

APPEAL RIGHTS

Pursuant to MGL c. 150E, Section 11, decisions of the Commonwealth Employment Relations Board are appealable to the Appeals Court of the Commonwealth of Massachusetts. **To claim such an appeal, the appealing party must file a notice of appeal with the Division of Labor Relations within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.**

THE COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF LABOR RELATIONS  
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

**NOTICE TO EMPLOYEES**

POSTED BY ORDER OF THE COMMONWEALTH  
EMPLOYMENT RELATIONS BOARD

AN AGENCY OF THE COMMONWEALTH OF  
MASSACHUSETTS

The Commonwealth Employment Relations Board (Board) has affirmed a Hearing Officer decision that the City of Newton (City) altered the workplace benefit of a physical fitness workout area by banning the fire fighters’ use of the free weight exercise equipment without first providing the Newton Fire Fighters Association, Local 863, IAFF (Union) with notice and an opportunity to bargain to resolution or impasse over the use of the free weight exercise equipment in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E.

The City posts this Notice to Employees in compliance with the Board’s order.

Chapter 150E gives public employees the following rights:

- To form, join or assist a union;
- To participate in proceedings at the Division of Labor Relations;
- To act together with other employees for the purposes of collective bargaining or other mutual aid or protection;
- To choose not to engage in any of these protected activities.

WE WILL NOT fail to bargain in good faith by banning the fire fighters’ use of the free weight exercise equipment in the fire stations without first providing the Union with notice and an opportunity to bargain to resolution over the use of the equipment.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed under Section 2 of Chapter 150E.

WE WILL immediately rescind the December 8, 2008 ban on the fire fighters’ use of the free weight exercise equipment in the fire stations.

WE WILL, upon request, bargain in good faith with the Union to resolution and impasse over the fire fighters’ use of the free weight exercise equipment in the fire stations.

[signed]  
For the City of Newton

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE  
DEFACED OR REMOVED**

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Division Labor Relations, Charles F. Hurley Building, 1<sup>st</sup> Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).

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In the Matter of BOARD OF TRUSTEES OF THE  
UNIVERSITY OF MASSACHUSETTS (DARTMOUTH)

and

AFSCME, COUNCIL 93, AFL-CIO

Case No. CAS-08-3720

17.1 *confidential employee*  
34.92 *clarification*  
35.2 *confidential employees*

October 1, 2010

Marjorie F. Wittner, Chair  
Harris Freeman, Board Member

James B. Cox, Esq.

Representing the Board of  
Trustees, University of  
Massachusetts Dartmouth

Jaime-DiPaola-Kenny

Representing AFSCME, Council  
93, Local 507

**DECISION**

Introduction

The Board of Trustees of the University of Massachusetts, Dartmouth (Petitioner or Employer) seeks to remove nine positions from a bargaining unit represented by AFSCME, Council 93, Local 507 (AFSCME or Union) at the Petitioner’s Dartmouth campus (UMass Dartmouth or University). The Petitioner argues that the nine individuals are confidential employees within the meaning of Section 1 of MGL c. 150E (the Law) and should be removed from the bargaining unit because they work for managerial employees and have access to confidential information regarding collective bargaining, contract proposals, and grievances. AFSCME opposes the removal of seven of the nine positions from its bargaining unit on the grounds that these employees are not confidential.

After considering the parties’ arguments and submissions, the Commonwealth Employment Relations Board (Board) dismisses the petition with respect to the following positions: Administrative Assistant I in Human Resources; Administrative Assistant II in Library Service Information Resource and Technology;; Adminis-

trative Assistants I and II in the Office of Equal Opportunity; Administrative Assistant II in Administration and Fiscal Services, and both Administrative Assistant II positions in Student Affairs. Unrebutted evidence provided by AFSCME demonstrates that these positions are not confidential within the meaning of the Law. We also dismiss the Petitioner's request to remove the Administrative Assistant II for Institutional Advancement because the position is vacant. We grant the Petitioner's request to remove the Administrative Assistant II in the Chancellor's Office because uncontested evidence demonstrates that this position is confidential.

#### Statement of the Case

The Employer filed the petition on January 17, 2008 seeking to remove the following nine positions from AFSCME's bargaining unit: Administrative Assistant I in the Office of Human Resources; Administrative Assistant II in Library Services, Information Resources and Technology; Administrative Assistant II for Institutional Advancement; Administrative Assistants I and II in the Office of Equal Opportunity; Administrative Assistant II in the Chancellor's Office; Administrative Assistant II in Administrative and Fiscal Services; and two Administrative Assistant II positions in Student Affairs.

The record is comprised of the Petitioner's written submission in support of the petition, filed on April 4, 2008, which included job descriptions signed by the incumbent employees and Carol Santos, the Petitioner's Interim Director of Human Resources. AFSCME filed a response on June 9, 2008 that included affidavits from six of the incumbent employees. The Petitioner did not file a reply to AFSCME's response.

#### Findings

AFSCME is the exclusive representative of certain employees at UMass Dartmouth, including the employees who occupy the disputed positions. According to the Union, all nine positions have existed since the Union was first certified in 1975. In 1997, in Case No. SCR-2229, after a secret ballot election between the Union and another employee organization, the former Labor Relations Commission<sup>1</sup> certified the Union as the exclusive representative of the following bargaining unit:

All full-time and regular part-time clerical employees employed by the University of Massachusetts Dartmouth at the Dartmouth campus including the job titles listed in Appendix A<sup>2</sup> and excluding the Administrative Assistant I in the Human Resources Department, the Clerk IV in the Chancellors Office and all confidential, managerial, casual and other employees.

In the most recent collective bargaining agreement submitted by the parties, which was effective by its terms from July 1, 2004 through June 30, 2007 (Agreement), the Employer recognized the Union as the sole bargaining agent for the certified 1997 bargaining unit.

#### Disputed Positions

It should be noted at the outset, that the Employer did not provide the Board with affidavits from any of its employees. Aside from the signed job descriptions described in detail below, all of the Employer's assertions in its submissions are made in the brief filed by Employer's counsel.<sup>3</sup>

#### *Administrative Assistant I in Human Resources - Danielle Almeida*

Danielle Almeida (Almeida) has worked in this position since November 2007. The job description the Petitioner submitted for Almeida's position states generally that the incumbent provides administrative support and assistance to the Deputy Director of Human Resources. The job description indicates that this includes handling mail and faxes for the Office of Human Resources. The Employer contends that this includes correspondence with General Counsel, Labor Counsel and outside labor counsel that frequently pertains to matters regarding the MCAD, the Division of Labor Relations, and the Civil Service Commission. Additionally, the Petitioner contends that confidential correspondence for senior administrators may contain materials regarding bargaining. The Petitioner further states that the Employer created this position intending for the incumbent to assist in preparation for collective bargaining and grievance handling, as set forth on her signed job description. However, the Employer indicates that, due to the position's "Union status," it has not assigned these tasks to Almeida.

Almeida's affidavit, offered by the Union, confirms that she has had no access to grievance-related materials, communications from legal counsel (General, Labor or otherwise), collective bargaining proposals, advance knowledge of negotiation strategy, or access to materials regarding negotiations. Moreover, Almeida's affidavit indicates that the Human Resources Office employs a non-bargaining unit, "confidential" Administrative Assistant Lisa Williams Cordeiro (Cordeiro), who opens all mail marked "confidential," including mail from the University's counsel.

#### *Administrative Assistant II In Library Service Information Resource and Technology - Karen Tavares*

The Petitioner contends that this Administrative Assistant II position, held by Karen Tavares (K.Tavares), serves in a confidential capacity under two managerial employees, the Dean of Library

1. Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission." The Board is the body within the Division charged with deciding adjudicatory matters. References to the Board include the Commission.

2. The listed titles are: Accountant I, II and III; Administrative Assistant I and II; Administrative Secretary I; Assistant Manager of Computer Operations; Audio Visual Equipment Technician II; Bookkeeper I and II; Clerk III-V; EDP Computer Operations Supervisor; EDP Entry Operator II and IV; EDP Program I and II; EDP system Analyst I-III; Electronic Computer Operator I; Librarian I; Library Assistant I-III; Mail Clerk II and III; Micro Computer Technician; Micro Computer

Technician I and III; Offset Duplicating Machine Operator II; Personnel Analyst; Photographer II; Reproduction Services Supervisor; Stenographer II; Technical Assistant I; Telephone Operator I and II; Typist II.

3. Petitioner's submission includes an attestation from an individual named Joseph Walkden that the facts and job descriptions contained therein are true and correct to the best of his knowledge. The submission contains no further reference to or information about Joseph Walkden and, as noted above, contains no affidavits from any of the Petitioner's employees.

Services, and Dr. Robert Green (Green), the Vice Chancellor of Library Service Information Resource and Technology, both of whom engage in grievance arbitration and agency litigation. The job description for this title reflects that its primary responsibilities include performing office, clerical, and administrative duties. The Petitioner asserts that K. Tavares is exposed to confidential correspondence addressed to Vice Chancellor Green and the Dean. The Union provided an affidavit from K. Tavares, which states that she has occupied the Administrative Assistant II position since approximately April of 2008. K. Tavares confirms that she reports to Green, but she claims that he does not exercise independent judgment with respect to collective bargaining or administrative authority, and does not serve as a hearing officer at any level with respect to enforcement of the collective bargaining agreement. K. Tavares further states that she does not have access to information concerning labor relations, mail concerning collective bargaining obligations, or access to or advance knowledge of the Employer's positions on grievances or contract proposals. The affidavit does not address whether she works with the Dean of Library Services as Petitioner asserts.

*Administrative Assistant II for Institutional Advancement -Vacant/ Temporary Employee*

The job description for this Administrative Assistant II position indicates that the incumbent would work in the fund-raising department and have access to confidential information regarding UMass Dartmouth, including information concerning the Employer's funds. The Petitioner contends that the incumbent in this position must be familiar with confidential programs and strategies regarding fundraising and thus should be excluded from the bargaining unit. To support this contention, the Petitioner relies on the duties listed in the job description, which include maintaining the "daily, weekly, monthly, and annual calendar for Vice Chancellor and Advancement Staff." The job description further states that the person occupying this position must "screen and respond to mail and telephone calls; format, draft, proofread and edit correspondence, reports, manuscripts, proposals, and other materials as necessary."

The position was occupied by K. Tavares from August 2005 until March 2008, but is now vacant. The Union provided an affidavit in which K. Tavares states that, while she was the Administrative Assistant II for Institutional Advancement, she reported to the Vice Chancellor of Institutional Advancement, Jeffrey Wolfman (Wolfman). According to K. Tavares, Wolfman was not a member of the collective bargaining team, nor did he participate to a substantial degree in collective bargaining - his only involvement with the grievance process was at the first step. K. Tavares further states that she did not have access to information regarding the Employer's position on grievances, advanced knowledge of the Employer's collective bargaining proposals, or confidential communications from counsel regarding labor relations.

*Administrative Secretary II and Administrative Assistant I in Office of Equal Opportunity - Marly Dulude and Theresa Canuel*

The incumbent employees, Marly Dulude (Dulude) and Theresa Canuel (Canuel) hold, respectively, the positions of Administrative Secretary II and Administrative Assistant I. The Employer as-

serts that both incumbents are assigned to the Office of Equal Opportunity, Diversity and Outreach (OEE). Dulude, the Administrative Secretary II, performs all administrative secretarial functions for the OEE Assistant Chancellor, Dr. George Smith. Canuel's job description states that she is primarily assigned to perform all secretarial functions for the Executive Director for the Recruitment and Retention of Culturally Diverse Students and the Compliance Officer; the position is also slated to provide back-up clerical support to the Assistant Chancellor. The job description also states that the incumbent assists with "formal grievance procedures, legal concerns and complaints submitted" to the EEO office.

The job description for Dulude's job, Administrative Secretary II, states that the incumbent works closely with the Assistant Chancellor "processing complaints of discrimination" and does research, documents and assists in responding to discrimination complaints before state and federal agencies and the courts. The Administrative Assistant I job description states that the Administrative Secretary II provides "functional supervision" for the incumbent in this job.

The employer contends that the Assistant Chancellor of EEO is a managerial-level employee, but provides no affidavits or documentation supporting this assertion. Nor does the Employer's submission contain any evidence - and the Employer does not claim - that these disputed employees perform any confidential labor relations duties, such as involvement with contract proposals or labor relations grievance decisions. Canuel's job description contains no labor-relations duties.

The Union submitted Dulude's affidavit in which she states that her immediate supervisor, Dr. Smith, does not participate in any collective bargaining or grievance-related responsibilities beyond the first step of the grievance process. Dulude further asserts that she does not handle mail or have access to labor relations documents or communications regarding labor relations matters.

*Administrative Assistant II in the Chancellor's Office - Mary Ann Ainley*

Mary Ann Ainley (Ainley) works in the Office of the Chancellor as an assistant to the Chancellor's Assistant. According to her job description, Ainley reviews, analyzes, and prepares reports and information for the Chancellor's input on a range of matters including policies, procedures, and collective bargaining. The Administrative Assistant II coordinates, organizes, and prioritizes the Chancellor's communications, including collective bargaining proposals.

*Administrative Assistant II in Administration and Fiscal Services - Margaret Tavares*

The Administrative Assistant II position is currently occupied by Margaret Tavares (M. Tavares) who works with the Vice Chancellor for the Division of Administrative and Fiscal Services, Dr. Donald Zeken (Zeken). The Employer asserts in its written submission that Zeken is a member of the Employer's Executive Council responsible for fiscal management and administration of UMass Dartmouth and that he is responsible for Human Resources matters and making decisions regarding the financial impact of labor relations on UMass Dartmouth. The Employer asserts that M.

Tavares answers the Vice Chancellor's phone, examines all incoming fax transmissions, prepares all outgoing correspondence and is wholly familiar with every aspect of the Vice Chancellor's confidential duties. However, the Petitioner did not submit an affidavit or other evidence regarding those duties, which are not presented with this level of specificity in the job description.

In M. Tavares' affidavit that the Union submitted, she states that she is not exposed to confidential material directly related to labor relations policy, and further asserts that anything marked "confidential" is delivered directly to the Vice Chancellor.

*Two Administrative Assistant II positions in Student Affairs - Francine Alfonse and Ann Marie Valentino*

The two Administrative Assistant II positions in Student Affairs are currently occupied by Francine Alfonse (Alfonse) and Ann Marie Valentino (Valentino). The Petitioner submitted only job descriptions for both of these positions. According to Alfonse's job description, maintaining confidential personnel and student files amounts to just 1% of her responsibilities and handling correspondence amounts to another 1%.

According to Alfonse's affidavit, she has held the position for eight years and has been an AFSCME member and an employee of UMass Dartmouth for eleven years. Alfonse states that she reports to the Vice Chancellor of Student Affairs, Dr. Jean Kim (Kim). Alfonse asserts that Kim is not a member of the collective bargaining team or serve as a hearing officer at any level in the collective bargaining process.

The Petitioner also contends in its written submission that Alfonse handles grievance hearings; however, handling grievances is not one of the duties listed in her job description. Alfonse expressly states in her affidavit that she has no access to information regarding labor relations, collective bargaining obligations, or access to or advance knowledge of the Employer's collective bargaining proposals, or access to communications regarding labor relations matters from counsel.

Valentino works directly with the Associate Vice Chancellor of Student Affairs, Dr. David Milstone (Milstone). Valentino has held this position for four years and has been employed by UMass Dartmouth and a member of AFSCME's bargaining unit for fifteen years.<sup>4</sup> Petitioner asserts in its written submission that in this capacity Valentino is exposed to confidential material concerning student conduct or performance and that she handles faxes, mail, and email addressed to the Vice Chancellor. However, the Petitioner did not submit an affidavit from the Vice Chancellor attesting to these allegations.

The job description for this position includes arranging grievance hearings for employees in the various bargaining units including AFSCME, IBPO, NAGE, and ESU; performing secretarial and clerical duties; and preparing recommendations regarding the Student Affairs Department for the Vice Chancellor's approval. In her affidavit that the Union submitted, Valentino denies that she has

access to mail or any other information concerning labor relations matters, including bargaining proposals or grievance handling.

#### Opinion

A unit clarification petition is appropriate where there is a need to "clarify confusion which may exist relative to whether certain positions fall within the certified unit either because of a change in the duties of employees," or the "positions were... created after certification or because the original description of the unit lacked specificity." *Silver Lake Regional School Committee*, 1 MLC 1240, 1243 (1975). Further, under certain circumstances, a timely-filed unit clarification petition may be used to decide whether a position should be excluded from a recognized bargaining unit because it satisfies the managerial or confidential criteria found in Section 1 of the Law. *Town of Athol*, 32 MLC 50, 52 (2005) (citing *Fall River School Committee*, 27 MLC 37, 40 (2000)). The outcome sought by the petition must remedy a "deficiency in the scope of the existing unit and must be... within the realm of what the... parties intended when the unit was first formulated." *Town of Athol*, 32 MLC at 52; *City of Somerville*, 1 MLC 1234, 1236 (1975).

At issue is whether the employees in the nine disputed positions are confidential employees who must be excluded from the existing bargaining unit under the Law. Section 1 of the Law defines confidential employees as those who "directly assist and act in a confidential capacity to a person or persons otherwise excluded from coverage" under the Law. The purpose of this provision is to protect certain personal relationships that must exist if the collective bargaining system is to function. *Littleton School Committee*, 4 MLC 1405, 1412-13 (1977). To be regarded as confidential, an employee must have a substantial relationship with a managerial employee "so that there is a legitimate expectation of confidentiality in their routine and recurrent dealings." *Framingham Public Schools*, 17 MLC 1233, 1236 (1990). Employees are considered confidential and excluded from bargaining units only when they have significant access or exposure to confidential information concerning labor relations matters, management's position on personnel matters, or advance knowledge of the employer's collective bargaining proposals. *City of Everett*, 27 MLC 147, 150 (2001). Casual access to material considered sensitive by the employer such as budget information or personnel records, does not, without more, make an employee confidential. *University of Massachusetts*, 3 MLC 1179, 1203 (1976).

The Board has construed exceptions to the definition of employee narrowly to preclude as few employees as possible from collective bargaining while not unduly hampering an employer's ability to manage the operation of the enterprise. *Framingham Public Schools*, 17 MLC at 1236 (citing *Silver Lake Regional School District*, 1 MLC 1240, 1243 (1975)). The threshold inquiry in determining whether an employee is confidential is whether that individual reports directly to a person who is otherwise excluded from the bargaining unit as managerial under Section 1 of the Law. *Board of Higher Education*, 33 MLC 159, 161 (2007). To be des-

4. The dates and years given are as of May 2008.

igned managerial under Section 1, an employee must meet at least one of the following three criteria:

- a) Participate to a substantial degree in formulating or determining policy, or b) assist to a substantial degree in the preparation for or the conduct of collective bargaining on behalf of a public employer, or c) have a substantial responsibility not initially in effect in the administration of a collective bargaining agreement or in personnel administration.

Unlike supervisory personnel who “transmit policy directives to lower level staff and, within certain areas of discretion, implement the policies, managerial employees make [policy] decisions and determine the objectives.” *Wellesley School Committee*, 1 MLC 1299, 1400 (1975). Where an employee’s participation in implementing policy is limited to an informational or advisory nature, there is insufficient cause to render the employee managerial. *Town of Medway*, 22 MLC 1261, 1268 (1995); *Wellesley School Committee*, 1 MLC at 1403. A managerial employee engages in “regular participation in the policy-decision making process.” *Town of Plainville*, 18 MLC 1001, 1009 (1991) citing *Town of Agawam*, 13 MLC 1364, 1368 (1986).

A determination of an employee’s professional status as confidential or managerial must be made through an assessment of the employee’s actual duties and responsibilities. *Boston School Committee*, 25 MLC 160, 162 (1999) (citing *Boston Water and Sewer Commission*, 7 MLC 1439, 1448 (1980)); see also *Division of Labor Relations Clarification or Amendment Guidelines*, available on-line at [www.mass.gov/dlr](http://www.mass.gov/dlr) (providing examples of evidence parties must provide to support a claim that disputed positions are managerial or confidential). With these principles in mind, we turn to analyze the nine disputed positions.

*Administrative Assistant I in Human Resources - Danielle Almeida*

There is no dispute that the incumbent in this position works directly under a manager, the Director of Human Resources. According to the job description, the duties of this title including conducting research for grievances and arbitration, and several other grievance-related tasks. However, Almeida’s affidavit reflects that she does not perform these duties, a fact confirmed by the Employer. Instead, according to Almeida’s affidavit, which the Employer did not refute, the Human Resources offices employs a non-unit confidential Administrative Assistant in the Human Resources office,<sup>5</sup> who, in conjunction with the Director of Human Resources, handles all confidential correspondence and duties, including grievance-related information and or confidential collective bargaining information.

Based on the foregoing, there is insufficient information to establish that Almeida is a confidential employee within the meaning of Section 1 of the Law and we dismiss the petition with respect to this position.

*Administrative Assistant in Library Service Information Resource and Technology - Karen Tavares*

The Petitioner contends that the Administrative Assistant II position occupied by K. Tavares serves in a confidential capacity to two managerial employees, Vice Chancellor Green and the Dean of Library Services, both of whom the Employer asserts participate in handling grievances. Based on K. Tavares’ sworn description of her actual duties, however, the evidence provided is insufficient to render a conclusion that K. Tavares is confidential within the meaning of Section 1 of the Law. In particular, even assuming without deciding that Vice Chancellor Green and the Dean are managerial employees, Tavares states, and the Employer does not refute that she has no access to information concerning labor relations, mail concerning collective bargaining obligation or access to or advance knowledge of the Employer’s positions on grievances or contract proposals. Based on this evidence, we decline to remove K. Tavares from the unit.

*Administrative Assistant II for Institutional Advancement - Vacant/ Temporary Employee*

We dismiss the petition to remove this position from the bargaining unit because it is vacant. The Division generally does not take up unit clarification petitions for positions that are unfilled unless the parties to the petition can stipulate as to the job duties of the position that are material to the questions raised in the petition. *Town of Athol*, 36 MLC 188, 190, n. 5 (2010) (citing *Upper Cape Cod Regional Vocational-Technical School Committee*, 9 MLC 1503, 1506-1507 (1982)). There are no such stipulations before us.

*Administrative Assistant I and II in Office of Equal Opportunity - Mary Dulude and Theresa Canuel*

The evidence presented does not support the Petitioner’s contention that these two positions should be excluded from the bargaining unit. The disputed positions work closely with the Assistant Chancellor of the Office of Equal Opportunity whom the Petitioner asserts is a managerial employee. Even assuming without deciding that the Assistant Chancellor is a managerial employee, Dulude and Canuel’s duties and relationship to the Assistant Chancellor do not create a routine and legitimate expectation of confidentiality in their regular dealings. The submissions do not show that either employee has access to labor relations materials, information concerning collective bargaining obligations, grievances or advance knowledge of contract proposals. While access to equal employment opportunity information may be classified as sensitive material, access to this material is not sufficient to exclude employees from a bargaining unit. *University of Lowell*, 3 MLC 1468, 1473 (1977). Accordingly, the Employer has failed to provide sufficient information to warrant excluding these two positions from the existing bargaining unit.

*Administrative Assistant II in Chancellor’s Office - Mary Ann Ainley*

We grant the petition to remove the Administrative Assistant II in the Chancellor’s Office from the existing bargaining unit. The Un-

5. That there is a separate non-unit “confidential” Administrative Assistant in Human Resources is consistent with the 1997 certification, which specifically excludes the Administrative Assistant I in the Human Resources Department. The presence of a confidential non-union Administrative Assistant in Human Re-

sources also explains why, as the Employer states on the second page of its written submission, Almeida’s [non-confidential] Administrative Assistant I position has always been part of AFSCME’s unit.

ion offers no affidavit from this employee or in its submission to challenge the removal of this position from the bargaining unit; it merely included this position in its blanket request that all nine positions remain in the unit. As such, it does not contest Ainley’s job description, which indicates that she reviews, analyzes, and prepares reports for the Chancellor on matters including policies and collective bargaining proposals. The Employer’s job description shows that Ainley is a confidential employee who works in close capacity with the Chancellor, a managerial employee, to an extent where there is a legitimate expectation of confidentiality on a recurrent and frequent basis. In light of the Union’s failure to challenge the accuracy of the job description with respect to this position, we grant the Employer’s request to remove it from the bargaining unit.

*Administrative Assistant II in Administration and Fiscal Services - Margaret Tavares*

The Board declines to remove the Administrative Assistant II position from the current bargaining unit. Even assuming without deciding that the Vice Chancellor for Administrative and Fiscal Services is a managerial employee as alleged, the record does not show that M. Tavares works in a close confidential capacity with the Vice Chancellor. Rather, M. Tavares’ affidavit, which the Employer has not refuted with an affidavit from an individual with direct personal knowledge of M. Tavares’ duties, reflects that she does not have access to any mail or other information concerning labor relations matters, including collective bargaining obligations, the University’s position on grievances or access to or advance knowledge of the University’s collective bargaining proposals.

*Two Administrative Assistant II positions in Student Affairs - Francine Alfonse and Ann Marie Valentino*

The Petitioner’s job descriptions - the only evidence before us - provided insufficient evidence to conclude that Alfonse and Valentino perform confidential duties for Vice Chancellor Kim and the Associate Chancellor. Although Alfonse’s job description indicates that she handles confidential personnel and student files, it contains no duties related to collective bargaining. Moreover, handling so-called confidential files amounts to only 1% of her job duties. As stated above, casual access to material considered sensitive by the employer, does not, without more, make an employee confidential. *University of Massachusetts*, 3 MLC at 1203.

Although Valentino’s job description does include certain labor relations materials, in her un rebutted affidavit, Valentino denies that she has access to mail or any other information concerning confidential labor relations matters, including collective bargaining obligations and the University’s position on grievances. Accordingly, even if we assume that Kim and the Vice Chancellor are managerial employees, we dismiss the Employer’s petition with respect to both titles for a lack of evidence establishing that they perform confidential duties.

Conclusion

For the foregoing reasons, we DISMISS this petition with respect to the Administrative Assistant I in Human Resources; Administrative Assistant II in Library Service Information Resource and

Technology; Administrative Assistants I and II in the Office of Equal Opportunity; Administrative Assistant II in Administration and Fiscal Services, and both Administrative Assistant II positions in Student Affairs. We allow the petition with respect to the Administrative Assistant II in the Chancellor’s Office and amend the certification to exclude that petition from the Union’s bargaining unit. We also dismiss the Petitioner’s request to exclude the Administrative Assistant II for Institutional Advancement because the position is currently vacant.

SO ORDERED.

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In the Matter of CAMBRIDGE PUBLIC HEALTH  
COMMISSION d/b/a CAMBRIDGE HEALTH ALLIANCE  
(Compliance)

and

MASSACHUSETTS NURSES ASSOCIATION

Case No. MUP-10-5888

83. **Compliance**

*October 8, 2010*

*Marjorie F. Wittner, Chair*

*Elizabeth Neumeier, Board Member*

*Harris Freeman, Board Member*

*Jack J. Canzoneri, Esq.  
James Lamond, Esq.*

*Representing the Massachusetts  
Nurses Association*

*Jerome N. Weinstein, Esq.  
Andrew M. Fuqua, Esq.*

*Representing Cambridge  
Health Alliance*

**ORDER ON COMPLIANCE**

Statement of the Case

**O**n August 27, 2010, the Commonwealth Employment Relations Board (Board) issued a decision [37 MLC 47] in the above-captioned matter, concluding that the Cambridge Public Health Commission, d/b/a Cambridge Health Alliance (Alliance) had violated Sections 10(a)(5) and, derivatively, 10(a)(1) of MGL c. 150E (the Law) by unilaterally implementing changes to bargaining unit members’ retiree health insurance benefits. In that decision, the Board issued the following order (Order):

1. Cease and desist from:

- a) Failing and refusing to bargain collectively in good faith with the Massachusetts Nurses Association over changes to bargaining unit members’ retiree health insurance contribution rates.
- b) Unilaterally changing the retiree health insurance contribution rates of bargaining unit members represented by the Massachusetts