

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-23-10286

Issued: July 2, 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

Kyle A. Berner, Esq. - Representing the Professional Staff Union (PSU)

**CERB DECISION**

**Summary and Statement of the Case**

1           On October 18, 2023, the Joint Executive Council, d/b/a PSU (Union or PSU) filed  
2   a unit clarification petition with the Department of Labor Relations (DLR) seeking to  
3   accrete the Assistant Provost of Community and Executive Education (APCEE) to its  
4   bargaining unit of non-academic professional staff employed at the University of  
5   Massachusetts (University) in their Boston (UMB) and Amherst (UMA) campuses. The  
6   Union contends that the APCEE shares a community of interest with other PSU  
7   bargaining unit members and is not a managerial or confidential employee. The University  
8   opposes accretion on grounds that Assistant Provosts are expressly excluded from the

1 recognition clause of the parties' collective bargaining agreement, and because the  
2 incumbent is a managerial employee within the meaning of Section 1 of M.G.L. c. 150E  
3 (the Law).

4 The DLR held an informal conference on March 4, 2024. Before, during, and after  
5 the conference, the parties submitted position statements, affidavits, and other  
6 documents. In a letter dated August 26, 2024, the DLR summarized the information that  
7 the parties had provided, sought some additional information, and directed the parties to  
8 show cause why the CERB should not resolve the petition based on its summary of the  
9 record and the additional information. The Union filed a response stating that it did not  
10 object to the CERB deciding this matter based on that record. The University filed a  
11 response agreeing with the summarized facts and providing certain outstanding and  
12 updated information. The Union did not reply to the University's response. After  
13 considering the information summarized below, we deny the petition to accrete the  
14 APCEE to the PSU for the reasons set forth below.

### 15 **Background**

#### 16 **PSU Bargaining Unit**

17  
18 At all relevant times, the PSU has represented a unit of full-time and part-time non-  
19 academic professional staff at UMB and UMA.<sup>1</sup> The unit consists of approximately 2000  
20 employees across numerous departments on both campuses.

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<sup>1</sup> 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 certified SEIU, Local 509 as the exclusive representative of a non-academic professional staff unit at UMass Boston and Amherst. The description of the unit contained in the certification is almost identical to the recognition clause in the PSU's 2020-2023 CBA. The record contains no information regarding when those positions were first excluded from the unit, or when the PSU replaced SEIU, Local 509 as the exclusive representative of the unit.

The parties' 2020-2023 collective bargaining agreement (CBA) contains a recognition clause that states in pertinent part:

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.

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)....

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

The parties' most recent agreement is a Memorandum of Agreement (MOA) effective from July 1, 2023 through June 30, 2024 that contained some changes to the CBA, but not to the recognition clause.

#### PSU Pay Grades

As of 2024, there were 17 PSU positions that earned more than \$150,000 a year, including two Associate Registrars, who earn \$152,167 and \$153,173, respectively. The highest-earning PSU positions are two Senior Major Gifts Officers, whose salaries are in the \$190,000's.

#### College of Advancing and Professional Studies (CAPS)

Until 2022 and prior to the creation of the APCEE position, UMB's academic units included the "College of Advancing and Professional Studies," also known as CAPS. CAPS' personnel were responsible for the development and administration of in-person and online credit and non-credit courses targeted at adult learners. In 2015, CAPS was headed by a Dean whose direct reports included two Associate Deans who oversaw graduate programs, a Director of Strategic Initiatives, a Director of Development, and an Operations Manager, Shona Jackson (Jackson). There were four divisions beneath the direct reports: Academic Programs; Centers and Institutes; International Programs; and Corporate Training and Outreach. Olga Lauterbach (Lauterbach) was the Director of Corporate Training and Outreach. Jackson's and Lauterbach's positions were included in the PSU bargaining unit.

#### CAPS Dean

A job posting for the Dean of University College<sup>2</sup> states in part:

The University of Massachusetts Boston invites applications and nominations for the position of founding Dean of its newest college, University College, which will build upon and extend the academic offerings of its predecessor unit, the division of continuing, corporate, and distance education. Created to become an embodiment of the entrepreneurial spirit of UMass Boston, University College is a major academic unit of a university which prides itself on its inclusiveness, excellent teaching, and ambitious research focus.

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<sup>2</sup> CAPS was formally known as "University College."

1  
2 Reporting directly to the Provost, the Dean of University College will be a  
3 key member of the university's senior academic leadership team and will be  
4 responsible for the quality and scope of the College's academic programs  
5 and policies, including those related to its centers and institutes. He or she  
6 will help to support existing programs that are offered in collaboration with  
7 other UMass Boston colleges, including, for example, programs in applied  
8 linguistics, school counseling, management of aging services, and an online  
9 RN to BS program. The Dean will also help to create new degree programs  
10 to be housed in and led by University College itself. The Dean will ensure  
11 that the College's students receive excellent academic and support  
12 services. As the Dean leads the development of this new College, he or she  
13 will enjoy the support of a highly competent professional executive team  
14 and the experienced deans of the other colleges.

15  
16 The successful candidate will have earned a doctorate from an accredited  
17 academic institution. He or she will have an established record of nurturing  
18 and growing continuing education and or academic degree programs and  
19 shaping an organizational structure to support those programs; at least five  
20 years of experience as an academic leader with demonstrable success in  
21 dealing with budgets, strategic planning, and marketing....

22  
23 Philip DiSalvio (DiSalvio) was the Dean of University College, and then of CAPS,  
24 from 2011-2019. Michael Tull (Tull) served as Interim Dean until 2022. Tull had previously  
25 served as CAPS Assistant Dean for Finance and Business Intelligence. Both positions  
26 were non-unit positions.

27 Director of Corporate Training and Research

28 Lauterbach held this position until she retired in 2019. Her salary at that time was  
29 \$98,269. Lauterbach reported to the CAPS dean. She attended senior staff meetings and  
30 was expected to develop new ideas for CAPS non-credit programs. Those ideas had to  
31 be approved by the Dean before implementation. A 2013 job posting for her position  
32 describes her duties and responsibilities as follows:

33 The Director of Corporate and Professional Training and Outreach designs,  
34 develops, and presents curriculum for a wide variety of corporate and  
35 professional training programs for delivery to the public and by contract to  
36 public and private-sector clients. These programs may be presented in

1 credit and non-credit formats and are delivered days, evenings and  
2 weekends at both on-campus and off-campus locations through the years.  
3 The Director is responsible for quality assurance, monitoring, and  
4 evaluating all programs under the supervision of this position. The Director  
5 initiates and cultivates relationships and partnerships with corporations,  
6 non-profit organizations, and government agencies, assesses their training  
7 and educational needs, and develops responsive academic and  
8 professional development programming. The Director establishes and  
9 implements strategies to increase the presence of UMass Boston, and  
10 CAPS in particular, within eastern Massachusetts. The Director actively  
11 engages in outreach to bring the resources of CAPS (and where  
12 appropriate, UMass Boston) to community groups. The Director participates  
13 fully in the development of marketing tools and strategy for professional  
14 training, as well as general CAPS initiatives. The Director develops and  
15 maintains relationships with collegiate deans, chairpersons, vice  
16 chancellors, faculty as well as executives and senior managers from  
17 government, business and industry. Information given and received as a  
18 routine part of this position could be of a confidential nature.  
19

20 The job description listed other duties including hiring, supervising, and evaluating  
21 instructional personnel for training programs, and conducting training and professional  
22 development needs assessment. Financial duties included preparing budgets for  
23 individual programs and annual professional and corporate training.

24 The minimum requirements for the position were a bachelor's degree with  
25 graduate study desirable, and ten years' experience in developing and maintaining  
26 successful relationships with corporate clients in delivering quality education and training.  
27 Lauterbach had a bachelor's degree.

28 After Lauterbach retired, Jackson assumed Lauterbach's duties on an interim basis  
29 until 2022, when she was laid off. In 2022, Jackson's annual salary was \$94,433.

### 30 CAPS' Elimination

31 In the fall of 2022, the University dissolved CAPS and centralized many of its  
32 functions within existing departments, colleges, or schools. In particular, the University  
33 moved the development and delivery of winter/summer credit courses and programs to

1 colleges and schools, which started directly delivering such courses as part of their  
2 academic year offerings. The University also transferred the hiring, budgeting, marketing,  
3 and procurement functions associated with these credit programs from CAPS to colleges  
4 and schools.

5 The University also moved the non-credit corporate and professional programs  
6 that Lauterbach and Jackson had previously overseen into the Office of the Provost and  
7 Vice Chancellor for Academic Affairs (Provost's Office).

#### 8 Provost's Office

9 The Provost's Office is headed by Joseph Berger (Berger), who is the Provost and  
10 Vice Chancellor for Academic Affairs. In addition to the APCEE position at issue here, the  
11 Provost's Office includes two Assistant Vice Chancellors, one Vice Provost, and two  
12 Associate Provosts. Berger oversees three other UMB divisions: College/School Deans,  
13 Academic Administration, and Centers/Institutes. Of all the positions reporting directly to  
14 Berger, only the Registrar is a PSU position. As of the investigation of this matter, there  
15 were no other Assistant Provosts at UMB other than the disputed APCEE position. The  
16 duties of this position are described below.

#### 17 Assistant Provost of Community and Executive Education

##### 18 Job Postings and Duties of the Position

19 The University first posted this position in October 2022 with the title "Assistant  
20 Vice Provost (Community and Executive Education)."<sup>3</sup> That posting stated in part:

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<sup>3</sup> Until April 2023, when it settled on the title Assistant Provost for CEE, the position at issue here, the University deviated between calling the position Assistant Vice Provost, or simply Assistant Provost. The record contains an April 2022 draft job posting with the title Assistant Vice Provost (CEE), a September 2022 Assistant Provost (CEE) posting, an October 2022 Assistant Vice Provost (CEE) posting, described above, and the April

1 The Assistant Vice Provost for Community and Executive Education (CEE)  
2 provides leadership for Continuing Education to achieve its mission to  
3 expand non-credit learning opportunities for diverse individuals, groups,  
4 communities, agencies, and organizations across a broad range of public  
5 and private sectors. The Assistant Vice Provost works collaboratively with  
6 internal University departments and external partners to identify and  
7 capitalize on opportunities to increase access to and enrollment in non-  
8 credit programs. The Assistant Vice Provost catalyzes opportunities for  
9 upskilling, micro-credentialing, and pioneering of non-credit programs to fill  
10 in the knowledge and skills gaps in the community and beyond. The  
11 Assistant Vice Provost works with academic deans, directors of institutes  
12 and others to align, where appropriate, non-credit pathways within the  
13 academic offerings of UMass Boston. The Assistant Vice Provost is also  
14 charged with developing and implementing strategies and objectives that  
15 align with the University's strategic goals including but not limited to  
16 developing partnerships with business and industry to become a preferred  
17 educational provider.

18  
19 The requirements for the position were an "advanced graduate degree; doctorate  
20 preferred" and at least "10 years of progressive experience managing innovative non-  
21 credit education program development, delivery, and improvement." The posting reflected  
22 that the Provost would directly supervise the incumbent.

23 On October 19, 2022, a PSU representative sent an email to UMB's Director of  
24 Labor Relations with the subject line "Contesting the unit status of the Asst VP of  
25 Community and Executive Education." The email indicated that the University had not  
26 notified the Union about the position or its non-unit status and pointed out that the CERB  
27 had recently ruled that a different Assistant Vice Provost position should be in the unit.<sup>4</sup>

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2023 Assistant Provost posting, described below. The record contains no clear explanation for the multiple title changes. The University did explain, however, that it made the position a provost and not a dean because it eliminated the CAPS college structure and therefore, "the classification of Assistant Provost outside of the classic governance structure of the University's colleges was most appropriate." The University also explained that it did not intend for the new position to be tenured.

<sup>4</sup> In University of Massachusetts Boston, 46 MLC 121, CAS-17-6267 (December 27, 2019), the CERB granted the PSU's petition to accrete the "Assistant Vice Provost,

1 The Union asked the University to reconsider the unit status of the position and indicated  
2 that it was interested in discussing the issue.

3 Also on October 19, 2022, Vice Chancellor for Human Resources Marie Bowen  
4 (Bowen) emailed several UMB officials regarding the posting, noting that the position was  
5 replacing the “former non-unit dean and assistant dean roles in CAPS,” so it was  
6 “longstanding non-unit.” On October 20, 2022, a Human Resource Generalist wrote to  
7 Bowen explaining that when the University first discussed the position, the title had been  
8 Assistant Provost, but that Berger had edited the title to Assistant Vice Provost just before  
9 posting it.

10 The October 2022 posting was never filled, and the position was reposted in April  
11 2023 with the title “Assistant Provost of Community and Executive Education.” This  
12 posting stated in part:

13 The Assistant Provost for Community & Executive Education leads UMB’s  
14 efforts to create, expand, and bring to market noncredit learning  
15 opportunities. As part of the university’s mission to increase access to  
16 education for all, the Assistant Provost collaborates with internal colleges  
17 and departments to identify non-credit courses and micro-credentialing  
18 programs that will appeal to adult learners in the public and private sectors.<sup>5</sup>  
19 This is a role for an entrepreneurial individual capable of honing in on  
20 potential, connecting the right people to pilot a new approach, and combing  
21 the data to know when success is achieved.

22  
23 UMB has seven academic colleges with the resources to provide non-credit  
24 education and is located in a metropolitan area with countless corporate,

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Research, Accounting and Financial Compliance” to its unit. The CERB found that the parties had not agreed to exclude this title from the unit, and that the incumbent was a non-managerial employee who shared a community of interest with other PSU bargaining unit members.

<sup>5</sup> Micro-credentials are non-academic certificates that focus on a specific skill or competency within a specialized subject. Both before and after Chang arrived, the University offered non-credit courses that could lead to micro-credentialing.

1 government, and nonprofit entities. The Assistant Provost's charge is to  
2 catalyze opportunities for upskilling, micro-credentialing, and pioneering of  
3 non-credit programs to fill the knowledge and skills gaps in the community  
4 and beyond.

5 The duties listed in the job description included managing the CEE's budget, and  
6 establishing and monitoring the performance of direct reports, including frequent coaching  
7 and annual performance appraisals. Additional duties included "establish[ing] goals,  
8 objectives, policies, procedures, and actions plans for [CEE] operations and adult  
9 initiatives that are consistent with the unit, division, and university strategic plans" and  
10 "collaborat[ing] with UMass Boston['s] academic colleges to create internal linkages  
11 between non-credit and credit bearing courses, certificates and programs."

12 The minimum qualifications included an "advanced graduate degree" and at least  
13 five years of experience managing some form of educational program delivery, as well as  
14 preferred experience managing complex budgets, networking with industry and nonprofit  
15 leaders, and overseeing pilot programs. The APCEE reports directly to the Provost.

16 Incumbent APCEE

17 In September 2023, UMB hired Dr. Tina Chang (Chang) for the position at a salary  
18 of \$150,000. Chang has a law degree and a Ph.D. in Educational Leadership and Policy  
19 Analysis. According to her resume, Chang had previously developed and led professional  
20 development credit and non-credit programs at several different colleges and universities.  
21 As of the investigation, she was earning \$156,000 a year.

22 Chang reports directly to Berger, and her office is right down the hall from his.  
23 Berger has charged Chang with independently identifying needs for non-credit courses  
24 and growing the University's ability to offer those programs. Chang interacts with both  
25 senior administration officials and PSU bargaining unit members, including the Registrar

1 and information technology employees. She has attended Academic Council Meetings.  
2 As of the investigation into this petition, Chang had no direct reports, but the University  
3 anticipated that as the program grew, she would need professional administrative  
4 support.

5 In July 2024, the University published a document titled "Information Technology  
6 Project Charter" (Charter), which described the University's plan for creating an  
7 information technology infrastructure for the CEE program.<sup>6</sup> The Charter included the  
8 following "Problem Statement:"

9 Currently, UMB does not have an established and scalable Community and  
10 Executive Education (CEE) Division. This is a missed opportunity for UMB  
11 to provide the community with an easily accessible channel for non-degree  
12 students and current/past students to access valuable and flexible skill-  
13 based courses and professional development programs.

14  
15 By creating CEE's infrastructure, UMB will begin to meet the current and  
16 future demand for flexible and personal learning options and provide  
17 valuable and marketable job skills for students to pursue their individual  
18 learning goals.

19 The Project Charter included a detailed description and timeline for implementing  
20 the "Canvas Learning Management System" (LMS), an online platform that would enable  
21 potential students, including non-degree and current students, to view, register, and pay  
22 for CEE courses. Once enrolled, the LMS platform would also allow students to manage  
23 the awards or badges that they earned in connection with their coursework. The Project  
24 Charter also included the creation of a marketing plan for the program that would include  
25 market research, branding, designing, and creating a webpage sitemap, and other digital  
26 components. The anticipated launch date was the 2025 spring semester.

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<sup>6</sup> The University provided this document with its response to the Show Cause letter.

1       The Project Charter mentioned Chang in three places. First, in the “Project  
2 Stakeholders,” who were defined as those individuals “actively involved in the project,  
3 who “may exert influence over the project’s objects and outcomes.” Chang was the third  
4 stakeholder, beneath Provost Berger, and Raymond Lefebvre, Vice Chancellor for  
5 Information Technology/Chief Information Officer (LeFebvre). Second, in a chart  
6 delineating “Roles and Responsibilities,” Chang was listed first as the “Project Sponsor,”  
7 above two Program Managers, and a 14-person project team. The previous section of the  
8 Charter defined the Project Sponsor as “an executive interested in the project’s outcome”  
9 with responsibility for “securing the spending authority and resources required for the  
10 project.” Duties included overseeing high-level project progress; providing input to  
11 development of project plan and deliverables; providing and approving the project  
12 budgets and resources; championing the project to senior management; and approving  
13 the project completion. On the chart, Chang’s role was summarized as “key decision  
14 maker, oversight, champion and signatory.”<sup>7</sup> Finally, Chang’s was first of four signatures  
15 on the Project Charter Approval page, above the Vice Chancellor/Chief Information  
16 Officer, the Associate Chief Information Officer, and the IT Project Manager.

#### 17       CEE Program Offerings

18       Most of the non-credit courses offered at UMB in the Fall '23 and Spring '24 were  
19 continuations of courses offered prior to Chang’s arrival, including courses on addiction  
20 counseling, and academic reading, writing, and research. As of September 2024, Chang  
21 had developed and launched two courses pertaining to offshore wind energy, and cancer

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<sup>7</sup> Chang was not the only project participant whose role was described in this way. It was also given to the Associate Chief Information Officer, who was a Project Co-Manager.

1 genomics, both of which had multiple modules and badges that could be stacked into  
2 micro-credentials. Chang was also meeting with faculty members from the College of  
3 Science and Mathematics and the Sustainable Solutions Lab to create new micro-  
4 credentials. She had also met with an outside company, “Upright Education,” which  
5 offered bootcamps in Data Analytics, Digital Marketing, Software Engineering and UX/UI  
6 [User Experience/User Interface] Design.

7 Select Provost Positions at UMB<sup>8</sup>  
8

9 As of September 2024, UMB employed a total of 13 staff members with provost  
10 titles. Their salaries ranged from \$132,44.33 for an Assistant Vice Provost to  
11 \$374,864.44, Provost Berger’s salary. The median salary was approximately \$170,000.  
12 The duties and qualifications of a representative sample of these titles appear below.

13 Associate Vice Provost for Inclusive Excellence at UMB

14 A May 2024 offer letter for this position reflects that the incumbent reports to the  
15 Vice Provost for Student Equity, Access and Success (SEAS), and serves as a member  
16 of the SEAS core leadership team. The offer letter indicated that the incumbent’s duties  
17 would include “oversight, strategic planning, implementation, and assessment” for three  
18 SEAS departments (Undergraduate Studies, Center for Academic Excellence, and the  
19 Lillian Semper Ross Center for Disability Services), including supervising the directors of  
20 each of those departments. The letter listed the position’s specific responsibilities,  
21 including:

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<sup>8</sup> After the Show Cause letter issued, the University provided updated and additional job descriptions and salary information for several provost titles. This section reflects the updated information.

- 1 • Collaborate with the SEAS leadership team to support UMass Boston's
- 2 Holistic Student Success Strategic Priority, including developing,
- 3 implementing and assessing student learning and success outcomes...
- 4 • Lead the University's academic Integrity policy implementation for
- 5 undergraduate students....Collaborate with the office of the Provost.
- 6 • Co-Lead the University Academic Policy Implementation Working Group
- 7 as charged by the provost; evaluate academic policies and make
- 8 recommendations for policy implementation improvement...
- 9 • Oversee General Education policies and procedures and work with
- 10 relevant departments and colleges to ensure clear communication
- 11 regarding General Education. Review and approve General Education
- 12 curricular proposals, and review and approve course waivers and
- 13 substitutions related to Gen Ed requirements. Advise the Vice Provost
- 14 on matters related to general education and academic policy and
- 15 proficiency, implementation, assessment and improvement.
- 16 • Serve on the Office of Faculty Development Cabinet and collaborate
- 17 with the Dean of Faculty to develop and implement professional
- 18 development opportunities.
- 19

20 The letter made clear that this was a non-unit position.

21

22 Associate Vice Provost for Graduate Studies

23

24 A 2017 job description for this position included the following summary:

25

26 The Associate Vice Provost for Graduate Studies appointed by and

27 reporting to the Vice Provost for Research and Dean of Graduate Studies,

28 is responsible for restructuring to provide university-wide leadership of all

29 aspects of graduate admissions. The incumbent will manage Graduate

30 Admissions and Graduate Studies staff and ensure that outstanding

31 support services are provided to graduate students and Graduate Program

32 Director[.] The Associate Vice Provost for Graduate Studies will be

33 responsible for increasing the rate of graduate retention and degree

34 completion; designing and implementing effective graduate marketing,

35 recruitment, admissions and retention, including working with the college

36 Deans, Graduate Program Directors, faculty and others in developing

37 ambitious and realistic targets to grow and enhance graduate programs.

38

39 Working with the Office of Enrollment Management and other relevant

40 units, coordinate and assist in the production of marketing materials and

41 planning and executing initiatives for attracting more and highly qualified

42 applicants, including out-of-state and international students to our graduate

43 programs. The Associate Vice Provost for Graduate Studies will also be

44 responsible for carrying out other duties and responsibilities as required by

45 the Vice Provost for Research and Dean of Graduate Studies.

46

1 The position required a master's degree, PhD preferred, and a minimum of ten  
2 (10) years of professional experience. The incumbent was expected to supervise the staff  
3 in the Office of Graduate Studies and Graduate Admissions and to directly supervise 5-  
4 10 employees.

5 Associate Vice Provost for Academic Support Services  
6

7 A 2020 job description for this position summarizes it as follows:  
8

9 The Associate Vice Provost serves as the chief daily operations officer for  
10 Academic Support Services which includes Academic Support Programs,  
11 the University Advising Center, Career Services and Internships, the Office  
12 of Global Programs, the Ross Center for Disability Services, Undergraduate  
13 Studies, the Pre-Collegiate Programs, and four Student Success  
14 Programs....The Associate Vice Provost works closely with the Vice  
15 Provost in the formulation of new policies, makes decisions with regard to  
16 the application of existing policies, and ensures adherence to existing  
17 academic, administrative, and fiscal policies of the University, the Board of  
18 Trustees, and the Board of Higher Education. The Associate Vice Provost  
19 works closely with the Vice Provost in planning, directing, and coordinating  
20 the programs, personnel, and fiscal matters within the unit. The Associate  
21 Vice Provost assumes leadership of the unit in the absence of the Vice  
22 Provost.  
23

24 The Associate Vice Provost has direct administrative responsibility for the  
25 supervision of within [sic] the departments of Pre-Collegiate and Student  
26 Support Services Programs. Works closely [with] the Vice Provost and with  
27 program directors in the development and preparation of external grant  
28 applications.  
29

30 Specific duties included:  
31

- 32 • Supervise the Pre-collegiate and Student Support Services Program  
33 senior directors and directors, and the Director of Business Operations  
34 and Resource Management; indirectly supervise the pre-collegiate,  
35 SSS, and Business Service Center staff. Oversee the selection, training  
36 and supervision of professional and clerical staff within these  
37 departments.
- 38 • Initiate and direct the annual budget planning process for Academic  
39 Support Services in collaboration with the Vice Provost, department  
40 heads, and program directors.

- Oversee human resource management, including providing consultation and training to department heads, directors, and support staff on financial, personnel and other resource management issues.
- Ensure employee relations in the unit are managed according to the applicable collective bargaining agreements.
- Lead unit strategic planning with regards to program and operational development.

The requirements include a master's degree in education, public affairs, or a related field and a minimum of seven years of administrative and operational management experience in higher education or non-profits.

Associate Provost, Institutional Research, and Assessment and Planning

The 2015 job description for this position contained the following summary:

[P]rovides leadership for the university's institutional reporting and research activities. The incumbent will coordinate and supervise ongoing reporting activities, special projects and research initiatives of the Office of Institutional Research, Assessment and Planning (OIRAP).

Specific duties included:

- Supervise staff and graduate assistants assigned to [OIRAP], ensuring compliance with UMass Boston policies and procedures, including those related to data security;
- Initiate and respond to requests from senior university administrators to conduct studies on university policy, academic, and administrative issues;
- Serve on the Executive Leadership Team and the Academic Council;<sup>9</sup>
- Work collaboratively with faculty, deans, the Division of Student Affairs, and other university offices to support assessment of student learning outcomes;
- Represent the campus in the system wide institutional research group (UIRG) and act as the data liaison to the Board of Higher Education[.]

The minimum qualifications included a doctorate in a social science discipline and a minimum of 7-10 years of professional experience at increasing levels of responsibility

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<sup>9</sup> Only Provosts and Deans attend Academic Council Meetings.

in institutional research and evaluation/assessment in higher education, of which two years included direct responsibility for supervising staff.

Vice Provost – IT & Chief Information Officer

The summary on this 2013 job description stated:

The Vice Provost for Information Technology/Chief Information Officer is the head of the Information Technology division and serves as a key member of the university leadership team. The VPIT-CIO will build on the IT strategic plan; develop and publish an IT roadmap to support the university's mission; plan and implement a deployment strategy for university-wide IT resources; identify, recommend, implement, and support cost-effective technology solutions for all aspects of the organization, including new construction projects; and oversee the development of information and instructional technology policies, procedures, governance, and standards. The VPIT-CIO will work closely with the University of Massachusetts system office and participate in initiatives led by the system. The VPIT-CIO reports to the Provost and Vice Chancellor for Academic Affairs.

Examples of duties include:

- Oversee the Information Technology Division;
- Serves as a key member of the university leadership team;
- Build on the IT strategic plan;
- Develop and publish an IT roadmap to support the university's mission;
- Oversee the development of information and instructional technology policies, procedures, governance, and standards.

Minimum qualifications included a master's degree in a relevant field, doctorate preferred, and at least 10 years of successful and progressively responsible experience managing a complex information technology organization.

Select PSU Titles

Registrar – PSU Grade 36

The summary of the position, as it appears in a 2023 job description states:

Serving as a member of the academic affairs leadership team and reporting directly to the provost, the university Registrar is responsible for directing the business operations of the office of the registrar including: Registration

1 Academic Records and transcripts; Course and final exam scheduling;  
2 Degree Audit Services; Student service operations; student information  
3 systems; and graduation and verifications services; including . . . uphold  
4 and review academic policies while following the university's strategic  
5 goals.  
6

7 Duties include "establishing long and short-terms goals that align with the strategic  
8 plans of the provost and the university while promoting excellent customer service" and  
9 "[p]rovid[ing] leadership in implementing, developing and enforcing the university's  
10 policies and protocols regarding the use, dissemination, integrity, security and privacy of  
11 student information..." The minimum qualifications included a bachelor's degree with a  
12 master's preferred and a minimum of 7-10 years of progressively responsible and  
13 successful administrative experience at a senior level in a registrar's office or a related  
14 area and prior supervisory experience. According to the job description, the Registrar  
15 directly supervised 19 non-student employees. As of 2023, the Registrar earned  
16 \$165,875 a year.

17 Director, Graduate Program Operations, PSU – Grade 34  
18

19 According to a 2019 job description, the Director of Graduate Program Operations  
20 is responsible for managing the day-to-day operations of the College of Management's  
21 graduate programs, including the Master of Business Administration (MBA), Master of  
22 Science in Accounting, Master of Science in Finance, Master of Science in Information  
23 Technology and Master of Science in Business Analytics, as well as graduate certificates  
24 and related programs. It is a PSU Grade 34 position.

25 Examples of duties include organizing and overseeing the administrative functions  
26 of the graduate programs, evaluating and making initial recommendations on all  
27 applications for admission, providing managerial responsibility for program functions

1 related to graduate admissions, coordination with department chairs, associate chairs,  
2 and faculty on degree programs, and course scheduling. The minimum qualifications are  
3 a master's degree and a minimum of 3-5 years of professional experience.

4 Opinion<sup>10</sup>

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

15 Here, there is no dispute that the APCEE position did not exist when the unit was  
16 first certified, so the first prong of the accretion analysis is not dispositive. There is a  
17 dispute regarding the second prong. Under that prong, the CERB reviews subsequent  
18 bargaining history to determine whether the parties have addressed and resolved the unit  
19 placement of the disputed position. Town of Somerset, 25 MLC 98, 100, CAS-3145  
20 (January 6, 1999). The CERB will not accrete a position into an existing bargaining unit if  
21 the parties have executed a collective bargaining agreement demonstrating an intent to  
22 exclude the position unless its job duties have materially changed. Commonwealth of

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<sup>10</sup> The CERB's jurisdiction is not contested.

1 Massachusetts, 30 MLC 156, 157, CAS-03-3539, 3540 (May 27, 2004) (citing Board of  
2 Trustees, University of Massachusetts, 8 MLC 1385, 1389, CAS-2303 (October 20, 1981)  
3 (additional citations omitted). The University asserts that the CAPS Dean and Assistant  
4 Dean were the “predecessor” positions to the APCEE. It argues that because the parties  
5 agreed in their recognition clause to exclude both Assistant Provosts and Deans, the  
6 CERB should give effect to the agreement and dismiss the Union’s petition.

7         The Union disagrees. It acknowledges that Assistant Provosts are excluded from  
8 the unit but notes that the University also posted the position as an Assistant Vice Provost  
9 CEE, a title that is not expressly excluded from the unit. It also disputes that the CAPS  
10 Deans positions were the predecessors to the APCEE position. Instead, it argues that  
11 most of Chang’s duties were performed by Lauterbach, and that the University has simply  
12 reclassified that position as non-unit. Finally, noting that the CBA does not define the  
13 duties of an Assistant Provost, or of any of the other provost positions listed in the CBA,  
14 and the University provided no job descriptions for an Assistant Provost position, the  
15 Union contends that the CERB does not have sufficient information to decide whether the  
16 parties would have understood the APCEE to be doing “Assistant Provost” work at the  
17 time the contract was negotiated such that the CBA’s exclusion of Assistant Provost titles  
18 is dispositive.

19         We agree with the Union that the title of a position is not dispositive of its unit  
20 placement, especially in situations like this one where the duties of the Assistant Provost  
21 are not well-defined, and the specific provost position at issue is not only new but has had

1 two different titles, one excluded, one not, without no discernible difference in duties.<sup>11</sup>  
2 Furthermore, this matter arises out of the elimination of an academic unit that resulted in  
3 the elimination of both a unit position (Lauterbach) and a non-unit position (CAPS Deans)  
4 and the creation of a new leadership position that is similar in several respects to both  
5 eliminated positions. Under these circumstances, we are unable to conclude that by  
6 agreeing to exclude Assistant Provosts and Deans from the bargaining unit, the parties  
7 also agreed to exclude the new APCEE position. We therefore turn to the third prong,  
8 community of interest, and the University's assertion that the APCEE is a managerial  
9 employee without collective bargaining rights.

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

12 Employees shall be designated as managerial employees only if they (a)  
13 participate to a substantial degree in formulating or determining policy, or  
14 (b) assist to a substantial degree in the preparation for or the conduct of  
15 collective bargaining on behalf of a public employer, or (c) have a  
16 substantial responsibility involving the exercise of independent judgment of  
17 an appellate responsibility not initially in effect, in the administration of a  
18 collective bargaining agreement or in personnel administration.  
19

20 The CERB excludes employees from an appropriate bargaining unit as managerial under  
21 Section 1 of the Law only if the employees' actual duties and responsibilities satisfy any  
22 one of the three criteria set out above. Town of Bolton, 25 MLC 62, 66, MCR-4562  
23 (September 10, 1998). The CERB traditionally applies all statutory exclusions from  
24 collective bargaining narrowly, so as not to deprive employees of the right to bargain  
25 collectively through representatives of their own choosing. Commonwealth of

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<sup>11</sup> The only noticeable difference is that the October 2022 Assistant Vice Provost position required 10 years of applicable experience, whereas the April 2023 Assistant Provost position required only five years of experience.

1 Massachusetts, 6 MLC 1026, 1028, CAS-2291 (May 9, 1979). There is no evidence, and  
2 the University does not argue, that the APCEE assists to a substantial degree in the  
3 preparation for or the conduct of collective bargaining on behalf of a public employer. Nor  
4 is there evidence that the APCEE meets part (b) of the test by “hav[ing] substantial  
5 responsibility involving the exercise of independent judgment of an appellate  
6 responsibility not initially in effect, in the administration of a collective bargaining  
7 agreement or in personnel administration.” M.G.L. c. 150E, §1. Accordingly, we review  
8 the APCEE’s duties and responsibilities to determine whether Chang substantially  
9 participates in formulating or determining policies.

10 To be considered a managerial employee under this part of the analysis, an  
11 employee must make policy decisions and determine the employer’s objectives.  
12 Wellesley School Committee, 1 MLC 1389, 1401, MUP-2009, CAS-2005 (April 25, 1975),  
13 *aff’d sub nom. School Committee of Wellesley v. Labor Relations Commission*, 376 Mass.  
14 112 (1978). The policy decisions must be of major importance to the mission and  
15 objectives of the public employees, Wellesley School Committee, 1 MLC at 1403, and the  
16 employee must participate in the policy decision-making process on a regular basis  
17 beyond the level of merely providing input into the process. Town of Plainville, 18 MLC  
18 1001, 1009, MCR-4019 (June 12, 1991). This part of the analysis also focuses on whether  
19 an employee possesses independent decision-making authority or whether the  
20 employee’s decisions are screened by another layer of administration. Worcester School  
21 Committee, 3 MLC 1653, 1672, MUP-2044 (April 29, 1977).

22 The University’s claim that the APCEE is a managerial position centers on its claim  
23 that her duties mirror those of the predecessor Dean to the extent that both positions

1 “establish[ed] goals, objects, policies, procedures and action plans” for the University’s  
2 continuing education functions. The Union responds that because Chang’s actual job  
3 description includes the caveat that such “goals, policies, procedures, and action plans,”  
4 be “consistent with the unit, division and university strategic plans,” the level of discretion  
5 she exercises is commensurate with that of other PSU members, specifically the  
6 Registrar, whose job description reflects responsibility for establishing and implementing  
7 certain department policies. According to the Union, this does not suffice to meet the  
8 managerial test.

9 We disagree for several reasons. First, when determining managerial status, the  
10 CERB does not require employees to bear the ultimate responsibility for establishing the  
11 employer’s major goals – rather, it examines the degree to which the employee has  
12 independent discretion to assess the employer’s needs and to create, implement and  
13 enforce programs to further those larger goals. See Board of Higher Education, 45 MLC  
14 195, CAS-17-6266 (June 27, 2019) (citing Town of Greenfield, 32 MLC 133, 152, MUP-  
15 04-4178, CAS-04-3588 (February 8, 2006). The language in Chang’s job description  
16 requiring consistency between her policies, plans and goals and the University’s strategic  
17 plan therefore does not preclude us from determining that she is a managerial employee.

18 The issue therefore is whether Chang makes such determinations and the extent  
19 of her independent authority to do so. In its position statement, the Union concedes that  
20 Chang makes policies and procedures to implement the University’s strategic plan but  
21 claims that they are not a matter of major importance which impacts a significant portion  
22 of the University. It reiterates that her duties in this regard are similar to those of other

1 bargaining unit members and focuses in particular on the many similarities between  
2 Lauterbach's and Chang's duties.

3 We agree that both Lauterbach and Chang had significant responsibility for  
4 developing and overseeing UMB's non-credit programs, but the different circumstances  
5 in which they performed those duties inform our analysis here. First, Lauterbach  
6 performed her duties within the confines of CAPS, a longstanding academic unit that was  
7 headed by a Dean. Once CAPS was dissolved, however, and the credit-programs  
8 integrated into other colleges and divisions, the non-credit programs lost that established  
9 academic infrastructure, leaving Chang, as the first leader of the newly-created and  
10 stand-alone CEE entity to establish the "goals, objectives, policies, procedures and action  
11 plans for these new operations." Although Lauterbach was also charged with creating  
12 new non-credit opportunities, the record shows that her decisions were subject to the  
13 Dean's approval. By contrast, Chang reports directly to Berger, who charged Chang with  
14 independently identifying needs for non-credit courses and growing the University's ability  
15 to offer those programs. The high level of responsibility and independent discretion  
16 delegated to her is reflected in the job description. It is also reflected throughout the  
17 Project Charter, which designated Chang, and not the Provost, as the Project Sponsor --  
18 the key decision maker in a project designed to create the infrastructure necessary to  
19 have an established CEE Division in order to "meet the current and future demand for  
20 flexible and personal learning options and provide valuable and marketable job skills for  
21 students to pursue their individual learning goals."<sup>12</sup>

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<sup>12</sup> The differences between the educational requirements for the two positions (bachelor's degree, graduate study desirable, vs. advanced degree, PhD preferred), and

1           This degree of responsibility and discretion also distinguishes Chang from the  
2 Assistant Vice Provost whom the CERB accreted to the PSU's unit in 2019 based partly  
3 on the fact that she reported directly to an Associate Vice Provost, a position that was  
4 several layers of administration below the Provost. University of Massachusetts Boston,  
5 46 MLC at 128-129. Rather, Chang's reporting authority and level of discretion is like that  
6 of the Director of Marketing and Communications at Fitchburg State University whom the  
7 CERB found was a managerial employee because, among other things, she reported  
8 directly to the President of Fitchburg State and had the authority, without any intervening  
9 level of administration, to plan, develop, budget for, and enforce her communications  
10 initiatives. Board of Higher Education, 45 MLC at 202.

11           We finally consider the Union's assertion that Chang's policy functions are not of  
12 major importance to the University's mission. As stated in the APCEE's job description,  
13 the University's mission is to increase access to education for all, and to fill the knowledge  
14 and skills gaps in the community and beyond. Chang's independent responsibility to  
15 create the infrastructure necessary, and to expand the University's non-degree course  
16 offerings for adult learners based on her assessment of the University's needs, further  
17 this important mission. Her discretion and duties in this regard are similar to those of other  
18 University provosts described above, including, in particular, the Associate Vice Provost  
19 for Inclusive Excellence, the Associate Vice Provost for Graduate Studies, and the Vice  
20 Provost – IT & Chief Information Officer, Director of the Council, who are also charged  
21 with creating, implementing and enforcing programs based on their assessment of the

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Chang's \$150,000 salary in 2023, as compared to Jackson's \$94,433 in 2022, also demonstrate that the University did not consider the two jobs to be equivalent.

1 University's needs and in furtherance of its mission. Chang's role is also like that of the  
2 Director of the Council on Aging in Town of Greenfield, 32 MLC at 152, whom the CERB  
3 determined was a managerial employee because he did more than just administer the  
4 town's elder services program, he had the independent authority to create, implement  
5 and enforce programs that he had created based on his assessment of the populace's  
6 needs. Id. We find that Chang has comparable discretion and authority over UMB's non-  
7 credit offerings and thus hold that she is a managerial employee.<sup>13</sup>

8 **Conclusion**

9 For the foregoing reasons, we decline to accrete the APCEE to the PSU's unit and  
10 dismiss the petition.

SO ORDERED.

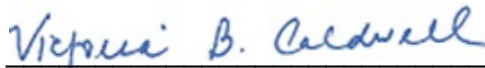
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



LAN T. KANTANY, CHAIR



KELLY B. STRONG, MEMBER



VICTORIA B. CALDWELL, MEMBER

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<sup>13</sup> Based on this holding, we do not have to reach the issue of whether Chang shares a community of interest with other PSU employees, including, in particular, the Registrar.