

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: November 21, 2025

CERB Members Participating:

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

Appearances:

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

CERB RULING ON MOTION TO REINVESTIGATE

Background

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 sought 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). The DLR held an informal conference to discuss the petition on February
7 21, 2024. Before, during, and after the conference, the parties submitted position
8 statements, affidavits, and other documents in support of their respective positions,

1 including on April 10, 2024. In a letter dated August 29, 2024, the DLR summarized the
2 information gathered during the investigation, and directed the parties to show cause why
3 the Commonwealth Employment Relations Board (CERB) should not resolve the petition
4 based on the summary. In its response dated September 13, 2024, the City provided
5 updated information about the new BRMs it had hired and their duties but did not dispute
6 any of the information contained in the show cause letter. The Union did not file a
7 response to the show cause letter or a reply to the City's response. The CERB issued a
8 decision on September 23, 2025, finding that there were no material facts in dispute and
9 based on that information, granted the petition to accrete the BRM position to SENA's
10 unit. In doing so, the CERB rejected the City's arguments that the BRMs were confidential
11 or managerial employees exempt from collective bargaining under Section 1 of M.G.L. c.
12 150E (the Law).

13 On October 11, 2025, the City filed a Motion for Reinvestigation of the Certification
14 (Motion), at issue in this ruling, and the Union filed an Opposition to the City's Motion on
15 October 12, 2025. In its Motion, the City argues that since the investigation on January
16 12, 2024, the informal conference on February 21, 2024, and the CERB's decision on
17 September 23, 2025, there is new evidence as to the scope of the BRM's duties and the
18 City's expectations for the position, such that good cause exists under DLR Regulation
19 456 CMR 14.15 to reinvestigate the certification. The City asserts that its "Motion rests
20 on new and material evidence, facts that did not exist at the time of the CERB's decision
21 to direct accretion of the BRMs into the SENA unit," and that the BRM role has
22 "transformed" since the CERB's decision. The City contends that this new evidence
23 establishes good cause for reinvestigation and asserts that its motion rests on more than

1 just “mere disagreement” with the CERB’s decision. The City also provided affidavits with
2 documents attached in support of its position that the BRM position is confidential and/or
3 managerial. The Union opposes the Motion, arguing that the City failed to establish good
4 cause for a reinvestigation. The Union maintains that the CERB has outlined limited
5 circumstances for granting a reinvestigation, none of which are present here. Specifically,
6 the Union asserts that the precise argument that the City makes – that a motion to
7 reinvestigate should be allowed to permit the record to be reopened for the admission of
8 new evidence after the issuance of a CERB decision – was previously found not to
9 constitute good cause for reinvestigation in Commonwealth of Massachusetts, 37 MLC
10 131, CAS-06-3655 (December 14, 2010).

11 Ruling

12 Section 3 of the Law requires the DLR to “prescribe rules and regulations and
13 establish procedures for the determination of appropriate bargaining units which shall be
14 consistent with the purposes of providing for stable and continuing labor relations.” M.G.L.
15 c. 150E, § 3. Pursuant to the Law, the DLR established DLR Regulation, 456 CMR 14.15,
16 which permits the DLR to “reinvestigate any matter concerning any certification issued by
17 it,” but only for “good cause shown.”

18 As the Union argued in its Opposition, the CERB has dealt with a similar motion
19 for reinvestigation in Commonwealth of Massachusetts, 37 MLC at 131. In that case, the
20 CERB issued a decision on July 14, 2010, allowing a unit clarification petition that sought
21 to accrete two positions into the bargaining unit that the employer argued were
22 managerial. See Commonwealth of Massachusetts, 37 MLC 13, CAS-06-3655 (July 14,
23 2010). Approximately a month and a half later, on August 30, 2010, the employer filed a

1 motion to reinvestigate the CERB's July 14, 2010 decision. Commonwealth of
2 Massachusetts, 37 MLC at 131. The employer argued that there was good cause to
3 reinvestigate the petition because the facts available at the time of the investigation did
4 not accurately reflect the full scope of the petitioned-for positions' job duties. Id. The
5 employer further argued that the new facts it presented demonstrated that the duties had
6 changed since the DLR's investigation, and that the employees are managerial and
7 confidential and should therefore be excluded from the unit. Id. Noting that the DLR's
8 regulations permit reopening the record to receive further evidence only prior to the
9 issuance of a final decision, the CERB determined that motions for reinvestigation that
10 request that the record be reopened to receive information after a final decision has been
11 issued, may be granted only when the proffered evidence is newly discovered evidence,
12 which was in existence at the time of the hearing, but of which the moving party was
13 excusably ignorant, despite the exercise of reasonable diligence. Id. (quoting Boston City
14 Hospital, 11 MLC 1065, 1075, MUP-4893 (July 25, 1984)). The CERB reasoned that this
15 general rule was to promote finality in DLR proceedings. Id. Noting the absence of error,
16 and to ensure the finality of agency proceedings, the CERB denied the employer's motion
17 for reinvestigation because the evidence the employer sought to introduce did not exist
18 at the time of the investigation. Id.

19 The City's arguments and facts here are nearly identical to those which were
20 before the CERB in Commonwealth of Massachusetts. Approximately two and a half
21 weeks after the CERB issued its decision, the City asked the CERB to reinvestigate by
22 reopening the record. The City, like the employer in Commonwealth of Massachusetts,
23 asserts that the facts available at the time of the investigation do not accurately reflect the

1 BRM job duties, and that since the investigation and the CERB's decision, the BRM job
2 duties have changed. Consistent with our decision in Commonwealth of Massachusetts,
3 we deny the City's petition to reinvestigate the CERB's decision accreting the BRM
4 position. Id. See also Town of Sturbridge, CAS-04-3575 (June 28, 2005) (holding that, in
5 the interest of finality, the Labor Relations Commission¹ declined to revisit a unit
6 clarification determination where the union had an opportunity to raise an issue during the
7 proceedings but failed to do so until after the Labor Relations Commission had rendered
8 its decision). See also North Andover School Committee, 10 MLC 1226, CAS-2525
9 (September 27, 1983) (denying a unit clarification petition seeking to sever positions as
10 confidential where the employer failed to demonstrate that the duties had changed since
11 the certification and holding that "a public employer is effectively precluded from raising
12 issues through a CAS petition that could have been raised during a prior representation
13 proceeding").

14 The City provided information on multiple occasions, on February 21, 2024, April
15 10, 2024, and September 13, 2024, which the CERB considered in its decision. Prior to
16 the CERB's decision on September 23, 2025, the City had not provided the information it
17 now seeks to provide two and a half weeks after the decision was issued. The City has
18 not demonstrated that the evidence it now proffers is newly discovered evidence that
19 existed prior to the CERB's September 23, 2025 decision, and that it was excusably
20 ignorant of the evidence despite its reasonable diligence. To the extent the City contends
21 that it has evidence that did not exist at the time of the investigation, that too, does not
22 warrant reopening the record after the CERB has issued a decision. Commonwealth of

¹ The Labor Relations Commission is the predecessor agency to the DLR and CERB.

1 Massachusetts, 37 MLC at 131. Where the City has not demonstrated a basis for
2 reopening a record post-decision, and to ensure the finality of agency proceedings, we
3 deny the City's motion to reinvestigate.

4 Conclusion

5 For the foregoing reasons, the CERB denies the City's request to reinvestigate the
6 CERB's order accreting the BRM position into SENA's bargaining unit.

SO ORDERED.

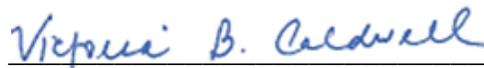
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