

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

In the Matter of

CITY OF BOSTON

and

SENA, LOCAL 9158

Case No. CAS-23-10231

Date Issued: September 23, 2025

CERB Members Participating:

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

Appearances:

Alejandra Hung, Esq.¹ - Representing the City of Boston
Alfred Gordon O'Connell, Esq. - Representing SENA, Local 9158

CERB DECISION

Summary and Statement of the Case

1 On September 15, 2023, SENA Local 9158, a division of the United Steelworkers,
2 AFL-CIO (Union or SENA) filed a unit clarification petition with the Department of Labor
3 Relations (DLR). SENA is seeking to accrete the position of Business Relations Manager
4 (BRM) located within the Department of Innovation and Technology (DoIT) to its
5 bargaining unit of administrative and supervisory employees employed by the City of
6 Boston (City). SENA contends that the BRMs share a community of interest with other

¹ Attorney Parker McIntyre represented the City of Boston during the investigation.

1 bargaining unit members and are not confidential or managerial employees within the
2 meaning of Section 1 of M.G.L. c. 150E (the Law). The City disagrees and opposes
3 accretion.

4 The DLR held an informal conference to discuss the petition on February 21, 2024.
5 Before, during, and after the conference, the parties submitted position statements,
6 affidavits, and other documents in support of their respective positions. In a letter dated
7 August 28, 2024, the DLR summarized the information gathered during the investigation,
8 and directed the parties to show cause why the CERB should not resolve the petition
9 based on the summary. In response, the City provided updated information about the new
10 BRMs it had hired and their duties but did not dispute any of the information contained in
11 the show cause letter. The Union did not file a response to the show cause letter or a
12 reply to the City's response. After considering the information summarized below, we find
13 that there are no material facts in dispute. Based on that information, we grant the petition
14 to accrete the BRM position to SENA's unit.

15 Background

16 SENA's Bargaining Unit

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18
19 SENA represents a unit of approximately 750 administrative and supervisory
20 employees in numerous City departments. Representative titles include Program
21 Supervisor, Program Manager, Product Manager, Project Manager, Data Supervisor, and
22 Data Process Systems Analyst. The DLR originally certified SENA in 1986. Since then,
23 various positions have been added and removed from the unit as the result of
24 negotiations, add-on elections, and unit clarification petitions.

1 DoIT

2
3 There are approximately 135 employees in DoIT, 103 of whom are SENA
4 bargaining unit members.

5 Santiago Garces (Garces) is DoIT's Chief Information Officer and the head of
6 DoIT. Garces reports to the Mayor of Boston and, as of 2023, the following DoIT titles
7 reported directly to him: Director of Operations, Chief Technology Officer, Chief Project
8 Officer, Chief Data Officer, Chief Security Information Officer, Chief Digital Officer,
9 Director of Broadband and Cable, and Garces' Chief of Staff, Kerry Jordan (Jordan).
10 These Chiefs and Directors oversee a variety of SENA titles. Jordan oversees the
11 department's central support staff including project managers.

12 Creation of BRM Position

13 In July 2023, Garces, with support from DoIT employees, community members,
14 and advisors, published a DoIT strategy plan that included a section titled "Governance
15 and Policy." This section envisioned a number of "possibilities" for DoIT, including
16 ensuring that "[a]ll of our workforce has access to transparent processes and plans to
17 procure and operate technology." This section also stated that the plan is to: 1) "listen to
18 and map the needs of our public servants" and "map out needs that are not covered by
19 existing solutions so they can be prioritized"; 2) "coordinate across all IT teams at the City
20 to make sure *all* constituents and public services are supported [and] establish[ing]
21 standards, policies, and guidelines that are helpful and reduce time and complexity," and
22 3) "get[] more value for taxpayers, with more financial predictability and more trust-
23 building community in and out of City Hall." (Emphasis in original).

1 That same month, Garces and the Mayor's Office created a new "Tech and
2 Governance Program," operating under the leadership of Chief Digital Officer Julia
3 Gutierrez (Gutierrez). To lead the program, the City created a new, non-union MM2,
4 Grade 11 position titled, "Director of Governance and Policy." The City hired Alejandro
5 Jimenez Jaramillo (Jaramillo) to fill the position. The posting included the following job
6 duties:

7 Working closely with the Chief Information Officer, the Director of
8 Governance and Policy will manage the development and implementation
9 of technology guidelines, standards, and policy across the entire City of
10 Boston....The Director of Governance and Policy will coordinate
11 departmental and city-wide technology standards and policies pertaining to
12 security, privacy, accessibility, data and other relevant innovation areas.
13 This role will also design and shepherd city-wide governance processes that
14 identify shared technology priorities and needs across all agencies and
15 departments, develop appropriate strategies for prioritizing budget
16 investments, and support the development of a user-centric IT service
17 management plan across the entire City. The role will interface with
18 leadership within DoIT; technology leaders across the City; the Mayor's
19 Team; and local, state and federal legislative bodies' activities.
20

21 The Director of Governance and Policy was also expected to "supervise and develop a
22 diverse team of technology policy practitioners, providing guidance and feedback."

23 Around the same time, Garces and the Mayor's Office created the BRM position,
24 with the goal of improving coordination between cabinets, departments and agencies,
25 including quasi-public agencies, in terms of developing IT services, plans, and policies.
26 The Union found out about the position on August 30, 2023, on the City's careers website.
27 The posting stated in part:

28 OVERVIEW

29

30 The Business Relationship Manager (BRM) is responsible for building and
31 maintaining relationships with City cabinets, agencies, and departments
32 and agencies. The BRMs will support other departments and agencies in
33 the development of programs, policies, and services bringing systems

1 thinking and leveraging technical resources – including digital
2 communications, data, etc. By strengthening trust, communication, and
3 collaboration between DoIT and the rest of the city operations, BRMs will
4 enable better outcomes for constituents.

5
6 RESPONSIBILITIES

- 7
- 8 • Build and maintain the relationship between DoIT and the City
9 Departments and agencies.
 - 10 • Work closely with their departments and agencies to understand
11 what their processes are and how they perform their work. They
12 assist in identifying areas that need improvement to become more
13 efficient, whether through process improvement or technology.
 - 14 • Manage special projects, has the ability to lead certain initiatives
15 within DoIT.
 - 16 • Conduct research and assessments for technology needs, perform
17 business case analysis for IT investments and coordinate with the
18 PMO on current implementation projects.
 - 19 • Communicate decisions, change management, priorities and
20 relevant project information to appropriate levels of staff regarding
21 business unit requests, projects and initiatives.
 - 22 • Proactively shares knowledge of technology risks and opportunities
23 to improve efficiency and effectiveness of business units.
 - 24 • Coordinates with business operations by exercising oversight,
25 applying risk/value techniques and business analysis expertise to
26 understand project architecture and how components shape initial
27 project requests, and assist with the formulation of [a] high-level
28 roadmap. Plans and prioritizes initiatives based on enterprise needs
29 of the city departments and agencies.
- 30

31 The posting indicated that there were five openings. The minimum entrance
32 qualifications were a bachelor's degree in business, public administration or a related
33 field, and five plus years of work experience. The grade was a MM2-9, with a salary range
34 of \$84,148.40 to \$119,695.32.² BRMs report directly to the Director of Governance and
35 Policy.

² By comparison, the non-union Chief of Digital Services is classified as an MM2-Grade 14, and the Director of Governance and Policy is classified as an MM2, Grade 11.

1 As of the investigation, the City had hired only one BRM, Brian Gannon (Gannon),
2 who began work on January 2, 2024. Gannon has a bachelor's degree in English literature
3 and a background in project and program management and analysis in various fields. His
4 annual salary at the time of hire was \$114,464.75. Since the investigation, the City has
5 hired three additional BRMs at the same salary: Ankita Raghupathy (Raghupathy),
6 Justyna Orlowska (Orlowska), and Kadija Diallo (Diallo). Raghupathy and Diallo started
7 work as a BRM on May 6, 2024. Orlowska started working as a BRM on September 9,
8 2024.

9 BRM Duties and Responsibilities

10 During the investigation, the City described the BRM's role as making independent
11 assessments of technology needs and reporting back to the DoIT senior team. Garces
12 described the BRMs as "unique" in that they were not part of a technical group nor part
13 of management, but they were in a position to gather information and assist in managing
14 projects with citywide implications. As part of their duties, they are expected to set up
15 regular meetings with City Cabinet, department, and agency heads and/or IT leaders.
16 The BRMs are then responsible for assessing those entities' IT needs and/or reviewing
17 existing IT policies and have input in developing them. They work under the supervision
18 of the Director of Governance and Policy and the IT Chiefs. The City provided the
19 following descriptions of the projects that Gannon, Raghupathy, and Diallo were working
20 on as of 2024. Orlowska had not yet started any projects.

21 Boston Planning and Development Agency Transition

22 In a February 2024 document describing this project, Gannon is listed as one of
23 three "primary liaisons" on this project to transition certain Boston Planning and

1 Development Agency (BPDA) employees to the City's Planning Department (CPD), along
2 with one employee from the BPDA and another from the Mayor's Office. A document
3 provided in September 2024 explains that Gannon's role is "coordinate workstreams
4 across DoIT, the BPDA and the CPD so as to enable the technical integration of former
5 BPDA staff into the City Planning department." The project's stakeholders included
6 employees from three City Departments, BPDA/CPD, People Ops and DoIT. Two of the
7 three DoIT stakeholders, Gretchen Grozier and Lauren Patrick, were SENA bargaining
8 unit members as of January 2024.

9 Boston Police Department (BPD) and Fire Department (BFD) Detail Project.

10 Gannon was also listed as a primary liaison on the BPD/BFD detail project, along
11 with a deputy from the BPD Bureau of Administration and Technology, the BPD Chief
12 Technology Officer, and Garces. The project's two stakeholders are the City's Advisor on
13 Labor Relations and the Mayor's Deputy Policy Director.

14 The City explained that approximately 40% of details go unfilled, and that in
15 addition to simplifying and improving the detail system, the project was intended to
16 implement a policy that would allow civilians and non-police personnel to work paid
17 details. According to the City, this policy was "announced as an accomplishment in the
18 recent patrol officer collective bargaining agreement." The City explained that the project
19 required recommendations for implementation consistent with the public safety labor
20 contracts. This, in turn, required Gannon to be involved in decision-making about how
21 non-City workers are paid for shift details and how future labor agreements might be
22 renegotiated to align with the Mayor's policy goals.

23 E-Bike Project

1 The E-Bike Project is an e-bike incentive program to provide a discount to eligible
2 Boston residents at the point of sale towards the purchase of an e-bike. Gannon served
3 on a committee that reviewed proposals from vendors to manage a digital voucher tool
4 for this project. He was not expected to provide recommendations.

5 BPS Enrollment Platform

6 Initially, Gannon served as the primary DoIT advisor on this project, but he shifted
7 to a support role to work on other projects. His remaining role was to monitor a checklist
8 of tasks that needed to be completed.

9 Computer-Aided Dispatch (CAD) Project

10 This project has two stated goals: to upgrade the City's current CAD system in a
11 manner that meets the public safety department's current and future technical and
12 operational needs; and to implement an administrative governance model for the next
13 CAD model that more fairly distributes authority and decision-making over changes to the
14 system. Gannon served on a seven-person team that included BPD, BFD, and EMS
15 representatives. The team was led by a BPD Project Manager.

16 The City contends that this project is relevant to the unit clarification analysis
17 because it provides a "significant opportunity to reassess how management of this system
18 is organized between Public Safety agencies." The City states that this "may involve a
19 significant reshuffling of administrative responsibilities and will likely involve developing a
20 new staffing plan to effectively match the plan." The City provided no further details
21 regarding Gannon's role on the project except an agenda from an August 2024 Executive
22 meeting that reflects an "Ask from [Gannon]," as to whether DoIT should own the CAD
23 technology/procurement or whether it should remain under BPD ownership.

1 The record does not reflect that Gannon has made or been exposed to collective
2 bargaining proposals or involved in any other aspect of collective bargaining negotiations.
3 The City contends that because one of Gannon's functions will be to determine whether
4 the proposed technological changes are feasible and/or optimal, Gannon may at some
5 unspecified point in the future be exposed to such plans before bargaining unit members
6 and/or present during negotiations over such plans.

7 Registry Holistic Needs Assessment

8 The project has multiple goals including: 1) establishing a prioritized list of projects
9 and a roadmap for the Registry based on the capacity of DoIT services; 2) using the
10 Registry as a case study, pilot a user-centered informational model that holistically
11 captures a department's technology needs and the services that the department receives
12 from DoIT; and 3) based on assessment of the Registry, identifying department best
13 practices that enable DoIT support.

14 Raghupathy worked on this project. The project had four key stakeholders - the
15 City Registrar and three DoIT employees, including Gutierrez and Steph Cariello
16 (Cariello). As of January 2024, Cariello was a Senior Data Processing System Analyst
17 and a member of SENA's bargaining unit.³

18 The City contends that Raghupathy's work on the project will directly inform
19 medium and long-term strategic planning for Registry services including how the services
20 are delivered and the technology used to support the services, as well as the staffing
21 model for those services. According to the City, that model will have direct implications

³ The Union's January 2024 submission included a list of SENA bargaining unit members who work in DoIT.

1 on new requests for personnel and changes to unionized staff responsibilities. On July
2 11, 2024, Raghupathy attended an Executive meeting, a meeting comprised of senior
3 DoIT leadership, in which she discussed the scope of this project.

4 Parking Clerk Contract Redesign

5 The goal of the project is to determine how to transfer tasks that an outside
6 contractor is performing for the Parking Clerk to DoIT. The project's key stakeholders
7 include the Commissioner of City Records, who works in the registry, the Director of
8 Parking and Curbside Management, and various DoIT Chiefs. The BRM's role in the
9 project was to understand and map out the current contract in terms of business
10 operations; work with the DoIT Chiefs to identify areas where DoIT could provide
11 contracted services; and provide recommendations to the Parking Clerk. According to the
12 City, this project will impact both DoIT's and the Office of Parking Clerk's staffing.
13 Raghupathy worked on this project and provided an update on it at an August 8, 2024
14 Executive meeting.

15 OWD Strategic Planning Project

16 The OWD is housed within the Office of Workforce Empowerment (OWE), which
17 is a cabinet office. The purpose of the project is to help OWD understand what "strategic
18 realignment of priorities and resources (staff and technology) will prepare them to better
19 align with the problem space of workforce development in Boston." The Chief of OWE is
20 the project's executive sponsor. The Team Leader is from the Mayor's Office. Team
21 members include Diallo, two OWE employees, and an external vendor. The City claims
22 that Diallo's work will help determine OWD's future goals and organizational structure,
23 including budget and staffing. The City emphasizes that the information they are

1 discussing is quite sensitive and explains that they brought in an outside contractor to
2 prevent their notes and materials from becoming public records.

3 Extension of Boston Public School (BPS) Sundays⁴

4 The purpose of this program is two-fold: to allow non-BPS students who live in
5 Boston to register for BPS Sundays and to expand access to Boston cultural opportunities
6 to as many constituents as feasible while maintaining financial feasibility for museums
7 and other partner organizations. Diallo is the project's Team Leader. The team includes
8 three DoIT Chiefs and two staff members from the Mayor's office. The City contends that
9 this project is relevant to this petition because it involves politically-sensitive topics such
10 as which constituents are the target audience for the expansion and how to validate their
11 eligibility in a manner that gains trust.

12 Sample SENA Positions

13 The Union provided the job descriptions and postings for several SENA titles that
14 it believes are comparable to the BRM, including the following DoIT positions:

15 Senior Analyst/Citywide Analytics Team

16 The posting described this position as "part of a highly-collaborative group using
17 data to improve all aspects of city government." The Senior Analyst was expected to
18 "develop and manage Citywide Analytics team projects from beginning to end" and to be
19 able to "work closely with other technical staff, project stakeholders and external partners
20 across City government, manage diverse technologies and projects, and develop tools

⁴ Although not fully explained in the City's materials, it would appear that the BPS Sundays program offers BPS students free or low-cost admission to select cultural institutions in the City on designated Sundays.

and best practices that can be implemented across the organization.” Specific responsibilities included:

Coordinates across departments to source data, develop projects, and put analytic findings and tools into business operations;

Become sufficiently knowledgeable about the citywide Analytics Team’s workflows and best practices to provide expert advice, mentoring, training, and guidance to other team members, project stakeholders, and external partners.

The minimum entrance qualifications were at least three years of experience working with data analysis projects in a business, government, or non-profit setting, with a bachelor’s degree in economics, computer science, social science, engineering, mathematics, public policy, business, or related field preferred. The position was classified as a MM1-Grade 8. As of October 2022, the salary range for a MM1-8 was \$77,085.54 to \$114,228.89.

Project Managers

The Union provided job postings for both a Project Manager and a Special Project Manager. Both positions report directly to the DoIT Chief of Staff. Both postings had an introductory paragraph describing DoIT as:

[L]eading the digital transformation of government in the City of Boston. Partnering with almost every City department, we implement technology solutions to modernize business processes, create world-class experience for our constituents, and develop tools and practices to create a data-driven approach to City operations.

The Project Manager works closely with the Special Project Manager. The posting required the candidate to have “strong involvement managing diverse and complex technology and/or business process projects (e.g., software implementations) and a proven ability to work cross departmentally and with diverse stakeholders to implement

1 organizational change.” The education and experience requirements were similar to the
2 Senior Analyst described above.⁵

3 DoIT Special Projects Manager

4 The April 2024 posting for this position sought an “experienced Special Projects
5 Manager to work on key transformational, operations, and strategic projects primarily for
6 DoIT to collaborate very closely with other departments.” The duties on the job description
7 included “providing knowledge transfer and support to internal stakeholders post
8 implementation”; “assisting with the creation and implementation of departmental policies,
9 procedure and governance models as assigned”; and representing DoIT’s Chief of Staff
10 at events, meetings, or presentations, as required. This position was a MM-Grade1- 8,
11 with similar educational and experience requirements as the Senior Analyst.

12 Meetings

13
14 Garces holds biweekly Executive meetings that DoIT Chiefs and Directors attend.
15 As of the investigation, Gannon had not attended these meetings, although he has
16 worked with the Chiefs of other departments on his current projects and reports to DoIT
17 management outside of these meetings. In its response to the Show Cause letter, the
18 City represents that BRMs now regularly attend and present at Executive meetings.
19 Topics of discussion at these meetings include AI guidelines, and the CAD and Registry
20 projects that the BRMS are working on. As described above, both Raghupathy and
21 Gannon have attended and spoken at Executive meetings.

⁵ The posting did not specify the job grade or classification.

Opinion⁶

A unit clarification petition is the appropriate procedural vehicle to determine whether newly created positions should be included in a particular bargaining unit. Town of Athol, 32 MLC 50, 52, CAS-04-3567 (June 29, 2005). In analyzing whether an employee should be accreted into an existing bargaining unit, the CERB considers: 1) whether the position at issue was covered by the original certification or recognition clause; 2) whether the parties' subsequent conduct, including bargaining history, discloses that the parties considered the position to be included in the existing bargaining unit; and 3) whether the position shares a community of interest with other positions in the existing bargaining unit. If the CERB determines that the requisite community of interest exists, it will accrete the petitioned-for employee into the bargaining unit. Town of Somerset, 25 MLC 98, 100, CAS-3145 (January 6, 1999).

The first two prongs of the accretion analysis are not dispositive in this case because the BRM position did not exist when the unit was first certified, and the parties have never bargained over its placement in the unit. Id. (declining to dismiss CAS petition at second prong in the absence of bargaining history showing that the parties addressed and resolved the unit placement of the disputed position). Turning to the third prong, we must analyze whether the BRM positions share a community of interest with other positions in SENA's unit. However, we first address the City's assertions that the BRMs are not entitled to collective bargaining rights because they are managerial and/or confidential employees within the meaning of Section 1 of the Law.

⁶ The CERB's jurisdiction is not contested.

1 Managerial Employees

2 Section 1 of the Law contains the following three-part test to determine whether a
3 person is a managerial employee:

4 Employees shall be designated as managerial employees only if they (a)
5 participate to a substantial degree in formulating or determining policy, or
6 (b) assist to a substantial degree in the preparation for or the conduct of
7 collective bargaining on behalf of a public employer, or (c) have a
8 substantial responsibility involving the exercise of independent judgment of
9 an appellate responsibility not initially in effect, in the administration of a
10 collective bargaining agreement or in personnel administration.

11
12 The CERB excludes employees from an appropriate bargaining unit as managerial under
13 Section 1 of the Law only if the employees' actual duties and responsibilities satisfy any
14 one of the three criteria set out above. Town of Bolton, 25 MLC 62, 66, MCR-4562
15 (September 10, 1998). Statutory exclusions from collective bargaining are generally
16 applied narrowly, so as not to deprive employees of the right to bargain collectively
17 through representatives of their own choosing. Commonwealth of Massachusetts, 6 MLC
18 1026, 1028, CAS-2291 (May 9, 1979).

19 The City argues that the BRMs are managerial employees because their special
20 projects have "far-reaching" impacts on City employees that involve the formulation of
21 policy. More specifically, the City asserts that:

22 The purpose behind creating the BRM position is to provide a structure for
23 CIO Garces and the senior DoIT team to assess, analyze and prioritize IT
24 needs across the City to align with the Mayor's vision and mission.
25 Subsumed within these responsibilities is the intention to have BRMs
26 independently assess IT needs and efficient IT practices in City Cabinets,
27 departments, and agencies and to convey the assessment to the CIO and
28 DoIT Senior team for the purpose of formulating policies, practices and
29 budget priorities.

30
31 Based on this description, the City argues that the BRMs "participate in a substantial
32 degree in formulating and determining policy" as required under the first part of the

1 managerial test. The City expands upon this argument in its response to the show cause
2 letter, focusing more specifically on the projects that the BRMs had worked on thus far.
3 In particular, the City contends that Gannon has already been involved in decision-making
4 regarding non-union employee staffing and the possible need to renegotiate labor
5 contracts in light of the changes the projects consider. It also described Diallo's and
6 Raghupathy's projects, asserting that they involve potential changes to union employee
7 staffing and responsibilities and access to sensitive information regarding budget and
8 staffing.

9 We disagree that the BRMs' duties render them managerial employees under any
10 of the three managerial criteria. To be considered a managerial employee under the first
11 part of the managerial test, an employee must make policy decisions and determine the
12 employer's objectives. Wellesley School Committee, 1 MLC 1389, 1401, MUP-2009,
13 CAS-2005 (April 25, 1975), aff'd sub nom. School Committee of Wellesley v. Labor
14 Relations Commission, 376 Mass. 112 (1978). The policy decisions must be of major
15 importance to the mission and objectives of the public employers, Wellesley School
16 Committee, 1 MLC at 1403, and the employee must participate in the policy decision-
17 making process on a regular basis. Town of Plainville, 18 MLC 1001, 1009, MCR-4019
18 (June 12, 1991). The employee must do more than just have input into the decision-
19 making process. Id. Merely consulting in formulating policy or periodic discussions with
20 higher administrators on policy matters is not enough to make an employee managerial.
21 City of Amesbury, 25 MLC 7, 9, MCR-4476 (July 14, 1998). Rather, this part of the
22 analysis focuses on whether an employee possesses independent decision-making
23 authority or whether the employee's decisions are screened by another layer of

1 administration. Worcester School Committee, 3 MLC 1653, 1672, MUP-2044 (April 29,
2 1977).

3 Here, even assuming without deciding that the BRMs' projects implicate major
4 policy-making decisions, the City has provided no evidence that the BRMs' role extends
5 beyond offering input into those decisions. Rather, as the City recognizes, the BRMs'
6 recommendations are screened through at least two additional layers of management,
7 senior DoIT management and CIO Garces. Moreover, the City has not described in any
8 detail a single policy that the BRMs have formulated or recommended.

9 The City contends that the BRMs' technology assessments could impact future
10 DoIT or other City department's staffing. However, when deciding unit placement issues,
11 the CERB looks at actual, not potential or future duties. Town of Athol, 36 MLC 188, 190,
12 CAS-10-3752 (May 7, 2010). Any nexus between the BRMs' job duties and actual staffing
13 changes is therefore too speculative at this point to warrant excluding them from the
14 bargaining unit under the first prong of the managerial analysis.

15 To the extent that the City argues that the BRMs' role regarding future staffing
16 and/or modifying labor contracts renders the position managerial under the second or
17 third prongs of the managerial test, we reject that argument as well. Under the second
18 prong, there is no evidence that the BRMs have assisted to a substantial degree in the
19 preparation for or conduct of collective bargaining. Having input into how *future* labor
20 agreements *might* need to be renegotiated is insufficient to satisfy this second criterion.
21 Id. Similarly, merely identifying problem areas to be discussed during bargaining or
22 consulting about bargaining proposals is insufficient to warrant designating an employee
23 as managerial. Commonwealth of Massachusetts, 25 MLC 121, 124, SCR-2227

1 (February 2, 1999). Rather, the employee must either participate in actual negotiations or
2 otherwise be involved directly in the collective bargaining process by preparing bargaining
3 proposals, determining bargaining objectives or strategy, or having a voice in the terms
4 of the settlement. North Attleborough Electric Department, 32 MLC 66, 72, MCR-04-5091
5 (June 29, 2005).

6 The third prong is inapplicable because there is no evidence, and the City does
7 not contend, that the BRMs are involved in any way in the actual administration of
8 collective bargaining agreements or in personnel administration.

9 In summary, the BRMs' duties do not render them managerial employees within
10 the meaning of Section 1 of the Law. While their work may implicate policy concerns like
11 streamlining technology and making government more efficient and useful for its
12 constituents, the same may be said of other SENA positions like the Senior Analyst in
13 the Citywide Analytics Team, who, according to the job description, is part of "a highly-
14 collaborative group that uses data to improve all aspects of City government." Likewise,
15 the DoIT Special Projects Manager is, according to the job description, responsible for
16 "assisting with the creation and implementation of departmental policies" to work on "key
17 transformational, operations, and strategic projects . . . for DoIT to collaborate with other
18 departments."

19 Confidential Employees

20 We next consider whether the BRMs are confidential employees. Section 1 of the
21 Law designates employees as confidential "only if they directly assist and act in a
22 confidential capacity to a person or persons otherwise excluded from coverage under this
23 chapter." The CERB has construed this statutory language to exclude those persons who

1 have a direct and substantial relationship with an excluded employee that creates a
2 legitimate expectation of confidentiality in their routine and recurrent dealings. Town of
3 Medway, 22 MLC 1261, 1269, MCR-4350, MCR-4352 (October 23, 1995). Regular
4 exposure to confidential material directly related to labor relations policy, management's
5 or other equally sensitive policy information, while directly assisting a person excluded
6 from the Law's coverage, renders an employee confidential. City of Boston, 37 MLC 1, n.
7 16, CAS-08-3727 (July 12, 2010) (citing Town of Wareham, 36 MLC 76, 79, WMAM-08-
8 1017 (October 28, 2009) (additional citations omitted). Access to sensitive financial and
9 personnel records alone is insufficient to designate an employee as confidential. Id. The
10 CERB traditionally construes all statutory exclusions narrowly to preclude as few
11 employees as possible from collective bargaining while not unduly hampering the
12 employer's ability to manage the operations. Silver Lake Regional School District, 1 MLC
13 1240, 1243, CAS-163 (January 13, 1975).

14 The City contends that the BRMs are confidential because their "job functions
15 create a continuing and substantial relationship with CIO Garces, a Cabinet-level exempt
16 position, and DoIT Chiefs, all exempt positions." The City further claims that the BRM
17 position was created with the legitimate expectation of confidential dealings in the routine
18 and recurrent interactions between the BRMs, CIO Garces, and his senior team regarding
19 budgetary matters, and the "efficient use of IT personnel."

20 Here, neither party disputes that CIO Garces or Jaramillo are managerial
21 employees or that the BRMs directly assist them. The question then is whether the BRMs'
22 duties provide them with significant access or regular exposure to the type of confidential
23 labor relations or other "equally sensitive policy information" that warrants their exclusion

1 from the bargaining unit. We find that the BRMs' duties are not the type that warrants their
2 exclusion from the bargaining unit.

3 With respect to labor relations duties, an employee will be excluded as a
4 confidential employee if they have access to all or substantially all of the bargaining
5 proposals prior to their submission to the union, or where their access to financial
6 information would make it obvious what the employer would offer during negotiations.
7 Millis School Committee, 22 MLC 1081, CAS-3059 (July 20, 1995). The mere preparation
8 of statistical data that might be used by the employer in collective bargaining is not a
9 confidential function. See, e.g., Board of Trustees, University of Massachusetts, 3 MLC
10 1179, 1204, SCR-2079, 2082 (October 15, 1976) (department chairmen not confidential
11 employees although they prepared the department's budget request because there was
12 no indication they would gain advance knowledge of the employer's final bargaining
13 proposals); Town of Wareham, 36 MLC 115, 118, WMAM-08-1016 (January 21, 2010)
14 (administrative assistant to the chief of police was not a confidential employee even
15 though she costs out bargaining proposals, because the chief's potential proposals
16 required more discussion before being finalized as the town's final bargaining proposals).

17 Here, there is no evidence that Garces or Jaramillo engage in collective bargaining
18 or that the BRMs are regularly exposed to labor relations policy or documents. Although
19 there is some evidence that the BRMs have been privy to discussions about potentially
20 modifying collective bargaining agreements if certain staffing models were implemented,
21 there is no evidence that the BRMs are involved in collective bargaining in any way or
22 have advance knowledge of the employer's collective bargaining proposals. While the
23 BRMs may be gathering information that could, at some point in the future, have an impact

1 on bargaining proposals that have yet to be drafted, their role in collective bargaining is
2 simply too far removed and speculative to warrant their exclusion from the unit on this
3 basis.

4 The remaining question, therefore, is whether the BRMs' duties expose them to
5 "sensitive policy information" that would warrant their exclusion from SENA's unit. This
6 raises the question of what constitutes "sensitive policy information" in the non-collective
7 bargaining context. Caselaw in this regard is scant, but as indicated above, to exclude an
8 employee based on their access to such information, the information must be "equally
9 sensitive" to labor relations policy information, such as management's position on
10 personnel matters. Town of Brookline, 30 MLC 71, 72, CAS-03-3550 (October 24, 2003).

11 We agree generally with the City that information about changes to bargaining unit
12 staffing and job duties could constitute sensitive policy information if the information has
13 not yet been disclosed to the affected employees or union. As explained above, however,
14 the CERB will not exclude employees as confidential based on their access to bargaining
15 proposals or positions that have not been finalized, or if their access to the underlying
16 information would not make it obvious what the employer's final position would be. Millis
17 School Committee, supra. The same principles must equally apply to other sensitive
18 policies to which the employees are exposed. Here, there is no evidence that the work
19 performed by the BRMs with respect to the Registry, Parking Clerk, CAD, OWD, or Public
20 Safety Details thus far has exposed them to new or changed staffing models for any group
21 of employees, or that the BRMs will necessarily be privy to the discussions when they are
22 finalized or approved. Although BRMs perform work that may ultimately affect a

1 department's future goals or organizational structure, we find that BRMs' contributions to
2 such programs at this point do not warrant their exclusion from the unit as confidential.

3 The City also contends that some of the projects that BRMs work on, such as the
4 BPS Sundays, involve politically sensitive issues. However, there is no evidence that this
5 information has or will have any impact on employees' terms and conditions of
6 employment. The City cites no cases, and we find none holding that access to this type
7 of politically sensitive policy information, standing alone, renders an employee
8 confidential under the Law.

9 For these reasons, we do not find that the BRMs are confidential employees within
10 the meaning of Section 1 of the Law and turn to whether they share a community of
11 interest with other SENA bargaining unit members.

12 Community of Interest

13 To determine whether employees share a community of interest, the CERB
14 considers such factors as similarity of skills and functions, similarity of pay and working
15 conditions, common supervision, work contact, and similarity of training and experience.
16 Waltham School Committee, 25 MLC 137, 139, MCR-4541 (March 1, 1999). No single
17 factor is outcome determinative, and minimal differences do not mandate separate
18 bargaining units where employees perform similar job duties under similar working
19 conditions and share common interests that would be amenable to the collective
20 bargaining process. University of Massachusetts, Amherst, 41 MLC 233, 241, SCR-14-
21 3687 (February 20, 2015).

22 The City argues that the BRMs do not share a community of interest with SENA
23 bargaining unit members because the BRMs work exclusively with DoIT and other City

1 department managers and do not have regular contact with other bargaining unit
2 members. However, the information the City provided reflects that Gannon and
3 Raghupathy are working on projects involving other DoIT employees who are members
4 of SENA's bargaining unit. Moreover, the BRMs' salary falls within the range listed on the
5 posting for the SENA Senior Analyst. The education requirements were also the same as
6 those for SENA Project Managers. Finally, the BRMs' work duties, involving working on
7 strategic projects for DoIT to collaborate with other departments, are very similar to those
8 contained in the postings for the SENA positions described above. We therefore find that
9 the BRM positions share a community of interest with other positions in SENA's unit.

10 Conclusion

11 For the above stated reasons, we grant the Union's petition to accrete the BRMs
12 to its bargaining unit.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



LAN T. KANTANY, CHAIR



KELLY B. STRONG, MEMBER



VICTORIA B. CALDWELL, MEMBER