

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

In the Matter of

CITY OF BOSTON

and

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

Case No. MCR-24-10762

Date issued: October 14, 2025

CERB Members Participating:

Lan T. Kantany, Chair
Kelly B. Strong, CERB Member
Victoria B. Caldwell, CERB Member

Appearances:

Alejandra Hung, Esq. Lauren Healy, Esq.	-	Representing the City of Boston
Alfred Gordon O'Connell, Esq. Jeremy DaCruz, Esq.	-	Representing the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC

CERB 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 United Steel, Paper and Forestry, Rubber,
3 Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-
4 CIO-CLC (USW or Petitioner) to add all eligible full-time and regular part-time employees

1 of the City of Boston (City) in the Planning Department to its existing bargaining unit of
2 administrative and supervisory City employees (SENA Citywide Unit).¹ The City opposes
3 the Petitioner's request for an add-on election, arguing that the petitioned-for employees
4 do not share a community of interest with the other employees in the SENA Citywide Unit.
5 The City also asserts that 10 positions are confidential and/or managerial employees
6 within the meaning of Section 1 of M.G.L. c. 150E (the Law) and therefore cannot be
7 included in any bargaining unit.

8 For the reasons set forth below, we find that the following positions are not
9 confidential or managerial employees under the Law and are properly included in the
10 petitioned-for bargaining unit: 1) Assistant Deputy Director of Design Review; 2) Assistant
11 Deputy Director of Public Realm; 3) Counsel; 4) Title Counsel; 5) Deputy Controller; 6)
12 Assistant Deputy Director for Capital Construction; 7) Deputy Director – Community
13 Engagement; and, 8) Supervisor of Administrative Services. We find that the Assistant
14 Director of Communications is excluded as a confidential employee, and that the Deputy
15 Director for Capital Construction is excluded as a managerial employee. We further find
16 that an election to add the petitioned-for positions in the Planning Department to the
17 SENA Citywide Unit is appropriate, and thus, we issue a direction of election.

18 Statement of the Case

19 On August 15, 2024, the USW filed the petition in this matter seeking an add-on
20 election to add the professional and non-professional City Planning Department

¹ The Salaried Employees of North America, Local 9158 (SENA) is a division of the USW. The USW, acting for and through SENA (collectively referred to as the Union), is the exclusive bargaining representative for this bargaining unit.

1 employees into the existing SENA Citywide Unit.² On February 24, 2025, March 26, 2025,
2 April 15, 2025, and May 12, 2025, a Department of Labor Relations (DLR) agent
3 conducted a hearing at which all parties had the opportunity to be heard, to examine
4 witnesses, and to introduce evidence. The City and the Petitioner filed timely post-hearing
5 briefs on June 17, 2025. On June 18, 2025, the Petitioner filed a motion to strike portions
6 of the City's brief. On June 25, 2025, the City filed its opposition to that motion.³

7 Prior to the hearing, the parties agreed to either include or exclude certain
8 petitioned-for positions, and also agreed which positions were professional and which
9 positions were non-professional. During the course of the hearing and immediately
10 thereafter, the parties further agreed that the Human Resource Specialist position, held
11 by Cassie Cavender, and the position of Senior Budget Manager, held by Dillion Darcy,
12 should be excluded from the unit. The parties also agreed that the Administrative
13 Assistant II position, held by Joanne Flowers, should be included in the unit. These

² The petition was filed the day after the CERB denied the Union's motion to amend the petition in Case No. MCR-24-10602 to seek an election in a stand-alone unit of employees in the City's Planning Department. See Boston Planning and Development Agency/Authority, 51 MLC 36, MCR-24-10602 (August 14, 2024).

³ The Union motioned to strike facts that the City provided in its brief that were not placed into evidence and to strike arguments that the City proffered as to the mechanics to be used in any resulting election. The City opposed the motion to strike, arguing that the motion was untimely because it was filed the day after the deadline for the post-hearing briefs and that there is no legal basis for a motion to strike portions of the brief, pursuant to the Massachusetts Rules of Civil Procedure 12(f).

The CERB finds that the Union's motion is timely as it was filed the day after the City filed its brief. As to the merits of the Union's Motion, the CERB denies the Union's motion to strike, as the CERB will not consider any facts that were not placed into evidence during the four days of hearing. Therefore, striking any alleged facts in the City's brief is unnecessary. Additionally, the issue of the mechanics of any election that results from our decision in this matter is not properly before the CERB, and we will not consider the City's arguments regarding those mechanics.

positions have been added to the appropriate lists of included and excluded employees in the appendices.

Ten positions remain in dispute and are addressed in this decision.

Stipulations of Fact

The parties entered into the following stipulations:

- (1) The City of Boston ("City") is a public employer within the meaning of Section 1 of the Law.
- (2) United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC ("USW"), is an employee organization within the meaning of Section 1 of the Law.
- (3) The Salaried Employees of North America, Local 9158 ("SENA"), a division of the USW, is an employee organization within the meaning of Section 1 of the Law.
- (4) The USW, acting for and through SENa, collectively referred to as the "Union," is the exclusive bargaining representative for a bargaining unit of designated administrative and supervisory employees employed by certain Departments of the City, as defined by Joint Exhibits 1 through 15 and 34, hereinafter referred to as the "Citywide Unit."
- (5) The Citywide Unit includes approximately 800 employees.⁴
- (6) The Union was certified as the exclusive bargaining representative for this unit on June 2, 1986.
- (7) The City and the Union are parties to a collective bargaining agreement ("CBA") which covers the period from October 1, 2023, through September 30, 2026.
- (8) The Citywide Unit currently includes employees from multiple City departments, including but not limited to [the] Age Strong [Commission], Human Resources, Intergovernmental Relations, Office of Budget Management, Assessing Department, Auditing Department, Boston Fire Department, Boston Police Department, Boston Residents Jobs Policy, Boston Retirement System, Cemetery Division, City Clerk, Consumer Affairs & Licensing, Dept. of Innovation & Technology, Election Division, Inspectional Services Department, Law Department, Office of Economic Opportunity & Inclusion, Office of Streets, Parks Department, Procurement, Property Management, Public Facilities, Public Works, Registry Division, Supplier Diversity, Transportation Department, Treasury,

⁴ During the processing of this matter, additional positions were added into the SENa Citywide Unit so the total number of employees in the unit has increased.

Veterans' Services, and Boston Center for Youth and Families.

(9) The City of Boston Planning Department ("Planning Department") did not exist at the time the bargaining unit was certified.

(10) The employees of the Planning Department are not currently represented for purposes of collective bargaining.

(11) The Parties agree that the non-professional titles listed in [Appendix] A and the professional titles listed in [Appendix] B are appropriately included in the petitioned-for bargaining unit.

(12) The Parties agree that the titles listed in Attachment C are appropriately excluded from the petitioned-for bargaining unit as confidential and/or managerial within the meaning of Section 1 of the Law.

(13) The Parties agree that the positions of Public Records Specialist, Human Resources Generalist, Operations Assistant - Executive Secretary, and Senior Advisor Strategy/Change Management, as described in the job descriptions that were entered into the record as Joint Exhibits 28 through 32, are designated as non-professional employees, and that their status is no longer in dispute.

(14) The headquarters of the Planning Department is located on the 9th Floor of Boston City Hall, where approximately 132 Planning Department employees are located. The Planning Department also has two employees who are assigned to 2 Boylston Street, approximately 19 employees who are assigned to 43 Hawkins Street, and approximately 23 employees who work at 12 Channel Street.

Additional Findings of Fact

The SENA Citywide Unit

On June 2, 1986, the DLR certified the Union as the exclusive representative of the employees in the following unit:

All administrative and supervisory employees in the following departments: administrative services, assessing, auditing, retirement board, traffic and parking, inspectional services, veteran's services, city clerk's office, treasurer and collecting, election, fire, law, parks and recreation, police, real property, public works, health and hospitals, excluding managerial, professional, and confidential employees, and all other City employees.

The unit description has changed over the years pursuant to unit clarification petitions, add-on elections, and by agreement of the parties.

Article I of the Union and City's October 1, 2017 to September 30, 2020 collective bargaining agreement (CBA) contains the following recognition clause:⁵

Section 1. The City recognizes the Union as the exclusive representative, for the purposes of collective bargaining relative to wages, hours and other conditions of employment of all employees in the service of the City as defined in MLRC Certification dated June 2, 1986, as amended by Memorandum of Agreement between the parties dated April 17, 1987; and as further amended by the agreed-upon merger of the former SENA 9158E unit (Public Facilities/DND) and the former SENA 9158F unit (Boston Center for Youth and Families) in the main SENA City-wide bargaining unit.

Section 2. The parties agree that with regard to the title of Principal Administrative Assistant only, inclusion in, or exclusion from the bargaining unit shall be determined as follows:

- a) Positions graded at or below the rate of MM-7 shall be included in the unit.
- b) In the event that a Principal Administrative Assistant position is upgraded beyond that of an MM8 without any substantial change in duties or responsibilities the position shall remain in the bargaining unit.
- c) Positions existing on the effective date of this Agreement at the rate of MM-8 shall be deemed included except for the positions listed in Appendix A.
- d) Positions created after the effective date of this Agreement at the rate of MM-8 shall be discussed by the Office of Personnel Management and local Union officials as soon as it is known that such positions are needed. A semiannual review by the Labor Management Committee referenced in Article 17 shall be held upon request by the Union of such MM-8 positions excluded. Should the Committee fail to agree on the Position's inclusion or exclusion, the Union may file for arbitration on the issue of whether the City has utilized the MM-8 Principal Administrative Assistant position to undermine the bargaining unit.

Section 3. Each of the following positions shall be removed from the bargaining unit as a confidential and/or managerial employee when the incumbent as of November 1, 2016, vacates the position:

	TITLE	DEPARTMENT	GRADE
a.	First [Assistant Treasurer]	Treasury-Collecting	MM-11
b.	Director of State Relations	Intergovernmental	MM-08
c.	Deputy Director of State Relations	Intergovernmental	MM-07
d.	Employee Develop Coordinator	Human Resources	MM-08

⁵ The parties entered into a CBA in effect from October 1, 2023 through September 30, 2027 that did not change the unit description in the recognition clause.

1 The composition of the bargaining unit has continued to change. On April 5, 2024,
2 as a result of a written majority authorization petition, the DLR certified the Union as the
3 representative for a unit of employees in the City's Environmental Department and Office
4 of Historic Preservation. On June 13, 2024, as a result of an add-on election, the DLR
5 certified the Union as the representative for a unit of employees in the City's Office of
6 Youth Employment and Opportunity. Both units were included in the SENA Citywide Unit
7 by agreement of the parties in a Memorandum of Agreement, dated September 12, 2024,
8 which provides the terms of the parties' most recent successor contract, effective October
9 1, 2023 through September 30, 2027.

10 Most recently, on April 11, 2025, the CERB accreted the following 19 positions in
11 the Mayor's Office of Arts and Culture into the existing unit: Director of Administration and
12 Finance; Administrative Assistant; Director of Cultural Planning; Cultural Planning Project
13 Manager–Development Review; Cultural Planning Project Manager–Community
14 Engagement; Creative Placemaking Project Manager; Director of Public Art; Senior
15 Public Art Project Manager; Public Art Project Manager; Public Art Registrar; Artist
16 Program Manager; Communications Director; Digital Media Manager; Director of Grants
17 and Programs; Senior Grants & Programs Manager; Exhibitions Coordinator (a/k/a
18 Galleries and Exhibitions Manager); Events + Partnerships; City Hall Plaza Engagement
19 Manager (a/k/a Director of City Hall Plaza Engagement); and Transformation Project
20 Coordinator.

21 The SENA Citywide Unit includes employees within various City departments and
22 includes a mixture of professional and non-professional employees holding varied titles,
23 including Accountant, Administrative Assistant, Assistant Director, Architect, Building

1 System Engineer, Communications Director, Management Analyst, Program Manager,
2 and Property Manager. Some of these unit employees perform public relations or
3 communications work, community outreach, program management, budget work, and
4 administrative and clerical duties. Some bargaining unit employees supervise other
5 employees, including other employees also in the SENA Citywide Unit.

6 The bargaining unit employees work either a 35 or 40-hour workweek. Most work
7 Monday through Friday although some work on weekends. The employees in the unit
8 work in various locations throughout the City, including City Hall, 43 Hawkins Street, and
9 12 Channel Street. The employees are paid bi-weekly. Their salaries range from about
10 \$50,000 to about \$168,000. The parties' CBA provides that the bargaining unit employees
11 are entitled to yearly pay increases. They receive step increases on the anniversary of
12 their hire date, until they reach step 10. These increases are automatic and are not merit
13 based. The bargaining unit employees are eligible for the City's pension program. The
14 unit employees are entitled to receive health insurance through the City. The employees
15 are entitled to receive some professional development funds, including tuition
16 reimbursement, from a pool of \$25,000.

17 The unit employees are covered by numerous City policies, including time and
18 attendance policies, worker's compensation policies, harassment-free workplace policies
19 and policies that cover various types of leave including medical leave and paid parental
20 leave. The employees are also eligible to participate in telework through the hybrid work
21 policy. Most City employees receive six personal days that come from their sick bank.⁶

⁶ Some unionized City employees receive personal time that is not taken from their sick leave balance.

1 There is a City residency requirement when employees are hired. There are exemptions
2 for employees who have been employed for at least 10 years.

3 The Planning Department

4 The Boston City Council passed an ordinance transferring the staff and function of
5 the Boston Planning and Development Agency (BPDA) to the City of Boston. The City's
6 Planning Department was created effective July 1, 2024.

7 The Planning Department is the City's primary land use agency. It is charged with
8 planning and designing the City's built environment. The Chief of Planning, who is
9 appointed by, and reports to, the Mayor, heads the Planning Department.⁷ The current
10 Chief of Planning is Kairos Shen (Shen or Chief of Planning). The Planning Department
11 recommends changes to the zoning code and reviews all large-scale private development
12 proposals for the City. The Planning Department makes recommendations to the BPDA
13 Board. The BPDA Board is responsible for approving building and planning projects for
14 the City. BPDA Board approval is required for requests for proposals (RFPs), invitations
15 for bids (IFBs), and planning studies.

16 Article 80 is an article of the Boston Zoning Code that sets forth the regulations for
17 reviewing and approving large-scale development in the City. The BPDA Board approves
18 Article 80 projects and other zoning recommendations. These and other matters are
19 presented to the BPDA Board for approval via a Board memo. Board memos are drafted
20 by staff and approved by the Chief of Planning or the Division Director, before being
21 presented to the BPDA Board. The BPDA Board can approve or deny the matter, or it

⁷ The Chief of Planning may serve in a dual capacity as Director of the Boston Redevelopment Authority (BRA) and the Economic Development and Industrial Corporation of Boston (EDIC) which together do business as the BPDA.

1 can table a matter for more review or development.

2 The Planning Department has a Business Line, headed by Deputy Chief Devin
3 Quirk (Quirk), and an Operations Line, headed by Executive Secretary Teresa Polhemus
4 (Polhemus). Both Polhemus and Quirk report directly to Shen. The Business Line
5 includes a Planning and Zoning Division to create comprehensive plans and zoning
6 regulations to guide urban development citywide; a Design Division to set standards and
7 guidelines for urban design citywide and to evaluate architectural, public realm, and site
8 design of proposed developments and policies; a Development Review Division to
9 evaluate proposed development projects to ensure coordination with zoning, land use
10 planning, and other relevant policies related to the built environment; and a Real Estate
11 Division to manage the planning process for acquisition and disposition of real estate in
12 coordination with the Public Facilities Commission and the BPDA Board, to oversee
13 public-private partnerships to create public value on public land, and to direct
14 construction, maintenance, coastal protection, leasing, and licensing of public assets with
15 municipal or non-municipal uses. The Operations line includes four divisions: 1) Human
16 Resources, 2) Finance, 3) Compliance, Technology and Record, and 4) Information
17 Technology.

18 Most of the Planning Department employees work at City Hall, on the 9th floor.
19 However, some work at various other locations, including Hawkins Street and 12 Channel
20 Street. The Planning Department employees generally work 35 hours a week, Monday
21 through Friday, although some employees may work nights or weekends at times. They
22 work a hybrid schedule, with some days spent working in the office and some spent
23 working remotely. The work of the Planning Department employees is considered to be

1 inherently cross functional as they work on plans and development across the City which
2 requires interacting with other City employees, including those in the SENA Citywide Unit.
3 The Planning Department employees also interact with employees working in human
4 resources and payroll.

5 The Planning Department employees, like other City employees, are paid on a
6 biweekly basis. The Planning Department has a different pay scale than the other
7 employees within the SENA Citywide Unit. The Planning Department employees' salaries
8 range between \$55,000 to \$164,000 per year. Planning Department employees receive
9 performance reviews, and unlike the SENA Citywide Unit employees, their merit pay
10 increases are based upon that performance review. Department heads, such as Shen,
11 are typically allotted a merit increase pool of 4% of the combined salaries within the
12 department, based on available funds. Employees with higher performance ratings can
13 receive merit increases above 4% while employees with lower performance ratings can
14 receive less.

15 During the transition from the BPDA to the City's Planning Department, the
16 employees were informed that their benefits and other terms and conditions of
17 employment would change as they would be under the same policies as other City
18 employees, with certain limited variations. The employees who transferred from BPDA to
19 the City's Planning Department participate in the same pension system as other
20 employees in the SENA Citywide Unit. The Planning Department employees are covered
21 by the same health insurance as the other City employees.⁸ They are subject to all the

⁸ BPDA provided employees with a Health Savings Account (HSA). The funds within the HSA remain with the employees who left the BPDA's employ, including those who were hired by the City. The City does not contribute to the HSA of the former BPDA employees.

1 same policies including those covering attendance, paid parental leave, workers
2 compensation, harassment-free workplace, and City technology.

3 The Planning Department employees earn the same number of vacation days as
4 other City employees. Like other City employees, the Planning Department employees
5 receive six personal days a year. However, two of the six personal days are taken from
6 the sick leave bank, while four of the personal days are not.

7 Like other City employees, Planning Department employees are required to be
8 City residents when hired. However, employees who were employed by the BPDA as of
9 June 30, 2024 who were hired by the Planning Department or by another City department,
10 with no break in service, were exempted from the residency ordinance if they had already
11 served 10 consecutive years with the BPDA or they served 10 consecutive years with the
12 BPDA combined with their service time with a City department after the date of the
13 transition to the City.⁹

14 Planning Department employees are eligible to receive professional development
15 funds of up to \$6,000, with some money allotted to professional fees and dues and other
16 money allotted for seminars and/or tuition.

17 Assistant Director of Communications

18 Brittany Comak (Comak) currently holds the Assistant Director of Communications
19 position. The qualifications for this position include a minimum of three to four years

⁹ This residency requirement was included in the ordinance establishing the Planning Department. The ordinance further provides that this exemption “shall remain in effect during the entirety of the Former BPDA Personnel’s service with the City unless and until the Former BPDA Personnel’s employment with the City ends, or unless and until the Former BPDA Personnel subsequently becomes covered by any labor or collective bargaining agreement. At the time of either of these events, the exemption set forth herein ceases to apply to that Former BPDA Personnel.”

1 working in communications. Comak reports to the Director of Communications, Lacey
2 Rose (Rose), an excluded position.

3 As the Assistant Director of Communications, Comak manages online
4 communications to generate positive content about the Planning Department's work and
5 initiatives. According to the job description, the Assistant Director of Communications
6 supports the Director of Communications "in responding to media inquiries, tracking
7 media coverage, and identifying opportunities for positive media coverage." The position's
8 duties include managing and generating content for the Planning Department's social
9 media outlets and website, as well as identifying new opportunities to improve how the
10 Planning Department communicates with the public through both social media and
11 traditional media. Comak schedules media interviews with the Planning Department staff,
12 works with them to draft "talking points," and otherwise prepares them for media
13 interviews and other events.

14 In addition to her responsibilities regarding external communications, Comak is
15 also responsible for messaging to employees. When BPDA was transitioning to the City's
16 Planning Department, Comak attended approximately 24 "pre-meetings" with Rose, the
17 Human Resource Director, and other senior staff, including Shen, Quirk, and Polhemus,
18 to discuss internal and external messaging. These meetings were generally held one
19 week or one day in advance of a general staff meeting. During the "pre-meetings", senior
20 staff provided Comak with advanced knowledge of changes that employees would
21 experience due to the transition, including changes to their benefits. Comak received
22 advance knowledge of what was to be announced to all employees in order to "stress
23 test...whatever policy they were going to announce" so that she could advise senior staff

1 members on the appropriate messaging to the employees.

2 Comak continued to attend meetings with senior leadership after the employees
3 transferred from BPDA to the Planning Department. Comak attends weekly strategic
4 communications meetings with Shen, Quirk, Polhemus, and others to discuss ongoing
5 work in case there are media inquiries. At times during these meetings, senior leadership
6 provides Comak with advance information of certain personnel changes, such as when
7 Division Head Aimee Chambers (Chambers) left her position. Comak was present for
8 subsequent discussions about whether to fill Chambers' position after her departure.

9 The previous Chief of Planning, Arthur Jamison, provided Comak with advance
10 notice when he was leaving his position. She also learned that Shen would be named as
11 the new Chief of Planning in advance of the official announcement. Comak was once
12 informed that a specific employee would be fired; she learned this information while filling
13 in for Rose, who was on parental leave.

14 At one point, Polhemus informed Comak about a Union petition and that there
15 would be a delay in the processing of that petition. Polhemus provided this information so
16 that they could discuss how to present the information to the staff so that the staff could
17 feel supported if they chose to unionize.

18 When Rose is out, Comak oversees the Digital Communications Specialist. During
19 Rose's leave, Comak began meeting regularly with the Mayor's office, including with the
20 Communications Director. Comak continued to attend these meetings after Rose returned
21 to her position.

22 Deputy Director – Community Engagement

1 Kristiana Lachiusa (Lachiusa) and Mark McGonagle (McGonagle)¹⁰ are the two
2 incumbents in the Deputy Director – Community Engagement position.¹¹ Qualifications
3 for the position include four plus years of direct relevant community outreach and
4 engagement experience. A bachelor's degree is preferred. Like Comak, they report
5 directly to Rose.

6 The two Deputy Directors focus on developing and executing positive community
7 outreach and engagement strategies to engage and educate Boston communities.
8 McGonagle leads the Community Leaders branch, which is responsible for fostering
9 political connections and relationships with community members. Lachiusa leads the
10 Community Builders branch which focuses on increasing accessibility and dialogue and
11 developing relationships in historically underrepresented communities in Boston, such as
12 renters, small business owners, and non-English speakers. Both incumbents work to
13 develop new methods of engagement with the community. They, along with their team of
14 direct reports, build relationships through conversations, surveying, and other methods of
15 receiving feedback from the communities. Lachiusa designs social media strategies to
16 communicate about projects to further community engagement.

17 Although usually McGonagle oversees two direct reports, at the time of the hearing
18 one of those direct report positions was vacant. Lachiusa oversees four direct reports.
19 Lachiusa worked on the job description prior to the hiring of a recent direct report and
20 worked with Human Resources to post it. She put together a hiring committee to bring

¹⁰ Lachiusa testified at the hearing, but McGonagle did not.

¹¹ According to the provided position description, which was developed when the position was in the BPDA, the Deputy Director was to work with the Director of Community Engagement. However, the Director of Community Engagement position was never filled and two Deputy Directors were hired instead.

1 different perspectives as to who would be a good hire for the team. The hiring committee
2 drafted questions and developed a system to evaluate the candidates. After interviewing
3 the candidates, Lachiusa provided her recommendations to Rose. The City's HR
4 Department made the job offer so that it could provide information to the applicant that
5 the Deputy Directors would not be equipped to answer.

6 Lachiusa attends weekly one-on-one meetings with Rose to discuss ongoing
7 projects and the work performance of Lachiusa's direct reports. Together, Lachiusa and
8 McGonagle also meet weekly with Rose to discuss ongoing projects and initiatives. On
9 occasion, they discuss personnel "challenges" and how to coach and support staff. When
10 performance issues arise among Lachiusa's or McGonagle's direct reports, they consult
11 with Rose to discuss appropriate discipline. One of Lachiusa's direct reports had
12 performance issues and was recently put on a performance development plan. Lachiusa
13 worked with both Rose and the Director of Human Resources to receive guidance for this
14 process. Rose, McGonagle, and Lachiusa also discussed issues pertaining to one of
15 McGonagle's direct reports. McGonagle participated in discussions with Polhemus
16 regarding the issues with this employee, who was ultimately terminated. Lachiusa had
17 advanced knowledge of that termination.

18 Lachiusa is leading the update of the Article 80 development review process as it
19 pertains to community engagement. In this regard, she discusses how to improve internal
20 operations to work together in a more coordinated way, and how to update zoning codes
21 to clarify the rules and update the practices around engagement. The effort as a whole
22 required approval from the Chief of Planning before it was brought to the BPDA Board for
23 final approval.

1 Lachiusa is also involved in launching a Planning Academy to create educational
2 content to help the community understand the work of the Planning Department. Lachiusa
3 assigns some of her direct reports to participate in this project as well. Lachiusa helped
4 to put together an RFP to bring on a consultant team to decide what should be included
5 in this education curriculum. The Planning Academy initiative as a whole required
6 approval of higher-level positions, including the Deputy Chief of Urban Design, Diana
7 Fernandez Bibeau (Fernandez Bibeau).

8 Assistant Deputy Director of Design Review

9 Alexa Pinard (Pinard) holds the position of Assistant Deputy Director of Design
10 Review and reports to Deputy Director of Design Review Seth Riseman (Riseman).
11 Riseman reports to Fernandez Bibeau, who reports to Quirk. The qualifications for this
12 position include a master's degree in architecture, urban design, urban planning,
13 landscape architecture or a closely related field and eight years of related professional
14 experience.

15 Riseman oversees a team of designers, planners, and engineers. His team is
16 responsible for the regulatory aspects of Article 80 and Zoning Board of Appeal cases
17 requesting zoning relief.

18 The position description for the Assistant Deputy Director of Design Review
19 position provides that, under the direction of Riseman, "the Assistant Deputy Director of
20 Design Review will manage and supervise the urban design staff participating in design
21 review of development projects of all scales." The position also assists Riseman and other
22 senior staff "in helping manage staff and activities and help coordinate with City design
23 review processes across City departments and agencies."

1 In this position, Pinard performs both small-scale and large-scale design reviews.¹²
2 She relies on her experience and expertise in applying zoning rules to determine whether
3 a project is appropriate based on design standards, including height, massing, and
4 setbacks from property lines. Pinard also assigns design reviewers to small scale design
5 projects for design review, and she answers their questions about the projects.

6 The Planning Department has a team working on an Article 80 modernization
7 action plan to update and streamline zoning processes and draft new zoning language.
8 Once completed, the plan must be approved by the Chief of Planning and then the BPDA
9 Board. Pinard is involved in these efforts, along with Riseman, the Assistant Deputy
10 Director of the Public Realm, and others. This group created a checklist for developers of
11 various triggers that factor into design review. Fernandez Bibeau asked Pinard to
12 summarize the design review work that the Division does. Pinard worked with senior
13 leaders, including Riseman, and provided a one-page summary.

14 Pinard is also working with the Deputy Director of Zoning on a design review article
15 that will define the design procedures for smaller scale projects. At some point, this will
16 be presented to the Chief of Planning for review and then submitted to the BPDA Board
17 and the City's Zoning Commission for approval.

18 Pinard attends biweekly meetings with Fernandez Bibeau, the two Deputy
19 Directors, and the Assistant Deputy Directors of Public Realm, during which Fernandez
20 Bibeau discusses strategic priorities for staff as well as staffing on particular projects.
21 Pinard also attends weekly meetings with Riseman, and the Assistant Deputy Director of

¹² From July 2024 through January 2025, Pinard filled in as Interim Executive Director for the Landmarks Commission. However, by the time of the hearing, she was back working as the Assistant Deputy Director of Design Review.

1 Public Realm, Jill Zick. They discuss project-specific issues during these meetings. They
2 have also discussed job openings, but other personnel matters are not usually addressed.
3 At one point, years ago, there were some conversations about staff members and
4 whether they needed to be put on performance improvement plans. Pinard was not
5 certain what actions were ultimately taken.

6 Pinard mentors more junior employees. Although she currently does not directly
7 supervise any employee, according to her job description, the incumbent in this position
8 provides supervisory support to the urban design team conducting design reviews and
9 manages and directs the work of assigned staff. When Fernandez Bibeau is considering
10 merit increases for those employees, she solicits Pinard's feedback regarding their
11 performance.

12 Assistant Deputy Director of Public Realm

13 Jill Zick currently holds the position of Assistant Deputy Director of Public Realm.¹³
14 Like Pinard, Zick also reports to Riseman. The position requires a master's degree in
15 landscape architecture, or urban design, or a closely related field, plus 15 years of related
16 professional experience.

17 According to the job description, under the direction of Riseman, the Assistant
18 Deputy Director of Public Realm position manages and supervises the urban design staff
19 in the public realm portion of design review. The position also assists Riseman and other

¹³ At the time of the hearing, Zick was temporarily working as Senior Landscape Architect in the City's Parks Department, which is a SENA Bargaining Unit position. However, she still spends approximately 25% of her time fulfilling her responsibilities as the Assistant Deputy Director of Public Realm.

1 senior staff “in helping manage staff and activities and help coordinate with City design
2 review processes across City Departments and agencies.”

3 Using her expertise, Zick conducts design reviews for projects of all scales. She is
4 the lead design reviewer for open space and public realm portion of projects. She
5 evaluates the way the proposed project interacts with the public realm, for instance
6 considering how the proposed project would fit within the existing neighborhood. She
7 advocates for the maximum open green space. Zick helps the proponents of plans
8 understand the City’s planning priorities, for instance addressing how to ensure
9 accessibility such as widening sidewalks and adding bike lanes or discussing climate
10 resiliency and the use of tree canopies. She consults with other departments within the
11 City. For instance, she would consult with the Parks Department when addressing tree
12 canopy, and with the Disability Commission when addressing accessibility. In consultation
13 with the employees in other City Departments, she offers recommendations to the plan’s
14 proponent, including how to ensure that the site is universally accessible, and how to
15 mitigate the loss of trees on-site.

16 Zick and other colleagues provide feedback on various matters including proposed
17 changes to the Article 80 modernization effort. Zick attends regular meetings with the
18 Fernandez Bibeau, the Deputy Directors on the Urban Design team, and Pinard, during
19 which ongoing projects and other priorities are discussed, including Article 80
20 modernization work. Although they discuss job openings, personnel matters are not
21 usually addressed. On one occasion, a few years ago, there were some conversations
22 about whether certain staff members should be put on performance improvement plans,
23 but Zick was not aware that any such action was instituted.

1 Although Zick formerly supervised one employee, she does not currently supervise
2 any City employees. However, according to her job description, the incumbent provides
3 supervisory support to urban design staff conducting design reviews, and she manages
4 and directs the work of assigned staff to supervise specific projects, workload, and the
5 review process.

6 Counsel

7 When this matter commenced, the Planning Department employed five real estate
8 attorneys in the role of Counsel: Alec Bonelli, Matthew Donovan (Donovan), Jonathan
9 Spillane (Spillane), Lyanne Perez, and Camden Fuller. The Counsels report to Deputy
10 Counsel Mallory Toomey Shea and General Counsel Lisa Herrington (Herrington).
11 Herrington reports to the Chief of Planning. The Counsel position requires a J.D. and
12 admission to the Massachusetts Bar with approximately three years of relevant legal
13 experience.

14 Counsels perform real estate development-related work, including drafting
15 corporation agreements, community benefit agreements, documents related to affordable
16 housing restrictions, and certificates of compliance. Counsels also perform legal work for
17 the procurement team, including drafting RFPs and RFQs. At times, Counsels address
18 issues related to Article 80 zoning regulations. Counsels' responsibilities include drafting
19 agreements between the City and BPDA, agreements for operations between City
20 departments, and grant agreements with community groups. Much of the litigation is
21 conducted by outside firms, although some of the incumbents in this position litigate
22 certain real estate and enforcement matters.

1 Herrington assigns work based on the Counsels' capacity, prior experience, and
2 their interests. Some Counsels have more experience with certain issues. For instance,
3 Donovan handles much of the licensing agreement work. However, any Counsel can be
4 assigned to any matter. Counsels can also volunteer for certain assignments.

5 Herrington conducts weekly staff meetings during which they discuss ongoing
6 matters. Although personnel matters may have been discussed at times, Donovan and
7 Spillane could not recall any specific examples.¹⁴

8 Herrington served on the team handling the transition from the BPDA to the City's
9 Planning Department. She assisted in drafting the City ordinance that created the City's
10 Planning Department. She worked with outside counsel to draft agreements for staffing
11 and financing between the BPDA and City. Herrington may have talked about the
12 transition conceptually with her staff, but the Counsels learned about the transition of staff
13 to the Planning Department at the same time as the other employees.

14 Herrington does not handle labor relations issues and is not involved with collective
15 bargaining. Herrington has, on occasion, assisted with personnel matters. However, none
16 of the Counsels are involved with that work. Counsels are not involved in Planning
17 Department employment-related claims.

18 The City is working to develop affordable housing through its Commercial to
19 Residential Conversion Policy Initiative, which provides tax incentives for property owners
20 and developers to convert vacant office space into residential units. Herrington assigned
21 Donovan to this initiative, and he has worked extensively on it. Herrington worked with
22 Donovan to shape parts of the policy, i.e., how to structure pilot agreements and

¹⁴ Two of the Counsel testified at the hearing, Donovan and Spillane.

1 requirements for entry into the program. Donovan helped draft the initiative along with a
2 Senior Policy Advisor and a Program Manager. After receiving feedback from developers,
3 Donovan and a Program Manager advocated to change the program by reducing certain
4 fees and changing the duration period. Herrington approved their Board memo before it
5 went to the BPDA Board for a vote.

6 The team on this initiative believed that it would be helpful to have projects go
7 through the Article 80 review process more quickly. Donovan made recommendations for
8 how to waive the Impact Advisory Group requirement to speed up the process under
9 certain circumstances. The Mayor needed to approve this modification so Donovan, along
10 with others, drafted an Executive Order. The City's Corporation Counsel made minor
11 revisions before he forwarded the Executive Order to the Mayor for final approval and
12 promulgation.

13 Counsels do not have any direct reports.

14 Title Counsel

15 The Planning Department employs one Title Counsel, Maggie Pitts-Dilley (Pitts-
16 Dilley), who reports directly to Herrington. The position requires a J.D. and admission to
17 the Massachusetts Bar with approximately three years of relevant legal experience.

18 Pitts-Dilley performs some of the same work the other Counsels perform, but she
19 focuses on title issues related to real estate holdings. She conducts real estate closings
20 and provides legal counsel on title and land use issues. Pitts-Dilley also undertakes other
21 legal matters and assists with some civil litigation. Like other Counsels, she performs
22 Article 80 work as well as procurement and housing compliance work.

1 Pitts-Dilley is the main contact for outside counsel who handle housing compliance
2 cases if they have questions. She reviews their filings to ensure accuracy before signing
3 off on them. At times, she consults with Herrington or the Compliance Manager at the
4 Mayor's Office of Housing to discuss next steps.

5 Pitts-Dilley attends the weekly legal division meetings where she receives her
6 assignments. She does not recall receiving any advance information about any personnel
7 decision. She recalled Herrington discussing a memorandum of agreement (MOA) about
8 the transition from BPDA to the City of Boston but learned about benefits and other related
9 information about the transition from the website for employees that HR updated.

10 When the Deputy Counsel went out on maternity leave, Pitts-Dilley assumed some
11 of her work projects. Pitts-Dilley has no direct reports.

12 Deputy Controller

13 The incumbent in the Deputy Controller for the Finance Division position in the
14 Planning Department is Aminata Scott (Scott). The position requires a bachelor's degree
15 in accounting, business administration or a related field, 10 years of relevant experience,
16 and five years of supervisory experience. Scott reports to Controller Linda Qian, who
17 reports to the Director of Finance. The Director of Finance normally reports to Polhemus.
18 At the time of the hearing, the Director of Finance position was vacant and Polhemus was
19 covering the position.

20 The Deputy Controller position oversees accounting operations, such as accounts
21 payable/receivables, payroll, fixed assets, and revenue operations. Scott oversees the
22 work of the accounting staff, conducts monthly reconciliations, and is involved in the audit
23 work of the various entities that make up the BPDA.

1 In early 2025, Scott began to serve as the Treasurer of the Boston Local
2 Development Corporation (BLDC) after the death of the Senior Small Business Manager.
3 The BLDC's Board of Directors approves the BLDC budget and votes to approve or reject
4 loans. Scott also assumed many of the duties of the Assistant Controller when that
5 position became vacant in January 2025.

6 Rather than having Scott perform all the duties set forth in the job description for
7 the Deputy Controller position,¹⁵ Polhemus has reduced Scott's responsibilities so that
8 she is focused on two main areas, supporting BLDC and submitting state reimbursements
9 for the MassWorks and Housing Works programs.

10 Scott attends biweekly finance meetings run by the Polhemus, in Polhemus'
11 position as interim Director of Finance, along with the Senior Budget Manager, Accounts
12 Payable Manager, Procurement Manager, Head Controller, and others. If any of the
13 participants need assistance with any work-related matter, they can bring it up during
14 these meetings. Personnel matters are not generally discussed although in one meeting,
15 Polhemus mentioned her intent to post the Deputy of Finance and Deputy Director of
16 Finance positions.

¹⁵ Scott was hired by the BPDA in mid-2022. According to the BPDA job description, the Deputy Controller, with oversight from the Controller and Director of Finance, co-directs and manages the administration and standards of all accounting operations. The job description also provides that the position oversees and coordinates the establishment and administration of all accounting and management reporting, internal fiscal operations, systems, and controls. Her job description includes the following duties and responsibilities: evaluate performance, determine personnel actions, and motivate employees...; establish and implement short- and long-range organizational goals, objectives, strategic plans, policies, and operating procedures; monitor and evaluate programmatic and operational effectiveness, and effect changes required for improvement; participate in institutional planning, policy development, and problem resolution, as required; and plan, develop, and implement strategies for generating resources and/or revenues for the organization.

1 Scott currently has three direct reports, Senior Accountant Yvonne Zhoa (Zhoa)
2 and, temporarily, she is also overseeing two other BLDC employees. Scott was involved
3 in Zhoa's hiring. She conducted the initial phone interview, and she and the former
4 Director of Finance together agreed to offer Zhoa the position. With the approval of the
5 former Director of Finance and the Controller, she negotiated with Human Resources
6 about the appropriate salary for this candidate. Scott conducts Zhoa's performance
7 reviews.

8 Deputy Director for Capital Construction

9 William Epperson (Epperson) serves as the current Deputy Director for Capital
10 Construction. The position requires work towards a bachelor's degree in civil engineering
11 plus management experience and 10 years of related experience in the public sector.
12 Epperson reports to Rebecca Tomasovic (Tomasovic), the Director of Real Estate, an
13 excluded position and meets with her weekly. Tomasovic reports to Quirk.

14 In this role, Epperson is responsible for all capital improvements and repairs for
15 all property owned by the City which the Planning Department controls and manages,
16 as well as property owned by the BRA and the EDIC. According to the position
17 description, under the direction of senior leadership, the Deputy Director for Capital
18 Construction plans and manages all projects from pre-development through completion
19 of construction, manages the Capital Construction staff and "all contracted design,
20 engineering and construction professionals; ensure[s] adherence to all city, state and
21 federal requirements and laws in all construction activities." Other listed duties include
22 managing the development and preparation of all contracts, the development for RFPs,
23 and the Massachusetts General Law public bidding process for procurement of all

1 vendors. The incumbent is also responsible for approving invoices as well as evaluating
2 and approving the selection of all consultant architects, engineers, and designers. The
3 incumbent monitors and directs “construction activities for quality control, adherence to
4 contract and design specifications, budget considerations, and timeliness.” The
5 incumbent also ensures compliance with building codes, zoning ordinances, and
6 regulations. He administers the capital construction project budget, issues contract
7 amendments, and verifies that any changes are within budget, and he “evaluate[s] and
8 recommend[s] action on budgetary overruns.”

9 Epperson enters into contracts which can range from \$2 million to \$12 million.
10 All construction contracts are executed by the Director, but written approval
11 authorizations are delegated to Epperson, and he therefore has the power to bind the
12 Planning Department with their contractors. He is responsible for ensuring that budget
13 constraints are adhered to and he negotiates when changes are required. Epperson
14 does not always obtain BPDA Board approval before he binds a vendor to a contract.
15 For example, due to a public safety issue regarding masonry repair work for the China
16 Trade Building, Epperson signed the change order to allow the work to begin before
17 getting BPDA Board approval. The BPDA Board defers to his expertise and has not
18 vetoed any matters that Epperson has brought to them. Epperson imposes a 10 percent
19 contingency on projects and has, on one occasion, increased the contingency to 15
20 percent due to the nature of the work.¹⁶ He has also created a capital plan and managed
21 it with the assistance of his staff.

¹⁶ A contingency is a certain amount of money set aside to cover unknown costs and risks in a project.

1 As a public entity, the Real Estate division is required by statute to accept the
2 lowest vendor bid offered. Epperson, though, reviews the bids to ensure that they are
3 at a fair price. He has rejected a bid if he does not consider it to be reasonable or
4 competitive and sends projects out to bid again. He also reviews the organization
5 submitting the bid to ensure that it has the qualifications to perform the work that is out
6 for bid.

7 Epperson oversees 10 employees. He holds weekly staff meetings with his direct
8 reports, as well as one-on-one weekly meetings. He conducts performance reviews for
9 these employees, and those reviews form the basis for their merit pay increases. When
10 performance issues arise, he meets individually with the employee. Epperson plays a
11 role in hiring for his direct reports including reviewing their resumes. He has not had an
12 occasion to issue any discipline. If there is a performance related issue, he addresses
13 it with the employee to explain his expectations.

14 Recently Epperson created a new position, the Assistant Deputy Director of
15 Capitol Construction, and promoted the Program Manager of Capital Construction into
16 this newly created position. There is no evidence that he required approval from anyone
17 else to take these actions.

18 Epperson assumes some of the Director of Real Estate's duties while she is on
19 leave.

20 Assistant Deputy Director for Capital Construction

21 Starleshia "Star" Laws (Laws) was recently promoted into the new position of
22 Assistant Deputy Director for Capital Construction. Laws reports to Epperson. The

1 qualifications for the position include 10 years of experience in public administration,
2 preferably in construction, real estate, or community development.

3 The newly created job description states that, under the supervision of the Deputy
4 Director for Capital Construction, the Assistant Deputy Director is “responsible for
5 managing the operation and administration of the Capital Construction team within the
6 Real Estate Division of the Planning Department” and is expected to “provide
7 administrative oversight and management of the capital construction portfolio of projects,
8 supporting the in-house team of engineers, architects, and construction managers directly
9 responsible for the project management and technical control of projects.” The Assistant
10 Deputy Director for Capital Construction is also responsible for maintaining “systems and
11 dashboards to prioritize and track the status of active engineering, design, and
12 construction projects as well as pending projects in the capital plan.” This position is also
13 responsible for planning and overseeing the procurement process of all Capital
14 Construction projects.

15 Laws oversees the Program Managers and reviews the projects of other staff
16 before they seek approval from the BPDA Board to advertise a solicitation, to award a
17 contract, or to amend a contract due to its cost. Laws works with Epperson to draft and
18 revise Board memos. She also attends the BPDA Board meetings, but Epperson makes
19 presentations before the BPDA Board.

20 Laws works very closely with Epperson and performs some of his duties when he
21 is absent. For example, when he was absent in early 2025, Laws drafted and/or revised
22 documents related to the unit’s share of the City budget.

1 Laws attends weekly meetings with Tomasovic and the Deputy Directors during
2 which they discuss project status for the week and potential “red flags.” Personnel matters
3 are not regularly discussed but may arise. When Tomasovic was preparing to take
4 parental leave, they discussed who would assume which of her responsibilities. On
5 another occasion, they discussed a new hire in a different unit and how that could impact
6 seating.

7 Laws recommended holding weekly Senior Project Manager meetings, and
8 Epperson agreed with her recommendation. Laws conducts the meetings which
9 Epperson attends sometimes. During these meetings, Laws asks the Senior Project
10 Managers about the performance of Junior Project Managers. Laws is not involved in the
11 administration of merit increases, although she has discussed with Epperson who would
12 receive a higher merit increase. She also has had conversations with Epperson about
13 whether an employee within the division should be promoted. Although Laws has not
14 been involved in any formal disciplinary matters, she was given advanced notice that
15 Epperson decided not to discipline an underperforming employee.

16 Laws continues to hold her previous Capital Program Manager position as well.
17 Laws helped update the job description for that position, to make it clear and concise.
18 She has also reviewed resumes of applicants and discussed with Epperson who should
19 be interviewed for the position. At the time of the hearing, Epperson and Laws had
20 conducted the first round of interviews for the position, which will report directly to her.
21 This will be Law’s only direct report, as she currently does not have anyone reporting to
22 her.

23 Supervisor of Administrative Services

1 George "Paul" Caron (Caron) is the current Supervisor of Administrative Services.
2 The position requires a bachelor's degree in business administration or a related field
3 plus seven years of related experience and previous supervisory experience.

4 Caron manages, supervises, and coordinates the activities of the Administrative
5 Services Staff to "ensure the provision of timely and quality administrative services to all
6 the Agency locations." Canon oversees and directs office facilities management. He
7 builds relationships with procurement managers and owners of companies in order to
8 ensure timely and cost-effective delivery of products. For instance, after one supply
9 vendor, WB Mason, moved its office which caused a slowdown in the provision of
10 supplies, Caron met with the owner to ensure timely delivery of products.

11 Caron reports directly to the Polhemus. They meet on a weekly basis to discuss
12 tasks. One of Caron's responsibilities is to coordinate office moves. Polhemus informs
13 him when they are hiring so that he can make the necessary office arrangements. He
14 cleans out employees' offices after employees leave their employment with the Planning
15 Department. At least once, Polhemus informed Caron that she was going to separate an
16 employee from employment before the employee was informed so that Caron could clean
17 out the office.¹⁷ At times when Polhemus is sharing the information with Caron, she
18 explains that he may not share it with anyone else.

¹⁷ On direct examination, Caron testified that he knows of personnel decisions before they occur. However, on cross-examination, he testified that he does not actually know whether an employee has already been informed when he receives the request to move or clean out an office. Polhemus testified that normally when separating an employee, the employee's last day would be when the employee signs an agreement. There was at least one occasion, though, when they needed the employee to vacate quickly, and Caron was informed to assist with that departure.

1 Caron generally has had two direct reports. One recently retired and that position
2 has been posted. Caron meets with his direct report weekly to discuss assignments,
3 which could be anything from mail delivery to office moves to working with IT and
4 archives. Caron conducts performance reviews for his direct reports. He once addressed
5 concerns with an employee's absences and/or tardiness with Human Resources. That
6 employee subsequently retired.

7 Opinion¹⁸

8 We first consider whether any of the 10 disputed positions should be excluded from
9 the unit because they are managerial and/or confidential employees within the meaning
10 of Section 1 of the Law.

11 Managerial Employees

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

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

21
22 Employees are excluded from an appropriate bargaining unit as managerial only if the
23 employees' actual duties and responsibilities satisfy any one of the three criteria set out
24 above. Town of Bolton, 25 MLC 62, 66, MCR-4562 (September 10, 1998). Traditionally,
25 all statutory exclusions from collective bargaining are construed narrowly so as not to
26 deprive employees of the right to bargain collectively through representatives of their own

¹⁸ The CERB's jurisdiction is not contested.

1 choosing. Framingham Housing Authority, 42 MLC 340, 344, WMAM-16-5045 (June 28,
2 2016).

3 Here, the City does not argue and there is no evidence to support a finding that
4 any of the disputed positions assist to a substantial degree in the preparation for, or the
5 conduct of, collective bargaining on behalf of a public employer. Thus, when considering
6 whether any of the disputed positions are managerial, we review the duties and
7 responsibilities of the employees to determine whether they fall under the first or third part
8 of the managerial test.

9 To be considered a managerial employee under the first part of the test, the
10 employee must make policy decisions and determine mission objectives. City of Boston,
11 Boston Public Library, 37 MLC 1, 9, CAS-08-3727 (July 12, 2010) (citing Wellesley School
12 Committee, 1 MLC 1389, 1401, MUP-2009, CAS-2005 (April 25, 1975), aff'd sub nom.
13 School Committee of Wellesley v. Labor Relations Commission, 376 Mass. 112 (1978)).
14 The policy decisions must be of major importance to the mission and objectives of the
15 employer. Town of Wareham, 36 MLC 76, WMAM-08-1017 (October 28, 2009). Neither
16 limited participation in the decision-making process nor attendance at policy-making
17 discussions is sufficient to consider an employee managerial if the person's input is
18 merely informational or advisory in nature. Id. Rather, an employee must participate in
19 the policy decision-making process on a regular basis, with the authority to select and
20 implement a policy alternative, to satisfy this first criterion of a managerial employee.
21 Town of Plainville, 18 MLC 1001, 1009, MCR-4019 (June 12, 1991). The analysis focuses
22 on whether an employee possesses independent decision-making authority or whether
23 the employee's decisions are screened by another layer of administration. Worcester

1 School Committee, 3 MLC 1653, 1672, MUP-2044 (April 29, 1977).

2 In determining whether an employee satisfies the third criterion, we construe
3 independent judgment to require exercise of discretion without the need to consult with a
4 higher authority. Wellesley School Committee, 1 MLC at 1408. "There must be more than
5 the coincidence of a recommendation and acceptance by a higher authority." Id. Further,
6 "the judgment exercised must be substantial, in that perfunctory denials and routine
7 decisions are not considered 'substantial responsibility.'" Town of Agawam, 13 MLC 1364,
8 1369, MCR-3511 (December 24, 1986). Finally, the "appellate" authority in the
9 administration of a collective bargaining agreement or in personnel administration must
10 be exercised beyond the first step of a grievance-arbitration procedure. Wellesley School
11 Committee, 1 MLC at 1408.

12 Confidential Employees

13 Section 1 of the Law designates employees as confidential "only if they directly
14 assist and act in a confidential capacity to a person or persons otherwise excluded from
15 coverage under this chapter." The CERB has traditionally construed this statutory
16 language to exclude persons who have a direct and substantial relationship with an
17 excluded employee that creates a legitimate expectation of confidentiality in their routine
18 and recurrent dealings. Framingham Public Schools, 17 MLC 1233, 1236, CAS-2838
19 (September 4, 1990). Employees who have "significant access or exposure to confidential
20 information concerning labor relations matters, management's position on personnel
21 matters, or advance knowledge of the employer's collective bargaining proposals are
22 excluded as confidential." City of Everett, 27 MLC 147, 150, MCR-4824 (May 23, 2001).
23 We construe exceptions to the definition of employee narrowly to limit the number of

1 employees who can be excluded from collective bargaining while not unduly hampering
2 an employer's ability to manage the operation of the enterprise. Framingham Public
3 Schools, 17 MLC at 1236.

4 Assistant Director of Communications

5 The City maintains that the Assistant Director of Communications position is
6 exempt as a confidential employee because the position has a substantial relationship
7 with an excluded employee that creates a legitimate expectation of confidentiality in their
8 routine and recurrent dealings. Conversely, the Union argues that although Comak was
9 given advance notice of the termination of an employee on the Community Engagement
10 team one time, the access to this type of confidential information was neither routine nor
11 recurrent.

12 The evidence establishes that Comak meets frequently with Rose, and other
13 senior staff who are excluded from the bargaining unit. During these meetings, sensitive
14 and non-routine issues affecting Planning Department employees are discussed. During
15 the transition from the BPDA to the City's Planning Department, Comak attended
16 approximately 24 meetings with the senior staff. During these meetings, Comak was
17 given advance notice of policies and other matters that impact employees, such as
18 changes to the employees' benefits. Comak collaborated with the senior managers to
19 discuss how to "message" these changes to employees and advise the senior managers
20 on messaging prior to the staff meetings. At some point, Polhemus informed Comak about
21 a Union petition and that there would be a delay in processing that petition. Polhemus
22 provided this information so that they could discuss how to present the information to the
23 staff, so that the staff could feel supported if they chose to unionize. These instances

1 demonstrate that Comak had frequent and direct contact with senior leadership regarding
2 sensitive and non-routine personnel and employment issues affecting the employees of
3 the Planning Department and preparing how to communicate these sensitive issues to
4 staff. In this respect, Comak's duties are similar to those of the Executive
5 Communications/Speech Writer position that we determined was confidential within the
6 meaning of Section 1 of the Law in University of Massachusetts, 51 MLC 18, 22, CAS-
7 22-9297 (July 23, 2024). Accordingly, we exclude the Assistant Director of
8 Communications from the bargaining unit as a confidential employee.

9 Deputy Directors – Community Engagement

10 Managerial

11 The City asserts that the Deputy Directors – Community Engagement are
12 managerial employees because they develop policy with a City-wide impact, pointing
13 specifically to Lachiusa's responsibility to assess the needs of several underserved
14 communities and devise programs in response, including the Planning Academy. The
15 City further maintains that the incumbents in this position also exercise discretion in
16 personnel administration matters. In this regard, Lachiusa is involved in the hiring process
17 including drafting the job description for a position.

18 We do not find that the Deputy Director – Community Engagement position is a
19 managerial position. No evidence was introduced that either McGonagle or Lachiusa
20 have any appellate authority in grievance or personnel administration or that they
21 independently develop policy that impacts a significant part of the public enterprise.
22 Instead, the evidence in the record demonstrates that they made decisions within their
23 specific niche and have operational control over their respective areas of responsibility.

1 Masconomet Regional School District, 3 MLC 1034, 1040-1041, MCR-2010 (July 15,
2 1976) (employees who have operational control over their respective areas of
3 responsibility do not exercise the breadth and scope of decision-making authority
4 necessary to be managerial employees).

5 Lachiusa and McGonagle are, at best, supervisors. The evidence demonstrates
6 that Lachiusa played some role in drafting a job description and participated in the hiring
7 process of her direct reports. The evidence, though, does not demonstrate that she had
8 final authority to make these decisions. Rather, Lachiusa provided her recommendation
9 to Rose about who should be hired. The exercise of supervisory authority, without more,
10 does not make an individual “managerial” within the meaning of the Law. Worcester
11 School Committee, 3 MLC at 1672. See also Masconomet Regional School District, 3
12 MLC at 1040-1041.

13 Lachiusa’s efforts on behalf of the Planning Academy required approval from
14 multiple levels of higher authority. Moreover, Lachiusa was one of many involved in the
15 Department-wide Article 80 modernization. This project also required approval by higher
16 level authorities. Accordingly, the evidence does not demonstrate that the Deputy
17 Directors – Community Engagement had final authority on these policies. See Worcester
18 School Committee, 3 MLC at 1672. For the above reasons, we conclude that the Deputy
19 Director – Community Engagement position should not be excluded from the bargaining
20 unit as a managerial employee.

21 Confidential

22 The City also maintains that the Deputy Directors – Community Engagement are
23 confidential employees, pointing to their frequent meetings with the Director of

1 Communication, an exempt position. During these meetings, they discuss ongoing
2 projects. They also discuss the work performance of their direct reports, including
3 challenges and the need for coaching and counseling. In one case, they addressed the
4 termination of an employee who reported to McGonagle.

5 Neither Lachiusa nor McGonagle has significant access or regular exposure to
6 information concerning labor relations matters. As supervisors, they have information
7 about the discipline of their direct reports, and they make disciplinary recommendations.
8 Although on one occasion, Lachiusa had advanced knowledge that one of McGonagle's
9 direct reports would be terminated, that is not the kind of routine significant access to or
10 advance knowledge of management's personnel actions that would classify them as
11 confidential employees. See Commonwealth of Massachusetts, 6 MLC 1411, SUP-2164
12 (August 28, 1979) (plurality opinion) (exempting as confidential, certain employees with
13 advance knowledge of management's personnel actions where they were involved in
14 grievance administration, but not finding an employee exempt where he did not participate
15 in any formal grievance steps or collective bargaining and was merely consulted on
16 personnel and policy matters); Greater Lawrence Sanitary District, 34 MLC 87, 96, MCR-
17 06-5209 (March 4, 2008) (refusing to exclude as confidential two employees who "have
18 no role in assisting [a managerial employee] . . . outside of their supervisory
19 responsibilities").

20 Assistant Deputy Director of Design Review

21 The City asserts that the Assistant Deputy Director of Design Review position is
22 exempt as a managerial employee, arguing that Pinard is involved in policy work due to
23 her involvement with the Article 80 modernization initiative, and that she exercises

1 independent judgment and discretion by determining work assignments for the design
2 review staff.

3 We find that the evidence fails to demonstrate that Pinard participates to a
4 substantial degree in formulating policy, which includes not only regularly participating in
5 the policy decision-making process but also having the authority to select and implement
6 a policy alternative. Town of Plainville, 18 MLC at 1009. Pinard uses her expertise to
7 review designs and provides input within her area of expertise. Pinard helps coordinate
8 the City's design review processes across City departments. In City of Boston, 51 MLC
9 178, 189, CAS-23-10303 (April 11, 2025), we determined that although the Director of
10 Cultural Planning made policy recommendations to other City departments, and possibly
11 external stakeholders, regarding the use of public spaces, this was more akin to providing
12 input rather than driving the decision-making process and thus we did not find the position
13 was managerial. Similarly here, we find that Pinard merely provides input into design
14 review processes and does not have the type of responsibility that requires exclusion as
15 a managerial employee.

16 Pinard worked with more senior staff to develop a summary document. She also
17 provided some input for the Article 80 modernization initiative. However, merely
18 consulting in formulating policy or periodic discussions with higher administrators on
19 policy matters is not sufficient to make one a managerial employee. City of Quincy, 13
20 MLC 1436, 1440, CAS-2509 (June 29, 1987); Masconomet Regional School District, 3
21 MLC at 1040-1041; Wellesley School Committee, 1 MLC at 1403 (employees who serve
22 in the schools in an advisory and coordinating capacity with respect to their specialized
23 area do not make policy considerations that impact a significant part of the public

1 enterprise and are not managerial employees). The facts do not reflect that Pinard
2 participated meaningfully in the decision-making process. The evidence presented is
3 clear that the Chief of Planning had to approve the Article 80 modernization initiative
4 before it was brought to the BPDA Board for final approval, and that Pinard did not have
5 authority to bring matters to the BPDA Board without higher level approval.

6 Pinard also attends frequent meetings with senior staff, however there is
7 insufficient evidence to demonstrate that she formulates policies that impact a significant
8 part of the public enterprise during these meetings.

9 The City also points to the fact that Pinard exercises independent judgment in
10 determining work assignments for the design review staff and provides input into
11 employees' performance assessments. Limited supervisory involvement in personnel
12 decisions is not sufficient to find an employee must be excluded from a bargaining unit
13 as managerial. Here, no evidence has been presented that as part of her regular duties
14 Pinard participates in or makes final decisions regarding hiring or imposing discipline. For
15 all these reasons, the duties of this position fail to satisfy any of the criteria for a
16 managerial employee under Section 1 of the Law.

17 Assistant Deputy Director of Public Realm

18 The City also maintains that the position of Assistant Deputy Director of Public
19 Realm is exempt as managerial, citing her attendance at senior leadership meetings, her
20 work as a liaison across the department, as well as her day-to-day design decisions to
21 effectuate the City's policies.

22 The record does not reflect any specific policies drafted by the leadership in the
23 meetings that Zick attends. Mere attendance at senior leadership meetings does not

1 demonstrate that an employee participates to a substantial degree in formulating or
2 determining policy.

3 The City notes that Zick has a wealth of knowledge in her field along with extensive
4 experience. However, being an expert in her field does not make her a managerial
5 employee. Although the City argues that Zick makes design decisions that effectuate the
6 City's policies to expand green space throughout the City, this demonstrates that Zick
7 works to advance the City's planning priorities, rather than determining the policies. Due
8 to her expertise, Zick's opinions were sought regarding the Article 80 modernization
9 initiative. But merely consulting on the formulation of policy is insufficient to make her a
10 managerial employee, especially where, like here, the initiative required approval from
11 higher levels of authority including the Chief of the Planning Department and the BPDA
12 Board.

13 Although at one point the City asserted that Zick should be excluded from the
14 bargaining unit as managerial and/or confidential, in its brief the City does not argue that
15 Zick is a confidential employee. We do not find that the evidence provided demonstrates
16 that Zick should be excluded from the bargaining unit as a confidential employee.

17 Counsels and Title Counsel

18
19 Managerial

20 The City argues that the Counsels are managerial employees, citing their work on
21 the Article 80 modernization initiative as well as one of the Counsels' work on the
22 Commercial to Residential Conversion Policy.

23 Very limited information was provided about the Counsels' input into the Article 80
24 modernization initiative. Moreover, as noted previously, the Article 80 modernization

1 initiative required approval by higher level authorities. Their involvement in that initiative
2 is insufficient to determine that Counsels are managerial employees.

3 More evidence was presented regarding Donovan's involvement with the
4 Commercial to Residential Conversion initiative. Donovan worked closely with Herrington
5 and others on the project. He drafted related documents and, after receiving feedback
6 from developers, Donovan and a Program Manager advocated for certain changes.
7 Herrington approved the draft initiative before it went to the BPDA Board for final approval.
8 Donovan also drafted a related Executive Order to be issued by the Mayor. The
9 Corporation Counsel reviewed the draft before the Executive Order was sent for the
10 Mayor's review and approval. Because these matters were screened by another layer of
11 administration before being implemented, the evidence fails to demonstrate that Donovan
12 or any of the Counsel have independent decision-making authority regarding the creation
13 of policy. For these reasons, the evidence is insufficient to find that the Counsel positions
14 are managerial employees.

15 The same hold true for the Title Counsel position. The fact that the Title Counsel
16 manages outside counsel and is involved in devising legal strategy is insufficient to find
17 that she is a managerial employee.

18 Confidential

19 The City maintains that the Counsel and Title Counsel positions are confidential
20 because the General Counsel discusses personnel matters with them in weekly meetings
21 and provided certain information during the transition from BPDA. However, none of the
22 Counsels or the Title Counsel recalled any specifics of any confidential information that
23 Herrington shared. None of the Counsels handle employment claims against the Planning

1 Department. Based on the evidence presented, we cannot find that the Counsels or Title
2 Counsel have significant access or regular exposure to information concerning labor
3 relations matters or any material that would require their exclusion from the bargaining
4 unit as confidential employees.

5 Deputy Controller

6 The City maintains that the Deputy Controller position is exempt as managerial,
7 relying on the job description. The testimony at the hearing, though, demonstrates that
8 Scott's actual responsibilities have been limited, and that she does not actually perform
9 many of the duties listed in the job description. No evidence was presented that Scott, in
10 her role as Deputy Controller, formulates or determines any specific policy. Some
11 evidence was presented that Scott was involved in the decision to hire a Senior
12 Accountant as her direct report. She sought permission to seek a higher salary for this
13 direct report. She and the Director of Finance consulted and agreed on who to hire.
14 Although Scott has some involvement, the evidence does not demonstrate that she has
15 the final say on personnel decisions such as hiring and changes to salary. Based on the
16 actual duties that Scott has performed, we find that the Deputy Controller is not a
17 managerial employee.¹⁹

18 Although at one point the City asserted that Scott should be excluded from the
19 bargaining unit as managerial and/or confidential, in its brief the City does not argue that
20 Scott is a confidential employee. We do not find that the evidence provided demonstrates

¹⁹ Our decision is based on the current duties that the incumbent performs. See Lower Pioneer Valley Educational Collaborative, 50 MLC 173, 176, WMAM-23-10111 (April 17, 2024) (a decision of whether to exclude a position from the bargaining unit is based on duties presently being performed). If there is a material change to the duties performed by the incumbent in this position, the City is free to file a clarification petition seeking to exclude the position from the unit.

1 that the Deputy Controller should be excluded from the bargaining unit as a confidential
2 employee.

3 Deputy Director for Capital Construction

4 The City maintains that the position of Deputy Director of Capital Construction is
5 exempt as a managerial position because Epperson created the Assistant Deputy
6 Director of Capital Construction position and promoted an employee to that position,
7 manages a staff of 10 employees, and conducts the performance reviews which
8 determine their merit pay. Although the City did not argue that Epperson participates to a
9 substantial degree in formulating or determining policy, the City notes Epperson's use of
10 independent judgement to manage the capital construction projects in the City. The
11 Union, conversely, asserts that the City failed to demonstrate that Epperson has
12 formulated any policies and argues that his authority to bind the City to capital
13 construction contracts, with Board oversight, does not confer managerial status.

14 The evidence demonstrates that Epperson has managed large construction
15 projects independently, including independently managing his staff. While Epperson's
16 ability to bind the City to capital construction contracts is usually approved by the BPDA
17 Board before implementation, the Board defers to his expertise and has never vetoed his
18 decisions. Importantly, on at least one occasion, he only sought BPDA Board approval
19 after binding the City to the contract where he independently determined that there was
20 a public safety issue and signed the change order. He has the authority to provide all
21 written approval authorizations for negotiating and changing the scope of an order.

22 Epperson had also rejected bids that he did not consider to be reasonable or
23 competitive and sent projects out to bid again. Although the City did not phrase it exactly

1 so, the evidence demonstrates that Epperson decided as a matter of policy to impose a
2 10 percent contingency on projects, and diverged on one project to increase it to 15
3 percent because of the nature of the work. Epperson also created a capital plan which he
4 manages. Further, he created a new position of Assistant Deputy Director of Capital
5 Construction to support the City's needs in his department. There was no testimony
6 elicited that a higher level of authority had to approve these decisions.

7 These decisions and duties are routine and regular to the position and have a
8 significant impact on the City's mission. They demonstrate that the Deputy Director of
9 Capital Construction participates to a substantial degree in formulating or determining
10 policy. See Taunton Municipal Light Plant, 30 MLC 16, 20-21, MCR-03-5022 (August 21,
11 2003) (holding that energy supply and planning manager and manager of special services
12 were managerial employees; they had a substantial role in determining the Employer's
13 energy supply policy where they developed strategic plans and executed them, and the
14 latter position had the authority to legally bind the employer). As such, we find that the
15 Deputy Director of Capital Construction is a managerial employee under the first prong of
16 the managerial test and is therefore excluded from the bargaining unit.

17 Assistant Deputy Director for Capital Construction

18 Managerial

19 The City maintains that the Assistant Deputy Director for Capital Construction
20 position is managerial because the incumbent is involved in the hiring process for the
21 Program Manager position, and she substitutes for the Deputy Director when he is not
22 available.

1 We disagree. The evidence demonstrates that Laws helped update the job
2 description for her previous position as Capital Program Manager to make it clear and
3 concise. She reviews applicants and attends interviews along with Epperson. Mere
4 involvement in the hiring process, without a demonstration that Laws has final authority
5 in the hiring process, is insufficient to demonstrate that she is a managerial employee.
6 Similarly, the fact that she covers for the Deputy Director for Capital Construction when
7 he is not available, without any evidence that she makes policy or engages in any other
8 activity that would satisfy any of the three criteria for a managerial employee, is insufficient
9 to exclude the position from the bargaining unit.

10 Confidential.

11 The City maintains that the position is confidential because the Deputy Director of
12 Capital Construction shares personnel matters with Laws, including promotional
13 opportunities, potential discipline, and the administration of merit increases to employees.

14 The evidence demonstrates that Laws is not involved in the administration of merit
15 increases, although she and Epperson discuss who should receive a higher merit
16 increase and whether a specific employee should be promoted. Similarly, Laws is not
17 involved with formal disciplinary matters, although she did learn in advance about
18 Epperson's decision not to discipline an underperforming employee. Although Laws
19 discussed these matters with Epperson and may have even provided a recommendation,
20 that is not the kind of significant access to or advance knowledge of management's
21 personnel actions that would classify Laws as a confidential employee. See
22 Commonwealth of Massachusetts, 6 MLC at 1415-17 (exempting certain employees as
23 confidential employees with advance knowledge of management's personnel actions

1 where they were involved in grievance administration, but not finding an employee
2 exempt where he did not participate in any formal grievance steps or collective bargaining
3 and was merely consulted on personnel and policy matters). We find that Laws is not a
4 confidential employee.

5 Supervisor of Administrative Services

6 Managerial

7 The City asserts that Caron should be excluded as a managerial employee. The
8 City points to Caron's decision to build a personal relationship with vendors, such as WB
9 Mason, to ensure the timely provision of services and supplies. The City also notes that
10 the incumbent has discretion to make personnel decisions about his direct reports. Caron
11 conducts performance evaluations and was involved in discussions regarding one
12 employee's absence and/or tardiness.

13 We find that the Supervisor of Administrative Services is not a managerial position.
14 There is no evidence that Caron is involved in any policy creation. His decision to build
15 personal relationships with vendors is not the type of policy decision that impacts a
16 significant part of the public enterprise. Not every decision concerning a plan or procedure
17 is a "policy decision." The decision must impact a significant part of the public enterprise.
18 Masconomet Regional School District, 3 MLC at 1040.

19 Caron is a supervisor who performs performance evaluations. He was involved
20 once in discussions with higher level authorities about his concerns regarding one of his
21 direct reports. The evidence, though, does not demonstrate that Caron has independent
22 authority to hire, discipline, or fire employees. The exercise of supervisory authority over
23 direct reports, without more, does not make an individual "managerial" within the meaning

1 of the Law. Accordingly, we decline to find that the Supervisor of Administrative Services
2 is a managerial position.

3 Confidential

4 The City also maintains that the position is confidential due to Caron's direct and
5 substantial relationship with Polhemus, and the fact that Caron has had advance
6 confidential knowledge about a terminated employee and knows when new employees
7 are hired.

8 The elicited testimony revealed only one occasion where Caron was informed that
9 a specific employee would be terminated before the employee was aware of the decision.
10 Caron has also been told when other employees are hired or fired so that he could
11 prepare the offices. However, the evidence did not clearly establish that he was privy to
12 this information prior to the impacted employees. We have previously determined that
13 although the Director of Administration and Finance was made aware of hiring decisions
14 and separations from employment in order to perform the duties of his position, he was
15 not a confidential employee because he did not have advanced knowledge of
16 management's position on personnel matters. See City of Boston, 51 MLC at 188. With
17 one specific exception, when Caron had advanced knowledge of a termination, the
18 evidence as a whole fails to establish that Caron has routine or recurrent significant
19 access to confidential information. See Springfield Housing Authority, 36 MLC 61, 64,
20 WMAM-08-1030 (October 15, 2009) (employees will not lose collective bargaining rights
21 due to access to confidential information, where the evidence demonstrates that their
22 exposure to that information is only potential or occasional, rather than routine). For these

1 reasons, we also decline to find that the Supervisor of Administrative Services is a
2 confidential position.

3 Appropriateness of Unit

4 Having determined that eight of the 10 challenged positions are not managerial or
5 confidential employees and are thus appropriately included in a bargaining unit, we turn
6 to whether the eligible Planning Department employees should be added to the existing
7 SENA Citywide Unit or represented in a separate unit.

8 Section 3 of the Law requires the CERB to determine appropriate bargaining units
9 that provide for stable and continuing labor relations. In determining whether a bargaining
10 unit is appropriate, the CERB considers three factors: 1) community of interest; 2)
11 efficiency of operation and effective dealings; and 3) safeguarding the rights to effective
12 representation. City of Everett, 27 MLC at 150-151. In considering whether a petitioned-
13 for bargaining unit is an appropriate bargaining unit, we will not reject the proposed
14 bargaining unit because it is not the only appropriate unit, or because there is an
15 alternative unit that is more appropriate. Town of Falmouth, 27 MLC 27, 30, CAS-3319,
16 MCR-4696 (September 18, 2000).

17 Community of Interest

18 To determine whether employees share a community of interest, the CERB
19 examines factors like similarity of skills and functions, similarity of pay and working
20 conditions, common supervision, work contact, and similarity of training and experience.
21 See Princeton Light Department, 28 MLC 46, 48, MCR-4803 (June 29, 2001) (citing
22 Boston School Committee, 12 MLC 1175, 1196, CAS-2598 (August 30, 1985)). No single
23 factor is outcome determinative. City of Springfield, 24 MLC 50, 54, MCR-4602 (January

1 15, 1998) (citing City of Worcester, 5 MLC 1108, 1111, MCR-2632, 2633, 2685-2688
2 (June 30, 1978)). The Law requires that employees share only a community of interest
3 rather than an identity of interest. City of Springfield, 24 MLC at 54. Minimal differences
4 do not mandate separate bargaining units where employees perform similar job duties
5 under similar working conditions and share common interests amenable to the collective
6 bargaining process. Id.

7 The City argues that the Planning Department employees should be represented
8 in a separate bargaining unit because they do not share a sufficient community of interest
9 with the employees in the SENA Citywide Unit. It notes that the Planning Department
10 employees are a largely professional group with a unique pay scale. The City also points
11 to certain other differences in some benefits, as well as the fact that the Planning
12 Department employees receive merit pay. Additionally, the City notes the differences
13 between the mission, function, organizational and reporting structure, and origins of the
14 Planning Department as compared to the other departments included within the SENA
15 Citywide units.

16 We disagree and find that the Planning Department employees do share a
17 community of interest with the employees in the SENA Citywide Unit. The Planning
18 Department employees interact with employees in the SENA Citywide unit. They are often
19 co-located in the same buildings, including City Hall as well as other locations. The
20 Planning Department employees share many of the same benefits as the employees
21 within the SENA Citywide unit, including the same vacation allotment, the same health
22 benefits and the same pension system. Both the Planning Department employees and
23 the employees within the SENA Citywide Unit are paid biweekly, require Boston residency

1 at hire, and must comply with the same City policies. Some Planning Department
2 employees, like some SENA Citywide Unit members, supervise other staff and have
3 similar educational and experiential requirements. Employees in the Planning
4 Department share similar job functions with employees in the existing unit. For instance,
5 both groups include employees who perform community outreach as part of their duties,
6 as well as people who perform budget work, grant management, and procurement work.

7 The City is correct that there are differences as well. Although the salary range for
8 the Planning Department is similar to the pay range for the employees in the SENA
9 Citywide Unit, the unit employees receive automatic annual step increases on their
10 employment anniversary date, while the Planning Department employees' pay increases
11 are determined by their performance reviews. There are some other small differences in
12 benefits, such as whether all or some of their personal leave days reduce the balance in
13 their sick bank, and the amount of money available for professional development. The
14 residency requirements for Planning Department employees include their time with the
15 BPDA. Notwithstanding these differences, the Law only requires that employees share a
16 community of interest. There is no requirement that they share identical working
17 conditions, pay, or benefits. County of Dukes County/Martha's Vineyard Airport
18 Commission, 25 MLC 153, 155, MCR-4700 (April 16, 1999) (holding that employees need
19 only share a community of interest, rather than an identity of interest). Some differences
20 in working conditions do not mandate separate bargaining units where, as here,
21 employees perform similar job duties and share common interests amenable to the
22 collective bargaining process. University of Massachusetts, 41 MLC 233, 241-242, SCR-
23 14-3687 (February 20, 2015). For the same reasons, we reject the City's argument that

1 there is no community of interest because the Planning Department is a separate
2 department with a number of subdivisions that have a different reporting structure and
3 mission than other City departments. However, the SENA Citywide Unit is composed of
4 many different departments that likely have unique missions and organizational
5 structures. These differences do not require finding that there is no community of interest.

6 Based on the evidence presented, we find that the Planning Department
7 employees share a community of interest with other employees in the SENA Citywide
8 unit.

9 Separate Unit

10 To satisfy the second and third criteria for determining appropriate bargaining units
11 under Section 3, we consider the impact of the proposed bargaining unit structure upon
12 a public employer's ability to effectively and efficiently deliver public services while
13 safeguarding the rights of employees to effective representation. Peabody School
14 Committee, 27 MLC 7, 8, MCR-4757 (August 14, 2000). The CERB satisfies these
15 obligations by placing employees with common interests in the same bargaining unit. Id.
16 This avoids the proliferation of units that places an unnecessary burden on the employer.
17 Town of Bolton, 25 MLC at 66.

18 Although the City argues that a stand-alone bargaining unit of the Planning
19 Department employees would not impair the efficiency of the City's operations, we have
20 also recognized the importance of maximizing the collective strength of employees in the
21 bargaining relationship. Franklin County Sheriff's Department, 38 MLC 317, 323, SCR-
22 12-1511 (June 6, 2012). This preference for broad comprehensive units is balanced by
23 concern that a unit should not include employees whose working conditions are so

1 diverse as to produce inevitable conflicts in the collective bargaining process. University
2 of Massachusetts, 4 MLC 1384, 1392, SCR-2020 (October 18, 1977). Only significant
3 differences that would result in inevitable conflicts between employees would require the
4 CERB to find that the employees lack a community of interest with other bargaining unit
5 members. Franklin County Sheriff's Department, 38 MLC at 323.

6 Where it is clear that the petitioned-for employees share a community of interest
7 with an existing unit, the CERB will generally dismiss a petition for a separate unit if there
8 is insufficient evidence to conclude that the petitioned-for employees have a distinct
9 community of interest from employees in the existing unit. Pittsfield School Committee,
10 12 MLC 1487, 1493-1495 MCR-3486 (December 31, 1985) (citing Walpole School
11 Committee, 12 MLC 1015, 1018, MCR-3499 (June 19, 1985). Here, for the reasons set
12 forth above, we find no basis to conclude that the Planning Department employees share
13 a distinct community from interest from other SENA employees that would warrant
14 creating a separate unit.²⁰

15 Add-on Election

16 An add-on election is appropriate if: 1) the representation petition is accompanied
17 by a sufficient showing of interest; 2) there is a sufficient community of interest between
18 the employees in the disputed titles and the employees in the existing unit; 3) the petition
19 seeks to include all employees in the disputed titles; and 4) the reasons for the original

²⁰ We note that in MCR-24-10602, the Union sought separate elections for a unit of BPDA employees and a stand-alone unit of City Planning Department employees. We determined at that point that a separate unit of City Planning Department employees was not an appropriate unit as it was underinclusive. In a footnote, we wrote that the Union had alternative options, including filing a petition for an add-on election. Upon consideration of all the evidence presented during the hearing in this matter, we maintain the same opinion.

1 exclusion no longer exist. University of Massachusetts, Amherst, 41 MLC 233, 242, SCR-
2 14-3687 (February 20, 2015).

3 The Union has satisfied the first prong of this test because the Union filed a
4 sufficient showing of interest in support of its petition in the instant case. The Union has
5 satisfied the second prong of this test because, as noted earlier, we have found that there
6 is a community of interest between the petitioned-for employees and the employees in
7 the SENA Citywide Unit. The Union has also satisfied the third requirement for an add-on
8 election because its petition sought to include all employees in the disputed titles. Finally,
9 the Union has satisfied the fourth requirement for an add-on election because the
10 Planning Department did not exist at the time the existing SENA Citywide Unit was
11 certified, so there is no basis to exclude this group of employees from the bargaining unit
12 they petitioned to join.

13 Conclusion

14 Based on the record and for the reasons stated above, we conclude that the
15 requirements for an add-on election have been met. Therefore, we order an add-on
16 election to be held so that the petitioned-for employees in the Planning Department,
17 including the positions of Assistant Deputy Director of Design Review, Assistant Deputy
18 Director of Public Realm, Counsel, Title Counsel, Deputy Controller, Assistant Deputy
19 Director for Capital Construction, Deputy Director – Community Engagement, and
20 Supervisor of Administrative Services, may decide whether or not they wish to be included
21 in the SENA Citywide Unit. We dismiss the petition with respect to the Assistant Director
22 of Communications and the Deputy Director for Capital Construction.

Direction of Election

Based on the record, we conclude that a question of representation has arisen concerning certain employees who are employed by the City of Boston. The unit appropriate for the purpose of collective bargaining consists of the SENA Citywide Unit, which includes supervisory and administrative positions throughout the City of Boston, as defined by the parties' collective bargaining agreement.

IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted to determine whether a majority of the employees of the City's Planning Department desire to be included in the existing citywide bargaining unit currently represented by SENA or whether they wish to be represented by no employee organization. The eligible voters shall include the employees of the City's Planning Department holding the positions listed in appendix A (Non-Professional Employees) and appendix B (Professional Employees)²¹ whose names appear on the City payroll for the payroll period for the week ending the Saturday preceding the date of this decision, and who have not since quit or been discharged for cause.

The professional employees shall be given an opportunity to vote whether they wish to be included in the existing SENA Citywide Unit consisting of both professional and non-professional employees. If a majority of the professionals vote for inclusion in the overall unit, they shall be given the opportunity to vote whether they desire to be represented by the Union or by no employee organization. If a majority of the professional employees vote not to be included in the overall unit, they shall be given the opportunity to vote whether they desire to be represented by the Union or by no employee

²¹ Those lists have been updated to include the eight positions that we have determined in this decision to be appropriately included in a bargaining unit.

1 organization.

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

5 Accordingly, IT IS HEREBY FURTHER DIRECTED that the City of Boston will file
6 an alphabetized election eligibility list, in a Word document or an Excel spread sheet,
7 containing the names and addresses of all eligible voters, with the DLR no later than 14
8 days from the date of this decision. One list should contain the names of the professional
9 employees, and another list should contain the names of the non-professional employees.
10 The lists must be filed electronically and sent to EFileDLR@mass.gov.

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

SO ORDERED.

COMMONWEALTH EMPLOYMENT RELATIONS BOARD



LAN T. KANTANY, CHAIR



KELLY B. STRONG, MEMBER



VICTORIA B. CALDWELL, MEMBER

APPENDIX A**NON-PROFESSIONAL EMPLOYEES INCLUDED IN THE UNIT**

Accounting Assistant
Administrative Assistant
Administrative Assistant II
Asst Recrds Spec
Com Engment Mgr
Contract Administrator
Data Operations Associate
Digital Communications Spe
Graphic Designer
Human Resources Gener
Language Access Coord.
Manager, Developer Comp
Model Maker
Operations Assistant
Operations Asst – Exec Sec
Planning Assis Compre
Planning Dev Rev Co Mgr
Prgm Mgr
Procurement Manager
Procurement Spec
Proj Asst
Project Manager
Property Specialist
Public Records Specialist
Receptionist
Senior Graphic Designer
Sr Adv Strtg/Chg Mgt
Sr Cmrc'l Leasg Mgr
Sr Cmty Dev Gnt Mgr
Sr Financial Anlyst
Sr Systems Support Spclst
Supp Diversity Data Ana
System Support Specialist
Trans Planning Assist
Urban Design Assistant
Web Content Specialist
Assist. Deputy Dir. for Capital Construction *

* This agreed-upon list did not include the Assistant Deputy Director for Capital Construction. We added that position to the list of positions in the unit after our determination that the position is properly included in the proposed bargaining unit.

APPENDIX B**PROFESSIONAL EMPLOYEES INCLUDED IN THE UNIT****Job Title**

3D Data Analyst
Accountant I
Brd Gov Ops
Compr. Planner I
Compr. Planner II
Data Operations Manager
Dep Dir of Geographic Info
Dep. Dir of Administration
Dep. Director Disposition
Deputy Director of Comprehensive Planning
Deputy Director, Enterprise
Development Portfolio
Development Review Ombu
Director of DEI
Implementation Mgr.
Operations Manager
Operations Manager
Planner I
Planner II
Project Engineer
Real Estate Dev Office
Research Assistant
Research Coord/Data Anl
Sen Landscp Arc II
Senior Accountant
Senior Architect
Senior Architect II
Senior Policy Adviser
Senior Project Engineer
Senior Project Manager
Senior Urban Designer I
Senior Urban Designer II
Smart Utilities Planner II
Special Asst. to the Dir
Sr Accounts Payable Mgr
Sr Clim & Coast Res Infra
Sr Clim & Coast Res PM
Sr Geospatial Data Anlyst
Sr GIS FullStack S/W Egnr

Sr INFRA & Energy Planner

Job Title

Sr Landscape Architect I
Sr Mgr Sm Bus. & Corp Fin
Sr Mgr, Records Mgt
Sr Researcher
Sr Resilience Plnr/Revr
Sr Trans Planner II
Sr Urban Designer/Design
Sr Zoning Reform Planner II
Sr. Comp. Planner II
Sr. Planner I
Sr. Plnr & Exe. Sec Zning
Transformation Project Mgr
Urban Designer I
Urban Designer II
Zoning Comp Planner I
Zoning Compliance Plnr II
Zoning Reform Planner I
Zoning Reform Planner II
Assistant Deputy Director of Design Review*
Assistant Deputy Director of Public Realm*
Counsel*
Title Counsel*
Deputy Controller*
Deputy Director – Community Engagement*
Supervisor of Administrative Services*

The job titles marked with an * were not included on the agreed-upon list of positions in the unit but have been added after our determination that these positions are properly included in the proposed unit

APPENDIX C**EXCLUSIONS FROM THE BARGAINING UNIT****Job Title**

Asst to Chief of Planning
Chief Communication Officer
Chief Information Officer
Chief of Planning
Controller
Deputy Chief - Urban Design
Deputy Chief of Planning
Deputy Director - Climate Change and Env.
Deputy Director - Transp. & Infrastructure
Deputy Director – Zoning
Director of Finance
Director of Human Resources
Director of Planning
Director of Real Estate
Director of Research
Executive Director, Planning Advisory Council
Executive Director/Secretary (Operations)
Human Resource Specialist
Senior Advisor to Director
Senior Budget Manager
Senior Deputy Director, Development Review
Assistant Director of Communications*
Deputy Dir Capital Construction*

The job titles marked with * were not included on the agreed-upon list of positions excluded from the unit but were added after our determination that these positions must be excluded from the proposed unit as confidential or managerial under the Law.