

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

In the Matter of:

UNITED STEEL, PAPER AND
FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO, CLC

and

BOSTON PLANNING AND
DEVELOPMENT
AGENCY/AUTHORITY

and

CITY OF BOSTON

Case Number: MCR-24-10602

Date Issued: August 14, 2024

CERB Members Participating:

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

Appearances:

Alfred Gordon O'Connell, Esq.	- Representing the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC
Nicholas J. Dominello, Esq. Ann Marie Noonan, Esq.	- Representing the Boston Planning and Development Authority
Parker McIntyre, Esq. Renee Bushey, Esq.	- Representing the City of Boston

**CERB RULING ON PETITIONER'S MOTION TO AMEND AND/OR BIFURCATE
ELECTION PETITION**

1 On July 1, 2024, approximately 231 employees who previously worked for BPDA
2 began working for the City. Of those employees, 169 work for the City's Planning
3 Department, 56 work for the Office of Work Force Development, and the remaining
4 employees work at three other City departments.

5 On July 2, 2024, the Union filed the instant motion. In support of its motion, the
6 Union argues that the City is a successor employer as to the portion of the petitioned-for
7 unit that currently work for the City in its Planning Department. Because the City became
8 the successor employer during the pendency of this representational matter, the Union
9 contends that the petition should be amended to name the City as the employer of the
10 former BPDA employees currently in the City's employ. Although the Union was unable
11 to cite to any case where a successor took over only part of a bargaining unit during a
12 representational proceeding, the Union suggests that, given the CERB's broad discretion
13 in determining appropriate bargaining units, the most appropriate action would be to
14 amend the petition to name both the City and BPDA as employers and/or to bifurcate the
15 petition to allow for two separate elections to establish two separate units at those
16 employers. In the alternative, the Union seeks to amend the petition to name the City as
17 the successor employer of the majority of the petitioned-for employees and proceed to an
18 election for the former BPDA employees currently employed in the City's Planning
19 Department.

20 The BPDA opposes the motion. The BPDA notes that it is a question of first
21 impression whether the Commonwealth Employment Relations Authority (CERB) would

parties disagreed about whether three other employees would be appropriately included in the unit. Accordingly, approximately 42 petitioned-for employees remaining at the BPDA would be appropriately included in a bargaining unit.

1 apply the National Labor Relations Board's (NLRB) successorship doctrine. Moreover,
2 the BPDA argues that bifurcation of the petition would be contrary to a conclusion that a
3 successorship relationship exists.

4 The City also opposes the motion, arguing that the City is not a successor
5 employer for the former BPDA employees. In part, the City argues that the terms and
6 conditions of employment of the former BPDA have significantly changed now that they
7 are City employees. The City further asserts that if the CERB grants the Union's motion,
8 there could be conflict with the other incumbent unions, noting that the employees at issue
9 are now working alongside other City employees currently represented by different labor
10 organizations.² The City also maintains that it would be inappropriate to allow the Union
11 to rely upon the authorization cards which were signed by employees when they were
12 employed by a different entity and working under different working conditions as those
13 authorizations may not accurately reflect the employees' current interests.

14 Ruling

15 Section 3 of the Law requires the CERB to determine appropriate bargaining units that
16 provide for stable and continuing labor relations. In determining whether a bargaining
17 unit is appropriate, the CERB must consider three factors: 1) community of interest; 2)
18 efficiency of operation and effective dealings; and 3) safeguarding the rights to effective
19 representation. City of Everett, 27 MLC 147, 150-151, MCR-4824 (May 23, 2001). The
20 CERB satisfies these obligations by placing employees with common interests in the
21 same bargaining unit, provided there is a sufficient community of interest. Peabody

² The City notes that it has collective bargaining agreements with 21 different labor organizations, including one for SENA's existing city-wide unit.

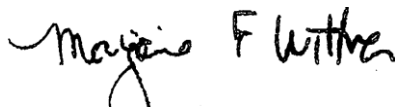
1 School Committee, 27 MLC 7, 8, MCR-4757 (August 14, 2000). The CERB has a long-
2 standing preference for broad comprehensive units over smaller fragmented units.
3 Pittsfield School Committee, 3 MLC 1490, MCR-2172 (February 9, 1977); City of Boston,
4 8 MLC 1835, MCR-3229 (February 12, 1982). The CERB has frequently held that units
5 which are limited to departments or other administrative units of a large employer are
6 inappropriately underinclusive where a community of interest exists among a larger group
7 of employees sufficient to create a broad, comprehensive bargaining unit. See Town of
8 Newbury, 14 MLC 1660, 1662, MCR-3669 (April 8, 1988) (declining to create a separate
9 unit for a small number of dispatchers); Boston Water and Sewer Commission, 7 MLC
10 1439, 1445, MCR-2981 (October 23, 1980) (declining to create separate water and sewer
11 units); Town of East Longmeadow, 14 MLC 1555, 1556-7, MCR-3721 (February 11,
12 1988) (upholding dismissal of petition seeking to sever library employees from the existing
13 unit of town employees).

14 The Union's petition originally sought to represent an appropriate unit of all eligible
15 full-time and regular part-time professional and non-professional employees of the BPDA.
16 Through its motion, the Union also seeks an election for a separate unit of employees of
17 the City's Planning Department. Under the circumstances presented here, we need not
18 reach the issue of successorship because, in accordance with the precedent cited above,
19 we determine that a separate unit of City Planning Department employees is
20 underinclusive and therefore not an appropriate unit. For this reason, the motion to
21 amend and/or bifurcate the petition is denied.³

³ SENA has alternative options it can utilize if it wishes to represent the former BPDA employees who are now City Planning Department employees. SENA can file a petition

- 1
- 2 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



MARJORIE F. WITTNER, CHAIR



KELLY B. STRONG, CERB MEMBER



VICTORIA B. CALDWELL, CERB MEMBER

seeking an add-on election to add these employees to its existing citywide bargaining unit. Depending on the specific facts involved, it may also be appropriate for SENA to seek to accrete these employees to its existing citywide bargaining unit.