

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

In the Matter of

UNIVERSITY OF MASSACHUSETTS (BOSTON)

and

JOINT EXECUTIVE COUNCIL/PSU/MTA

Case No. CAS-22-9297

Issued: July 23, 2024

CERB Members Participating:

Marjorie F. Wittner, 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**

1 Summary

2 The Joint Executive Council, Inc. d/b/a PSU (Union or PSU) represents a  
3 bargaining unit of full-time and regular part-time non-academic professional staff at the  
4 Amherst (UMA) and Boston (UMB) campuses of the University of Massachusetts  
5 (University or Employer). On May 11, 2022, the PSU filed a unit clarification petition  
6 seeking to accrete the Executive Communications/Speech Writer position held by UMB  
7 employee Paul Nuti (Nuti) to its bargaining unit.<sup>1</sup> The Union asserts that this position

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<sup>1</sup> The Union initially sought to accrete two titles: "Director of Website Development" and "Staff Writer/Speech Writer." During the investigation, the Union clarified that the speech

1 should be accreted to its unit because the incumbent, like other PSU bargaining unit  
2 members, is a non-managerial, non-confidential, and non-academic professional  
3 employee. The University disagrees, claiming that the duties that Nuti performs render  
4 him a confidential employee within the meaning of Section 1 of M.G.L. c. 150E (the Law).

5 Before, during, and after the conference, the parties submitted position statements,  
6 affidavits and other documents regarding the disputed position. On June 17, 2024, the  
7 DLR sent the parties a letter asking them to show cause why the petition should not be  
8 resolved based upon the information summarized therein and seeking some additional  
9 information. The University filed a response that included additional information. The  
10 Union did not file a response. After reviewing the University's response, and incorporating  
11 the additional information, the Commonwealth Employment Relations Board (CERB) has  
12 determined that there are no material disputes of fact. For the reasons set forth below,  
13 the CERB finds that the Executive Communications/Speech Writer is a confidential  
14 position and declines to accrete it to PSU's unit.

15 **Background**

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writer position it wished to accrete was the "Executive Communications/Speech Writer" currently held by Paul Nuti. On May 16, 2022, the Union filed a second accretion petition, CAS-22-9404, seeking to accrete the Director of the William Joiner Institute. The DLR consolidated both petitions for investigation. Before the informal conference, the Union reached a settlement with the University regarding the unit placement of the Director of Website Development and the Director of the William Joiner Institute, but never withdrew its petitions with respect to those titles. In the show cause letter, the DLR notified the Union that if it did not submit withdrawals within 20 days, it should show cause why the DLR should not dismiss the petitions with respect to those titles. The Union neither submitted withdrawals nor responded to the show cause letter. Accordingly, the CERB dismisses CAS-22-9297 with respect to the Director of Website Development, and dismisses CAS-22-9304 in its entirety. Unless the duties of those positions change, these dismissals are with prejudice to the Union filing new CAS petitions with respect to these titles.

1 PSU Bargaining Unit

2 In or around 1990, the DLR certified the PSU as the exclusive representative of all  
3 full-time and regular part-time professional staff employees employed by the Amherst and  
4 Boston campuses of the University of Massachusetts.<sup>2</sup> The recognition clause of the  
5 parties' July 1, 2020 – June 30, 2023 agreement states in pertinent part:

6 The unit includes the following state job titles: Staff Administrator; Staff  
7 Associate; Staff Assistant; Extension Specialist; Professional Technician I,  
8 II and III; Construction Maintenance Engineer; Lecturer A (non-academic);  
9 Academic Coordinator; Academic Coordinator A; Research Engineer;  
10 Psychological Counselor; Principal Psychologist; Assistant Director of  
11 Procurement; Athletic Trainer; Assistant Director of Guidance and  
12 Counseling; Director of Sports Publicity; Registrar; Associate Dean of  
13 Admissions; Superintendent of Building and Grounds; Editor; Assistant  
14 Dean of Students.

15  
16 The unit shall exclude all academic professionals, faculty members,  
17 librarians I-V, all classified employees, all managerial employees, all  
18 professional employees employed in a confidential capacity, all casual and  
19 temporary employees and all other employees. All professional staff  
20 employees in the following state job titles are specifically excluded from the  
21 unit: Chancellor; Associate Chancellor, Assistant Chancellor; Vice  
22 Chancellor; Associate Vice Chancellor; Assistant Vice Chancellor; Provost;  
23 Associate Provost; Assistant Provost; Dean, Associate Dean: Assistant  
24 Dean; Dean of Students; Controller; Chief Project Engineer; Director of  
25 Research Computing Center; Research Fellow; Senior Research Fellow;  
26 Director of Security; Director of Athletics; Senior Staff Physician; Staff  
27 Physician; all Medical Doctors . . . ; Head Coach; Assistant Coach; Post  
28 Doctoral Research Associate; Post Doctoral Research Fellow . . . ;Director  
29 of Admissions at Boston . . . ; Director, Office of Sponsored Projects  
30 (Boston).

31  
32 All professional staff employees assigned to the following areas reporting  
33 to the President's Office are specifically excluded from the unit: University  
34 Controller's Office; University Treasurer's Office; Internal Audit Department;  
35 Institute for Labor Affairs; Data Processing Center.  
36

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<sup>2</sup> The CERB takes administrative notice of the DLR's file in Case No. MCR-2198. The PSU was formerly known as the Professional Staff Organization.

1 As of the investigation, the PSU's bargaining unit consisted of approximately 1,100  
2 employees. All UMB bargaining unit positions are assigned a position or grade level  
3 ranging from Grade 24 to Grade 41. In June 2022, the contractual salary range for a  
4 Grade 31 position was \$66,400 to \$99,600.

5 Office of Communications/Director of Communications  
6

7 There is an Office of Communications within the Division of Marketing and  
8 Engagement (Division). Other offices in this Division include Marketing, Creative  
9 Services, Community Engagement, WUMB radio station, and Finance and Operations.  
10 The Director of Communications is currently DeWayne Lehman (Lehman).

11 When Lehman was hired in 2008, Keith Motley was UMB Chancellor, and Lehman  
12 reported to the Vice Chancellor in charge of Government Affairs and Public Relations.<sup>3</sup>  
13 Since 2020, Lehman has reported to Vice Chancellor and Chief Marketing Officer Megan  
14 Delage Sullivan (Sullivan). Lehman also has a dotted line reporting relationship to the  
15 Chancellor's Chief of Staff. In 2022, Lehman's annual salary was \$146,737.

16 The Communications Department has primary responsibility for managing media  
17 relations and contacts, and for creating and distributing content to both the campus  
18 community and the public via the campus website, social media platforms, and through  
19 speeches, public statements, emails, press releases, etc. Under Chancellor Motley's  
20 administration, which ended around 2017, the Communications Department consisted of  
21 Lehman and approximately 2-4 PSU bargaining unit members whose duties included  
22 creating, editing and curating communications for the University's marketing,

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<sup>3</sup> The record does not reflect when the Communications Department became part of the Division of Marketing and Engagement.

1 engagement and communications functions. Bargaining unit staff also created general,  
2 calendar-based communications on behalf of the Chancellor, such as drafting remarks  
3 for public events and sending annual messages to the campus community. If the topic  
4 involved a more sensitive matter, senior Communications staff worked with the  
5 Chancellor's senior staff, including the Chancellor, to draft the communication.

6 Staff Writer/Speech Writer<sup>4</sup>

7 In February 2015, UMB posted an opening for a PSU bargaining unit "Staff  
8 Writer/Speech Writer." The job description contained a general summary, which stated in  
9 part:

10 The Speechwriter/Staff Writer, within the Division of Government Relations  
11 and Public Affairs, will research and write primary documents that will  
12 support university wide internal and external communications and the work  
13 of the Chancellor's office and the Provost's Office, including speeches,  
14 talking points, reports, letters, columns and other materials. The incumbent  
15 will work collaboratively with a broad cross-section of university faculty, staff  
16 and students, including senior administrators and deans, and will be called  
17 upon to assist with related public relations, website, social media, or  
18 marketing projects to support the Office of Communications and the  
19 University.

20  
21 The posting provided examples of this title's duties including:

- 22
- 23 • Work closely with the Chancellor's Office to research and write
  - 24 speeches for public appearances and campus events; . . . ;
  - 25 • Draft columns, memos, letters, weekly emails, and other materials to
  - 26 support the Office of Communications and Chancellor's Office; . . .
  - 27 • Develop strategy to elevate priority internal and external
  - 28 communications and proactively propose, develop, and write
  - 29 Chancellor's communications consistent with the university's Strategic
  - 30 Plan and the Strategic Communications and Marketing Plan; ...

31 \* \* \*

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<sup>4</sup> The University's job descriptions and offer letters vary in their spelling of "Speech Writer," sometimes using one word, sometimes using two. For the sake of consistency, we use "Speech Writer" throughout the decision, except when directly quoting from a document.

- 1           • Participate in Office of Communications planning meetings and  
2           contribute ideas to strengthen the University's internal and external  
3           communications.

4   The posting indicated that the incumbent reported to the Director of Communications and  
5   had no direct or indirect reports. The position level was Grade 31 on the PSU salary  
6   scale. The minimum qualifications were a bachelor's degree in English, Journalism,  
7   Communications or a closely-related field and a minimum of 5-7 years of professional  
8   speechwriting experience, preferably in an academic environment.

9           The University hired Mary Alice Gil (Gil) to fill the position. Gil reported to Lehman.  
10   Gil's duties included developing campus communications on behalf of the Chancellor's  
11   office under Lehman's direction. Gil did not report to or work directly with the Chancellor.  
12   Gil left the position in August 2016. Her annual salary at that time was \$56,470.

13           Due to hiring freezes, Gil's position remained vacant from 2016 until 2021. There  
14   were two interim Chancellors at UMB from 2017-2020, Barry Mills (Mills) and Katherine  
15   Newman (Newman). Mills drafted his own personal messages but when the  
16   communications involved sensitive content, his senior staff would consult with senior  
17   Office of Communications staff. Newman had primary authorship of her public remarks  
18   and statements. She did not have a dedicated speechwriter.

19           UMB Chancellor Marcelo Suárez-Orozco (Suárez-Orozco) was hired in the fall of  
20   2020. At his initiative, the University created a new, non-unit position in or around April  
21   2021 titled "Speechwriter/Executive Communications." The job description contained a  
22   general summary, which stated:

23           The Speechwriter/Executive Communications will research and write  
24           primary documents on behalf of the Office of Communications that will  
25           support university-wide internal and external communications and capture  
26           the vision and message of the Chancellor and the University. These include

1 Chancellor's speeches and talking points, Chancellor's reports to the Board  
2 of Trustees, commencement and special event scripts, news stories and  
3 profiles for University publications and the website, and other material as  
4 needed. The position requires confidentiality and complete discretion for all  
5 assignments and in particular those related to confidential policies and  
6 [personnel] matters related to the ongoing COVID-19 global pandemic.  
7

8 The position is located in the Office of Communications, within the Division  
9 of Marketing and Engagement, and will work closely with the Chancellor's  
10 office, senior administration, as well as a broad cross section of University  
11 faculty and staff. The Speechwriter/Executive Communications will also be  
12 called upon to edit and update the website as needed, contribute to social  
13 media, and assist with the related public relations and marketing projects to  
14 support the Office of Communications and the University.  
15

16 The job duties listed in the job description included "Assisting the Chancellor and  
17 Cabinet in writing confidential policies related to the ongoing COVID-19 pandemic," and  
18 "Assist Human Resources with communications related to collective bargaining."<sup>5</sup> The  
19 job description included other duties that were similar to those listed in the 2015  
20 speechwriter job description set forth above. The requirements were also substantially  
21 the same, except that the Executive Communications position required 3-5 years of  
22 professional writing experience as opposed to the 5-7 years of professional speech  
23 writing experience required in the 2015 Staff Writer/Speech Writer job description.<sup>6</sup>

24 This position does not appear to have been posted. Instead, in June 2021, UMB  
25 posted an opening for a PSU Grade 31 Staff Writer/Speech Writer position that was  
26 essentially the same as the one that had been posted in 2015.<sup>7</sup> The University did not fill

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<sup>5</sup> As of October 2022, Nuti had not issued any communications related to collective bargaining.

<sup>6</sup> The record does not explain this discrepancy.

<sup>7</sup> Sullivan explained in her affidavit that the position was posted "as the result of budget lines opening up to add additional communications staff" that had previously been frozen.

1 this position. Rather, at the Chancellor's Office's request, and in conjunction with Sullivan  
2 and the Human Resources Department, the University decided to fill the Speech  
3 Writer/Executive Communications position that was created in April 2021. On September  
4 14, 2021, the University offered Nuti the position. Nuti's offer letter indicated that this was  
5 a full-time, benefitted, exempt, professional, non-unit position with an annual salary of  
6 \$145,000. Nuti began working for UMB on October 12, 2021.

7 Nuti reports to Sullivan and has a dotted line reporting relationship to the  
8 Chancellor and the Chancellor's Chief of Staff. According to a Division of Marketing and  
9 Engagement Organization chart that the University prepared in September 2022, there  
10 are three positions higher on the organization chart than Nuti - Associate Vice Chancellor  
11 (unfilled), Vice Chancellor/Chief Marketing Officer (Sullivan), and Chancellor Suárez-  
12 Orozco.<sup>8</sup> Nuti is on the same level of the organization chart as Lehman and six other  
13 positions: Executive Director of Marketing (PSU), Director of Creative Services (PSU),  
14 Associate University Editor (PSU), Director of Community Relations (non-union), General  
15 Manager of WUMB (PSU), and Senior Director of Finance and Operations (PSU). As of  
16 2022, there were two bargaining unit members working within the Department of  
17 Communications. Both employees report to Lehman and perform duties previously  
18 performed by Gill in addition to other communications duties.

19 Nuti's main duties include creating external and internal communications on behalf  
20 of the Office of the Chancellor, the Provost, and other senior leadership in the form of

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<sup>8</sup> Nuti's title on that chart is "Director of Executive Communications/Speechwriter." It is not clear when or why his title changed from the "Speechwriter/Executive Communications" title referenced in the April 2021 job description and Nuti's offer letter.

1 public comments or speeches at public events, executive correspondence, and cover  
2 memoranda. Nuti has also consulted with the Human Resources and the Labor Relations  
3 departments regarding their responses to various campus union communication  
4 campaigns and information requests, particularly with respect to COVID-19 pandemic  
5 responses. When creating such communications, Nuti is in frequent and direct contact  
6 with senior leadership on campus including Sullivan, Lehman, and the Chancellor's office,  
7 which includes the Chancellor and/or the Chancellor's Chief of Staff. Although Nuti's  
8 output includes routine campus communications, his focus is on executive  
9 communications of a non-routine or mission-related nature. The University provided the  
10 following four examples of communications that Nuti either drafted or collaborated upon  
11 that related to active labor or personnel matters and/or UMB's strategic plan:

12 1. In February 2022, Nuti collaborated with Chancellor Suárez-Orozco and  
13 Provost/Vice Chancellor Joseph B. Berger (Berger) on a letter from the Chancellor  
14 and Berger to the "Campus Community" concerning the appointment of the Dean  
15 of the College of Liberal Arts to chair a search committee for a Dean of the College  
16 of Education and Human Development. The letter "condemned" what it deemed  
17 "racially-charged treatment by members of the Faculty Council publicly calling into  
18 question" this appointment.

19  
20 The contents of this letter are at issue in a prohibited practice charge that Union  
21 filed with the DLR on April 5, 2022 (SUP-22-9224).<sup>9</sup> On October 19, 2022, a DLR  
22 Investigator issued a complaint in that matter, which alleged that the letter was  
23 directed at statements made by Jeffrey Melnick, the Faculty Staff Union's<sup>10</sup>  
24 Communications Director, and that, by publishing the letter, Berger and other UMB  
25 officials had interfered with, restrained, and coerced its employees in the exercise  
26 of their rights guaranteed under Section 2 of the Law in violation of Section  
27 10(a)(1) of the Law.

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<sup>9</sup> The CERB takes administrative notice of the charge and complaint in Case No. SUP-22-9224.

<sup>10</sup> The Faculty Staff Union represents a unit comprised of faculty and librarians employed at UMB.



1 those persons who have a direct and substantial relationship with an excluded employee  
2 that creates a legitimate expectation of confidentiality in their routine and recurrent  
3 dealings. Town of Medway, 22 MLC 1261, 1269, MCR-4350, MCR-4352 (October 23,  
4 1995). Employees who have significant access or exposure to confidential information  
5 concerning labor relations matters or other equally sensitive policy information,  
6 management positions on personnel matters, or advance knowledge of the employer's  
7 collective bargaining proposals are excluded as confidential. City of Everett, 27 MLC 147,  
8 150, MCR-4824 (May 23, 2001); Town of Medway, 22 MLC at 1269. The CERB  
9 traditionally construes all statutory exclusions narrowly to preclude as few employees as  
10 possible from collective bargaining while not unduly hampering the employer's ability to  
11 manage the operations. Silver Lake Regional School District, 1 MLC 1240, 1243, CAS-  
12 163 (January 13, 1975).

13 Here, the evidence establishes that in his first year on the job, Nuti had frequent  
14 and direct contact with senior leadership on campus, including the Chancellor, the  
15 Chancellor's Chief of Staff, the Provost and Vice Chancellor, and the Vice Chancellor of  
16 Human Resources regarding sensitive and non-routine campus issues affecting  
17 bargaining unit members. Nuti's duties included collaborating with these senior managers  
18 to address sensitive personnel or labor relations matters, including drafting responses to  
19 union communications and information requests regarding COVID-19, and other  
20 statements or letters involving bargaining unit members and personnel changes, such as  
21 the letter "condemning" certain unionized employees, which resulted in an unfair labor  
22 practice charge, and the statement discussing changes to certain academic departments,  
23 which resulted in a grievance. These frequent collaborations on matters affecting

1 personnel and labor relations shows that Nuti had a direct and substantial relationship  
2 with high-ranking campus officials that created a legitimate expectation of confidentiality  
3 in their routine and recurrent dealings, and leads us to conclude that Nuti is a confidential  
4 employee.

5         The Union makes two main arguments in support of accreting Nuti to the unit. It  
6 contends that Nuti performs substantially the same duties as the bargaining unit speech  
7 writer position that Gil held, and that the communications that Nuti worked on were  
8 eventually released to the public. According to the Union, public communications can  
9 never be confidential. We are not persuaded by either argument. Despite similar job  
10 descriptions, Nuti, unlike Gil or other bargaining unit members who work in the  
11 Communications Department, works directly with the Chancellor. Further, the matters  
12 that he works on with the Chancellor and other managers involve non-routine and  
13 sensitive personnel, labor relations and policy matters, as opposed to general, calendar-  
14 based communications. And, even if the sensitive personnel, labor relations and policy  
15 communications that Nuti collaborates on are eventually made public, until then, the  
16 information that forms the basis of those communications, the decision or policy  
17 expressed therein, and how those decisions or policies are going to be expressed in  
18 writing is confidential information. The CERB has previously recognized this in the many  
19 decisions it has issued holding that employees who have advanced knowledge of an  
20 employer's labor relations proposals, disciplinary decisions, or responses to grievances  
21 are confidential employees. See, e.g., Town of Falmouth, 39 MLC 376, 385-386, CAS-  
22 12-1936 (June 24, 2013) and cases cited therein. Because this analysis and the term  
23 "advanced knowledge" anticipates that the employer will eventually submit the proposals

1 to a union, issue discipline, or provide a grievance response, an employee's confidential  
2 status cannot turn on the fact that the confidential information to which they are exposed  
3 will eventually be made public. The same result must be obtained here, where Nuti  
4 frequently participates in discussions and drafts documents concerning confidential  
5 matters that precede the issuance of executive communications. It is his exposure to that  
6 confidential information during his regular and recurrent collaborations with managerial  
7 employees that renders Nuti a confidential employee.

8 Conclusion

9 For the reasons stated above, we conclude that the Executive  
10 Communications/Speech Writer is a confidential employee within the meaning of Section  
11 1 of the Law. Accordingly, we deny the Union's petition to accrete this petition to its unit.

12 SO ORDERED

COMMONWEALTH EMPLOYMENT RELATIONS BOARD

*Marjorie F Wittner*

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MARJORIE F. WITTNER, CHAIR

*Kelly B Strong*

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KELLY B. STRONG, CERB MEMBER

*Victoria B. Caldwell*

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VICTORIA B. CALDWELL, CERB MEMBER

