

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

In the Matter of

CITY OF SOMERVILLE

and

SOMERVILLE MUNICIPAL EMPLOYEES
ASSOCIATION

Case No. CAS-23-9758

Issued: March 19, 2024

CERB Members Participating:

Marjorie F. Wittner, Chair
Kelly B. Strong, CERB Member
Victoria B. Caldwell, CERB Member

Appearances:

Brett M. Sabbag Esq. - Representing the City of Somerville

Dennis Coyne, Esq. - Representing the Somerville Municipal Employees
Association

CERB DECISION

Summary

1 The Somerville Municipal Employees Association (SMEA or Union) seeks to
2 accrete the title of ISD Liaison into Unit D, a bargaining unit of specialized employees
3 within the City of Somerville (City). For the following reasons, the Commonwealth
4 Employment Relations Board (CERB) grants the petition.

5 Statement of Case

1 In December 2022, the SMEA filed two unit clarification petitions with the
2 Department of Labor Relations (DLR) regarding three newly-created non-union positions
3 within the City's Inspectional Services Department (ISD). In Case No. CAS-23-9758, the
4 SMEA sought to accrete the ISD Operations Manager and the ISD Liaison into Unit D. In
5 Case No. CAS-23-9770, the SMEA sought to accrete the ISD Accountant/Business
6 Analyst into Unit B, which is comprised of the City's non-supervisory clerical employees.

7 The DLR consolidated these petitions for investigation and conducted an informal
8 conference on July 19, 2023 to discuss them. Prior to the conference, the parties settled
9 their dispute over the unit placement of two of the three disputed titles: the ISD
10 Accountant/Business Analyst and the ISD Operations Manager. During the conference,
11 the parties provided information pertinent to the unit placement of the single remaining
12 position, the ISD Liaison. On December 6, 2023, the SMEA formally withdrew CAS-23-
13 9770 and partially withdrew CAS-23-9758 with respect to the ISD Operations Manager.

14 On January 9, 2024, the DLR sent the parties a letter asking them to show cause
15 why the unit placement dispute should not be resolved based on the information
16 summarized therein. The letter also requested some additional information. The SMEA
17 responded to the questions and requested that the CERB amend one erroneous finding.
18 The City did not file a response. After reviewing this response and amending the finding,
19 the CERB has determined that there are no materially disputed facts and issues this
20 decision based upon the following findings.

21 Background

22 ISD

23
24

1 The ISD has several divisions, including a Building Division and a Health Division.
2 The Building Division's services include conducting building, electrical, plumbing, and gas
3 inspections, and issuing permits. The Health Division's services include issuing health-
4 related licenses and responding to health code violation complaints. The ISD employs
5 about 33 employees in various titles, including inspector, administrative assistant,
6 coordinators, and the Liaison position at issue here.

7 The ISD's office is located in the City Department of Public Works (DPW) building.
8 Much of the ISD's business is conducted through CitizenServe, which is the City's on-line
9 portal for permitting, planning and zoning, licensing code enforcement, and general
10 requests. The ISD hours are Monday-Wednesday 8:00 a.m. to 4:00 p.m., Thursday, 8:00
11 a.m. to 7:00 p.m., and Friday, 8:00 a.m. to 12:00 p.m. All of the ISD employees discussed
12 below work those hours on a hybrid basis.

13 SMEA Units A, B and D

14
15 The SMEA represents three bargaining units in the City, Units A, B, and D.

16 Unit A is a bargaining unit of supervisory employees. Several ISD employees are
17 members of Unit A, including the Chief Building Inspector, the Chief Code Enforcement
18 Inspector, and the Sealer of Weights and Measures.

19 Unit B is a unit of non-supervisory clerical and laborer employees, excluding non-
20 clerical employees of the Police Department, Fire Department and School Committee.
21 As of the Investigation, the Unit B ISD titles included the Administrative Assistant (Health),
22 Deputy Sealer, Building Inspector (7), Electrical Inspector, Plumbing Inspector (2), Senior
23 Code Enforcement Inspector (Housing), Senior Code Enforcement Inspector (Rodents),
24 Code Enforcement Inspector, Safety Inspector, and Senior Clerk.

Unit B pay grades are grouped by job classification, e.g., Administrative Assistant, Laborer, Library, Inspector, etc. There are ten steps in each grade. Pursuant to the MOA that expired on June 30, 2022, in FY 22, the Administrative Assistants had a salary range of \$60,101 to \$65,623. The Housing and Code Enforcement Inspectors, including Senior Code Enforcement Inspectors, earned salaries ranging from the low \$60,000's to the high \$70,000's. The highest paid Unit B employees were Local Building and Elevator Inspectors, whose FY 22 salaries ranged from the upper \$70,000s to the mid-\$80,000s.

Unit D

In 2007, after a City-wide reorganization, the parties agreed to create Unit D. The parties consider Unit D to be a unit of "specialized" positions that do not belong in either Unit A or Unit B.¹ The recognition clause of the parties' 2007-2010 collective bargaining agreement describes Unit D as follows:

The City of Somerville recognizes the Somerville Municipal Employees Association as the sole and exclusive representative of the certain specialized positions employed by the City (Unit D) including:

Facilities Supervisor; Supervisor of Custodians and Maintenance; Assistant Supervisors of Custodians and Maintenance; Information Technology (IT) Specialist; Grant Accountant; Benefits Coordinator; Library Supervisor; Chief Wire and Electrical Inspector; Chief Plumbing and Gas Inspector; Parking Control Officer (PCO) Supervisor; Senior Police Detail Administrator; Junior Police Detail Administrator; Animal Control Officer; Inspectional Coordinator I; Inspectional Coordinator II; Inspectional Coordinator III; Communications Office Coordinator I; Communications Office Coordinator II; Locksmith; and Recreational Program Developer; excluding non-clerical employees of the Police Department, Fire Department, employees represented under other collective bargaining agreements and those employees under the jurisdiction of the School Committee.

¹ During the informal conference, the parties' representatives agreed that Unit D could also be described as a "residual" unit.

1 Following the expiration of the 2007-2010 CBA, the parties entered into a series of
2 Memoranda of Agreements (MOAs) that covered the periods from July 1, 2016 –June 30,
3 2019, and July 1, 2019-June 30, 2022. In those MOAs, the parties modified the Unit D
4 recognition clause to include social workers and to exclude the Recreation Program
5 Developer when the incumbent vacated the position. The Administrative Assistant
6 (Building Division) became part of Unit D around 2012. As of the Investigation, the Unit
7 D ISD employees included the ISD Coordinator, the ISD Administrative Assistant
8 (Building) and, due to the partial settlement of the instant CAS petition, the Operations
9 Manager.

10 Unit D salaries are grouped in grades A-R, with ten steps in each grade. The FY
11 22 salaries ranged from Grade A, Step 1 annual salary of \$50,694.75 to Grade P, Step
12 10 salary of \$110,028.12.

13 All ISD employees are represented by the SMEA in Units A, B, or D, except for the
14 ISD Superintendent, Deputy Director, Environmental Health Manager, Environmental
15 Health Coordinator, Senior Zoning Review Planner, Zoning Review Planner, and the
16 Business Analyst/Accountant. Those employees are not represented by any union for
17 purposes of collective bargaining.

18 The Newly-Created ISD Positions

19
20 In or about September 2022, the City created three new ISD positions, the ISD
21 Operations Manager, the ISD Liaison, and the ISD Accountant/Business Analyst. Around
22 two months later, the City selected Jennifer Sousa (Sousa) to fill the ISD Operations
23 Manager position; Kelly Como (Como) to fill the ISD Liaison position; and Anna Pickett

(Pickett) to fill the ISD Accountant/Business Analyst position. The City did not initially place any of these positions in a bargaining unit.

Sousa first began working for the City in 2014. From 2017 until 2022, she served as the ISD Coordinator (Building), a Unit D position. Como was hired by the City in 1996. From 1996 until 2022, when she assumed the ISD Liaison position at issue, Como served as the Unit D ISD Administrative Assistant (Building).² Pickett was hired by the City in 1988 and served as the Unit B ISD Administrative Assistant (Health) until 2022.

Selected Unit B Positions

Unit B Administrative Assistants, Generally.

Unit B includes Administrative Assistant positions in a number of City departments, including Fire, Police, Library, Department of Public Works (Administration Office), Department of Public Works (Water and Sewer Enterprise), Infrastructure and Asset Management, Parks and Recreation, Assessing, Purchasing, and the ISD Health Division. Similar to the Unit B ISD Administrative Assistant (Health) position described in greater detail below, Unit B administrative assistants in other departments perform “highly responsible administrative and clerical functions,” report to their respective department or division head, supervise clerical staff, perform data entry, assist the public, and handle databases. Other duties listed on various job descriptions for these positions include keeping records for staff time and attendance, preparing and disbursing payroll, maintaining personnel files, assisting with staffing, acting as a liaison with other departments and agencies, handling mail, working with the department head to

² The CERB has corrected this finding to reflect that Como formerly served as the Administration Assistant in the ISD Building Division.

1 implement department policies and procedures, overseeing budget, handling invoicing
2 and fee collection, and providing assistance to the public regarding the assorted licenses,
3 certificates and other documents generated by their respective departments. None of the
4 positions require a bachelor's degree, except for the Administrative Assistant in the
5 Library Department, a.k.a., Technology Librarian. That position requires a master's
6 degree in library science.

7 Selected Unit B ISD Positions

8
9 Administrative Assistant - ISD Health Division

10
11 This is Pickett's former position. As listed on a job posting, the duties of this
12 position include:

13 Assists the Deputy Director³ and Operations Manager by performing highly
14 responsible administrative and clerical functions. Supervises clerical
15 personnel. Makes independent decisions about the department's work and
16 applicable laws and regulations. Develops and supervises complaint,
17 dumpster and future databases. Manages database for licensing with a
18 high degree of accuracy and accountability. Manages database for
19 housing, occupancy permits, lead determinations and tickets.
20 Computerize[s] inspection reports, enforcement orders, and court
21 complaints. Intense telephone contact with the public resolving complaints
22 or inquiries regarding housing, sanitation, restaurants, rubbish, tobacco,
23 etc. Compiles data for annual reports. High level of computer skills.
24 Performs all required department training and continuing education.
25 Performs related duties as assigned by the Director.
26

27 The requirements included at least five years of experience in a health department,
28 computer knowledge, experience with complex database management, ability to work
29 pleasantly and efficiently with department staff and the public, knowledge of bookkeeping,
30 and a high school diploma or equivalent. The weekly salary listed on the job bulletin

³ According to an ISD organization chart, the Deputy Director is the second in command at the ISD, just below the ISD Superintendent.

1 ranged from \$1,154.04 at Step 1 to \$1,262.16 at Step 10, or \$60,008 to \$65,624
2 annually.⁴

3 Senior Clerk-ISD

4
5 There are two Senior Clerks in the ISD. According to the organization chart, one
6 reports to the ISD Coordinator and the other reports to the Administrative Assistant
7 (Health). The duties for the position listed in the undated job posting include:

8 Performs a variety of clerical duties for the ISD Building and Health
9 Divisions, according to departmental procedures. Handles financial
10 transactions as well as providing email, front desk and telephone customer
11 service on a regular basis. Assists customers in all matters relating to the
12 department, including public record requests, complaints, permitting, and
13 the ticket processing systems. Files and inputs data entry into software as
14 required. Perform a variety of other clerical duties as assigned by the ISD
15 Director and/or Deputy Director.

16
17 The requirements for this position include experience processing financial
18 transactions, superior computer skills, and the ability to refer customer inquiries to
19 appropriate personnel for response. There were no specific educational requirements.
20 The weekly salary listed on the bulletin ranged from \$838.57 at Step 1 to \$917.14 at Step
21 10. The FY 24 salary range was \$44,651 to \$45,351. The job descriptions for Unit B
22 clerks in other departments required a high school diploma and essentially the same
23 types of responsibilities and skills.

24 Building Inspector

25
26 Building Inspectors report to the Unit A Chief Building Inspector. They are
27 responsible for inspecting ongoing and completed construction to determine compliance

⁴ These weekly salaries correlate with the FY 22 annual salaries for Administrative Assistants listed in the Unit B MOA that was signed in 2018. In the FY 24 City Budget Book, the salary range for this position was \$60,845 to \$63,823.

1 with applicable laws, codes, ordinances, and regulations. Building Inspectors also
2 approve and issue building permits and certifications of use and occupancy, and respond
3 to complaints and problems regarding building code violations. Requirements include
4 having and maintaining a Massachusetts Building Inspector license. In FY 24, Building
5 Inspectors' salaries ranged from the low to high \$80,000s.

6 Selected Unit D ISD Positions

7
8 Inspectional Coordinator

9
10 This position has been in Unit D since at least 2007. The duties listed on the job
11 description are as follows:

12 Reports to ISD Administrative Assistant.⁵ Under supervision, performs
13 complex clerical duties of more than ordinary difficulty and individual
14 responsibility involving general knowledge of standard office procedures,
15 regulations and practice. Responsible for department's electrical
16 inspection request spreadsheet, and entry of daily electrical inspector
17 schedules into CitizenServe. Schedules Certificate of Inspection and
18 building inspections. Utilizes CitizenServe to receive electrical, plumbing
19 and gas permits; reviews all permit applications for required documentation;
20 assigns all permits to appropriate inspectors; approves Plumbing and Gas
21 permits for payment. Assists Administrative Assistant with processing of
22 building permits and Certificate of Occupancy applications. Proofreads
23 and processes mailing of department violation letters and tickets. Assists
24 customers with permit applications and general inquiries; accepts
25 documentation and payments from customers and processes according to
26 department procedures. Maintains departmental records, answers
27 telephones, completes record requests and provides general information;
28 interacts with the general public, vendors and contractors, and various
29 internal and external agencies. Performs other duties as assigned by the
30 ISD Director, ISD Deputy Director, and/or Administrative Assistant.
31

⁵ In its response to the Show Cause letter, the Union confirmed that prior to the creation of the ISD Operations Manager position, the ISD Inspectional Coordinator reported to the ISD Administrative Assistant.

1 The position requires a high school diploma and three years of clerical experience.
2 The weekly salary range listed in the posting was \$1,200.67 at Step 1 to \$1,313.15 at
3 Step 10. In FY 24, the annual salary ranged from \$63,303 to \$63,800.

4 During the investigation, Sousa confirmed that when she was the Inspectional
5 Coordinator, she performed all of the duties set forth in that title's job description. In
6 addition to those duties, she assisted with making improvements to the CitizenServe
7 portal and worked with the City's archivist to digitize building permit plans. When
8 performing these duties, Sousa worked closely with Como, who was then serving as ISD
9 Administrative Assistant (Building). Their shared duties included scheduling training and
10 supervising administrative staff on permit intake requirements.

11 ISD Administrative Assistant (Unit D)

12 A May 2023 job description describes this position as follows:

13 Reports directly to the ISD Operations Manager. Performs complex clerical
14 work requiring a high degree of decision making and excellent organization
15 skills. Supervises clerical personnel in ISD Building Division, trains new
16 clerical employees. Responsible for work related to the preparation and
17 maintenance of ISD payroll records, accounts payable and deposits.
18 Prepares monthly and annual reports for ISD on all permits and
19 certifications issued by the ISD Building Division. Manages permit
20 application system and permit databases. Supervises clerical training for
21 permit system and database. Acts as the point person for all permit system
22 and database inquiries. Assists with implementation of all new software for
23 Division. Supervises data entry, filing and customer assistance for ISD
24 Building Division. Assists Superintendent with responses to City Council
25 requests. Intense telephone, computer and counter assistance with the
26 public resolving complaints, answering inquiries and conducting research.
27

28 The job requirements were advanced computer skills and a "demonstrated extensive and
29 detailed knowledge of the ISD's functions and operations; a high school diploma or

1 equivalent, five years of clerical experience or an associate's degree.⁶ " As of the
2 investigation, the position was unfilled, although Como continued to perform some of her
3 former duties, such as payroll.⁷

4 Operations Manager

5 Sousa currently holds this position. A March 30, 2023 job description for this
6 position describes it as "responsible for providing community engagement and
7 department process guidance to residents, businesses and developers for all permits,
8 certificates and approvals issued/processed by ISD." The job description indicates that
9 this position reports to the "Director/[Deputy] Director." The essential functions of the
10 position include:

11 Responsible for scheduling all department inspection and training. Maintain
12 a current training log for all Department staff (current licenses, CEUs
13 required, etc.) Train and supervise administrative staff on permit intake
14 requirements and procedures. In coordination with the Department Director
15 be responsible for document control and organization for all electronic and
16 hard copy files; Coordinate with Director and Department Director to
17 improve permitting processes and procedures. Coordinate with Department
18 Liaison for project information requests. Coordinate with the City Archivist
19 for the archiving and searching of Department files. Maintain the
20 Department PTO calendar and adjust schedules appropriately. Engage
21 customers to identify and prioritize issues, and coordinate with Department
22 staff on improvement strategies for the various application processes.
23 Coordinate with Department Liaison for standard notification emails to be
24 distributed via CitizenServe to alert permit holders of upcoming holidays and
25 other occasions when work scheduled may be affected. Coordinate with
26 Inspectors to develop standard review comments in CitizenServe.
27 Coordinate payroll and OT with Department Chiefs for submission and
28 approval.

⁶ Como has an associate's degree.

⁷ As of the investigation, it was anticipated that those duties will be transferred to the Operations Manager.

1 The job description indicates supervisory responsibility for administrative clerks
2 and partial supervision of inspectors for all ISD training and scheduling.⁸ Under the
3 heading “Supervision Required,” the job description stated that the employee:

4 [P]lans and prioritizes the majority of work independently, in accordance
5 with standard practices and previous training...Work is generally reviewed
6 only for technical adequacy, appropriateness of actions or decisions, and
7 conformance with policy or other requirements; the methods used in
8 arriving at the end result are not usually reviewed in detail.

9 The recommended minimum qualifications for this position are a bachelor’s degree
10 and “7-10 years of experience in municipal permitting and inspections; scheduling and
11 document control; or any equivalent combination of education, training and experience
12 which provides the required knowledge, skills and abilities to perform the essential
13 functions of the job.” Other requirements included an OSHA 30 Card.⁹

14 When created in 2022, the City classified the position as an NU8, which had an
15 annual salary range of \$80,000 to \$118, 875 in 2022. The City hired Sousa at Step 5, or
16 \$86,594 annually. As of FY 24, the pay range for the position was \$91,425 to \$92,142.

17 As Operations Manager, Sousa performs many duties that she performed in her
18 former ISD Coordinator position, including scheduling department inspections, training
19 and supervising administrative staff on permit intake requirements and procedures, being
20 responsible for document control and organization, coordinating improvements to

⁸ In its response to the Show Cause letter, the Union indicated that Sousa understood that she would be the person responsible for scheduling and tracking all ISD training and keeping track of schedules for availability for inspections and time off.

⁹ OSHA issues this card to persons who have completed 30 hours of workplace safety training.

1 permitting processes, coordinating project information requests, maintaining the
2 Department Paid Time Off (PTO) calendar, and adjusting schedules.

3 Chief Plumbing and Gas Fitting Inspector

4 This individual inspects and tests new and existing plumbing systems and water
5 heating systems for conformance with laws, examines plans for plumbing systems,
6 advises plumbers and builders and issues permits for installation, alternation, repair and
7 connecting plumbing to sewers. The Chief Plumbing and Gas Fitting Inspector supervises
8 a staff of one or more inspectors. The incumbent is required to have a master plumber's
9 license and necessary state certification(s). As of FY 24, its annual salary ranged from
10 \$97,187 to \$102,414.00

11 Other Unit D Positions

12 The City provided job descriptions for a number of non-ISD Unit D positions,
13 including the Police Detail Clerk, Animal Control Officer, IT Specialist; Grant
14 Accountant/Auditing; Geriatric Social Worker, Council on Aging; and Social Worker,
15 Health and Human Services. The positions varied in the level of education, licenses,
16 certifications, and skill required, ranging from a high school degree to a master's degree.
17 Some, but not all, of these titles had supervisory responsibility. Most reported to their
18 respective department heads.

19 Unit A Positions

20
21 All ISD positions in Unit A exercise direct supervisory authority over other
22 department members. The Chief Building Inspector supervises the Local Building
23 Inspectors as well as the Plumbing/Gas and Electrical Inspectors, and reports directly to
24 the ISD Superintendent. Requirements included state certification as an Inspector of

Buildings or Building Commissioner. The Chief Building Inspector position is classified as a Unit A Grade 13, with a weekly salary ranging from \$1,963.41 to \$2,147.35 or an annual salary of \$102,076 to \$111,644.00.

Selected Non-Union Positions

ISD Liaison

This is Como's current position. The introduction to its September 2022 job description was identical to that of the Operations Manager, i.e.,

The employee is responsible for providing community engagement and department process guidance to residents, businesses and developers for all permits, certificates and approvals issued/processed by ISD.

The duties listed under the Essential Functions heading of the job description included:

- Review all emails to the general ISD account and distribute them to the appropriate staff. Determine which requests should be elevated for departmental review.
- Coordinate with developers, business owners, contractors and residents who are having difficulty navigating the City permitting process to understand the required documents and any outstanding comments that need to be addressed for all ISD applications.
- Coordinate with the Department Director and Operations Manager to identify potential improvements to the permitting process for review and implementation with the Director.
- Prepare and distribute general notifications regarding Department updates, holiday restrictions, etc., via the electronic permitting system to all affected users.
- Coordinate with the Director and Deputy Director to develop and generate monthly metric reports to continually evaluate the Department's efficiency and production.
- Facilitate meetings with other departments, developers, and contractors to expedite resolutions to outstanding issues for permit or certificate issuance.
- Engage customers to identify and prioritize issues, and coordinate with department staff on improvement strategies for the various application processes.
- Coordinate with Operations Manager to develop standard notification emails to be distributed via CitizenServe to alert permit holders of upcoming holidays and other occasions when work schedules may be affected.
- Prepare and update department responses to citizen requests, comments and concerns submitted via the 311 Q-Alert system in coordination with the Director and Department Director.

1 The "Supervision Required" was the same as that described in the Operations Manager
2 job description. Unlike the Operations Manager position, however, the position does not
3 require the regular supervision of employees.

4 The minimum recommended qualifications are the same as the Operations
5 Manager, except that the position also required ICC Permit Technician certification. Both
6 Como and Sousa are ICC Permit Technician certified.¹⁰ Como received no additional
7 training when she became the ISD Liaison and, as of the date of the investigation, did not
8 have OSHA 30 certification. The City classified the position as a NU-09, which has a
9 salary range of \$75,000 to \$111,446. Her base salary as of July 1, 2023 was \$91,425.

10 As ISD Liaison, Como continues to report to the ISD Director and performs many
11 of the same duties that she performed when in her former position, including reviewing
12 all emails to the general ISD account and distributing to staff, determining which requests
13 should be elevated for departmental review, coordinating with third-parties who use the
14 City's permitting process to help them understand permitting documents, working on
15 improvements to the permitting process with the Department Director and Operations
16 Manager, and sending external emails to users regarding the permitting system.

17 As of the investigation conference, Como had not yet performed several duties in
18 her job description, including coordinating with the Director and Deputy Director to
19 develop and generate monthly metric reports to continually evaluate the Department's
20 efficiency and production. Nor had Como facilitated meetings with other departments,

¹⁰ In its response to the Show Cause letter, the Union stated that Como and Sousa are the only ISD employees with this certification. Inspectors do not have it because they have their own certification.

1 developers, and contractors to expedite resolutions to outstanding issues for permit or
2 certificate issuance, a function that the Unit A Chief Building Inspector had previously
3 performed. As of the conference, however, the City stated that it expected Como to
4 perform these duties, claiming that the main difference between Como's former and
5 current roles is that she is now expected to be in a more front-facing position, which will
6 interact with business owners and the mayor, and make policy and planning decisions
7 concerning inspection-related matters.¹¹ The City does not contend, however, that the
8 ISD Liaison is a confidential or managerial employee within the meaning of Section 1 of
9 the M.G.L. c.150E (the Law.)

10 Accountant Business Analyst
11

12 This position is responsible for all of the ISD's accounting and contract service
13 functions. As indicated above, in 2022, the City hired Pickett, the former Unit B
14 Administrative Assistant (Health) to fill the position. The position is a Grade NU9, and the
15 City hired Pickett at an annual salary of \$87,874.45. The FY 24 base salary was
16 \$101,355. The duties of the position include assisting the Director in executing contracts
17 with vendors; developing and implementing fiscal policies and procedures; managing
18 accounting, budgeting and payroll activities; and coordinating and supervising the ISD
19 office's financial and contract functions. The requirements of the position include a
20 bachelor's degree and five years of experience or its equivalent.

21 Zoning Review Planner
22

¹¹ The City provided no evidence that Como has participated in such meetings. In its response to the Show Cause letter, the Union stated that Sousa understood that Como had attended those meetings, but she had no information about the topics covered or Como's role at the meetings.

1 This position is located within the ISD and reports to the ISD Director and the
2 Senior Zoning Review Planner. Under the heading "Statement of Duties," the job
3 description states in part:

4 This position is responsible for administration and review of projects under
5 the Somerville Zoning Ordinance. Work duties include professional and
6 technical work in planning, including project review, plan review for zoning
7 consistency, and site inspections for consistency, with zoning approvals and
8 special approvals. Site inspections for projects mid construction and nearing
9 completion will constitute a large portion of the work week. The Zoning
10 Review Planner also participates in development review, provides input into
11 zoning amendments and serves as a liaison between the ISD building
12 inspectors, Office of Strategic Planning and Community development
13 (OSPCD) planners, and other City agencies to ensure streamlined review of
14 development projects.

15 The Zoning Review Planner has no supervisory responsibilities. The position
16 requires a college degree and a minimum of three years of experience, with a master's
17 degree in planning or a related field preferred. The position is classified as an NU9. In
18 FY 24, its salary was in the mid-to-upper \$80,000s.

19 Senior Zoning Review Planner

20 This position supervises the Zoning Review Planner. The "Statement of Duties"
21 on its job description is almost identical to that of the Zoning Review Planner, described
22 above, except that the duties include assignment of work to other staff and serving as the
23 "*principal* liaison between the ISD building inspectors, Office of Strategic Planning and
24 Community Development planners and other City agencies to ensure streamlined review
25 of development projects and consistent and fair application of the zoning
26 ordinance."(*emphasis added*) The job requirements are the same as those of the Zoning
27 Review Planner. It is classified as a NU7, and its FY 24 base salary was \$97,638.

Opinion¹²

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; 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. City of Boston, 35 MLC 137, 140, CAS-07-3669 (December 31, 2008).

In this case, the first two prongs of the accretion analysis are inconclusive. The ISD Liaison was created in 2023, after the SMEA was certified, and after Unit D was recognized. The parties have not agreed on the position's unit placement. We therefore turn to the final prong of the accretion analysis to determine whether the ISD Liaison shares a community of interest with Unit D.

To determine whether employees share a community of interest, the CERB considers factors like similarity of skills and functions, similarity of pay and working conditions, common supervision, work contact, and similarity of training and experience. Board of Higher Education, 36 MLC 139, 141, CAS-06-3659 (March 5, 2010). No single factor is outcome-determinative. City of Springfield, 24 MLC 50, 54, MCR-4602 (January

¹² The CERB's jurisdiction is not contested.

1 15, 1998). The Law requires that employees share only a community of interest rather
2 than an identity of interest. County of Dukes County/Martha's Vineyard Airport
3 Commission, 25 MLC 153, 155, MCR-4700 (April 16, 1999).

4 The Union contends that the ISD Liaison is appropriately placed in Unit D because
5 Como is, for the most part, performing the same duties that she performed when she was
6 the ISD Administrative Assistant (Building). The City opposes the petition, but does not
7 assert that the position is exempt as managerial or confidential, or that it should be placed
8 in a different bargaining unit. It acknowledges that in both her former and present
9 positions, Como has responsibility for coordinating inquiries to the ISD from the public
10 and other City departments. However, it claims that the Administrative Assistant only
11 does this in a supporting role to the ISD Liaison, who it describes as working with permit
12 holders and applicants and other City departments in the first instance, and on a
13 "wholesale level," particularly on major construction projects. The City also claims that
14 Como will play a more significant role in facilitating meetings with business owners and/or
15 engaging in policy discussions with the mayor and affected parties concerning inspection
16 related matters. The City compares the ISD Liaison's role to that of the non-unit Senior
17 Zoning Review Planner, who acts as the point of contact for any issue involving zoning
18 review.

19 The ISD Liaison is appropriately accreted into Unit D. Como's duties are
20 substantially the same as those she performed when serving as ISD Administrative
21 Assistant (Building), including, dealing with the public and customers to explain ISD's
22 processes, answer inquiries and resolve complaints, and being the point person for permit
23 inquiries to the ISD general email account. The fact that the City envisions that Como will

1 now play a more significant role in facilitating meetings does not change this result for
2 several reasons. First, the City provided no evidence that Como has been performing
3 this function at the anticipated level. The CERB makes unit decisions based on actual,
4 not future or potential duties. City of Everett, 27 MLC 147, MCR-4824 (July 10, 2010).

5 Second, even assuming that Como now has more responsibility as a “point person”
6 to external users and other City departments, the Law requires a community of interest,
7 not an identity of interest, provided there is no inherent conflict among consolidated
8 groups of employees. Town of Somerset, 25 MLC 98, 100, CAS-3145 (January 6, 1999).
9 The City does not claim and there is no evidence that the ISD Liaison is a managerial or
10 confidential employee within the meaning of the Law. Further, unlike when she was the
11 ISD Administrator, Como no longer supervises the ISD Coordinator or clerical staff. Thus,
12 there is no evidence the ISD Liaison performs any duties that would create intra-unit
13 conflicts such that accretion is inappropriate.

14 In most other respects, Como continues to share a community of interest with Unit
15 D, especially with her former Administrative Assistant position, the Inspectional
16 Coordinator, and the Operations Manager. These three titles work in the same building
17 and perform duties aimed at providing guidance, training, and administrative/clerical
18 support to ISD staff and external users on all aspects of the ISD’s processes and
19 functions. While the amount of experience and level of education required may differ for
20 each of these positions, each of the positions require an employee with experience in
21 permitting and inspections functions and operations. In this regard, it is notable that Como
22 required no additional training when she was promoted. Like many other Unit D
23 employees, and as she did previously, Como reports to her department head. Como’s

1 current salary, though higher than it was previously, falls within the range of Unit D
2 salaries.

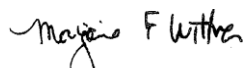
3 The City contends that Como's increased responsibilities as a Department "point"
4 person make her more like the non-unit Senior Zoning Review Planner than other Unit D
5 employees. However, the question before us is not whether Como shares a greater
6 community of interest with non-unit employees, but whether the ISD Liaison shares a
7 sufficient community of interest with employees in Unit D to warrant accretion to that unit.
8 See Town of Granby, 28 MLC 139, 142, CAS-3477 (October 10, 2001) (rejecting
9 employer's argument that highway foreman should not be accreted to highway
10 department bargaining unit because it shared a greater community of interest with other
11 unorganized employees). For the reasons set forth above, and in the absence of any
12 inherent conflicts of interest, we find that she does.

13 Conclusion

14 Como served for over twenty-five years as the Unit D ISD Administrative Assistant
15 (Building). Although she has been promoted to a higher-paying position that arguably
16 elevates her role as a point person for addressing ISD issues and procedures with which
17 she is undoubtedly familiar, the ISD Liaison position still shares a sufficient community of
18 interest with other Unit D positions. We therefore order that the ISD Liaison position be
19 accreted into Unit D.

20 SO ORDERED.

COMMONWEALTH EMPLOYMENT RELATIONS BOARD

Handwritten signature of Marjorie F. Wittner in black ink.

MARJORIE F. WITTNER, CHAIR

Handwritten signature of Kelly B. Strong in blue ink.

KELLY B. STRONG, CERB MEMBER

Handwritten signature of Victoria B. Caldwell in blue ink.

VICTORIA B. CALDWELL, CERB MEMBER