

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. MCR-23-9789

Date issued: August 28, 2023

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
Kristen A. Barnes, Esq. - Representing the Somerville Municipal
Employees Association

DECISION AND DIRECTION OF ELECTION

Summary

1 The issue in this case is whether the Commonwealth Employment Relations Board
2 (CERB) should grant a petition filed by the Somerville Municipal Employees Association
3 (SMEA) seeking an add-on election to include 311 customer service representatives (311
4 representatives) who are employed by the City of Somerville (City). The SMEA seeks to
5 add these employees, who are currently unrepresented for the purposes of collective
6 bargaining, to its existing bargaining unit B (Unit B). We find an add-on election for the
7 311 representatives to be appropriate and issue a direction of election.

1 Statement of the Case

2 On January 6, 2023, the SMEA filed a representation petition seeking to include
3 the 311 representatives employed by the City to its existing Unit B through an add-on
4 election. On April 20, 2023, a Department of Labor Relations (DLR) agent conducted a
5 hearing remotely via the WebEx videoconference platform at which all parties had the
6 opportunity to be heard, to examine witnesses, and to introduce evidence. The City and
7 the SMEA filed their post-hearing briefs on June 20, 2023.

8 The SMEA contends that it has satisfied the four requisite criteria for an add-on
9 election, including that the 311 representatives share a community of interest with the
10 SMEA's existing Unit B members. The SMEA also asserts that the City has failed to
11 demonstrate that the SMEA has unmistakably waived its right to file an add-on election
12 by agreeing to certain contractual language. The SMEA also argues that granting the
13 City's request to dismiss the petition would, under the circumstances, function as an
14 indefinite waiver of the 311 representatives' statutory right to freely choose a bargaining
15 representative.

16 Conversely, the City contends that the parties have negotiated unambiguous
17 contract language that bars the SMEA from adding positions created prior to January 23,
18 2013, including the position of 311 representative, to its bargaining units during the
19 pendency of the most recent contract. Notwithstanding this argument, the City also
20 asserts that the petitioned-for unit is not an appropriate bargaining unit under Section 2
21 of M.G.L. c. 150E (the Law) because the 311 representatives do not share a sufficient
22 community of interest with other Unit B positions to warrant their inclusion in the
23 bargaining unit. The City requests that the petition be dismissed.

1

Stipulations of Fact

- 2 1. The City of Somerville (City) is a public employer within the meaning of Section 1 of
3 M.G.L. c.150E (the Law).
4
- 5 2. The petitioner Somerville Municipal Employees Association (SMEA) is an employee
6 organization within the meaning of Section 1 of the Law.
7
- 8 3. Excluding employees under the authority of the School Committee, the City currently
9 has ten groups of bargaining unit employees: 1) fire alarm and, 2) fire suppression
10 employees that the Somerville Firefighters, Local 76 represents, 3) police patrol
11 officers that the Somerville Police Employees Association represents, 4) police
12 superior officers that the Somerville Police Superior Officers Association represents,
13 5) non-public safety supervisory employees that the SMEA represents in its Unit A,
14 6) non-public safety, non-supervisory employees that the SMEA represents in its Unit
15 B, 7) non-public safety, non-supervisory employees and supervisory positions that the
16 SMEA represents in its Unit D, 8) crossing guards that the Service Employees
17 International Union, Local 888 (SEIU) represents, 9) E911 dispatchers that SEIU
18 represents and 10) custodians that SEIU, Fireman and Oilers, Local 3 represents.
19
- 20 4. The City and the SMEA are parties to a Memorandum of Agreement for Unit B, that
21 by its terms, was in effect from July 1, 2019 through June 30, 2022 (2019-2022 MOA).
22
- 23 5. The 2019-2022 MOA states that “[t]he City agrees to add an “Evergreen” clause to the
24 SMEA Unit B contract.
25
- 26 6. The parties’ most recent fully integrated collective bargaining agreement was in effect,
27 by its terms, from July 1, 2013 through June 30, 2016 (2013-2016 CBA).
28
- 29 7. The parties reached the 2013-2016 CBA via a July 1, 2013 to June 30, 2016
30 Memorandum of Agreement.
31
- 32 8. Article I, Section 3 of the 2013-2016 CBA states in pertinent part:
33
- 34 During the life of this Agreement, neither party will seek to add
35 to, subtract from or otherwise modify the current job
36 titles/positions covered by the SMEA contracts with the
37 exception that should the City create a new position, after
38 January 23, 2013, that qualifies for bargaining unit inclusion
39 under M.G.L. c.150E either party may pursue its rights under
40 the Law.
41
- 42 9. The City and the SMEA are currently in negotiations for a successor collective
43 bargaining agreement for Unit B.
44
- 45 10. The City recognized SMEA as the exclusive bargaining representative of Units A & B

- 1 in or about 1966. The City recognized SMEA as the exclusive bargaining
2 representative of Unit D in 2007.
3
- 4 11. The positions contained in the classification plan and the salary plan of the 2013-2016
5 CBA accurately reflect the composition of Unit B.
6
- 7 12. The City created the position of 311 Customer Service Representative in or about
8 2005.
9
- 10 13. The job description for the 311 Customer Service Representative that was entered
11 into the record as a joint exhibit accurately reflects the duties and requirements of that
12 position.
13
- 14 14. 311 Customer Service Representatives have the capability to perform all of their
15 duties remotely apart from staffing the Welcome Desk. The physical work location for
16 311 Customer Service Representatives is located on the basement level of City Hall.
17 311 Customer Service Representatives are expected to report to the work site at City
18 Hall at least once a week.
19
- 20 15. 311 Customer Service Representatives work on staggered 8-hour shifts Monday
21 through Friday between 8 a.m. and 6 p.m.
22
- 23 16. Calls to the 311 Constituent Services line are recorded and monitored in real-time for
24 training and quality assurance purposes. Calls to other City Departments are not
25 recorded.
26
- 27 17. Calls made to the 311 Constituent Services line outside normal business hours of
28 8 a.m. and 6 p.m. are handled by employees from a third-party vendor contracted by
29 the City.
30
- 31 18. In addition to the duties reflected in Joint Exhibit 4, 311 Customer Service
32 Representatives staff a Welcome Desk located at the entrance to City Hall on the first
33 floor of City Hall when City Hall is open.
34
- 35 19. City Hall is open Monday to Wednesday, 8:30 a.m. to 4:30 p.m.; Thursday, 8:30 a.m.
36 to 7:30 p.m., and Friday 8:30 a.m. to 12:30 p.m.
37
- 38 20. 311 Customer Service Representatives are assigned to the Welcome Desk on a
39 rotating basis.
40
- 41 21. The 311 Customer Service Representative at the Welcome Desk greets visitors to
42 City Hall, directs visitors in obtaining appropriate assistance, disseminates advice, and
43 processes visitors' credit card payments to the Treasury Division of the Finance
44 Department.
45
- 46 22. 311 Customer Service Representative Eileen Costa has additional duties in addition

- 1 to those described in Joint Exhibit 4. Costa prepares the monthly bill roll, submits
2 requisitions, processes purchase orders, facilitates line-item transfers and journal
3 entries, and pays bills for the Constituent Services Office during her regular work
4 hours.
5
- 6 23. There are currently nine full-time and two regular part-time 311 Customer Service
7 Representatives.
8
- 9 24. The position of 311 Customer Service Representative is currently unrepresented for
10 the purposes of collective bargaining.
11
- 12 25. The only issues that are being presented to the Commonwealth Employment
13 Relations Board in Case No. MCR-22-9789 are whether: A) Article 1, Section 3 of the
14 2013-2016 CBA precludes the SMEA from filing a petition seeking to add the position
15 of 311 Customer Service Representative to Unit B, and B) the position of 311
16 Customer Service Representative shares a community of interest with other positions
17 in Unit B.
18
- 19 26. The parties are not invoking managerial, confidential, or supervisory status under the
20 Law for the position of the 311 Customer Service Representative.
21
- 22 27. Unit B includes approximately 250 employees.
23
- 24 28. Unit B employees are employed in multiple City departments and divisions of City
25 departments including the Communications Department; Constituent Services Office
26 (within the Communications Department); City Clerk's Office, Department of Public
27 Works (including the Grounds, Building, Lights and Lines, Fleet Repair, Sanitation,
28 and Highway Divisions), Elections Department, Finance Department (including
29 Assessing, Auditing, Procurement, and Treasurer), Infrastructure and Asset
30 Management (including Engineering), Inspectional Services Division (including the
31 Health, Building, and Weights and Measures Divisions), Libraries, Parks and
32 Recreation, Traffic and Parking Department, Water and Sewer, Veterans Services,
33 and Police (clerical only) and Fire (clerical only).
34
- 35 29. The City employs the 311 Customer Service Representatives within its Constituent
36 Services Office, which is a division of its Communications Department.
37
- 38 30. 311 Customer Service Representatives report to the Director of Constituent Services.
39 Steven Craig is currently the Director of Constituent Services.
40
- 41 31. The Director of Constituent Services reports to the Director of Communications and
42 Community Engagement. Denise Taylor is currently the Director of Communications
43 and Community Engagement.
44
- 45 32. The Constituent Services Office includes two Telephone Operator, TEL2, positions
46 which are within Unit B. One Telephone Operator position is currently vacant.

- 1
- 2 33. The Telephone Operator positions report to the Director of Constituent Services.
- 3 34. The Telephone Operator positions work at City Hall in an office on the first floor located
- 4 next to the Welcome Desk.
- 5
- 6 35. The Telephone Operator's regular weekly schedule is Monday to Friday 7:00 a.m. to
- 7 3:00 p.m.
- 8
- 9 36. A 311 Customer Service Representative, during his/her regularly scheduled shift, fills
- 10 the Telephone Operator position when the Telephone Operator is absent from work.
- 11 During elections, a 311 Customer Service Representative works in the Telephone
- 12 Operator position on overtime funded by the Election Department budget.
- 13
- 14 37. The Customer Relationship Management system used by the Constituent Services
- 15 Office is called QAlert.
- 16
- 17 33. The Communications Department includes a Principal Clerk position which is in Unit
- 18 B.
- 19
- 20 34. The City's Personnel Department, IT Department, Elections Division, and
- 21 Communications Departments including the Constituent Services Office, are located
- 22 in the Basement Level of City Hall.
- 23
- 24 35. The Principal Clerk in the Communications Department reports to the Director of
- 25 Communications and Community Engagement.
- 26
- 27 36. Unit B includes one Senior Clerk, one Principal Clerk, two Head Clerks, and one
- 28 Administrative Assistant employed by the City within the Department of Public Works
- 29 ["DPW Clericals"].
- 30
- 31 37. The DPW Clericals work at the DPW Administrative Office. The DPW Clericals'
- 32 regular schedule is Monday to Friday from 8:00 a.m. to 4:00 p.m.
- 33
- 34 38. As a significant part of their duties, DPW Clericals answer incoming telephone calls
- 35 and emails from the public and other City employees, respond to questions, and assist
- 36 with service requests and complaints.
- 37
- 38 39. DPW Clericals have received training on QAlert and enter requests for service into
- 39 QAlert including requests from the public. DPW Clericals close requests for service
- 40 from the DPW in QAlert once they have been handled by the DPW.
- 41
- 42 40. Unit B includes two Head Clerks, six Senior Clerks, two Principal Clerks, and one
- 43 Administrative Assistant in Traffic and Parking [Traffic and Parking Clericals].
- 44
- 45 41. The Traffic and Parking Head Clerks, Senior Clerks, and Principal Clerks work at a

- 1 City building on Holland Street in Somerville and are regularly scheduled to work from
2 Monday to Wednesday, 8:30 a.m. to 4:30 p.m.; Thursday, 8:30 a.m. to 7:30 p.m., and
3 Friday 8:30 a.m. to 12:30 p.m.
4
- 5 42. The Administrative Assistant in Traffic and Parking works from home.
6
- 7 43. The Traffic and Parking Principal Clerks and Head Clerks are trained to use QAlert
8 and handle requests for service received via QAlert or by phone from 311 Customer
9 Service Representatives.
10
- 11 44. Unit B includes three Principal Clerks, one Head Clerk, and one Head Cashier in the
12 Treasury Division of the Finance Department located on the first floor of City Hall
13 [Treasury Clericals].
14
- 15 45. Unit B includes one Senior Clerk, one Administrative Assistant, and one Principal
16 Clerk in the Assessing Division of the Finance Department located on the first floor of
17 City Hall.
18
- 19 46. Unit B includes one Administrative Assistant and one Principal Clerk in the Purchasing
20 Division of the Finance Department located on the first floor of City Hall.
21
- 22 47. Unit B includes one Administrative Assistant and one Principal Clerk in the Auditing
23 Division of the Finance Department located on the first floor of City Hall.
24
- 25 48. Unit B includes one Administrative Assistant and two Principal Clerks in the Water and
26 Sewer Department [Water and Sewer Clericals].
27
- 28 49. The Water and Sewer Clericals work in a building the DPW Yard. The Water and
29 Sewer Clericals' regular schedule is Monday to Friday from 8:00 a.m. to 4:00 p.m.
30
- 31 50. Unit B includes one Head Clerk, three Principal Clerks, and two Administrative
32 Assistants in the City Clerk's Office located on the first floor of City Hall [Clerk's Office
33 Clericals].
34
- 35 51. The Clerk's Office Clericals have received training on QAlert and enter requests for
36 white goods stickers into QAlert. White goods stickers are used for trash pickup of
37 large appliances.
38
- 39 52. Unit B includes a Senior Clerk and an Administrative Assistant in the Inspectional
40 Services Division ("ISD").
41
- 42 53. The ISD Senior Clerk and Administrative Assistant work on a hybrid basis and are
43 located in the DPW Administrative Building. The regular work schedule for the ISD
44 Senior Clerk and Administrative Assistant is Monday to Wednesday, 8:30 a.m. to 4:30
45 p.m., Thursday, 8:30 a.m. to 7:30 p.m., and Friday 8:30 a.m. to 12:30 p.m.
46

- 1 54. Unit B includes a Principal Clerk in the Elections Division located on the basement
2 level at City Hall.
3
- 4 55. Unit B includes a Principal Clerk in the Veterans' Services Department located at 50
5 Evergreen Avenue.
6
- 7 56. The regular work schedule of the Principal Clerk in the Veterans' Service Department
8 is Monday to Wednesday, 8:30 a.m. to 4:30 p.m., Thursday, 8:30 a.m. to 7:30 p.m.,
9 and Friday 8:30 a.m. to 12:30 p.m.
10
- 11 57. Unit B includes a Senior Clerk & IT Help Desk Administrator in the IT Department
12 located in the basement level of City Hall.
13
- 14 58. Unit B includes a Payroll Clerk, a Senior Clerk, and an Administrative Assistant in the
15 Police Department located in the main police station. Unit B also includes two Senior
16 Clerks in the Police Department located at the East and West police substations.
17
- 18 59. The Police Clericals' regular schedule is Monday to Friday from 8:00 a.m. to 4:00 p.m.
19
- 20 60. Unit B includes a Senior Clerk and an Administrative Assistant in the Fire Department
21 located at the Center Firehouse on Broadway.
22
- 23 61. The Fire Clericals' regular schedule is Monday to Friday from 8:00 a.m. to 4:00 p.m.
24
- 25 62. Unit B includes an Administrative Assistant in the Parks and Recreation Department
26 located in the City Recreation Building on Walnut Street.
27
- 28 63. The Parks and Recreation Administrative Assistant's regular schedule is Monday to
29 Friday from 8:00 a.m. to 4:00 p.m.
30
- 31 64. Unit B includes an Administrative Assistant in the Department of Infrastructure and
32 Asset Management.
33
- 34 65. The Administrative Assistant works on a hybrid basis. The Administrative Assistant's
35 regular schedule is Monday to Friday from 8:00 a.m. to 4:00 p.m.
36
- 37 66. The Treasury Division, City Clerk's Office, Traffic and Parking Department, and
38 Assessing Division have customer service windows.
39
40
- 41 67. The Treasury Clericals, Clerk's Office Clericals, Traffic and Parking Clericals, and
42 Assessing Division Clericals' duties involve providing in-person customer service at
43 their respective customer service windows and by answering questions and assisting
44 with requests by phone and email.
45
- 46 68. The regular schedule of Unit B employees located at City Hall is Monday to

- 1 Wednesday, 8:30 a.m. to 4:30 p.m., Thursday, 8:30 a.m. to 7:30 p.m., and Friday 8:30
2 a.m. to 12:30 p.m.
3
- 4 69. 311 Customer Service Representatives are non-exempt employees paid at an hourly
5 rate of pay, and are eligible for overtime, as are persons employed in positions within
6 Unit B.
- 7 70. 311 Customer Service Representatives are paid on a wage table for non-bargaining
8 unit employees. The 311 Customer Service Representatives are classified in the NU-
9 13 column. The annual pay rate for a 311 Customer Service Representative starts at
10 \$45,709.45.
11
- 12 71. The annual rate of pay for the highest paid 311 Customer Service Representative
13 currently employed is \$58,812.
14
- 15 72. Full-time 311 Customer Service Representatives are eligible for health insurance
16 coverage on the same basis as are persons employed full-time in positions within
17 Unit B.
18
- 19 73. 311 Customer Service Representatives are eligible for paid vacations, as are persons
20 employed in positions within Unit B.
21
- 22 74. 311 Customer Service Representatives are eligible for paid sick leave, as are
23 persons employed in positions within Unit B
24
- 25 75. For non-clerical Unit B employees in the DPW, the regular schedule is Monday to
26 Friday, 7:30 a.m. to 4:00 p.m. Report man positions have a regular schedule of 12:00
27 a.m. to 8:00 a.m. and from 4:00 p.m. to 12:00 a.m. Some custodian positions have a
28 regular schedule from 2:00 p.m. to 10:00 p.m. and from 3:00 p.m. to 11:00 p.m.
29
- 30 76. For non-clerical Unit B employees in the Water and Sewer Department, the regular
31 schedule is Monday to Friday, 7:00 a.m. to 3:30 p.m.
32
- 33 77. For non-clerical Unit B employees in ISD, the regular schedule is Monday to
34 Wednesday, 8:30 a.m. to 4:30 p.m., Thursday, 8:30 a.m. to 7:30 p.m., and Friday
35 8:30 a.m. to 12:30 p.m.
36
- 37 78. The Unit B Job Descriptions, entered as Joint Exhibits 5-98, accurately reflect the
38 duties, responsibilities, and requirements of those positions, but may not necessarily
39 reflect their current salaries.

40 Findings of Fact¹

¹ The CERB's jurisdiction in this matter is uncontested.

1 Overview

2 The City has ten bargaining units, and the SMEA represents three of those units.
3 The SMEA represents non-public safety, supervisory employees in its Unit A, non-public
4 safety, non-supervisory employees in its Unit B, and non-public safety, non-supervisory
5 and supervisory positions in its Unit D. The focus of the present case is Unit B, which
6 has approximately 250 bargaining unit members who work for a number of municipal
7 departments and divisions in a variety of job titles. The City voluntarily recognized the
8 SMEA as the exclusive representative for Unit B in 1966 and, thereafter, the parties
9 entered into a succession of collective bargaining agreements. The most recent fully
10 integrated collective bargaining agreement for Unit B covered the periods July 1, 2010
11 through June 30, 2013 and July 1, 2013 through June 30, 2016 (2010-2013 and 2013-
12 2016 CBA). Article 1, the Recognition Clause, of the 2010-2013 and 2013-2016 CBA
13 stated:

14 Section 1:

15
16 Pursuant to a vote and order of the Board of Aldermen of December 12,
17 1966, and approval by the Mayor on December 14, 1966, the City of
18 Somerville recognizes the [SMEA] as the sole and exclusive bargaining
19 representative of the non-supervisory employees of the City (Unit B)
20 including the Traffic Commission but excluding non-clerical employees of
21 the Police Department, Fire Department, and those employees under the
22 jurisdiction of the School Committee.

23
24 Section 2.

25
26 Full-time clerical civilian employees in the police department's substation(s)
27 entitled Neighborhood Police Service Representatives shall be added to
28 Unit B effective upon the January 23, 2013 ratification.

29
30 Section 3.

31
32 During the life of this Agreement neither party will seek to add to, subtract
33 from or otherwise modify the current job titles/positions covered by the

1 SMEA contracts with the exception that should the City create a new
 2 position, after July 23, 2013, that qualifies for bargaining unit inclusion under
 3 M.G.L. c. 150E, either party may pursue its rights under the law.²
 4

5 Section 4.
 6

7 The following positions will be removed from the bargaining unit upon the
 8 position[s] being vacated by the incumbent bargaining unit member (i.e., the
 9 incumbents will be “grandfathered” in their present position as long as they
 10 maintain that position).
 11

- 12 a) All positions within the City’s Personnel Department;
 13 b) All positions within the City’s Law Department.
 14

15 Section 5.
 16

17 Effective January 23, 2013, all Unit B nursing positions shall be removed
 18 from Unit B and transferred to Unit A.
 19

20 On December 31, 2018, the City and SMEA executed a memorandum of agreement that
 21 covered the periods July 1, 2016 through June 30, 2019 and July 1, 2019 through June
 22 30, 2022 (2016-2019 and 2019-2022 MOAs). The 2016-2019 and 2019-2022 MOA
 23 stated in pertinent part:
 24

25 The parties sign this MOA to reflect their agreements on December 31,
 26 2018, which will be integrated into the expired collective bargaining
 27 agreement. The parties also wish to incorporate all items on which they
 28 have reached tentative agreements prior to the December 31, 2018 session
 29 during the course of successor negotiations and mediation ...
 30

31 Except as set forth below and in the parties’ prior tentative agreements, all
 32 other terms and conditions of the Prior Agreement shall remain in full force
 33 and effect.
 34

35 1.Term

- 36 Contract 1: July 1, 2016-June 30, 2019
 37 Contract 2: July 1, 2019-June 30, 2022

²The hearing record is silent concerning any discussions the parties may have had during successor contract negotiations for the 2010-2013 and 2013-2016 CBAs regarding the language in Section 3.

1 The City agrees to add an “Evergreen” clause to the SMEA, Unit B
2 contract.³

3

4 2. The parties agree that the financial terms of this agreement are
5 retroactive, but that the language terms (either newly negotiated language
6 or existing contractual language) shall not be retroactive.

7 Numbered paragraphs 3-16 then set forth the MOAs’ new or changed terms, e.g.,
8 financial terms, stipends, longevity rates, new postings, signing bonuses, and winter
9 differentials.

10 311 Representative

11 In 2005, the City created the 311 constituent service program (311 program) and
12 the position of 311 representative to perform customer service functions for its
13 Department of Public Works (DPW). The City subsequently expanded the 311 program,
14 and it became part of the Constituent Services Office.⁴ The 311 representatives became
15 responsible for responding to constituent contacts.⁵ for about 20 to 30 municipal
16 departments or agencies. The municipal departments that are the most frequent subject
17 of constituents’ contacts are: the DPW, Traffic and Parking, and the City Clerk’s Office.
18 The 311 service representatives provide information about municipal programs and
19 services, assist with the delivery of services, and respond to complaints. The 311

³ The hearing record is silent about the parties’ discussions during successor contract negotiations regarding the inclusion of the evergreen clause in the 2016-2019 and 2019-2022 MOAs.

⁴ The 311 representatives report to the Director of Constituent Services Steven Craig (Craig), who has held the position for fourteen years. Craig reports to the Director of Communications and Community Engagement Denise Taylor (Taylor).

⁵ Craig used the term “contacts” to describe generally the different ways that constituents reach out and communicate with the 311 representatives.

1 representatives also receive constituent contacts about non-municipal problems, which
2 include full trash barrels at the Department of Conservation and Recreation (DCR)
3 properties or broken glass at MBTA stations. The 311 representatives call a DCR
4 representative or log into the MBTA website to forward those complaints.

5 Currently, there are nine full-time and two regular part-time⁶ 311 representatives.
6 The 311 representatives work staggered eight-hour shifts Monday through Friday
7 between 8:00 a.m. and 6:00 p.m.⁷ A third party vendor with whom the City contracts
8 handles constituent calls that are received outside of those hours. Prior to 2020, the 311
9 representatives worked onsite in the 311 call center, now known as the 311 contact
10 center, in the basement of City Hall or at the Welcome Desk, which is a kiosk on the first
11 floor of City Hall.⁸ 311 representatives staff the kiosk on a rotating basis.

12 With the onset of the pandemic in 2020, the 311 representatives began to work
13 remotely.⁹ The 311 representatives ceased staffing the Welcome Desk and did not
14 resume that duty until the Welcome Desk re-opened in the Summer of 2022. Currently,
15 most of the 311 representatives work a hybrid schedule having at least one in-office day

⁶ The part-time 311 representatives typically work twenty-four hours per week. However, they sometimes work additional hours filling in for absent full-time 311 representatives.

⁷ 311 representatives work 8:00 a.m. to 4:00 p.m., 8:30 to 4:30 p.m., 9:00 to 5:00 p.m. or 10:00 a.m. to 6:00 p.m. Some customer service representatives work later on Thursdays and only work half-days on Fridays, similar to the hours that City Hall is open on Thursdays and Fridays. City Hall is open 8:30 a.m. to 7:30 p.m. on Thursdays and 8:30 to 12:30 p.m. on Fridays as well as 8:30 a.m. to 4:30 p.m. on Mondays, Tuesdays, and Wednesdays.

⁸ The following departments are located on the first floor of City Hall: city clerk, auditing, procurement, treasury, assessing, and payroll, which is part of human resources.

⁹ The 311 program had conducted a pilot remote work program in 2019.

1 per week.¹⁰ Typically, two or three 311 representatives are present in the office each
2 day.

3 The 311 representatives respond to approximately 300 contacts per day.
4 Telephone calls (calls) constitute approximately eighty percent of the contacts that the
5 311 representatives receive, but they also receive contacts via the City's website, a
6 mobile application, and social media, including Facebook and Twitter,¹¹ or through a live
7 chat function. The 311 program uses a software queueing system Cisco Telephony,
8 which distributes calls equally amongst the 311 representatives, and also provides the
9 live chat function. The 311 representatives have guidelines for greetings and
10 engagement with constituents when answering calls.¹² When the 311 service
11 representatives answer calls, those calls are recorded.¹³ The quality assurance

¹⁰ The City has made exemptions to the one in-office day requirement in certain circumstances. Also, certain 311 representatives work more in-office days, including one 311 representative who prefers to work entirely in the office.

¹¹ A supervisor in the 311 program has been responding to constituent contacts on social media feeds for approximately one month. Previously, a 311 representative, Patricia Tenorio Vazquez, responded to the social media feeds, but she subsequently moved to a new position with the City.

¹² The average call lasts for three plus minutes, although certain calls can last longer when a constituent has multiple questions or a complex issue.

¹³ Calls to other city departments and divisions are not recorded.

1 manager¹⁴ has sometimes monitored calls in real time or listened to the recorded calls to
2 provide coaching and performance assessments to the 311 representatives.¹⁵

3 The 311 representative stationed at the Welcome Desk answers questions from
4 City Hall visitors, which sometimes includes helping constituents determine which
5 department or office has the information they need and giving them directions. The 311
6 representative stationed at the Welcome Desk also responds to all emails that were sent
7 to the 311 program, including any emails received the prior evening. A self-service
8 payment kiosk near the Welcome Desk enables visitors to use credit cards to pay monies
9 owed to the City.¹⁶ When constituents have difficulties using the kiosk, the 311
10 representative at the Welcome Desk will process the payments for them.

11 *Bargaining Unit Status, Salary and Qualifications*

12 The 311 representatives currently are unrepresented for the purposes of collective
13 bargaining.¹⁷ They earn an hourly rate of pay and are eligible for overtime.¹⁸ The salary

¹⁴ The quality assurance manager position is currently vacant. The other two positions that directly supervise the 311 representatives are the contact center manager and the floor supervisor.

¹⁵ When the quality assurance manager reviewed calls, she scored them, took notes, and met one-on-one with the 311 representative who took the calls, to discuss what aspects of the calls were successful and what aspects needed improvement.

¹⁶ Visitors can make payments using checks or cash at the Treasury Department's customer service windows, which are staffed by clerical employees (clericals), who are Unit B members. However, the Treasury Department directs visitors who want to make payments with a credit or debit card to the self-service kiosk.

¹⁷ The hearing record is devoid of any information concerning the reasons, if any, why the 311 representatives, were not included in a bargaining unit.

¹⁸ Similarly, Unit B members also earn hourly rates of pay and are eligible for overtime.

1 range for the 311 representatives is between \$45,709.45 and \$58,182.00.¹⁹
2 Qualifications for the position include a high school or GED degree (an associate's or
3 bachelor's degree a plus) and a minimum of one to three years of experience in
4 communications, call center and/or customer service,²⁰ with any equivalent combination
5 of education, experience, and/or training. Incumbents in the position need to have
6 knowledge of Microsoft 365 applications, specifically Word, Excel, PowerPoint, and
7 Teams, and experience with telecommunications systems and working in a high-volume
8 customer-engaging environment with web-based customer management tools. The
9 ability to communicate both verbally and in writing in Spanish, Portuguese, or Haitian
10 Creole is preferred but not required.²¹

11 *Training*

12 The City requires newly hired 311 representatives to attend three-plus weeks of
13 classroom training to become familiar with the various municipal departments and
14 divisions. Such training includes taking tours of those areas and learning about the City's
15 organizational structure. The 311 representatives begin answering calls approximately
16 four weeks after they are hired. When a newly-hired 311 representative begins taking
17 calls, a supervisor, using a secondary jack, listens during the call and pauses the call

¹⁹ The salary range for certain Unit B administrative/clerical titles is \$60,010.27 to \$65,632.35 for administrative assistants, \$56,795.44 to \$62,116.33 for head clerks, \$53,044.79 to \$58,014.31 for principal clerk Is, \$48,726.20 to \$53,291.13 for principal clerk IIs, and \$44,478.28 to \$48,645.24 for senior clerks.

²⁰ Craig described the position as requiring a high-level of customer service skills.

²¹ Currently, one 311 representative is bilingual in Spanish and English, and another 311 representative has some knowledge of Spanish but is not fluent.

1 when the 311 representative misses an issue or needs assistance responding to the
2 caller. Even after answering calls on their own, newly-hired 311 representatives will
3 sometimes come into the 311 contact center to listen when more experienced 311
4 representatives answer calls. The City does not consider 311 representatives to be fully
5 trained until four and one-half to six months after they have started the position.

6 Interactions Between the 311 representatives and Unit B Members

7 *Constituent Services Office*

8 The Constituent Services Office also employs a telephone operator,²² who is a
9 member of Unit B, and who works in the Switchboard Room, which is located
10 approximately five feet from the Welcome Desk in the lobby of City Hall. The telephone
11 operator²³ answers phone calls and transfers the callers to the appropriate municipal
12 department, including to the 311 phone system.²⁴ For approximately one year during the
13 pandemic, the switchboard was closed and the 311 representatives answered all calls.
14 Subsequently, the 311 representatives answered switchboard calls²⁵ when the telephone
15 operator was on leave, which included the three-week period prior to the hearing. During
16 elections, a 311 representative performs telephone operator duties on an overtime basis
17 with funds provided by the Elections Department.

²² A second telephone operator position has been vacant for approximately three years.

²³ The telephone operator's work schedule is Monday through Friday from 7:00 a.m. to 3:00 p.m.

²⁴ Calls to the telephone operator last on average for fifteen seconds.

²⁵ The telephone system automatically forwards calls to the switchboard to the 311 representatives.

1 When the telephone operator is absent and the 311 representatives receive the
2 switchboard's calls, they also receive work orders from the Somerville Public Schools.
3 These work orders are for a variety of maintenance problems, including leaky bathroom
4 equipment, faulty electrical outlets, and broken door locks. The 311 representatives send
5 service requests for those work orders.

6 *DPW*

7 The 311 representatives document constituent contacts in a customer
8 management relationship software system called QAlert. They input the constituent's
9 name, address, phone number,²⁶ and a description of the constituent's comments,
10 concerns, requests, or complaints. When a constituent requests services from a
11 municipal department or agency, the 311 representatives will send a service request to
12 the department or agency. There are over 300 different types of service requests in
13 QAlert. For instance, when the 311 representatives receive constituent inquiries about
14 DPW-related matters, including broken traffic lights, graffiti, or trash not being collected,
15 they will submit service requests to the clericals in the DPW, who are Unit B members.
16 The DPW clericals will access QAlert²⁷ and then will forward the request to the
17 appropriate DPW division or department. Also, when a constituent calls 311 to request
18 replacements for damaged trash or recycling barrels, the 311 representative will place a
19 service request in QAlert and notify the constituent of the service request number. If the
20 constituent has to call again, the 311 representative will notify the constituent where the

²⁶ When requested, the 311 representatives use certain keystroke functions to preserve a constituent's anonymity during calls.

²⁷ Constituent Services provided training to the DPW clericals on the use of QAlert.

1 constituent is in the queue to receive the replacements and verify if the constituent wants
2 to be notified of the status of the service request via email or text message. A DPW
3 clerical then will process the service request in QAlert. Additionally, when a constituent
4 requests information, for example, inquiring when their street has trash collection, the 311
5 representative will provide the information and then designate the contact as closed out
6 in QAlert. Eileen Costa (Costa), who has worked as a 311 representative for twelve years,
7 estimated that seventy percent of the contacts that she receives require service requests
8 be sent to various municipal departments.

9 The 311 representatives also receive all constituent calls that constituents make
10 to the DPW's Water and Sewer Department. When constituents call 311 to complain that
11 their water bills are too high, the 311 representative will send service requests to the
12 Water and Sewer Department, or on occasion to the Treasury Department. The 311
13 representatives sometimes receive multiple constituent complaints about the same
14 issues, such as water main breaks and power outages. After reporting the earliest
15 constituent complaints about a water break to the Water and Sewer Department or a
16 power outage to Eversource, the 311 representatives then will log subsequent constituent
17 contacts about the same problem into QAlert, notify the constituents that the problem
18 already has been reported, and designate those contacts as closed in QAlert.

19 Also, the 311 representatives sometimes need to speak directly with the DPW
20 clericals to ensure that a constituent successfully receives requested services.²⁸ For

²⁸ Costa testified that she spoke with Unit B clericals in various departments about constituent calls many times each day, a claim that the City in its post-hearing brief characterized as overly broad. Craig testified that the 311 representatives closed out ninety to ninety-five percent of their calls by providing information or submitting service

1 instance, a constituent may call 311 to request a pickup of an unwanted mattress.²⁹ The
2 311 representative will inquire what day of the week the constituent's trash is picked up
3 and submit a service request for a mattress pickup for the following day. However, when
4 a DPW clerical reviews the service request in QAlert, the clerical may notice that the
5 constituent gave incorrect information about when the trash is collected. The DPW clerical
6 will call the 311 representative and inform the 311 representative that the service order
7 needs to be changed with the mattress pick up scheduled for another date. The 311
8 representative will then contact the constituent and tell them the new date.

9 The 311 representatives also take calls from constituents who are interested in
10 signing up for the City's rodent assessment program.³⁰ The 311 representatives ask
11 whether the constituent owns the residence and whether the constituent had previously
12 signed up for the program. The 311 representative then submits a service request to the
13 inspectors in the DPW's inspectional services department, who are Unit B members. The
14 311 representatives then inquire whether the constituents want an application for the
15 rodent assessment program emailed to them or sent via the postal service. Costa is
16 responsible for sending out all applications via the postal service.

requests without needing to speak with Unit B clericals in other departments. However, Craig as the Director of Constituent Services admittedly did not handle constituent contacts on a regular basis. Further, Costa provided detailed information about the nature of the calls that she made to Unit B clericals in other departments supporting a finding that, at a minimum, she made daily calls to other Unit B clericals whether or not those daily calls constituted many calls each day.

²⁹ State law now requires mattresses to be recycled. Not necessary

³⁰ The City recently mailed out postcards to 84,000 residents informing them about the free rodent assessment program and telling them to call 311 for information.

1 The 311 representatives, who are on duty from 4:00 to 6:00 p.m., infrequently
2 contact the DPW's reportman, who is a Unit B member. The reportman is responsible for
3 coordinating the DPW's response to emergency situations after the DPW's regular
4 operational hours. For instance, when a 311 representative receives a call that: a stop
5 sign near an intersection has fallen; a truck has spilled a load of trash on a busy road; or
6 a water main has broken; the 311 representative will call the reportman's cellphone. The
7 reportman either goes to the scene or contacts the appropriate DPW division or
8 department to handle the incident. The 311 representatives have also called the
9 reportman when constituents have called to complain that unwanted "white goods,"
10 including stoves, refrigerators or washing machines, were not picked up for disposal
11 despite the constituents paying a disposal fee.

12 *Traffic and Parking*

13 The 311 representatives answer all calls that constituents make to the City's Traffic
14 and Parking Department, because that department's phone extension is automatically
15 routed to the 311 representatives.³¹ The 311 representatives receive calls inquiring about
16 students enrolling at Tufts University and what they need to do for residential parking
17 permits, temporary parking permits, and moving permits. The City requires all residents
18 who park their cars in the City to apply annually for residential parking permits, for which
19 they pay a fee and submit documents showing proof of residency and current vehicle
20 registration. However, residents who are sixty-five years or older, are eligible to call 311
21 and request a free senior residential parking permit. After the 311 representative verifies

³¹The Traffic and Parking clericals also provide in-person services to constituents at their department's customer service windows.

1 that the constituent is a current resident with a valid registration, the 311 representative
2 then submits a service order in QAlert to a Traffic and Parking clerical, who is a Unit B
3 member.³² The Traffic and Parking clerical will issue a senior parking permit and two
4 senior visitor parking permits and mail them to the constituent.

5 The 311 representatives also receive contacts from constituents who need spaces
6 to load or unload a moving/rental truck, have purchased “no parking” signs for the
7 designated spaces, have timely posted those no parking signs, but discovered vehicles
8 illegally parked in the spaces. After the 311 representative ascertains that the constituent
9 timely posted the no parking signs, the 311 representative will call the police dispatchers,
10 who are members of a stand-alone bargaining unit. The police dispatchers contact a
11 police officer to arrange a tow of the illegally parked vehicle. The 311 representatives
12 also receive calls from constituents who want to appeal parking tickets.³³ The 311
13 representative instructs the constituent to send an email requesting an appeal, and then
14 the 311 representative submits a service request to the Traffic and Parking Department,
15 which assigns the appeal to a hearing officer.

16 Also, the 311 representatives speak to the Traffic and Parking clericals directly
17 when attempting to resolve problems/complaints that constituents raise during 311 calls.
18 For instance, a constituent may have ordered and been charged for a residential parking
19 permit, but never received the permit. While the constituent was waiting for the permit,
20 the constituent continued to receive parking tickets. The 311 representative first verifies

³²Constituent Services provided training to the Traffic and Parking clericals on the use of the QAlert system.

³³ Constituents also can appeal parking tickets online.

1 that the constituent actually has paid for the permit in eTime, the software that the Traffic
2 and Parking Department uses.³⁴ The 311 representative then will speak with a Traffic and
3 Parking Unit B clerical, indicate that the parking permit needs to be mailed out
4 immediately, and confirm that the parking tickets should be revoked. Additionally, the
5 311 representatives receive calls from constituents who have registered their vehicles in
6 the City, but whose online applications for parking permits have been denied. The 311
7 representatives then call a Traffic and Parking Unit B clerical to request that the clerical
8 look up a constituent's permit application and determine why the application was denied.
9 If an error was made, the Traffic and Parking Unit B clerical will approve the application.
10 The 311 representative will notify the constituent that the application has now been
11 approved and that the constituent should go ahead and pay for the permit.

12 The 311 representatives often receive calls from constituents who are at the
13 Registry of Motor Vehicles and are unable to renew their drivers' licenses because of
14 unpaid parking tickets (Registry hold). The 311 representative will look up the
15 constituent's unpaid tickets and inform the constituent of the amount of money that is
16 owed. Although the constituents can pay online, they frequently ask the 311
17 representatives to take their credit card payments. The 311 representatives make the
18 payments and then send service requests to the Unit B clericals in Traffic and Parking to
19 release the Registry holds.

20 *City Clerk's Office*

³⁴ The 311 representatives have received training on how to obtain information from eTime.

1 The 311 representatives receive calls from constituents seeking information or
2 services that the City Clerk's office provides, which includes copies of birth and death
3 certificates, marriage and liquor licenses, and small event licenses, such as permits for
4 yard sales. For yard sales, the 311 representatives transfer the calls to the clericals in
5 the City Clerk's Office,³⁵ who are Unit B members, and who will assist the constituent in
6 applying for the appropriate permit depending on the location of the yard sale. The 311
7 representatives receive many calls from constituents who are applying for a REAL ID
8 driver's license and need certified birth certificates. Although a constituent can order and
9 pay for copies of a birth certificate online, the City will not refund the payment if the City
10 does not have the birth certificate on file. Often, the 311 representatives receive calls
11 from constituents seeking to confirm that the City has their birth certificates on file. The
12 311 representatives then call the clericals in the City Clerk's Office to confirm that the City
13 has the birth certificate on file³⁶ or will transfer the call to the City Clerk's Office so that
14 the clerical can speak directly to the constituent.

15 When a constituent calls 311 to request a birth certificate and wants to use a credit
16 card to pay for the birth certificate, the 311 representatives will process the payment if the
17 constituent is unwilling or unable to make an online or in-person payment. The 311
18 representative first takes the necessary information, including the constituent's date of
19 birth, parents' names, and credit card information. The 311 representatives then will send

³⁵ Clericals in the City Clerk's Office also provide in-person assistance to constituents at their department's customer-service windows as well as responding to constituents' calls and emails.

³⁶ Constituents also call the City Clerk's Office directly to confirm that the City has their birth certificates on file.

1 a service request to a Unit B clerical in the City Clerk's office to mail out the birth certificate
2 to the constituent.

3 The 311 representatives also receive calls from constituents appealing tickets that
4 they received for non-criminal violations, including alleged failures to shovel snow from
5 their sidewalks (snow removal ticket). The 311 representatives will ask a constituent to
6 send an email confirming in written form that the constituent seeks to appeal the snow
7 removal ticket. The 311 representatives will send a service request to the City Clerk's
8 Office to schedule a hearing on the constituent's appeal. The 311 representatives also
9 receive calls from constituents protesting snow removal tickets because the constituent
10 does not own the property referenced in the ticket. In those situations, the 311
11 representative may call the clerical at the City Clerk's Office to ascertain whether a
12 hearing officer would be willing to dismiss the ticket without a hearing.

13 *Treasury*

14 The 311 representatives receive calls from constituents regarding bills that they
15 received from the City, and the 311 representative will contact the clericals in the Treasury
16 Department,³⁷ who are Unit B members. For example, although constituents can pay
17 bills online, it is problematic if the constituent does not have the bill number. The 311
18 representatives frequently receive calls from constituents requesting old bill numbers,
19 especially numbers for outstanding excise tax bills that prevent constituents from
20 renewing their driver's licenses. The 311 representative will call the Unit B clericals in the
21 Treasury Department to obtain the number of the excise bills.

³⁷ The Treasury Department handles every City bill notwithstanding which municipal department sent the bill or what municipal department receives the payment.

1 *Assessing Division*

2 At certain times of the year, the 311 representatives receive large numbers of calls
3 from constituents regarding bills for vehicle excise and property taxes. Constituents ask
4 why the City sent them excise bills for vehicles that they owned for part of the calendar
5 year but no longer own. The 311 representatives explain that the constituents may need
6 to file abatements for excise bills for vehicles they no longer own. Constituents also
7 inquire about their eligibility for property tax exemptions, including exemptions for
8 residential property use, veterans, senior citizens, and persons with certain disabilities.
9 The 311 representatives then call the clericals in the Assessing Division (Assessing), who
10 are Unit B members, and indicate that the constituents are seeking to file excise tax
11 abatements or property tax exemptions and ask whether the Unit B clericals can take the
12 calls. If so, the 311 representatives then forward the calls.³⁸

13 *Elections Department*

14 The 311 representatives also receive a small number of constituent calls regarding
15 the Elections Department, including inquiries about voter registration, census forms, and
16 mail-in ballots. The 311 representatives forward the calls to the clericals in the Elections
17 Department, who are Unit B members.

18 *Communications Department*

19 The Communications Department employs a principal clerk, a Unit B member who
20 reports to Taylor. In the last five years, the Communications Department has experienced

³⁸Clericals in Assessing also provide in-person services to constituents at their Department's customer service windows and respond directly to constituent's calls and emails.

1 turnover in that position, and the City paid Costa overtime for approximately seven
2 months to perform payroll functions for Constituent Services, which included one month
3 of training the most recently hired principal clerk.³⁹ During the workday, Costa also has
4 trained the current principal clerk in processing bill rolls, line items, and ordering supplies.
5 Costa performs similar functions for the 311 program and uses the Munis computer
6 program, which certain Unit B clericals also use, to perform those functions. Costa is the
7 only 311 representative who uses Munis.⁴⁰

8 Opinion

9 Threshold Issue

10 We first consider the City's argument that the petition is barred because the SMEA
11 contractually waived its right to seek to represent the 311 representatives in the 2016-
12 2019 and 2019-2022 MOAs. Specifically, Section 3 of the 2010-2013 and 2013-2016
13 CBA, the parties' most recent fully integrated contract, states:

14 During the life of this Agreement neither party will seek to add to, subtract
15 from or otherwise modify the current job titles/positions covered by the
16 SMEA contracts with the exception that should the City create a new
17 position, after July 23, 2013, that qualifies for bargaining unit inclusion under
18 M.G.L. c. 150E either party may pursue its rights under the Law.

19 Reading the language of Section 3 carefully, giving the words their plain and
20 normal meaning, the provision clearly shows that the SMEA agreed not to seek to add
21 positions created before July 23, 2013 to the bargaining units that it represented, including

³⁹ Prior to working as a 311 representative, Costa worked for the City for approximately ten years as a systems coordinator in the Communications Department, overseeing the City's telephone system, including the switchboard, the 911 system, payphones, fax machines, and all copper wiring, as well as the personnel operating that equipment.

⁴⁰ Supervisors in the 311 program also use Munis to perform payroll functions.

1 Unit B, for the “life of this Agreement.” Because it is undisputed that the City created the
2 position of 311 representative in 2005, the position falls within the category of
3 unrepresented positions that the SMEA agreed not to seek to represent during the term
4 of the 2010-2013 and 2013-2016 CBA agreements.

5 The CERB previously has determined that a union can agree to waive its right to
6 organize certain employees. Massachusetts Bay Transportation Authority (MBTA), 36
7 MLC 21, 23-24, WMAP-08-1001 (August 5, 2009) (citing Cessna Aircraft, 123 NLRB 855,
8 857 (1959); Briggs Indiana Corp., 63 NLRB 1270, 1273 (1945)). In the MBTA case, the
9 CERB concluded that the petitioner had explicitly agreed in the recognition clause of its
10 2006-2010 collective bargaining agreement with the MBTA that certain employees would
11 not be included in the unit because they were statutorily exempt from collective
12 bargaining, and because the agreement was for a “reasonably short period of time.”
13 MBTA, 36 MLC at 24.

14 This case, however, presents a wrinkle not addressed in the decisions cited above.
15 Here, the City asserts that the parties’ subsequent agreement (reached after the 2010-
16 2013 and 2013-2016 CBA expired) to include an “evergreen” clause creates an ongoing
17 and indefinite bar to adding employees hired before July 23, 2013 to one of the existing
18 SMEA bargaining units. In other words, the City argues that the parties’ agreement in the
19 2016-2019 and 2019-2022 MOAs, to add an evergreen clause to the SMEA Unit B
20 contract, keeps Section 3 in effect, thereby preventing the SMEA from seeking to add
21 new positions to Unit B, even now, after the 2019-2022 MOA expired, and before the
22 parties have negotiated a successor agreement. The SMEA contends, however, that
23 interpreting the provision in this manner would improperly create an indefinite waiver of

1 the 311 representatives' rights to join a bargaining unit of their own choosing, thereby
2 infringing on their rights guaranteed under Section 2 of the Law. The SMEA also argues
3 that the language of Section 3 was not carried over to the 2016-2019 and 2019-2022
4 MOAs because the 2013-2016 CBA in which the provision was included did not itself have
5 an evergreen clause.⁴¹

6 While we believe there are public policy reasons for not allowing employees'
7 choice to be represented to be restricted indefinitely, we decline to reach that issue here.
8 Instead, we find that the introductory language of Section 3 – “[d]uring the life of this
9 Agreement,” limits the application of the provision to the term of the CBA that ended in
10 2016. We reach this conclusion based on the fact that unlike most of the provisions in
11 the 2010-2013 and 2013-2016 CBA, Section 3, by its express language, was in effect
12 only “During the life of this Agreement.”⁴² Even if that meant that the SMEA was
13 prohibited from seeking to add 311 representatives “during the life of those agreements,”
14 including during periods that would otherwise be “open” periods for filing representation

⁴¹ The contract that included Section 3 expired on June 30, 2016, and the City and the SMEA did not execute the 2016-2019 and 2019-2022 MOAs until December 31, 2018.

⁴² Other than Section 3, there were four provisions in the 2010-2013 and 2013-2016 CBA that were limited to the “life” or “term” of the agreement: Article III, Section 2, Agency Service Fees (requiring such fees as a condition of continued employment “during the life of this Agreement”); Article XXIII, Employment Security (“For the life of this Agreement, no Unit B employee will suffer a reduction of pay . . . as a result of subcontracting...”); Article XXXII, Productivity, (“During the term of this Agreement, the City may establish reasonable productivity standards for any Department or Division, subject to bargaining with the Association. . .”); Article XXXVI, Custodial Services, (Section 1 - “During the life of this contract all custodial services will be performed by members of this bargaining unit...”; and Section 2 – custodial minimum staffing provision). Our finding concerning Section 3 should not be interpreted to mean that we would find the four provisions containing similar language did not survive beyond June 30, 2016, as each of those sections would need to be examined based on the facts and circumstances surrounding the parties’ agreement with respect to that specific contract provision.

1 petitions, see MBTA, 36 MLC at 23-24, that prohibition ended when the 2013-2016 CBA,
2 which contained no evergreen clause, expired on June 30, 2016.

3 We do not view language in the subsequent MOAs that the parties entered into on
4 December 31, 2018, which, in addition to adding the evergreen clause, states that "...all
5 other terms and conditions of the prior agreement shall remain in full and effect..." as
6 either reviving or indefinitely extending Section 3's terms. The parties presented no
7 evidence of any discussions they had regarding Section 3 either when it lapsed or two
8 and a half years later, when they added the evergreen clause and the "all other terms and
9 conditions..." language quoted in the preceding sentence. Further, the parties
10 enumerated thirteen specific changes in the 2016-2019 and 2019-2022 MOAs but made
11 no mention whatsoever of Section 3. Therefore, absent evidence that the parties
12 expressly agreed to extend this already-lapsed provision, Section 3 was not a "term and
13 condition of the prior agreement that remained in full force and effect." And, because it
14 did not "remain" in the 2016-2019 and 2019-2022 MOAs, it was not extended for an
15 indefinite duration by operation of the evergreen clause that the parties added in 2018.
16 For these reasons, we decline to bar the filing of this petition due to contract language

17 We therefore proceed to the remaining issue and consider the City's argument that
18 the 311 representatives do not share a community of interest with the other Unit B
19 positions to warrant their inclusion in that unit.

20 Four-Part Test for Add-On Elections

21 An add-on election may be ordered if: 1) the representation petition is
22 accompanied by a sufficient showing of interest; 2) there is a sufficient community of
23 interest between the employees in the disputed title and the employees in the existing

1 unit; 3) the petition seeks to include all employees in the disputed titles; and 4) the reasons
2 for the original exclusion no longer exist. University of Massachusetts, Amherst, 41 MLC
3 233, 242, SCR-14-3687 (February 20, 2015). Because the SMEA has filed a sufficient
4 showing of interest in support of its petition in the instant case, it has satisfied the first
5 prong of the test.

6 *Community of Interest*

7 Next, we must examine whether a sufficient community of interest exists between
8 the 311 representatives and the employees in the existing Unit B. Under Section 3 of the
9 Law, we are charged with determining appropriate bargaining units that are consistent
10 with the purpose of providing for stable and continuing labor relations. In determining
11 whether a bargaining unit is appropriate for purposes of collective bargaining, the CERB
12 is statutorily bound to consider three factors: 1) community of interest; 2) efficiency of
13 operation and effective dealings; and 3) safeguarding the rights to effective
14 representation. City of Everett, 27 MLC 147, 150-151, MCR-4824 (May 23, 2001). In
15 considering whether a petitioned-for bargaining unit is an appropriate bargaining unit, we
16 will not reject the proposed bargaining unit because it is not the only appropriate unit or
17 because there is an alternative that is more appropriate. Town of Falmouth, 27 MLC 27,
18 30, CAS-3319, MCR-4696 (September 18, 2000).

19 In deciding whether employees share a community of interest, we examine factors
20 like similarity of skills and functions, similarity of pay and working conditions, common
21 supervision, work contact, and similarity of training and experience. Princeton Light
22 Department, 28 MLC 46, 48. MCR-4805 (June 29, 2001); Town of Bolton, 25 MLC 62,
23 65, MCR-4562 (September 10, 1998); Boston School Committee, 12 MLC 1175, 1196,

1 CAS-2598 (August 30,1985). No single factor is outcome determinative. City of
2 Springfield, 24 MLC 50, 54, MCR-4602 (January 15, 1998) (citing City of Worcester, 5
3 MLC 1108, 1111, MCR-2632, 2633,2685-2688 (June 30, 1978)). The Law requires that
4 employees share only a community of interest rather than an identity of interest. County
5 of Dukes County/Martha's Vineyard Airport Commission, 25 MLC 153, 155, MCR-4700
6 (April 16, 1999); Springfield Water and Sewer Commission, 24 MLC 55, 59, MCR-4603
7 (January 15, 1998).

8 To satisfy the second and third statutory criteria, the CERB considers the impact
9 of the proposed bargaining unit structure upon a public employer's ability to effectively
10 and efficiently deliver public services while safeguarding the rights of employees to
11 effective representation. Peabody School Committee, 27 MLC 7, 8, MCR-4757 (August
12 14, 2000). The CERB satisfies these obligations by placing employees with common
13 interests in the same bargaining unit. Id. This avoids the proliferation of units that place
14 an unnecessary burden on the employer. Town of Bolton, 25 MLC at 65. Although the
15 City argues that a stand-alone bargaining unit of 311 representatives would not impair the
16 efficiency of the City's operations, the CERB also has recognized the importance of
17 maximizing the collective strength of employees in the bargaining relationship. Franklin
18 County Sheriff's Department, 38 MLC 317, 323, SCR-12-1511 (June 6, 2012). The
19 CERB's preference for broad comprehensive units is balanced by its concern that a unit
20 should not include employees so diverse as to produce inevitable conflicts in the collective
21 bargaining process. University of Massachusetts, 4 MLC 1384, 1392, SCR-2020
22 (October 18, 1977). Only significant differences that would result in inevitable conflicts
23 employees lack a community of interest with other bargaining unit members. West

1 Boylston Water District, 25 MLC 150, 151, MCR-4706 (April 1, 1999); Franklin Institute of
2 Boston, 12 MLC 1091, 1093, MCR-3409 (July 18, 1985).

3 Here, we find that the 311 representatives share a community of interest with
4 certain employees in the existing Unit B, which has approximately two-hundred and fifty
5 members. Most of the 311 representatives work at least one day per week at City Hall,
6 where Unit B clericals in Treasury, Assessing, the City Clerk's Office, Communications,
7 IT and Elections work. Although the City argues that other Unit B members cannot
8 perform their duties on a remote basis as the 311 representatives can, the parties'
9 stipulations reveal that certain Unit B members perform their duties on a fully remote
10 basis, including the administrative assistant in Traffic and Parking, or on a hybrid basis,
11 including the senior clerk and administrative assistant in ISD and an administrative
12 assistant in the Department of Infrastructure and Asset Management. Also, the 311
13 representatives work Monday through Friday with varying shifts that are similar to the
14 hours that City Hall is open and that certain Unit B members work.

15 The 311 representatives use a customer service management system known as
16 QAlert to send service requests to Unit B clericals in the DPW and Traffic and Parking,
17 who then access QAlert to retrieve the service requests, which includes converting them
18 into work orders, if necessary. The 311 representatives access and extract information
19 from eTimes, the computer database that the Traffic and Parking Unit B clericals use.
20 The 311 representatives answer all phone calls that constituents make to Traffic and
21 Parking and to the DPW's Water and Sewer Department and speak directly with the Unit
22 B clericals in the DPW and Traffic and Parking on a daily basis. The 311 representatives
23 also frequently speak with Unit B clericals in the City Clerk's Office, Treasury, and

1 Assessing. The 311 representatives fill in for the telephone operator, a Unit B member,
2 when she is on leave and perform switchboard duties on an overtime basis during
3 elections. The Welcome Desk, which the 311 representatives staff on a rotating basis, is
4 several feet from the Switchboard Room on the first floor of City Hall. One of the 311
5 representatives, Costa, has helped train the principal clerk in the Communications
6 Department, a Unit B position, and Costa has performed the Communications
7 Department's payroll on an overtime basis, and uses the MUNIS database to purchase
8 supplies and pay invoices as do certain Unit B members.

9 The 311 representatives report to the Director of Constituent Services who, in turn,
10 reports to the Director of Communications and Constituent Services. The
11 Communications Department is located in the basement of City Hall as is the 311 contact
12 center, where the 311 representatives work, when in-person. The IT Department and the
13 Elections Department are also located in the basement of City Hall and employ Unit B
14 members. The City contends that there are differences in the 311 representatives'
15 working conditions from other Unit B members because the 311 representatives are the
16 only City employees whose calls with constituents are always recorded and that the 311
17 representatives undergo more extensive training when hired than other Unit B members.
18 Those differences, however, do not outweigh the fact that the 311 representatives and
19 certain Unit B clericals perform similar core functions by assisting constituents with
20 concerns and problems.

21 *Third and Fourth Requirements*

22 The SMEA has satisfied the third and fourth requirements for an add-on election
23 because it seeks to include all the 311 representatives in the existing SMEA unit and as

1 discussed above, because there is no basis to continue to exclude this group of
2 employees from the bargaining unit they are petitioning to join.

3 CONCLUSION

4 Based on the record and for the reasons stated above, we conclude the
5 requirements for an add-on election have been met. Therefore, we order an add-on
6 election to be held so that the 311 customer service representatives may decide whether
7 or not they wish to be included in the SMEA Unit B bargaining unit.

8 DIRECTION OF ELECTION

9 Based on the record, we conclude that a question of representation has arisen
10 concerning the 311 customer service representatives who are employed by the City of
11 Somerville. The unit appropriate for the purpose of collective bargaining consists of the
12 Somerville Municipal Employee Association's existing Unit B, which includes non-
13 supervisory employees of the City of Somerville including the Traffic Commission but
14 excluding non-clerical employees of the Police Department and Fire Department, and the
15 311 customer service representatives.

16 IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted to
17 determine whether a majority of the 311 customer service representatives desire to be
18 included in the existing bargaining unit of Unit B members currently represented by the
19 Somerville Municipal Employees Association or whether they wish to be represented by
20 no employee organization. The eligible voters shall include all 311 customer service
21 representatives whose names appear on the City of Somerville's payroll for the payroll
22 period for the week ending the Saturday preceding the date of this decision and who have
23 not since quit or been discharged for cause.

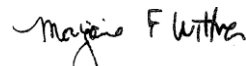
1 To assure that all eligible voters will have the opportunity to be informed of their
2 statutory right to vote, the SMEA should have access to a list of voters and their addresses
3 which may be used to communicate with them.

4 Accordingly, IT IS HEREBY FURTHER DIRECTED that the City of Somerville will
5 file an alphabetized election eligibility list, in a Word document or an Excel spread sheet,
6 containing the names and addresses of all eligible voters, with the Department of Labor
7 Relations (Department) no later than fourteen days from the date of this decision. The list
8 must be filed electronically and sent to EFileDLR@mass.gov.

9 The Department shall make the list available to all parties to the election. Failure to
10 submit the list in a timely manner may result in substantial prejudice to the rights of the
11 employees and the parties, therefore, no extension of time for filing the list will be granted
12 except under extraordinary circumstances. Failure to comply with this direction may be
13 grounds for setting aside the election should proper and timely objections be filed.

14 SO ORDERED.

COMMONWEALTH EMPLOYMENT
RELATIONS BOARD



MARJORIE F. WITTNER, CHAIR



KELLY B. STRONG, CERB MEMBER



VICTORIA B. CALDWELL, CERB MEMBER