

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

In the Matter of

BOARD OF TRUSTEES OF THE UNIVERSITY
OF MASSACHUSETTS, BOSTON

and

JOINT EXECUTIVE COUNCIL/PSU/MTA

Case No. CAS-22-9244

Issued: May 28, 2025

CERB Members Participating:

Lan T. Kantany, Chair
Kelly B. Strong, CERB Member
Victoria B. Caldwell, CERB Member

Appearances:

Ethan Mutschler, Esq. - Representing the University of Massachusetts

Mark Hickernell, Esq. - Representing the Professional Staff Union (PSU)

CERB DECISION

Summary

1 The Joint Executive Council, Inc. d/b/a PSU (Union or PSU) seeks to accrete two
2 new positions, the Deputy Athletic Director for Internal Administration and
3 Operations/Senior Woman Administrator (DADIA), and the Deputy Athletic Director of
4 Strategic Advancement (DADSA), into its bargaining unit of full-time and regular part-time
5 non-academic professional staff who are employed by the University of Massachusetts
6 (University) at its Boston campus. For the following reasons, the Commonwealth
7 Employment Relations Board (CERB) grants the petition with respect to the DADSA, who

1 shall be accreted to the PSU bargaining unit, but denies it with respect to the DADIA,
2 which shall remain a non-bargaining unit position.

3 **Statement of the Case**

4 On April 19, 2022, the PSU filed a unit clarification (CAS) petition with the
5 Department of Labor Relations (DLR) seeking to accrete two new positions, the DADIA
6 and the DADSA, into its bargaining unit. The PSU contends that these positions have
7 similar duties and levels of authority as other members of its bargaining unit and thus
8 share a community of interest with other non-academic professional bargaining unit
9 members. The University opposes accretion on grounds that the incumbents are
10 supervisors and/or confidential employees.

11 The DLR investigated the petition by requesting information from the parties and
12 conducting an informal conference with the parties and their representatives. Before,
13 during, and after the conference, the parties submitted position statements, affidavits, and
14 other documents pertaining to the petition. By letter dated August 12, 2024, the DLR
15 directed the parties to show cause why it should not resolve the petition based upon the
16 information summarized and requested therein. The University responded to the letter by
17 providing some additional information and confirming that there were no material facts in
18 dispute. The Union did not respond to the letter. After reviewing the University's response
19 and incorporating the additional information, the CERB has determined that there are no
20 material facts in dispute. We base our decision on the information set forth below.

21 **Background**

22 PSU Bargaining Units

23 Non-Academic Professional Staff Unit

At all relevant times, the PSU has represented a unit of full-time and part-time non-academic professional staff at the University's Boston (UMB) and Amherst (UMA) campuses. Article I, Section 1.1 of the parties' 2020-2023 collective bargaining agreement (CBA) contains a recognition clause, which states in part:¹

The Employer/University agrees to recognize the Union as the exclusive representative for purposes of bargaining for all matters pertaining to wages, hours, standards of productivity and performance and other terms or conditions of employment for full-time and regular part-time non-academic professional staff bargaining unit members employed at the Boston and Amherst campuses . . . The unit includes the following state job titles: Staff Administrator; Staff Associate; Staff Assistant; Extension Specialist; Professional Technician I, II and III; Construction Maintenance Engineer; Lecturer A (non-academic); Academic Coordinator...Research Engineer; Psychological Counselor; Principal Psychologist; Assistant Director of Procurement; Athletic Trainer; Assistant Director of Guidance and Counseling; Director of Sports Publicity; Registrar; Associate Dean of Admissions; Superintendent of Building and Grounds; Editor; Assistant of Students.

The unit shall exclude all academic professionals, faculty members, librarians I-V, all classified employees, all managerial employees, all professional employees employed in a confidential capacity, all casual and temporary employees and all other employees. All professional staff employees in the following state job titles are specifically excluded from the unit: Chancellor; Associate Chancellor; Assistant Chancellor; Vice Chancellor; Associate Vice Chancellor; Assistant Vice Chancellor; Provost; Associate Provost; Assistant Provost; Dean; Associate Dean; Assistant Dean; Dean of Students; Controller; Chief Project Engineer; Director of Campus Center; Director of Research Computer Center; Research Fellow...Director of Security; Director of Athletics; Senior Staff Physician; Staff Physician. . . Head Coach; Assistant Coach; . . . Associate Director of Athletics (Amherst)....

¹ The CERB takes administrative notice of the 1989 certification of the unit in Case No. SCR-2198. In that matter, the former Labor Relations Commission (LRC) certified SEIU, Local 509 as the exclusive representative of a non-academic professional staff unit at UMB and UMA. The description of the unit contained in the certification is almost identical to the recognition clause in the PSU's 2020-2023 CBA, except that the SEIU certification did not reference the Director of Athletics or the Associate Director of Athletics on the Amherst campus. The record contains no information regarding when those positions were first excluded from the bargaining unit, or when the PSU replaced SEIU, Local 509 as the exclusive representative of the bargaining unit.

1 Section 1.2 of the CBA requires the University to disclose the creation of new
2 professional classifications. If the Union disagrees with the inclusion or exclusion of the
3 title in the bargaining unit, this provision provides for submission to the DLR for resolution.

4 The 2022-2023 PSU salaries range from Grade 25 to Grade 36, with a minimum
5 Grade 25 salary of \$39,700 and a maximum Grade 36 salary of \$166,800. The Grade 31
6 range is \$66,400 to \$99,600; the Grade 34 range is \$88,700 to \$133,000; the Grade 35
7 range is \$99,300 to \$149,900.

8 Head Coaches – PSU – Unit C

9 On February 22, 2021, the DLR certified the Joint Executive Council
10 PSU/MTA/UMA/UMB & UBCS as the exclusive representative of all full-time head
11 coaches employed by UMB and excluding all other employees.²

12 UMB Athletics and Recreation Department (Athletics Department)

13 At all relevant times, UMB's Athletics Department has been headed by a Vice
14 Chancellor of Athletics & Recreation, also known as the Director of Athletics. On June 30,
15 2020, longtime Vice Chancellor of Athletics and Recreation Charlie Titus (Titus) retired.
16 Before Titus retired, there were four Associate Directors that reported directly to him. In
17 2020, the Associate Directors were Stephanie Dollar (Dollar), Senior Associate
18 Director/SWA Internal Operations (SAD/SWA);³ John Pagliarulo (Pagliarulo), Associate

² The CERB takes administrative notice of the DLR's file in Case No. WMAS-21-8429.

³ The term SWA stands for "Senior Woman Administrator." This is a position designated by the National Collegiate Athletic Association (NCAA) for the most senior woman (other than the leader) in the department. The SWA has the power to be the designee for voting at NCAA conferences and can serve on committees that only the Athletic Director and the SWA can serve on. Dollar held this designation both when serving as the Senior Associate Director SWA and as DADIA.

1 Director, Intramural and Recreation; Kevin McCluskey (McCluskey), Director of External
2 Development; and Gamal Abiona (Abiona), Associate Director of Athletic Facilities.
3 Darlene Gordon (Gordon) served as the Special Assistant to the Vice Chancellor and
4 reported directly to Titus. Dollar, Pagliarulo, McCluskey, and Abiona were PSU
5 bargaining unit members; Gordon was not.

6 Gordon served as the Interim Athletic Director until July 19, 2021, when the
7 University hired Dr. Jacqueline Schuman (Schuman) to replace Titus. In 2022, Schuman
8 reorganized the Athletics Department by eliminating the four PSU Associate Director
9 positions that previously reported directly to Titus and creating four new positions that
10 now reported directly to her – the non-union DADIA and DADSA titles at issue here and
11 two new PSU positions, “Associate Athletics Director for Finance and Recreation,” and
12 “Associate Director of Athletics, Facilities, Operations and Sport Administration.”

13 Three of the four former Associate Directors have continued to work in the Athletics
14 Department but in new roles. As discussed below, Dollar became the DADIA; Pagliarulo
15 assumed the Associate Director of Athletics, Finance and Recreation position; and
16 McCluskey was given a new position titled “Associate Director of Athletics for External
17 Business Development and Marketing,” which reports to the DADSA. The job duties and
18 terms and conditions of employment of the DADIA and DADSA titles and other Athletics
19 Department titles are set forth below. Scott Netkovick (Netkovick) was hired as the
20 DADSA in 2022.

21 Dollar and Netkovick sit on Schuman’s senior leadership team. Schuman also
22 considers Pagliarulo to be part of her senior management team because of his role in

developing budgets. Schuman holds weekly meetings with the DADSA and DADIA and separate meetings with a larger administrative team.

DADIA

The General Summary of Position contained in a DADIA job description dated April 2022 states in pertinent part:

The [DADIA] is a key advisor to the Director of Athletics & Recreation for oversight and management of the day-to-day operations of the University's intercollegiate athletics program and the establishment of policies and procedures that achieve the parallel goals of development of quality, competitive athletics teams, excellent program leadership (i.e., Head Coaches, program area leaders) and support of the individual educational goals of student athletes. The incumbent oversees the operation of eighteen (18) sports programs, including facilities, budget, travel, scheduling, recruiting, equipment, planning, staffing, bidding, and the coordination of championships and other related areas; this position also provides leadership to sports programs through the oversight of the sports administration program and by serving as a sport administrator. The position has oversight of the department's compliance program to assist the Director of A&R in ensuring University compliance with applicable [NCAA] athletics conferences, and University rules and regulations governing all facets of intercollegiate athletics programs. This position also oversees the student/athlete development and academic support division, and the human resource function/team for the department.

The incumbent reports to the Director of A&R and will work closely with the Vice Chancellor for Human Resources and the Human Resources and Labor Relations team . . .

The minimum qualifications for the position are a bachelor's degree with a preference in business, sports administration and/or management, with a master's degree preferred, and a minimum of 10+ years of previous experience in intercollegiate athletics administration. The SAD/SWA job description had identical requirements.

The supervision section of the job description left blank the number of nonstudent employees directly or indirectly supervised. As described below, however, and as

1 reflected on the post-2021 organization chart, this position has several direct reports, all
2 of whom are either members of the PSU's or the Head Coaches' bargaining unit.

3 Dollar

4 Dollar began working for UMB as the SAD/SWA in 2018. She was promoted to
5 DADIA in October 2022 and was serving in that capacity as of the investigation. Prior to
6 her promotion, she had an annual salary of \$103,000. After Titus retired and Gordon
7 became acting Interim Athletic Director, Dollar assumed some of the personnel functions
8 that Gordon had previously performed.⁴ As of the investigation, Dollar's annual salary
9 was \$115,000.

10 The examples of duties listed on both the SAD/SWA and DADIA job descriptions
11 include hiring, supervisory, and evaluation responsibilities for staff involved in the day-to-
12 day operations of the Intercollegiate Athletics program, including providing oversight and
13 leadership to Head Coaches and to staff involved in sport administration. Before 2022,
14 this staff included at least three PSU titles (Assistant Director, Sport Communication and
15 Event Management; Assistant Director Compliance and Student Athlete Welfare; and
16 Senior Academic Counselor for Athletics). As of April 2023, after Dollar became DADIA,
17 she continued to supervise the Head Coaches and the two PSU Assistant Director
18 positions that she supervised in her previous role. Dollar also supervised the PSU
19 Equipment Coordinator.

20 Since at least 2020, Dollar's personnel-related duties have included acting as the
21 Chair for Head Coach searches and working with employees, including PSU members,
22 on performance improvement plans. As of the investigation, Dollar had been working

⁴ Gordon's duties before and after Titus resigned are addressed in more detail below.

1 with Schuman and the Human Resources department regarding a head coach who had
2 been placed on a performance improvement plan to improve performance deficiencies,
3 which, according to the University, had the potential to affect NCAA sponsorship for the
4 sports program if left unaddressed.

5 As DADIA, Dollar's labor relations duties have included attending management
6 planning meetings and serving alongside UMB's Labor Relations Manager as a member
7 of management's negotiating team for the Head Coaches' CBA. In December 2022, the
8 PSU filed a class action grievance concerning compensation issues for staff under
9 Dollar's oversight. Dollar participated in resolving that grievance at the informal stage.

10 DADSA
11

12 The DADSA is responsible for overseeing the Training/Sport Medicine and
13 Communication functions in the Athletic Department. This position was first posted in
14 January 2022, but was not filled until December 2022. The January 2022 job description
15 summarized the position's duties as follows:

16 The Deputy Athletic Director for Strategic Advancement will provide
17 strategic leadership and be responsible for department-wide strategic
18 planning efforts and broad supervision with the department's external units
19 including development, athletic communications, multimedia, marketing,
20 fan engagement, and alumni relations. This position will develop and
21 execute strategies to ensure collaboration and alignment amongst these
22 areas to unify and strengthen the UMass Boston Department of Athletics
23 and Recreation (UMB A&R) identity, brand, presence, message,
24 engagement, and strategic focus. The Deputy is responsible for the
25 leadership, supervision and implementation of a department development
26 strategy including but not limited to affinity programs, annual appeals,
27 endowment and capital related projects, with a major emphasis in the
28 solicitation of gifts of \$25,000 or more from individuals, alumni, corporations
29 and foundations efforts and associated marketing and communication
30 strategies. Supervision of a select portfolio for the department and varsity
31 programs will be expected. The Deputy will also work closely with the
32 Director of Athletics and Recreation (A&R) to build strategic efforts towards
33 the development of a high performing and collaborative sport performance

1 model including efforts to garner financial support for the program
2 development and initiatives. The incumbent reports to the Director of A&R,
3 will work closely with the Vice Chancellor for University Advancement and
4 collaborate with partners at the University's Advancement Department,
5 University Communications, the Sports and Administration Program, and
6 the Department of A&R to recruit and cultivate active volunteers and
7 increase opportunities for engagement among external constituencies to
8 ensure that the program meets its financial targets.

9 The job description provided more details regarding the position under four
10 headings: Strategic Direction and Leadership; External Relations; Philanthropy; and
11 Marketing; and Communications.

12 Under Strategic Direction and Leadership, the duties included:

- 13 • Oversee high-level departmental initiatives that support strategic
- 14 planning objectives and supervise administrative staff as assigned;
- 15 • Serve as a member of the departmental leadership team to promote a
- 16 culture of inclusion, growth and learning;
- 17 • In the absence of the Director of Athletics and Recreation, serve as the
- 18 athletics lead on all external matters;
- 19 • Serve as a senior departmental strategist.

20
21 Under External Relations, the duties included:

- 22 • Oversee and direct the external units and functions including
- 23 development, athletics communications, multimedia, marketing, fan
- 24 engagement, and alumni relations;
- 25 • Support the Director of A&R in implementing UMB A&R's presence at
- 26 the city, state, and national levels.

27 Under Philanthropy, the duties included:

- 28 • In close coordination with the Director of A&R, the Vice Chancellor for
- 29 Advancement and Advancement Team, coaches and A&R
- 30 Administrative team, develop a metric based departmental,
- 31 comprehensive strategy and annual plan for fundraising efforts,
- 32 including capital planning...and communications/appeal strategies for
- 33 Beacons Athletics as a whole and for all sports team fundraising groups;
- 34 • Supervise and mentor members of the A&R Advancement Team;
- 35 • Provide leadership and training to coaches and staff on fundraising and
- 36 marketing/communications initiatives to strengthen both.

37 Under Marketing and Communications, the duties included:

- Develop and implement an integrated strategic communications plan to advance the Department of A&R's brand identity; broaden awareness of its programs and priorities and increase the visibility of its programs across key stakeholder audiences and media outlet;
- Act as the lead for key content generation for targeted and timely communications, appeals, and announcement to increase donor engagement and stewardship;
- Working with the Communications and Development team to develop and implement a comprehensive marketing/communications plan annually for UMB A&R.

Additional duties included:

- In close coordination with Director of A&R, lead efforts to build a high-performance program model and garner partnership and financial support for efforts;
- Provide leadership, supervision, and evaluation of designated team members in Athletics and Recreation for external efforts.

The minimum education and experience requirements are the same as those listed on the DADIA job description. Additional requirements include "Discretion and ability to communicate and interact effectively with high-level donors and sponsor contacts and the ability to maintain a high level of confidentiality."

Netkovick

Netkovick was hired as DADSA in December 2022. He previously worked as an Associate Athletic Director for Development and Major Gifts Officer at a public university in a different state. He has three direct reports: McCluskey, External Business, Development and Marketing; David Walberg (Walberg), the Assistant Director of Athletics for Sports Communication and Events Management; and Ed Perkins, Assistant Director, Training/Sports Performance.⁵ As of April 2023, Netkovick earned \$135,000 a year.

⁵ McCluskey and Walberg are PSU members. Their duties are described below.

1 Netkovick's personnel-related duties include participating in internal discussions
2 about ongoing staff concerns. As of the investigation, he was managing a staff member
3 who was in the process of leaving the University. He will also evaluate the staff that report
4 to him. He served as the hiring manager when Walberg was hired and may serve as the
5 Chair of some future Head Coach searches.⁶

6 Netkovick's communication duties include participating in the drafting and
7 dissemination of communications relating to coaching staff and vacancies, and relative to
8 potential major gifts. He is involved in drafting remarks for the Vice Chancellor to make
9 at events involving donors and other supporters. Netkovick also performs several different
10 advancement functions.

11 Special Assistant to the Vice Chancellor of Athletics and Recreation, Special Projects and
12 Programs
13

14 Gordon held this non-union position until her retirement in 2020, when the
15 University eliminated the position. An April 2018 job description summarizes the position
16 as follows:

17 As a full member of the senior leadership team within the Division of
18 Athletics and Recreation, the Special Assistant to the Vice Chancellor for
19 Athletics and Recreation is responsible for ensuring that the Division's
20 planning efforts and the Vice Chancellor's priorities and strategic and
21 management initiatives are communicated, coordinated and implemented.
22 The incumbent is responsible for providing high-level administrative support
23 for the Vice Chancellor and will serve as the Liaison for the Vice Chancellor
24 for high-level internal and external constituencies.

25
26 The Special Assistant will independently manage, oversee and implement
27 special projects and initiatives that are highly sensitive and involve
28 privileged information, and will work as a member of a cross-functional team
29 to support the division. The incumbent will also be responsible for assisting
30 the Vice Chancellor in communications.

⁶ This information has been supplemented by the University's response to the show cause letter.

Examples of duties include:

- Draft executive correspondence, reports, speeches, and publications for the Vice Chancellor of Athletics and Recreation as directed;
- Serve as the human resources liaison for the division; represent the division at grievance proceedings and negotiate resolution;
- Handle issues of substantial complexity and/or high management visibility as directed on a special project basis; typically assignments are highly sensitive, involve privileged information and/or the activity crosses organizational and functional lines.

Selected PSU Positions

Associate Director of Athletics for External Business Development and Marketing

McCluskey, the former Associate Director of External Development, holds this Grade 34 Staff Associate position. The summary of position on a February 2022 job description states that the position is responsible for:

[D]evelopment and implementation of an athletic fundraising and marketing program including affinity programs, annual appeals, endowment and capital related projects with a major emphasis in the solicitation of gifts of \$25,000 or more....Reports to the [DADSA] or as designated by the Director of Athletics and Recreation. Incumbent works closely with the Vice Chancellor for University Advancement, divisional senior staff and head coaches.

The job posting included the following duties:

- Collaborate with the Director of Athletics and Recreation to develop a comprehensive strategy for the annual solicitation of prospects to benefit the [Athletics Department] and specific teams;
- Provide leadership, supervision and evaluation of Associate Business Manager for IT and Athletics Development and the Community Outreach and Engagement Coordinator.

The requirements for the position are a bachelor's degree in business, marketing, sports management or a closely related field with a master's degree preferred, with a minimum of 7-10 years of experience in development, fundraising and marketing. As of April 2023, McCluskey earned \$95,023 a year.

1 Associate Athletics Director for Finance and Recreation

2 Pagliarulo, whose former title was “Associate Director Intramural and Recreation,”
3 holds this Grade 35 Staff Associate position. On the 2023 organization chart, four PSU
4 positions report directly to him: Business Office, Recreation, Intramurals, and Fitness. As
5 previously indicated, Pagliarulo reports directly to Schuman.

6 The June 30, 2022 job description indicates that the position has financial duties
7 that include responsibility for the management and oversight of the division’s accounts,
8 including 36 general operations funds, 30 development gift funds, and other revenue
9 accounts. The incumbent creates spreadsheets for the various budgets and accounts,
10 analyzes and balances those budgets, and oversees and monitors all financial actions.

11 The recreation duties include implementation, organization and management of
12 the elements associated with the University’s recreation program, with responsibility for
13 developing policies for the conduct of such programs.

14 Other examples of duties in the job description include:
15

- 16 • Serves on the Athletics Department leadership team;
- 17 • Leads, supervises, and mentors department personnel, including hiring;
18 coaching, and developing, rewarding, assigning and reviewing work to
19 full-time administrative staff;
- 20 • Oversight of Business Manager, including goal setting, guidance,
21 professional development and performance management.
- 22

23 A master’s degree in business administration, sports management or a related field
24 and at least five years of work experience in budget management is preferred. Other listed
25 requirements include the “ability to maintain a high level of confidentiality.” As of 2023,
26 Pagliarulo earned \$99,500 a year.

1 Assistant Director of Athletics for Sports Communication and Events Management

2
3 David Walberg (Walberg) holds this Grade 31 Staff Assistant position. He reports
4 to Netkovick. The March 2016 job description summarizes this position as:

5 [P]roviding leadership in the areas of athletic communications, as well as
6 media and public relations for UMB athletics and ...intercollegiate programs.
7 The incumbent is responsible for the overall supervision, organization and
8 management of the Sports information Office and public relations functions
9 of the department including the development, coordination, and
10 implementation of effective communication strategies and initiatives that
11 create recognition of the achievements, programs, teams, and participants.
12 The [incumbent] will also serve as the main contact for all game day event
13 management and the primary contact for officials and any outside parties.

14 The position's duties include providing leadership, supervision, and evaluation of
15 staff responsible for the oversight of all home athletic events, and providing leadership,
16 supervision, and evaluation of the Sports Information Assistant, a PSU title.

17 This position requires a bachelor's degree, master's preferred, in Sports
18 Management, Marketing, Communications, or a closely related field, and a minimum of
19 three to five years of work experience in brand marketing, public relations, and/or
20 advertising, preferably in collegiate athletics and/or professional athletics. As of April
21 2023, Walberg earned \$82,094 a year.

22 Associate Director of Athletics for Facilities, Operations and Sports Administration

23
24 This is a Grade 35 Staff Associate position. On the April 2023 organization chart,
25 the incumbent reported directly to Schuman, with a dotted line reporting relationship to
26 Dollar. The May 5, 2022 job description states that this position will:

27 [P]rovide leadership and oversight of all athletics and recreation facilities
28 and operations and work closely with university facilities staff on current
29 facility improvements, renovations and new construction. The [incumbent]
30 will also serve as a sport administrator for multiple programs, overseeing
31 Head Coaches and Assistant Coaches of those sports programs.
32

1 The incumbent is responsible for the direct oversight, policy development,
2 budget and personnel management for all facilities, facility maintenance,
3 capital projects and construction.
4

5 ***

6 As a sport administrator for multiple programs and part of a team of sport
7 administration liaisons, the incumbent will be responsible for all facets of
8 sport program oversight including program and Head Coaches'
9 performance, budget planning, goal setting, and long-range planning.
10

11 Examples of duties include:
12

- 13 • Provide leadership and guidance to the Director of Athletics and
14 Recreation, the department and campus on all facilities related matter
15 for the [Athletics Department].
- 16 • Oversee Head Coaches and Assistant Coaches of sport programs . . .
- 17 • Evaluate coaches' performance on a yearly basis.
18

19 Under "Supervision Exercised," the job description states:

20 The incumbent will directly supervise the Athletics Facilities Supervisor(s),
21 Facilities Assistant and Ice Rink Attendant. The incumbent will also directly
22 oversee a number of Head Coaches as a sports administrator. Supervision
23 includes both close and general direction, as well as appropriate delegation
24 of duties and responsibilities at the university setting as well as on-site
25 location for related activities.
26

27 Number of non-student employees directly supervised: 4-10

28 Number of non-student employees indirectly supervised: 15

29 Average number of student employees supervised at any given time:

30 _____ [blank line in original].
31

32 The position requires a bachelor's degree in sports administration, facilities
33 management or related field, with a master's degree preferred. It also requires a minimum
34 of 10+ years of full-time experience in athletic operations, construction management, or
35 facilities development management. As of April 2023, the incumbent earned \$99,300 a
36 year.

1 Non-UMB Position

2
3 Senior Associate Director of Athletics/Executive Director of Development for
4 Athletics at UMA

5
6 The University asserts that this non-union position is the UMA equivalent of the
7 DADSA. The job description for the UMA position shows that both positions have similar
8 responsibilities for overseeing athletic development and fundraising and the staff that
9 perform those duties. Both employees also work closely with the Director of Athletics
10 and/or a Vice Chancellor athletic- related position on their respective campuses. As noted
11 above, however, the record contains no information regarding when or why the parties
12 bargained to exclude this position from the PSU's unit.⁷

13 Opinion⁸

14 A unit clarification petition is the appropriate procedural vehicle to determine
15 whether newly-created positions should be included in a particular bargaining unit. Town
16 of Athol, 32 MLC 50, 52, CAS-04-3567 (June 29, 2005). In analyzing whether an
17 employee should be accreted into an existing bargaining unit, the CERB considers: 1)
18 whether the position at issue was covered by the original certification or recognition; 2)
19 whether the parties' subsequent conduct, including bargaining history, discloses that the
20 parties considered the position to be included in the existing bargaining unit; and 3)
21 whether the position shares a community of interest with other positions in the existing

⁷ The header of the job description that the University provided for this position states "University of Massachusetts Amherst Foundation." The University asserts that the UMA Associate Director of Amherst is a University employee and is part of the athletic department "infrastructure" even if he has a role in the foundation. Both parties agreed that there is no equivalent "foundation" structure specific to the UMB campus.

⁸ The CERB's jurisdiction is not contested.

1 bargaining unit. If the CERB determines that the requisite community of interest exists, it
2 will accrete the petitioned-for employee into the bargaining unit. City of Boston, 35 MLC
3 137, 140, CAS-07-3669 (December 31, 2008). Here, the DADSA and DADIA positions
4 are newly-created, so the first prong of the analysis does not resolve the issue. As to the
5 second prong, the parties disagree over the unit placement of the positions, and, in accord
6 with the CBA, the Union filed this unit clarification petition upon learning of their existence.
7 Accordingly, to resolve this petition, we must consider whether the positions share a
8 community of interest with the other positions in the bargaining unit.

9 We first consider the University's assertion that the DADIA and DADSA perform
10 confidential duties that warrant their exclusion from the unit.⁹ M.G. L. c. 150E, §1 defines
11 confidential employees as those who directly assist and act in a confidential capacity to
12 a person or persons otherwise excluded under the Law. To be regarded as confidential,
13 an employee must have a substantial relationship with a managerial employee so that
14 there is a legitimate expectation of confidentiality in their routine and recurrent dealings.
15 Town of Provincetown, 31 MLC 55, 59, CAS-03-3553, CAS-03-3555 (September 24,
16 2004) (citing Framingham Public Schools, 17 MLC 1233, 1236, CAS-2838 (September 4,
17 1990)). Employees who have significant access or exposure to confidential information
18 concerning labor relations matters, management's position on personnel matters, or
19 advance knowledge of the employer's collective bargaining proposals are excluded as
20 confidential. City of Everett, 27 MLC 147, 150, MCR-4824 (May 23, 2001). The CERB
21 has construed exceptions to the definition of confidential employee narrowly to exclude

⁹ The University does not argue that Dollar or Netkovick are managerial employees within the meaning of Section 1 of the Law.

1 as few employees as possible from collective bargaining while not unduly hampering an
2 employer's ability to manage the operations of the enterprise. Town of Provincetown, 31
3 MLC at 59. There is no dispute that Schuman is a managerial employee and that the
4 DADSA and DADIA have a substantial relationship with her. We therefore turn to whether
5 these positions are confidential.

6 DADIA

7 The CERB has consistently found that individuals who have advance access to
8 bargaining proposals, disciplinary decisions, or responses to grievances are confidential
9 employees. See, e.g., Town of Falmouth, 39 MLC 376, 385-386, CAS-12-1936 (June 24,
10 2013) and cases cited therein. Since becoming the DADIA, Dollar has been a member of
11 management's negotiating team for the Head Coaches CBA. In this capacity, she worked
12 with UMB's Labor Relations manager and participated in bargaining by attending planning
13 sessions and bargaining sessions. Those duties, in conjunction with her direct reporting
14 relationship to Schuman, suffice to exclude her as a confidential employee. Id.

15 The Union does not dispute Dollar's role in negotiating the Head Coaches CBA. It
16 nevertheless suggests that the University "grafted" labor relations duties onto this position
17 to support its removal from the unit without providing evidence that those duties will
18 continue. There is no evidence, however, that the University purposely grafted collective
19 bargaining duties onto the DADIA position to preclude her from joining the unit. Moreover,
20 the evidence shows that in 2020, Dollar assumed some of Gordon's personnel duties
21 after Gordon became Interim Acting Athletic Director. According to the job description for
22 Gordon's former non-unit position, those duties included representing the division at
23 grievance proceedings. Accordingly, some of Dollar's labor relations duties existed as

1 non-unit duties *before* the University created the DADIA position in 2022. Furthermore,
2 even if serving on a bargaining team comprises only a limited part of Dollar's duties, the
3 CERB will not require an employer to alter the composition of its bargaining team to avoid
4 excluding an employee from a bargaining unit, especially where the employee has an
5 expertise in the subject of negotiations. Town of Manchester-by-the Sea, 24 MLC 76, 81-
6 82, MCR-4511 (March 6, 1998). Here, both before and after she assumed the DADIA
7 position, Dollar's duties included supervising the Head Coaches. It is therefore not
8 surprising that after the Head Coaches formed a union, Dollar would play a role in
9 bargaining over their terms and conditions of employment.

10 DADSA

11 We reach a different conclusion with respect to the DADSA. Although Netkovick
12 also reports to Schuman and attends Senior Management meetings, there is no evidence,
13 and the University does not argue, that he has any specific labor relations duties. Further,
14 although Netkovick has participated in discussions about staff concerns and, at the time
15 of the investigation into this petition, was managing a staff member's departure from the
16 University, there is no evidence that these duties have exposed him to the type of
17 confidential labor relations information that would render him a confidential employee.
18 Although the University suggests that Netkovick may at some point draft communications
19 for Schuman and the Department that will "likely touch on collective bargaining matters
20 and other sensitive materials related to internal personnel concerns," it is well established
21 that coverage under the Law is based on actual, not potential job duties. See, e.g., Town
22 of Chelmsford, 27 MLC 41, 43, CAS-3394 (November 6, 2000) and cases cited therein.
23 Based on the record before us therefore, we decline to exclude the DADSA from the unit

1 as a confidential position and turn to whether Netkovick shares a community of interest
2 with other PSU bargaining unit members.

3 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 working
5 conditions, common supervision, work contact, and similarity of training and experience.
6 Waltham School Committee, 25 MLC 137, 139, CAS-3220, MCR-4541 (March 1, 1999)
7 (additional citations omitted). No single factor is outcome determinative, and minimal
8 differences do not mandate separate bargaining units where employees perform similar
9 job duties under similar working conditions and share common interests that would be
10 amenable to the collective bargaining process. Id.

11 The DADSA position shares a community of interest with the other Athletics
12 Department positions with respect to most of these factors. The education requirement,
13 a bachelor's degree with a master's preferred, is the same as that of the Associate
14 Athletics Director for Finance and Recreation (Pagliarulo) and the Associate Director of
15 Athletics for External Business Development and Marketing (McClusky). Both the
16 Associate Athletics Director for Finance and Recreation, and the Associate Director of
17 Athletics for Facilities, Operations and Sports Administration positions are Grade 35
18 positions, and Netkovick's salary falls in the middle of the Grade 35 range.

19 There is also common supervision. Like Netkovick, Pagliarulo and the Associate
20 Director of Athletics for Facilities, Operations and Sports Administration report directly to
21 Schuman. As to job duties, although Netkovick may have a wider range of duties and
22 more responsibility than his subordinates, he has similar marketing, communications, and
23 external business duties as the Associate Director of Athletics for External Business

1 Development and Marketing and the Assistant Director for Sports Communication and
2 Events Management.

3 Despite these similarities, the University argues that Netkovick's current and future
4 supervision and evaluation of the PSU staff that report to him will create a conflict of
5 interest that justifies his exclusion from the unit. The difficulty with this argument is that it
6 fails to consider that the PSU is a professional supervisory and administrative unit that
7 includes employees like Pagliarulo and Walberg who hire, supervise, and evaluate other
8 PSU positions.¹⁰ Even assuming without deciding that Netkovick is a true supervisor, the
9 only way to avoid conflicts of interest would be to create a separate bargaining unit for
10 each layer of supervision in the unit. We decline to do so. The CERB has previously
11 expressed strong reservations about adopting an approach to bargaining unit
12 determination that creates more than one supervisory bargaining unit in a particular
13 group. See Sheriff of Worcester County, 30 MLC 132, 138, CAS-03-3543 (April 7, 2004).
14 Netkovick's current or even his potential supervisory duties do not warrant his exclusion
15 from the unit or distinguish him from other bargaining unit members. In fact, they provide
16 yet another basis to conclude that the DADSA position shares a strong community of
17 interest with other positions in the PSU's unit.

18 **Conclusion**

19 For these reasons, we grant the Union's petition with respect to the DADSA, who
20 shall be accreted to the PSU bargaining unit, but deny it with respect to the DADIA, which
21 shall remain a non-bargaining unit position.

¹⁰ Dollar also supervised and evaluated PSU bargaining unit members in her former PSU role as SAD/SWA.

SO ORDERED.

COMMONWEALTH EMPLOYMENT RELATIONS BOARD



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