10 interest with the other Library unit members because she is a confidential employee. The  
11 Town alternatively argues that even if the Library Bookkeeper were not confidential, she  
12 performs clerical duties that cause her to share a greater community of interest with the  
13 Clerical unit.

14 We disagree that the Library Bookkeeper is a confidential employee. Section 1 of  
15 the Law defines confidential employees as those who directly assist and act in a  
16 confidential capacity to a person or persons otherwise excluded from coverage under the  
17 Law. The purpose of this provision is to protect certain personal relationships that must  
18 exist if the collective bargaining system is to function. Littleton School Committee, 4 MLC  
19 1405, 1412-13, CAS-2000, MUP-2027 (October 27, 1977). To be regarded as  
20 confidential, an employee must have a substantial relationship with a managerial  
21 employee so that there is a legitimate expectation of confidentiality in their routine and  
22 recurrent dealings. Framingham Public Schools, 17 MLC 1233, 1236, CAS-2838  
23 (September 4, 1990). Employees are considered confidential and excluded from

1 bargaining units only when they have significant access or exposure to confidential  
2 information concerning labor relations matters, management's position on personnel  
3 matters, or advance knowledge of the employer's collective bargaining proposals. City of  
4 Everett, 27 MLC 147, 150, MCR-4824 (May 23, 2001). Casual access to material  
5 considered sensitive by the employer, such as budget information or personnel records,  
6 does not, without more, make an employee confidential. University of Massachusetts, 3  
7 MLC 1179, 1203, SCR-2079, 2082 (October 15, 1976). The CERB has construed  
8 exceptions to the definition of employee narrowly to preclude as few employees as  
9 possible from collective bargaining while not unduly hampering an employer's ability to  
10 manage the operation of the enterprise. Framingham Public Schools, 17 MLC at 1236  
11 (citing Silver Lake Regional School District, 1 MLC 1240, 1243, CAS-163 (January  
12 13,1975)).

13 Preliminarily, although the Bookkeeper's job description has a separate  
14 "Confidentiality" heading that indicates that "discretion and integrity are required,  
15 especially in matters involving personnel," this does not, standing alone, confer  
16 confidential status, especially where most of the other bargaining unit job descriptions  
17 contain the same or similar language. More significantly, there is no evidence in the  
18 record and the Town does not contend that the Library Bookkeeper has significant access  
19 or exposure to confidential information concerning labor relations matters, management's  
20 position on personnel matters, or advance knowledge of the employer's collective  
21 bargaining proposals. Rather, the Town has represented that it intends the Library  
22 Bookkeeper to perform these duties. We will not, however, preclude the Library  
23 Bookkeeper from exercising collective bargaining rights under the Law based solely on a

1 representation that the position will at some point participate in collective bargaining. It is  
2 well-settled that coverage under the Law must be based upon actual, not potential duties  
3 or future responsibilities. City of Boston, 37 MLC 1, 11, CAS-08-3727 (July 10, 2010)  
4 citing Town of Bridgewater, 15 MLC 1001, 1007, MCR-3765 (June 13, 19880).

5 We finally consider the Town's argument that the Union's petition should be  
6 dismissed because, based on its duties, the Library Bookkeeper position is more  
7 appropriately placed in the Clerical unit. We reject this argument because the question  
8 of whether to accrete the Library Bookkeeper into the Clerical unit is not before us.  
9 Rather, the Union, which represents separate units of Clerical and Library employees,  
10 filed a petition seeking to accrete the Library Bookkeeper into the Library unit.  
11 Accordingly, to decide this matter, we need only determine whether the Library  
12 Bookkeeper shares a community of interest with employees in the Library unit.<sup>14</sup>

13 We find that it does. Although the Library Bookkeeper may be the only bargaining  
14 unit position that performs bookkeeping duties exclusively, the Law requires that  
15 members of a bargaining unit share only a community of interest, not an identity of  
16 interest, provided there is no inherent conflict among consolidated groups of employees.  
17 County of Dukes County/Martha's Vineyard Airport Commission, 25 MLC 153, 155, MCR-  
18 4700 (April 16, 1999). Only significant differences that would result in inevitable conflicts

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<sup>14</sup> The CERB considers with which unit a position shares a greater community of interest only in cases where a petitioner seeks to accrete a position that is already included in another bargaining unit, see, e.g., University of Massachusetts, 31 MLC 209, CAS-04-3577 (June 22, 2005), or where an employer or union files a petition seeking to accrete an unrepresented title to a particular unit, and a union representing a different bargaining unit intervenes, see, e.g., University of Massachusetts, 40 MLC 315, CAS-12-2194, CAS-13-2523 (May 1, 2014). That is not the procedural posture here.

1 constitute a basis for excluding employees from a bargaining unit on the grounds that the  
2 employees lack a community of interest with other bargaining unit members. West  
3 Boylston Water District, 25 MLC 150, 1515, MCR-4706 (April 1,1999); Franklin Institute  
4 of Boston, 12 MLC 1091, 1093, MCR-3409 (July 18, 1985).

5 Here, we have already determined that the Library Bookkeeper is not a confidential  
6 employee and the Town points to no other significant differences in the position's duties  
7 that would result in inevitable conflicts. Further, we find that the Library Bookkeeper  
8 shares a community of interest with the other bargaining unit members based on a  
9 number of factors, including similarity of pay and working conditions, work contact, and  
10 similarity of training and experience.

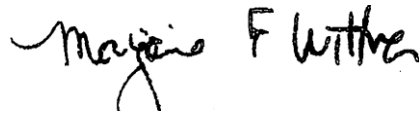
11 First, like all other members of the bargaining unit described in both the DLR's  
12 certification and the recognition clause, the Library Bookkeeper is a Library employee  
13 who works in the Morse Institute Library. Her level of pay, \$21.00 an hour, falls squarely  
14 with the range earned by Library Associates. The level of education required of other  
15 bargaining unit members ranges from a high school degree to a Master's in Library  
16 Science, and the Associate's degree or Bachelor's degree that the position requires falls  
17 within that range. The record also reflects that the Library Bookkeeper has regular contact  
18 with other bargaining unit members. Her duties include answering reference staff's  
19 questions about budgets and grants and making monthly budget presentations to staff.  
20 Finally, like the majority of Library Assistants and Associates, the Library Bookkeeper  
21 works a part-time schedule. Taken together, we find that these factors demonstrate that  
22 the Library Bookkeeper shares a community of interest with the other members of the  
23 Library unit.

1 Conclusion

2 For the reasons stated above, the CERB grant the Union's petition to accrete the  
3 Library Bookkeeper into the Laborers' Library unit.

4 **SO ORDERED**

COMMONWEALTH OF MASSACHUSETTS  
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



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MARJORIE F. WITTNER, CHAIR



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JOAN ACKERSTEIN, CERB MEMBER