

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

In the Matter of

BOSTON SCHOOL COMMITTEE

and

BOSTON TEACHERS UNION, LOCAL 66

and

BOSTON ASSOCIATION OF SCHOOL  
ADMINISTRATORS AND SUPERVISORS

Case No. CAS-21-8555; CAS-21-8796

Issued: May 21, 2024

CERB Members Participating:

Marjorie F. Wittner, Chair  
Kelly B. Strong, CERB Member  
Victoria B. Caldwell, CERB Member

Appearances:

Brian A. Pansius, Esq. - Representing the Boston School Committee  
John Foscett, Esq.

Harold Jones, Esq. - Representing the Boston Teachers Union, Local 66  
Jenniffer Migliaccio, Esq.

Dominic Sacchetti - Representing the Boston Association of School  
Administrators and Supervisors

**CERB DECISION**

Summary

- 1 The issue before the Commonwealth Employment Relations Board (CERB) is
- 2 whether multiple positions that perform non-instructional duties generally aimed at

1 improving school climate, culture, and student performance in various locations  
2 throughout the Boston Public Schools should be accreted to the bargaining unit of  
3 teachers and other personnel represented by the Boston Teachers Union Local 66 (BTU),  
4 or to the bargaining unit of administrators and supervisors represented by the Boston  
5 Association of School Administrators and Supervisors (BASAS). A secondary issue is  
6 whether one of the petitioned-for positions, the Homeless Education Resource Network  
7 (HERN) Help Service Coordinator, is a managerial employee as defined in Section 1 of  
8 M.G.L. c. 150E (the Law). For the following reasons, the CERB accretes the climate and  
9 culture positions to the BASAS bargaining unit. The CERB further concludes that the  
10 HERN Help Service Coordinator is not a managerial employee and accretes that title to  
11 the BTU's bargaining unit.

#### 12 Statement of Case

13 On March 29, 2021, the Boston Teachers Union (Union) filed a unit clarification  
14 petition (CAS-21-8555) with the Department of Labor Relations (DLR) seeking to add  
15 ten positions to its bargaining unit of Boston Public School (District or BPS) employees:

- 16 1. HERN Help Service Coordinator
- 17 2. Manager of Social Climate
- 18 3. Manager of Social and Emotional Learning and Family Partnership
- 19 4. Coordinator of School Culture
- 20 5. Climate and Culture Coordinator
- 21 6. School Climate and Culture Coordinator
- 22 7. Manager of Climate and Discipline/Dean of Students
- 23 8. Dean of School Culture
- 24 9. School Culture and Climate Manager
- 25 10. English Language Learners (ELL) Coordinator

26 The BTU's petition indicated that these titles were newly-created, non-unionized  
27 positions. The DLR notified BASAS about the petition on May 17, 2021. On August 27,

1 2021, BASAS filed a petition (CAS-21-8796) seeking to accrete the same 10 titles to its  
2 bargaining unit. The DLR consolidated the petitions for investigation.

3 On October 1, 2021, the Boston School Committee (School Committee or  
4 Employer), BTU, and BASAS participated in an informal conference regarding the  
5 petitions. During the conference, the BTU withdrew without prejudice its petition for the  
6 ELL Coordinator titles based on the School Committee's assertion that it had no plans to  
7 fill these vacant positions.<sup>1</sup> The BTU argues that the remaining nine titles should be  
8 accreted to its bargaining unit because they share a greater community of interest with  
9 the members of its bargaining unit than with BASAS's bargaining unit members. The  
10 School Committee contends that to the extent the positions are not managerial,<sup>2</sup> they are  
11 more appropriately placed in the BASAS unit because they do not have teaching  
12 responsibilities, do not have to be licensed by the Department of Elementary and  
13 Secondary Education (DESE), and because they work 12 months and longer hours than  
14 BTU members. BPS also argues that BASAS placement is appropriate because some  
15 of the positions supervise, evaluate, and/or occasionally address complaints regarding

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<sup>1</sup> During the investigation, the BPS asserted that the Dean of School Culture position at the Dever School no longer existed. In the show cause letter, the CERB asked the BTU and BASAS to show cause why the DLR should not dismiss the petition with respect to this position. The BTU replied that if the position no longer existed, it would agree to dismiss its petition for the position without prejudice to refiling. BASAS did not file a response. After reviewing the record, the CERB finds no evidence that Dean of School Culture position is filled or still exists. The CERB therefore dismisses both petitions with respect to this position without prejudice.

<sup>2</sup> The School Committee originally argued that all 10 positions were managerial employees within the meaning of Section 1 of the Law. During the conference, the School Committee withdrew that argument with respect to every position except the HERN Help Resource Coordinator.

1 BTU bargaining unit members. BASAS makes similar arguments as the School  
2 Committee in support of accreting the disputed positions to its unit.

3 The parties submitted position statements, affidavits, and other documents before  
4 and after the conference. By letter dated December 20, 2023, the DLR directed the  
5 parties to show cause why the unit placement dispute should not be resolved on the basis  
6 of the information summarized therein. All parties filed responses to the letter. After  
7 reviewing these responses and making certain changes, as noted herein, the CERB has  
8 determined that there are no materially disputed facts and issues this decision based  
9 upon the following findings.

10 Background

11  
12 Boston Teachers Union

13  
14 In 1981, in Case No. MCR-3074, the former Labor Relations Commission (LRC)<sup>3</sup>  
15 certified the BTU as the exclusive representative of a bargaining unit of teachers and  
16 substitute teachers employed by the School Committee. Since 1981, the School  
17 Committee and the BTU have been parties to a series of collective bargaining  
18 agreements, including one effective from September 1, 2018 through August 31, 2021  
19 (CBA). In Article I, Section A of the CBA, the School Committee recognizes the BTU as  
20 the exclusive representative:

21 [F]or all persons in the bargaining unit which consists of those covered by  
22 Groups I, 2A-2B of the salary schedule (1963-1964) of the Boston School  
23 Committee, excluding Assistant Principals and Coordinators, but including  
24 nurses and supervising nurses, provisional teachers and nurses, substitute  
25 teachers and nurses on a one year's assignment, teacher-coaches,  
26 teachers and nurses in Summer and Evening Schools, swimming  
27 instructors, E.T.F.'s, certain employees from the Department of

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<sup>3</sup> References to the CERB include the former LRC.

1 Implementation, investigative counselors, security specialists, supervisors  
2 of attendance, clinical coordinators and lead sign language interpreters.  
3 The jurisdiction of the Union shall include those persons now or hereafter  
4 who perform the duties or functions of the categories of employees in the  
5 bargaining unit, regardless of whether these duties or functions are  
6 performed by present, or modified, or new processes or equipment [sic].

7 As of the investigation, the BTU's bargaining unit consisted of approximately 5,888  
8 employees. The unit includes both teaching and non-teaching positions. As described  
9 in the section of "comparable" BTU titles below, several of these non-teaching positions  
10 perform duties pertaining to attendance, school climate, family outreach, and discipline  
11 issues. Except for the Supervisors of Attendance, all such comparable positions require  
12 a master's degree and/or some type of DESE certification.

13 The BTU salary schedule has nine salary lanes depending on the level of  
14 education reached and the number of additional graduate credits, e.g., bachelor's,  
15 bachelor's +15, master's, master's +15, doctorate, etc. There are nine steps per grade.  
16 The salary range for someone with a bachelor's degree in non-Schedule A schools<sup>4</sup> for  
17 the 2020/2021 school year was \$58,680 - \$97,787. The salary range for an employee  
18 with a master's +30 was \$66,767 - \$108,496.

19 Almost all BTU bargaining unit members work a 10-month, 183-day schedule that  
20 includes three orientation days. However, Article V (B) of the 2021-2024 CBA, "Special  
21 Groups," includes four titles that work more than 183 days: Hub Community School  
22 Coordinators, described in Article V (B)(9), whose contractual work year is 223 days, and  
23 Department of Implementation Personnel (Article V (B)(11)), which includes three  
24 positions – Information Officer, Transportation Officer, and Assignment Transfer

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<sup>4</sup> The record does not reflect which schools are "Schedule A" schools.

1 Specialist (discussed below) - whose contractual work year is “12 months, not to exceed  
2 215 work days.”

### 3 BASAS

4  
5 BASAS and the School Committee were parties to a collective bargaining  
6 agreement that expired on August 31, 2020. The BASAS bargaining unit consists of  
7 employees with the titles of Assistant Principal, Director, Department Head, Program  
8 Director, Senior Program Director, Assistant Program Director, Dean, Operational  
9 Leader, Special Education Support Services Supervisors, and a variety of Coordinator  
10 titles, including Senior Coordinator, Senior Program Coordinator, Cluster Coordinator,  
11 Coordinator Manager, and Bilingual Coordinator. In general, all BASAS positions are  
12 non-teaching, administrative in nature, and include supervisory responsibilities. As  
13 described in more detail below, some of these titles are building-based and others work  
14 out of the BPS’ central offices. Some of these titles require DESE licensure, others do  
15 not. All BASAS members work an eight-hour day on a 12-month schedule (between 207  
16 and 260 days), with most titles working between 207 and 225 days. There are a number  
17 of BASAS positions that report to other BASAS positions but all building-based BASAS  
18 positions are evaluated by the school principal.

19 BASAS salaries are classified from Grade 3 to Grade 12B, with each grade having  
20 eight steps. In 2019-2020, the Grade 3, Step 1 salary was \$67,607. The Grade 12B, Step  
21 1 salary was \$111,366.

22 As of the investigation, there were approximately 240 individuals in the BASAS  
23 bargaining unit.

### 24 Petitioned-For Positions

1        Generally

2        All of the disputed titles were created between 2015 and 2021. Except for the  
3        HERN Help Service Coordinator, described in greater detail below, the petitioned-for  
4        positions have similar terms and conditions of employment, job duties, education and  
5        experience requirements, and are building-based.<sup>5</sup> All the positions are full-time, 12-  
6        month positions that report to the building principal or head of school. They perform  
7        various duties centered on developing and implementing student discipline, attendance,  
8        school climate, culture and restorative justice policies and initiatives at their respective  
9        schools. In furtherance of these duties, the petitioned-for positions conduct hearings,  
10       work with students, coach teachers, and perform community outreach regarding climate  
11       and culture. These employees also attend meetings with students, family, administrators  
12       and other school personnel regarding these matters. The headmasters and principals at  
13       several schools consider some of the positions to be part of the school's administrative  
14       team, which may include both BASAS and BTU titles.<sup>6</sup> The positions are non-instructional  
15       and do not require a Massachusetts teachers license or DESE certification. Most, but not  
16       all positions require a bachelor's degree, although several job descriptions indicate that

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<sup>5</sup> The BTU clarified during the investigation that it is seeking to accrete all positions at BPS locations that have the same or similar job titles as those on its petition, even if the job posting it provided with its petition only pertained to a particular school.

<sup>6</sup> For example, as set forth below, the job description for the Manager of Social and Emotional Learning and Family Partnership at the Henderson School states that it will be "an integral member of the Administrative Team working collaboratively with the Principal, Manager of School Climate, Guidance Counselor and Student Support Service" and "will also support school level implementation of SEL programming and practices by teaming with school leadership team, teachers and staff."

1 a master's degree is preferred.<sup>7</sup> Some of the titles may evaluate other BPS employees or  
2 conduct investigations of bias complaints made against teachers. None of the  
3 incumbents in the petitioned-for titles have the authority to impose discipline, however,  
4 and there is no evidence that they hire, or recommend discipline of other BPS employees.

#### 5 Compensation

6 BPS placed the disputed titles on Tiers B and C of its five-tier "managerial" salary  
7 scale, Tier A-Tier E. As of fiscal year 2021, Central Office Tier B positions had annual  
8 salaries ranging from \$76,631 to \$87,671. Tier C positions ranged from \$85,670 to  
9 \$121,816.

10 The educational requirements of Tier B positions range from a high school diploma  
11 through a bachelor's degree. These positions are generally assistants or coordinators of  
12 various work and projects. Tier C positions generally require a bachelor's degree and  
13 two to three years of experience in a related field.

#### 14 **HERN Help Service Coordinator**

15 This position was originally posted in early 2017 as a Managerial Tier C, half-time  
16 position with a pro-rated, grant-funded salary of approximately \$28,100. It was filled on  
17 September 5, 2017. In 2019, it was converted to a full-time, 12-month position with a  
18 salary of \$58,493. After two more adjustments, the salary as of July 6, 2020, was  
19 \$94,262.

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<sup>7</sup> The following job postings provided by BTU do not require a bachelor's degree: School Climate and Culture Manager (Charlestown H.S. - no educational requirements listed); and Climate and Culture Coordinator (Boston Latin Academy - high school diploma or GED required).



1           The position is the only one of the petitioned-for positions that is based in the BPS  
2 central offices. Until 2019, it was part of the office of “Opportunity, Youth, Office of Social  
3 Emotional Learning and Wellness” (Department of Opportunity Youth), where the  
4 incumbent worked with the Homeless Resource Coordinator, which is a former BTU  
5 position that BPS eliminated in 2019 after the incumbent retired.

6           The HERN Help Service Coordinator now reports to the Assistant Director of  
7 Opportunity Youth.<sup>8</sup> According to a job posting, the incumbent helps develop and pilot  
8 “HERN Helps,” a program that tries to identify the special needs of each unhoused  
9 student served by BPS and develop a customized slate of services for them. The  
10 incumbent is responsible for engaging relevant internal and external stakeholders to align  
11 appropriate services, including school placements, transportation, tutoring and extended  
12 school year programing. Within the District, the HERN Help Service Coordinator has  
13 regular contact with administrators, principals, secretaries, registrars, counselors, social  
14 workers, teachers, and transportation staff. The position’s external contacts include the  
15 Office of the State Coordinator, the local community, and related service providers to  
16 unhoused families, children, and youth. The HERN Help Coordinator has case

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<sup>8</sup> In its response to the Show Cause letter, the BTU asserts that the Assistant Director of Opportunity Youth is a position in the BASAS bargaining unit. BPS in turn states that the Assistant Director of Opportunity Youth is classified as “managerial” but reports to the Senior Director of Opportunity Youth, which is classified as a BASAS position. We note that the positions in the BASAS unit include both “Assistant Director” and “Senior Director.” Regardless of who is correct, the CERB acknowledges that if the HERN Help Service Coordinator were classified as managerial, either its direct or indirect supervisor would be a member of the BASAS bargaining unit. We address this issue in our discussion below.

1 management and data management duties, and conducts home visits with families to  
2 determine their individual needs.

3 The requirements are a bachelor's degree in social work or a related field with a  
4 master's degree preferred.

5 **School Climate and Culture Coordinator<sup>9</sup>**

6 A posting for this position at the Eliot K-8 Innovation School for the 2016-2017  
7 school year states in part:

8 **General Description**

9 The Climate & Culture Coordinator will play a critical role in improving  
10 student performance at the Eliot K-8 Innovation School by ensuring our  
11 school maintains a positive learning environment and a culture of high  
12 expectations. The Climate & Culture Coordinator will collaborate with  
13 school staff to continue to implement strategies and programs designed to  
14 improve culture and climate. He/she will develop a system for school staff  
15 to regularly monitor school culture and climate, and work to ensure that the  
16 school is safe, supports learning and expects staff and students to perform  
17 at high levels. In addition, the Climate & Culture Coordinator will work with  
18 school staff to effectively engage families in academically focused activities  
19 as well as the work required to build a strong school culture and climate.  
20

21 **Key Roles and Responsibilities:**

- 22
- 23 • Work with school staff in leading the effective implementation and  
24 continuous improvement of a school-wide program designed to  
25 improve climate and culture.
  - 26 • Work collaboratively with school leaders to develop/maintain a  
27 strategic implementation plan for improving climate and culture.
  - 28 • Work with [the] Instructional Leadership Team to develop a system  
29 for measuring culture and climate improvements including

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<sup>9</sup> The CERB has supplemented the show cause letter to add a description of this position and a description of the Manager of Social and Emotional Learning described below. These positions are similar but not identical to other petitioned-for Climate/Culture positions for which the BTU provided postings. Some notable differences between the various positions and job descriptions are that the Charlestown High School Culture and Climate Manager job description contained no educational requirements, and the Coordinator of School Culture and the Dennis C. Haley K-8 Pilot School was the only Climate/Culture Coordinator classified as a Managerial Tier C.

attendance data, discipline data, student achievement data and climate survey response.

- Provide professional development to school leaders, family and staff designed to increase their skill level in developing academic social and emotional supports for students.

The requirements are graduation from an accredited college or university with a preference for a master's degree in social work, psychology or counseling, education, or a related field. The position also requires a minimum of three years of instructional experience or five years' experience as a social worker, psychologist, or counselor. The position is classified as Managerial Tier B and reports to the School Principal. The work year listed on the posting is 223 days between July 1 and June 30.

**Manager of Social and Emotional Learning and Family Partnership  
(Henderson K-12 Inclusion School)**

A job posting for this position for the 2018-2019 school year contains the following description:

The Manager of Social and Emotional Learning (SEL) and Family Partnership (FP) will work to implement systemic SEL practices and Family Engagement Strategies at the Henderson K-12 Inclusion School. The SEL/FP Manager is responsible for the integration of SEL programming including standards, curriculum, resources, professional development and continuous improvement. The SEL/FP Manager will work directly with school administrators, teachers and support staff to ensure SEL programming is integrated into instruction, through common language that aligns with the schools' educational goals and vision.

The responsibilities included:

- The SEL/FP Manager will be an integral member of the Administrative Team working collaboratively with the Principal, Manager of School Climate, Guidance Counselor and Student Support Services. The SEL/FP Manager will also support school level implementation of SEL programming and practices by teaming with the school leadership team, teachers and staff.
- Participate in Community Partnership Meetings, collaborate and attend meetings with stakeholder groups...
- Support school based teams in messaging what SEL is...

- 1 • Participate in student disciplinary meetings and coordinate peer  
2 mediation and other restorative justice/alternative discipline  
3 responses to student disciplinary concerns when appropriate.
- 4 • Oversee and coordinate with the Director of Operations all family  
5 engagement activities...
- 6 • Make home visits to students and families as needed, in support of  
7 student attendance, and to ensure 100% participation in state  
8 assessments.

9 The position reports to the school principal. The posting required a bachelor's  
10 degree and was classified as a Managerial Tier C. The work year is 223 days between  
11 July 1 and June 30.

#### 12 Comparable Positions

13 The BTU and BASAS provided job descriptions for positions within their bargaining  
14 unit that they believe are comparable to the petitioned-for positions. For the BTU, those  
15 positions included the following:

#### 16 Supervisors of Attendance

17  
18 As set forth above, Supervisors of Attendance were included in the BTU's 1983  
19 certification from the former Labor Relations Commission. The general description of  
20 their duties on a 2015/2016 posting stated in part:

21 [S]ince a child cannot benefit from the best curriculum unless he/she is  
22 regularly present, attendance becomes a vital element of any educational  
23 program. The supervisors of attendance provide important linkage between  
24 schools and homes. In performing their duties, they investigate attendance  
25 problems primarily outside the school environment working in the  
26 community, visiting homes and counseling students and their families.  
27 Working with school based staff, they help to solve attendance problems.  
28 When necessary, the supervisors of attendance file and represent chronic  
29 cases at the Boston Juvenile Court.

30 The posting reflects that Supervisors of Attendance work closely with cluster  
31 leadership, school staff, administrative leadership, students, and parents on attendance  
32 related issues, among other things, conducting in-service training for attendance-related

1 issues with schools and parent groups, and develop and complete all reports regarding  
2 investigations. They work with external groups, including Community-Based Juvenile  
3 Justice Roundtables, Attendance Review Committees, the Probation Department, the  
4 Police Department, the District Attorney's office, and various Commonwealth agencies,  
5 including the Department of Youth Services, with respect to attendance initiatives and  
6 legal matters. The position's work-year is 10 months plus 10 days (193-day) and it  
7 requires a bachelor's degree and certification as a Massachusetts Supervisor of  
8 Attendance. The positions work out of the BPS Central Office.

9 Assignment Transfer Specialist

10 According to a 2016/2017 job posting, this position is primarily responsible for  
11 ensuring that current and prospective students are assigned to schools within BPS in  
12 accordance with rules governing the Controlled Choice Student Assignment Plan. It  
13 works out of the West Zone Family Resource Center. The responsibilities include working  
14 with various BPS employees and schools to ensure that students are in the correct  
15 grade/program. The position requires a bachelor's degree and as noted below, is a 12-  
16 month position.<sup>10</sup>

17 Student Support/Education Program Coordinator for Home and Hospital  
18 Instruction

19 This position works with schools, hospitals, and parents to coordinate educational  
20 services for home and hospital bound students with medical or psychological issues.  
21 Duties include assisting in determining eligibility requirements; maintaining databases for

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<sup>10</sup> The BTU provided several Assignment Transfer Specialist job postings dating from 1993-2016/2017. Two indicated that the position was a 12-month position. The others did not indicate the length of the work year.

1 students; recruiting, training and supervising home instructors, staff and payroll; and  
2 involving parents in their home or hospital bound child's educational process. The  
3 position requires a master's degree, a teaching certification or certification in school  
4 administration, with some classroom teaching experience preferred.

5 Social Emotional Learning (SEL) Coach

6 This district-wide position reports to the Director of Safe and Welcoming Schools.<sup>11</sup>  
7 The SEL Instructional Coach works with BPS teachers and staff to support the  
8 implementation of high quality SEL Curriculum and assessment in the classroom. The  
9 incumbent works directly with teachers in schools modeling high quality instruction in a  
10 variety of formats. The position requires a master's degree and experience with  
11 developing SEL and training or coaching teachers.

12 Safe and Welcoming Schools Specialist

13 The Safe and Welcoming Schools (SAWS) Specialist is a district-wide position that  
14 reports to the Director of Safe and Welcoming Schools. The SAWS Specialist provides  
15 professional development to school staff as well as to Student Support Teams (SSTs) to  
16 inform, guide and train SST's and school staff to perform self-assessments, create school  
17 climate action plans, and other initiatives that build safe and welcoming schools. In

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<sup>11</sup> The job description described the Safe and Welcoming Schools (SAWS) Department as promoting student learning and engagement by supporting schools in developing and maintaining safe, welcoming, nurturing, and inclusive environments. This department provides school climate assessments, professional development, instructional coaching, connections to community partners/resources, and consults on building school climate action plans. A component of the SAWS Department is the Safe and Welcoming Schools Intervention Center, which supports all students who have committed infractions that violate the BPS code of conduct (possession of a weapon, possession or distribution of a controlled substance, assault and battery) or who have been charged with other expellable offenses.

1 addition to working with school staff and SSTs, the position is responsible for data  
2 management and administration and works with community partners, parents, and  
3 families to support parent/family engagement around school climate. The position  
4 requires a master's degree in education, special education, human services, psychology,  
5 counseling, social work, or public health, with preferred qualifications including a license  
6 in an appropriate field.

7 Homeless Resource Coordinator (HRC)

8 According to its job description, this now-defunct position provided services to  
9 children and youth in the McKinney-Vento program<sup>12</sup> to help overcome obstacles and  
10 barriers to receiving an education and to assist families with support services. The HRC  
11 was responsible for articulating and adhering to all federal guidelines as they pertain to  
12 the eligibility of children and provision of services for the McKinney-Vento Homeless  
13 program. Working with social workers and key school personnel, including principals,  
14 secretaries, registrars, counselors, social workers transportation staff, food services staff,  
15 school nurses, truancy officers and teachers, the HRC performed outreach, assisted in  
16 placing children in programs, and had data management and administration duties.

17 Other duties included developing and implementing comprehensive case  
18 management plans that include individual counseling and family progress monitoring, and  
19 monitoring attendance and truancy of unhoused students. The HRC also acted as a

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<sup>12</sup> The U.S. Department of Education administers the McKinney-Vento Education for Homeless Children and Youth program. The McKinney-Vento Act requires that both state and local education agencies ensure that homeless children and youths have equal access to the same free, appropriate public education as is provided to children and other youth. See <https://www.federalregister.gov/documents/2016/03/17/2016-06073/mckinney-vento-education-for-homeless-children-and-youths-program> (last accessed December 20, 2023).

1 resource to school staff regarding interpretations of policies, laws, and record-keeping  
2 requirements. They also provided professional development to BPS staff, including  
3 teachers and paraprofessionals regarding awareness, and the rights of students and  
4 families in homeless situations. Qualifications included a master's degree in social work  
5 or a related field, and an extensive knowledge of the social services and resources in the  
6 community for unhoused students and families.

7 Comprehensive Behavioral Health Model (CBHM) Data and Research Coordinator

8 This employee works in the Behavioral Health Services department, which is  
9 responsible for supporting the behavioral health needs of all BPS students. Behavioral  
10 Health Services department staff provide direct services to students and support staff,  
11 students, and their families. The CBHM Data and Research Coordinator is responsible  
12 for overseeing and coordinating all data and research activities related to CBHM  
13 implementation, including grant writing, reporting, program evaluation, data management,  
14 and staff training. The position requires certification as a licensed school psychologist.

15 District-Wide Restorative Practices Coach Specialist

16 This position is located within the Office of Social Emotional Learning and  
17 Wellness. It is responsible for providing in-person and virtual coaching and professional  
18 development for school staff, parents, youth and community partners to implement  
19 positive school climate and culture and reduce student discipline. The Coach Specialist  
20 evaluates and facilitates restorative practices like classroom circles and restorative  
21 practice conferences. The incumbent coaches, mentors, trains and co-evaluates three  
22 school-based Restorative Practice coordinators and has data collection, analysis and  
23 management responsibilities. The requirements include a bachelor's degree in a related



1 area like education or psychology, with a master's preferred, a Massachusetts teaching  
2 license, and experience working as an instructional coach. The work year is 183 + 15  
3 days.

#### 4 BASAS Comparable Positions

5  
6 BASAS contends that the following positions are comparable to the petitioned-for  
7 titles.

#### 8 Comprehensive School Planning Specialist-High School [BASAS Coordinator 9]

9 This position works out of the TechBoston Academy and is responsible for  
10 managing the Academy's 21<sup>st</sup> century innovation plan to enrich teaching and learning  
11 objectives through technology. Responsibilities include coordinating the delivery of  
12 professional development opportunities and working with the governing board to develop  
13 community partnerships with local education and service agencies that can help promote  
14 the plan. The position also coordinates schoolwide programs that promote wellness,  
15 service, and a positive school climate in light of the Innovation Plan. This position requires  
16 a master's degree in education or management and two DESE licenses.

#### 17 Field Coordinator, Food Nutrition Services [BASAS 4-B]

18 This position supervises multiple schools and school sites to ensure compliance  
19 with all aspects of school food service programs. The position requires a minimum of a  
20 bachelor's degree in a food or hospitality-related major with a minimum of five years of  
21 managerial/supervisory experience in institutional food service preparation. An advanced  
22 degree is preferred. The position supervises and coaches food service staff, works with  
23 outside agencies, auditors, department managers, and principals. No DESE licensure is  
24 required.

1           Coordinator/LAB Cluster [BASAS 7]

2  
3           This is a special education administrative position that coordinates the LAB cluster  
4 program, which serves students with moderate to severe emotional and behavioral  
5 disabilities in the public school setting. The position requires a master's degree in  
6 education specializing in therapeutic programs for students with emotional disabilities,  
7 and Special Education Administrator Certification.

8           Technology Coordinator, Food and Nutrition Service (FNS) [BASAS 4B]

9  
10          This position works in the FNS department to maintain information technology at  
11 all food service locations and in the FNS central office and ensures that staff know how  
12 to use this technology. The incumbent works with central IT and department leadership.  
13 The position requires a bachelor's degree in a related field and three or more years of  
14 professional experience.

15          The following BASAS titles also address disciplinary and social, emotional and  
16 equity issues:

17           Director of Social Emotional Learning

18  
19          This District-Wide Director position is based in the BPS Office of Health and  
20 Wellness (OHW) and reports to the Assistant Superintendent of OHW. A 2021-2022 job  
21 description states that the position will "lead the development and implementation of a  
22 comprehensive, systemic Tier 1 SEL approach and professional learning plan, playing an  
23 essential role in implementing social emotional and academic strategies across schools  
24 to create safe, healthy, joyful, anti-racist, culturally and linguistically affirming  
25 environments that support students' social, emotional and academic development in  
26 alignment with the District Wellness Policy." The position requires knowledge of SEL

1 competencies and standards, research and evaluating, curriculum, instructing and  
2 program and staff management. The incumbent communicates with internal and external  
3 stakeholders, and hires, trains, and manages program staff. The position requires a  
4 master's degree in a related field and possession of or the ability to obtain a DESE  
5 administrator license within 12 months of hire. This position's work-year is 225-days and  
6 is a BASAS 11B position.

7 In 2020-2021, there was also a grant-funded Assistant Program Director,  
8 Partnership in Social Emotional Learning, who supervised and managed the day to day  
9 activities of the Partnership in Social and Emotional Learning initiative, including grant  
10 compliance, planning, staff, and project management assessment. The position required  
11 a master's degree and DESE licensure.

12 Dean of Students – UP Academy Holland<sup>13 14</sup>

13 The Dean of Students reports to UP Academy's Principal and serves on UP  
14 Academy's Leadership team. The job description states that it will "lead the school's  
15 efforts to create a positive, structured, consistent, caring, and disciplined school culture."  
16 The Dean of Students reports to the UP Academy's Principal. Qualifications include a  
17 bachelor's degree with a master's preferred with three years of teaching experience  
18 required and two or more years of school leadership experience strongly preferred.

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<sup>13</sup> A description of these two Dean positions were not included in the Show Cause letter. The CERB has added descriptions of these positions for the sake of completeness. BASAS provided job descriptions for both positions during the investigation.

<sup>14</sup> According to the job description, the UP Education Network "operates five schools in Boston and Lawrence, MA serving more than 2,600 elementary and middle school students." UP "is invited by local school districts to restart chronically underperforming district school as UP Academies."

Specific responsibilities include:

- Establish and ensure a joyful, structured, achievement-oriented school culture.
- Support and coach teachers to hold students to consistently high behavioral expectations.
- Serve as the point person for discipline/culture issues.
- Assist teachers, students, and families in the effective creation and implementation of individual behavior plans.
- Leads staff efforts to ensure all students have excellent attendance and arrive at school on time and prepared to learn.
- Oversee the development and implementation of student supports and interventions.

#### Dean of Students – Madison Park Vocational High

Based on a 2014 job description, this position reports to the school's Director of Student Services. The position requires a master's degree and certification as a Secondary Principal/Assistant Principal, and/or AC1 Superintendent/Director of Vocational Education. Responsibilities include:

- Assists the Director of Student Services with the implementation of school procedures ensuring the safety and security of all students and staff.
- Collaborates with all administrators and teachers to support students in the creation and maintenance of a safe learning environment.
- Supports and consults with staff on teaching and learning, classroom management and classroom procedures, and evaluates their progress.
- Follows all BPS guidelines relative to implementing the Code of Discipline.
- Performs other related duties requested by the Headmaster/Director.

#### Opinion<sup>15</sup>

A unit clarification petition is the appropriate vehicle to determine whether newly created positions should be included or excluded from a given bargaining unit or to determine whether substantial changes in the job duties of an existing position warrant either its inclusion or exclusion from the unit. Town of Athol, 32 MLC 50, 52, CAS-04-

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<sup>15</sup> The CERB's jurisdiction is not contested.

1 3567 (June 29, 2005). In deciding whether an employee should be accreted into an  
2 existing bargaining unit, the CERB applies a three-step analysis. It first determines  
3 whether the position existed when the unit was first recognized or certified. City of Boston,  
4 35 MLC 137, 140, CAS-07-3669 (December 31, 2008). If the position is newly-created,  
5 the second step examines the parties' subsequent bargaining history to determine  
6 whether the parties considered the disputed position to be in the unit. Id. If there is no  
7 relevant bargaining history or negotiations did not result in an agreement as to unit  
8 placement, the CERB examines whether the position shares a community of interest with  
9 the existing unit. Town of Somerset, 25 MLC 98, 100, CAS-3145 (January 6, 1999).

10 Here, the first prong of the accretion analysis is inconclusive because the positions  
11 are newly-created, and there is no evidence that any similar climate and culture positions  
12 existed when either the BTU or BASAS were first certified. The second prong is also  
13 inconclusive because there is no evidence that the parties ever discussed the positions'  
14 unit placement. We therefore turn to the third prong, community of interest.

15 Climate and Culture Positions – Community of Interest

16 When determining community of interest, the CERB considers such factors as  
17 similarity of skills and functions, pay and working conditions, training and experience and  
18 common supervision and work contact. Boston School Committee, 12 MLC 1175, 1196,  
19 CAS-2598 (August 30, 1985). When two unions seek to accrete new positions and the  
20 CERB determines that the positions share a community of interest with both units, the  
21 CERB places the position in the unit with which it shares the greater community of  
22 interest. Board of Trustees, University of Massachusetts, 31 MLC 209, 215, CAS-04-  
23 3577 (June 22, 2005).

1           That determination is a close one in this case because many of the BTU and  
2 BASAS non-instructional bargaining unit members share a community of interest in terms  
3 of common supervision, work contact, and education requirements. Also, both units  
4 include positions that, like the disputed positions, are responsible for developing and  
5 implementing programs and initiatives relating to school culture and climate, discipline,  
6 restorative justice, family outreach, and social and emotional learning. Those positions  
7 include the SEL Coach (BTU); Safe and Welcoming Schools Specialist (BTU); District  
8 Wide Restorative Practices Coach Specialist (BTU); Comprehensive School Planning  
9 Specialist High School (BASAS), Coordinator/LAB Cluster (BASAS); Director of Social  
10 Emotional Learning (SEL), Dean of Students – UP Academy Holland (BASAS); and Dean  
11 of Students – Madison Park Vocational High (BASAS). However, with the notable  
12 exception of the Dean of Students – UP Academy Holland, which, as of 2021, required  
13 only a bachelor's degree, all of these climate and culture positions require a master's  
14 degree or DESE licensure of some sort. Further, unlike the disputed positions, most of  
15 the BTU positions that focus on school culture and climate do so at the district-wide, not  
16 school level.

17           The BTU positions most comparable to the disputed titles are the Supervisors of  
18 Attendance. Like the disputed positions, the Supervisors of Attendance are required to  
19 have a bachelor's degree, address student behavioral issues that may affect learning,  
20 and work with school staff, administrative leadership and families to recommend and  
21 provide appropriate interventions to solve these issues. Unlike the positions at issue here,  
22 however, the Supervisors of Attendance are district-based, 10-month positions that

1 require state certification, whose job description reveals no responsibility for evaluating  
2 or conducting bias investigations of other staff members.

3 The BASAS position that is most comparable to the disputed positions is the Dean  
4 of Students, UP Academy Holland. This is a 12-month building-based position with  
5 responsibility for creating a “positive, structure, consisting, caring, and disciplined school  
6 culture.” Like the Climate and Culture Coordinator at the Eliot K-8 Innovation School, the  
7 Manager of Social and Emotional Learning at the Henderson K-12 Inclusion School, and  
8 practically every other disputed position, the Dean of Students reports to the School  
9 Principal, is considered part of the school’s administrative team, does not have direct,  
10 instructional duties, requires only a bachelor’s degree and no DESE licensure, and is a  
11 12-month position. When we view the near identity of interest that the disputed titles  
12 share with this Dean of Students, along with the fact that all other building-based BASAS  
13 positions are 12-month positions that serve on the building’s administrative team, we find  
14 that the disputed climate and culture positions share a greater community of interest with  
15 the BASAS bargaining unit than with the BTU unit.

16 HERN Help Service Coordinator

17 We reach a different conclusion with respect to the HERN Help Service  
18 Coordinator. As a preliminary matter, we find no basis to conclude that this employee is  
19 a managerial employee within the meaning of Section 1 of the Law. Pursuant to the  
20 statutory definition, employees shall be designated as managerial employees only if they:

- 21 a) participate to a substantial degree in formulating or determining policy, or
- 22 b) assist to a substantial degree in the preparation for or the conduct of collective
- 23 bargaining on behalf of a public employer, or,
- 24 c) have a substantial responsibility involving the exercise of independent
- 25 judgment or an appellate responsibility not initially in effect in the administration
- 26 of a collective bargaining agreement or in personnel administration.

1 If any of the disputed position's actual duties or responsibilities satisfy any one of the  
2 statutory criteria, the position must be excluded from the bargaining unit pursuant to  
3 Section 3 of the Law. Town of Bolton, 25 MLC 62, 66, MCR-4562 (September 10, 1998).

4 Here, the School Committee contends that the HERN Service Coordinator is a  
5 managerial employee under the first part of the statutory definition.<sup>16</sup> To be considered a  
6 managerial employee in this category, the employee must make policy decisions and  
7 determine mission objectives without being screened by another layer of administration  
8 before being implemented. Board of Trustees (UMass Dartmouth) 39 MLC 275, 283,  
9 CAS-08-3719, CAS-11-1074 (April 2, 2013) These decisions must be of major importance  
10 to the mission and objectives of the public employer, and the employee must be involved  
11 in the decision-making process on a regular basis. Id. Without providing much more detail  
12 than the job posting, BPS asserts that the HERN Help Service Coordinator satisfies this  
13 test. We disagree.

14 While we do not doubt that developing a program that identifies the needs of each  
15 unhoused student at BPS and develops a customized slate of services for them is  
16 important and necessary work, this job is similar to that performed by school social  
17 workers and other BTU and BASAS positions that have case management and data  
18 management duties. Furthermore, the position is quite similar to the Homeless Resource  
19 Coordinator that was in the BTU unit for years. That employee also had data management  
20 and administrative duties and was responsible for helping unhoused children receive an  
21 education and assisting their families with support services.

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<sup>16</sup> The School Committee does not contend that the HERN Help Service Coordinator is a managerial employees based on parts (b) or (c) of the statutory definition.



1 Finally, there are at least two layers of supervision above the HERN Help Service  
2 Coordinator, at least one of which is a BASAS position. While evidence is sparse on this  
3 issue, this hierarchical structure renders it unlikely that this employee makes major policy  
4 decisions that are not screened by another layer of administration. We agree with the  
5 BTU that it would be anomalous to conclude that an employee that reports to a unionized  
6 supervisor is a managerial employee without collective bargaining rights. For all these  
7 reasons, we hold that the HERN Help Service Coordinator is not a managerial employee.

8 For similar reasons, we find that this position is most appropriately placed in the  
9 BTU unit. As explained above, its duties are very similar to those performed by the  
10 Homeless Resource Coordinator, a former BTU position. Further, whenever possible,  
11 the CERB avoids placing employees in the same unit with their supervisor to avoid any  
12 potential conflicts of interest. Weston School Committee, 37 MLC 224, 226, CAS-08-  
13 3732 (May 23, 2011) (additional citations omitted). We are able to avoid potential conflicts  
14 here by placing the HERN Help Service Coordinator into the BTU unit. The HERN Help  
15 Service Coordinator shares a community of interest with other BTU titles, most notably,  
16 the Supervisors of Attendance, who also work on a district-wide basis with students,  
17 school staff, external groups, including government agencies and local community  
18 groups, and families to investigate and coordinate the educational and other needs of a  
19 distinct group of students. The fact that the HERN Help Service Coordinator is a 12-  
20 month position, and most other BTU positions are 10-month positions does not change  
21 our conclusion because the BTU already includes some 12-month positions.

22 In sum, based on the CERB's reluctance to put employees in the same unit with  
23 their supervisors, and the fact that the BTU previously included and currently includes

similar positions, we conclude that the HERN Help Service Coordinator shares a greater community of interest with the BTU unit than with the BASAS unit, and we accrete that position to the BTU.

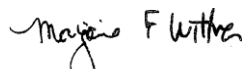
Conclusion

We grant the BASAS petition (CAS-21-8796) to accrete the following positions and those with the same or similar job titles to its bargaining unit:

1. Manager of Social Climate
2. Manager of Social and Emotional Learning and Family Partnership
3. Coordinator of School Culture
4. Climate and Culture Coordinator
5. School Climate and Culture Coordinator
6. Manager of Climate and Discipline/Dean of Students
7. School Culture and Climate Manager

We dismiss the BTU petition (CAS-21-8555) with respect to the above-listed positions and grant it only with respect to the accretion of the HERN Help Service Coordinator to its bargaining unit. As such, we dismiss the BASAS petition with respect to the HERN position.

SO ORDERED. COMMONWEALTH EMPLOYMENT RELATIONS BOARD



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MARJORIE F. WITTNER, CHAIR



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KELLY B. STRONG, CERB MEMBER



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VICTORIA B. CALDWELL, CERB MEMBER

