

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

CITY OF BOSTON

and

BOSTON PUBLIC LIBRARY
PROFESSIONAL STAFF ASSOCIATION

and

AFSCME COUNCIL 93, AFL-CIO

Case No.: MUP-15-4572

Date issued: June 30, 2023

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Robert Boyle, Esq.	-	Representing the City of Boston
Nicole Horberg Decter, Esq.	-	Representing the Boston Public Library Professional Staff Association
Philip Brown, Esq. ¹	-	Representing AFSCME Council 93, AFL-CIO

HEARING OFFICER'S DECISION

1 Summary

2 The issues in this case are whether the City of Boston (City), acting through the
3 Boston Public Library (BPL), violated Section 10(a)(5) and, derivatively, Section 10(a)(1)
4 of Massachusetts General Laws, Chapter 150E (the Law) by: a) allegedly transferring

¹ After the closing of the hearing record, Philip Lim succeeded Philip Brown (Brown) as counsel for AFSCME and submitted its post-hearing brief.

1 three public instruction duties, which included offering established training and providing
2 teaching assistance, assisting the Curriculum Development Coordinator (CDC) with
3 curriculum development, and working with the CDC to develop and implement online
4 public instruction, from the Boston Public Library Professional Staff Association (PSA)
5 bargaining unit to the AFSCME Council 93, AFL-CIO (AFSCME) bargaining unit; and b)
6 refusing to bargain over the above-referenced, disputed job duties. For the reasons
7 explained below, I find that the City did not violate the Law in the manner alleged.

8 Statement of the Case²

9 On May 15, 2015, the PSA filed a Charge of Prohibited Practice (Charge) with the
10 Department of Labor Relations (DLR), alleging that the City had engaged in prohibited
11 practices within the meaning of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the
12 Law. Following an investigation, the DLR issued a Complaint and Partial Dismissal on
13 August 25, 2015. On October 2, 2015, the PSA filed a request for review of the Partial
14 Dismissal pursuant to DLR Rule 456 CMR 15.05 (9), and the City filed a response on
15 October 20, 2015. On March 18, 2016, the Commonwealth Employment Relations Board
16 (CERB) remanded the dismissed allegation. The Investigator issued an Amended
17 Complaint (Amended Complaint) consistent with the CERB's Ruling alleging a transfer of
18 certain bargaining unit duties in Count I and a refusal to bargain over those disputed
19 duties in Count II. On March 21, 2016, the DLR allowed AFSCME's Motion to Intervene
20 dated February 24, 2016. The City filed an Answer to the Amended Complaint on March
21 31, 2016.

² This section refers only to motions and rulings essential to a Decision in this case and is not a complete list of all motions and rulings in the record.

1 On September 26, 2016, and October 2, 2017, the PSA withdrew portions of
2 Counts I and II of the Amended Complaint, narrowing the issues to be decided. The
3 remaining issues to be decided are in Count I, paragraphs 6, 9, 11, and the portions of
4 paragraphs 12-14 related to paragraph 9, and in Count II to the extent that Count II relates
5 to the disputed job duties listed in Count I, paragraph 6. Count I, Paragraph 6 lists the
6 following duties as exclusive to the PSA:

- 7 • Offers established training and provides instruction assistance for the public
8 at all BPL locations and non-library locations with a BPL presence.
9
- 10 • Assists with curriculum preparation and organization, including gathering
11 resources both internal and external.
12
- 13 • Works with the Curriculum Development Coordinator [CDC] to develop and
14 implement online public instruction.

15 For consistency and ease of reference, I have rearranged the order in which these three
16 duties appear listed in Paragraph 6 of the Amended Complaint to reflect the order in which
17 these issues are addressed in this Decision.

18 Additionally, I have omitted a fourth duty that appears in Count I, Paragraph 6:
19 “Provides reference assistance to the public up to the level of use of standard reference
20 works, and usage of the public access catalog, in person at the Community Learning
21 Center service desk as assigned.” Based on the parties’ settlement agreements, Joint
22 Stipulation 12, statements on the record, and post-hearing briefs, I conclude that the
23 PSA withdrew this allegation in the Amended Complaint.³ To the extent that the

³ PSA Attorney Nicole Horberg Decter (Decter) noted in her opening statement that “this case involves the attempted transfer of public instruction work, particularly technology instruction,” and that “there’s no dispute whether reference and programming are exclusive [PSA] duties,” and later objected to a question about reference and commented “we’re here about instruction.” Further, Brown noted in AFSCME’s opening statement that the issues for hearing are confined to the above-referenced “three specific bullet points.”

1 allegation with respect to providing reference assistance was not withdrawn explicitly, it
2 is summarily dismissed. I also summarily dismiss the allegation that the PSA referred to
3 in its post-hearing brief that the BPL unlawfully transferred the duty of “assists with public
4 instruction assessment” because the Amended Complaint does not identify “assists with
5 public instruction assessment” as a transferred duty, nor did the PSA seek to amend the
6 Complaint to include that allegation before the close of the hearing record. See City of
7 Boston, 46 MLC 191, 197-198, MUP-17-6211, MUP-18-6629 (March 31, 2020) (denying
8 charging party’s motion to amend complaint to include retaliation allegations because it
9 was not made before the hearing record closed).

10 Paragraph 9 of the Amended Complaint alleges that on or about January 2015,
11 the City transferred the job duties listed in Paragraph 6 from PSA bargaining unit
12 members to non-unit personnel in the Instruction position, a position in AFSCME’s
13 bargaining unit. Paragraphs 11-14 allege that the transfer of bargaining unit work is a
14 mandatory subject of bargaining, and that the City unlawfully failed to bargain to
15 resolution or impasse over the decision and the impacts of the decision to transfer the
16 Paragraph 6 duties out of the PSA unit.

17 Count II of the Amended Complaint, as narrowed by the March 31, 2016 and
18 October 2, 2017 withdrawals, alleges that in January and April of 2015, the PSA
19 requested to bargain about the job duties referred to in Paragraph 6, and that the City
20 refused to do so in violation of the Law. As described in the CERB’s April 12, 2016 letter
21 responding to the City’s March 30, 2016 request for clarification, timeliness could be an
22 issue to be decided at hearing.

1 I conducted twenty days of hearing⁴ between November 6, 2017 and March 18,
2 2019,⁵ at which all parties had the opportunity to be heard, to examine witnesses and to
3 introduce evidence.⁶ The parties filed post-hearing briefs on May 15, 2020.⁷ Based on
4 the record, which includes witness testimony, my observation of the witnesses'
5 demeanor, stipulations of fact, and documentary exhibits, and in consideration of the
6 parties' arguments, I make the following findings of fact and render the following opinion.

7 Stipulated Facts⁸

8 A. Facts Immediately Giving Rise to the Instant Charge

- 9
10 1. The PSA is an employee organization within the meaning of G.L. c.150E §1.
11
12 2. AFSCME, Local 1526 is an employee organization within the meaning of G.L.
13 c.150E §1.

⁴ On November 17, 2017, I allowed the City's request to sequester potential witnesses except for two representatives from each party. The representatives were: Karen Shafts and Emily Todd for the PSA, Michael Colford and Claudia Urujio, whom Jessica Dembro subsequently succeeded, for the City, and Elissa Cadillac and Claire O'Toole for AFSCME.

⁵ The DLR provided copies of the electronic recordings of the hearing to the parties during the course of the proceedings. The DLR subsequently requested that Marsha Johnson of the All-Write Transcription and Reporting Services produce a transcript of the electronic recordings, and the DLR provided digital copies of the transcript to the parties for their review prior to the filing of post-hearing briefs. The parties subsequently agreed that the transcript would be the official record of the hearing.

⁶ On April 26, 2019, the CERB denied the PSA's interlocutory appeal of the Hearing Officer's July 9, 2018 Ruling excluding evidence that post-dated the PSA's May 15, 2015 Charge.

⁷ AFSCME filed a Motion for Summary Decision on March 6, 2020. In light of my decision in the case, I dismiss AFSCME's March 6, 2020 Motion.

⁸ I lightly edited the parties' stipulations for clarity and consistency with the text of this decision. Although the parties' stipulations include references to certain joint exhibits, no exhibits are attached to this decision. However, I refer to the substance of relevant exhibits in my factual findings.

- 1 3. The City is a public employer within the meaning of G.L.c.150E §1. The Boston
2 Public Library [(BPL or Library)] is a sub-division of the City.
3
- 4 4. The [BPL] has a central location, located in Copley Square (Central Library), and
5 24 other [Branch Libraries or Branches] located throughout the City.
6
- 7 5. At all times relevant to this matter, PSA members have been employed in the
8 Central Library public service departments at issue in this case.
9
- 10 6. In July of 2014, the City announced and began negotiating with the PSA over the
11 City's proposal to reorganize its public services at the Central Library.
12
- 13 7. Under the Library's proposal, multiple departments were consolidated, while new
14 departments were established. A number of PSA job descriptions were eliminated,
15 modified, or established. The organization, staffing levels, responsibilities, and command
16 structure of a number of Library departments [were] also modified.
17
- 18 8. Negotiations between the parties included bargaining over the impacts of the
19 reorganization on the terms and conditions of PSA members in each affected Central
20 Library department. Negotiations between [the] PSA and the City concluded in late
21 November 2015.
22
- 23 9. AFSCME conducted separate negotiations with the City around the same time
24 period. No joint sessions with [the] PSA, AFSCME and the City were held.
25
- 26 10. During the course of [the] PSA's negotiations with the City, sometime between
27 January and March 2015, [the] PSA requested certain AFSCME job descriptions.
28
- 29 11. In response, in March 2015, the City provided the PSA with [the Instruction position
30 job description (Joint Ex. 5; PSA Ex. 44B), a position in] the AFSCME bargaining unit,
31 which is the subject of the Complaint.
32
- 33 12. As proposed, the job duties of the [Instruction] position included:
34
- 35 • Works with the Curriculum Development Coordinator to develop and implement
36 online public instruction.
37
 - 38 • Offers established training and provides instruction assistance for the public at all
39 BPL locations and non-library locations with a BPL presence.
40
 - 41 • Assists with curriculum preparation and organization, including gathering
42 resources both internal and external.
43
- 44 13. Additionally, the proposed Position Overview [in the Instruction position job
45 description] stated, "Primarily provides basic and intermediate instruction for the public at
46 all BPL locations and off-site locations with a BPL presence and assists with the

1 development of curriculum in accordance with the Reference and Instruction
2 Department.”

3
4 14. In negotiations between the [City] and PSA between March and April 2015, the
5 PSA protested the inclusion of [the duties referred to in stipulations 12 and 13], demanded
6 bargaining, and argued that these duties, if included in the [Instruction position job
7 description], would constitute a transfer of exclusive bargaining unit work. The City
8 disagreed, arguing that these job duties were already shared work.

9
10 15. On April 9, 2015, the PSA sent a written bargaining demand concerning the
11 exclusive bargaining duties it believed were in the [Instruction] position.

12
13 16. The [City] did not respond to PSA's April 9 demand.

14
15 17. The Union filed the instant [C]harge on May 15, 2015.

16
17 18. The [Instruction position] job description was approved in February 2015 and was
18 filled by Claire O'Toole [(O'Toole)].

19
20 19. The [Instruction] position is currently vacant. It has been vacant since November
21 1, 2016.

22
23 **B. Relevant Background**

24
25 20. In Fall 2012, the [City] and AFSCME started and finished negotiations over the
26 [Trainer/Collections job description (Joint Ex. 12), a position] whose time would be split
27 between the Central Library's Collections and Reference & Instructions Department.

28
29 21. On November 28, 2012, the [BPL] issued a General Administrative Notice [GAN]
30 announcing that the following work would be assigned to the [Trainer/Collections
31 position]:

- 32
33 - Offering established computer training and providing instruction assistance;
34 - Assisting with curriculum development and organization[.]

35
36 See Joint Ex. 12; Joint Ex. 40.

37
38 22. On February 7, 2013, PSA filed a grievance. See Joint Ex. 7A.

39
40 23. [O'Toole filled the Trainer/Collections] position on March 9, 2013.

41
42 24. On June 11, 2013, the PSA wrote to the Library stating that they had yet to receive
43 a Step II response to [the grievance referred to in stipulation 22], despite the fact that a
44 Step II meeting had been held on April 5, 2013. See Joint Ex. 7C.

- 1 25. On January 1, 2014, PSA renewed its request that a Step III hearing be scheduled.
2 See Joint Ex. 7D.
3
- 4 26. The City issued a Step III decision, dated April 23, 2014. See Joint Ex. 7E.
5
- 6 27. On July 25, 2016, PSA filed an arbitration demand with the American Arbitration
7 Association.
8
- 9 28. An arbitration has been scheduled on PSA's grievance for October 2018.
10
- 11 29. O'Toole conducted trainings for members of the public in the Library Branches at
12 the following points in time: Fields Corner (August of 2014); Egleston (September of
13 2014); Jamaica Plain (October of 2014); Codman Square (November of 2014).⁹

14 Findings of Fact¹⁰

15 The City and the PSA¹¹ and the City and AFSCME¹² are parties to separate
16 collective bargaining agreements. The PSA bargaining unit represents over 160

⁹ The PSA proffered a stipulation that O'Toole conducted trainings for members of the public at the Dudley Branch but provided no timeframe, and no other party assented to the proposed stipulation.

¹⁰ The DLR's jurisdiction in this matter is uncontested.

¹¹ The City and the PSA are parties to a Memorandum of Agreement executed January 17, 2014 (PSA 2014 MOA) relative to agreements for the period October 1, 2010 through September 30, 2013 (PSA 2010-2013 Agreement) and October 1, 2013 through September 30, 2016 (PSA 2013-2016 Agreement).

¹² The City and AFSCME are parties to a July 24, 2013 Memorandum of Agreement (AFSCME 2013 MOA) relative to agreements for the period October 1, 2010 through September 30, 2013, (AFSCME 2010-2013 Agreement) and October 1, 2013 through September 30, 2016 (AFSCME 2013-2016 Agreement).

1 librarians and other professionals working in the BPL system.¹³ The AFSCME bargaining
 2 unit represents over 250 administrative and technical staff, including library assistants
 3 working in the BPL system.

4 I. Definitions

5 Based on the totality of the facts, I make the following definitional findings for the
 6 purposes of this Decision.

- 7 • The term “public instruction” refers to curriculum-based instruction of specifically
 8 identified technology and non-technology topics, including classes listed on BPL
 9 calendars as Technology Workshops and Research, Computer and Career Classes, by
 10 an instructor to members of the public in small groups in formal classrooms or other
 11 designated teaching areas at all BPL locations and non-library locations with a BPL
 12 presence, but excluding strictly “drop-in” and “Q&A” classes. This term does not include
 13 one-on-one ad hoc assistance to members of the public. Nor does it refer to staff training.
 14
- 15 • The term “offers established training” refers to teaching a class as the lead instructor in
 16 the BPL public instruction program.
 17
- 18 • The term “providing instruction assistance” refers to working as a teaching assistant (TA)
 19 or assistant teaching for an instructor that is teaching a class that is part of the BPL public
 20 instruction program.¹⁴ This term does not refer to one-on-one assistance to members of
 21 the public that occurs outside the realm of established training.
 22
- 23 • The term “assists with curriculum preparation and organization” refers strictly to providing
 24 curriculum-related administrative assistance to the curriculum development coordinator
 25 (CDC). It does not refer to independently developing curriculum.

¹³ Pursuant to an October 4, 2013, Memorandum Of Agreement (2013 MOA) the City recognized the PSA as the exclusive representative, for the purpose of collective bargaining relative to wages, hours, and other conditions of employment, of all employees classified in the Pre-Professional Library Service, all Professional Library Service employees in grades P-1 through P-4, all employees in grades LA-10, M-10, and C-10, but excluding personnel officers and all other employees. An attachment to the PSA 2010-2013 MOA indicated that employees in certain other positions were accreted to the bargaining unit pursuant to CAS-08-3727. Likewise, the March 6, 2015 Memorandum of Agreement (2015 MOA) between the City and the PSA modified the recognition clause of the collective bargaining agreement to include certain positions.

¹⁴ The role of the TA is to help class members follow along with the instructor during a class. The TA helps keep the class moving so that the instructor does not have to circulate around to assist everyone in the class.

- 1 • The term “online public instruction” refers to providing public instruction in an online
2 setting, either live or recorded. Posting instructional documents alone does not constitute
3 online public instruction.
4
- 5 • The term “basic instruction” refers to providing instruction in the following classes:
6 computers, internet, and email for beginners classes and the precursors to those
7 classes, such as mousercise or creating and using email; as well as all other classes
8 that the BPL offered as part of the public instruction program between September of
9 2011 and May of 2015, which will be discussed later in this decision, with the terms
10 “basic” or “introductory” in the title of the class.
11
- 12 • The term “basic computer training” is a component of basic instruction and basic tech
13 classes. It refers to computers, internet, and email for beginners classes as well as the
14 precursors to those classes, such as mousercise or creating and using email; and all
15 other classes that the BPL offered as part of the public instruction program between
16 September of 2011 and May of 2015 with the terms “basic” or “introductory” in the title
17 of the class and that concern basic use of any computer or basic computer software
18 generally used on a computer, such as Mac: introduction or word processing basics.
19
- 20 • The term “intermediate instruction” necessarily excludes basic computer classes and
21 other classes named basic or introductory.
22
- 23 • The term “technology class” (tech class) refers to classes where the exclusive point of
24 the class is to teach about or learn about electronic hardware, software, or search
25 engines, on any type of electronic device.
26
- 27 • The term “non-technology class” (non-tech class) refers to classes that do not focus
28 exclusively on teaching and learning about how to use electronic hardware, software, or
29 search engines independent of other subject matter, the most obvious forms being
30 classes about knitting, happiness, books to read, insurance benefits, but also including
31 research on genealogy, African-American History Resources, or other topics of interest.
32
- 33 • The term “basic tech classes” refer to refers to classes where the exclusive point of the
34 class is to teach about or learn about how to use electronic hardware, software, or search
35 engines. It refers to computers, internet, and email for beginners classes, as well as all
36 other classes that the BPL offered as part of the public instruction program between
37 September of 2011 and May of 2015 with the terms “basic” or “introductory” in the title
38 of the class, such as intro to the catalogue, iPad basics, or Twitter basics.
39
- 40 • The term “intermediate tech classes” refers to classes where the exclusive point of the
41 class is to teach about or learn about how to use electronic hardware, software, or search
42 engines, and the class is not identified by class title as “basic” or “introductory,” such as
43 classes on Overdrive, Windows 8, and Windows photo gallery.
44

1 I. Pre-2011

2 A. Pre-2011: Tech at the Central Library Hub

3 Beginning around 2002, the Central Library made computers available for public
4 use in two adjoining rooms of the McKim Building, the Washington Room and the
5 Boylston Room, referred to as “the Hub.” The Hub existed between 2002 and 2011.
6 Patrons could sign on to a computer in the Washington Room for an hour at a time to
7 connect with the internet or do word processing. Computers were available in the
8 Boylston Room on a first come first served basis to the public in fifteen-minute
9 increments. Typically, the public used the Boylston Room computers to check email or
10 print a boarding pass.

11 PSA librarians worked in the Washington Room, and AFSCME library assistants
12 worked in the Boylston Room. Both PSA librarians and AFSCME library assistants
13 provided one-on-one assistance to members of the public in the Hub, but the type of
14 assistance that they provided differed. Between 2006-2008, PSA librarians in the
15 Washington Room helped the public access the internet and research databases, and
16 provided other relevant research assistance, while the AFSCME library assistants in the
17 Boylston Room provided troubleshooting for technical (tech) problems.

18 The Central Library also had other technology hardware including computer
19 sign-up machines, printers, and copiers. Staff from various Central Library Departments
20 including Circulation, Reference, and Readers Advisory, Microtext and Newspapers,
21 Social Sciences and Government Documents, and the Kirstein Business Library (KBL),
22 assisted the public with that equipment. For instance, certain research departments had
23 computers for their specific databases that they helped the public use.

1 B. Pre-2011: Tech at the Branch Libraries

2 Prior to 2011, the branch libraries (branches) also had short-term and longer-term
3 use computers, as well as printers and copiers. The branch librarians and library
4 assistants provided similar support as those in the Central Library, responding to patrons'
5 questions on a one-on-one basis, but on a smaller scale.¹⁵ The only branch with a
6 computer classroom prior to 2011 was the Dudley Literacy Center at the Dudley Branch,
7 which was staffed by a literacy coordinator, a literacy librarian, and a literacy library
8 assistant. The Dudley Literacy Center was dedicated to literacy and training.

9 C. Pre-2011: Public Instruction, Curriculum Development, and Online Public
10 Instruction

11 1. Pre-2011 Overview

12 Prior to 2011, PSA unit members routinely offered non-technology (non-tech)
13 classes in specialized areas, AFSCME bargaining unit members did not do so, and
14 contractors did so on a limited basis (quilting and knitting classes). PSA unit members
15 developed their own curriculum for classes. Between 2007 and 2010, neither PSA nor
16 AFSCME bargaining unit members taught tech classes, and contractors did so on a
17 limited basis (Tech Goes Home Program, discussed infra). Prior to 2011, neither PSA
18 nor AFSCME unit members provided live or recorded online public instruction.

19 2. Pre-2011 Job Descriptions

¹⁵ For example, Nereida Villanueva (Villanueva) previously had worked at the Uphams Corner, Dudley, and Jamaica Plain branches in various library assistant positions since 2000 and assisted the public on computers with resumes, job applications, writing papers, using email and Facebook, and PowerPoint. More infrequently, Villanueva assisted the public with their mobile devices by verbally instructing them. She also assisted them with other electronic resources such as Gale, which consisted of e-classes taken online for a certificate. I do not find that Villanueva ever provided public instruction as that term is defined for the purposes of this Decision.

1 No PSA or AFSCME job descriptions created prior to 2011 used the specific
2 phrases that were present in the 2015 Instruction position¹⁶ job description, which is fully
3 referenced on pages 93 and 94, and that were at issue in this case. For instance, the
4 Instruction position job description used certain phrases in the context of basic and
5 intermediate instruction, such as: “offers established training and providing instruction
6 assistance for the public;” “assists with curriculum preparation and organization;” and
7 “develops and implements online public instruction.” Numerous PSA job descriptions
8 created prior to 2011 generally referred to training or instruction,¹⁷ at least one referenced
9 curriculum development,¹⁸ and one referred to assisting in the creating and execution of
10 tech training resources for the public.¹⁹ Numerous AFSCME job descriptions referred to
11 assistance and instruction in the use of basic electronic resources and library-owned

¹⁶ The date before the position’s job description refers to the year when the BPL and the employee organization, whose bargaining unit included the position, agreed to the job description.

¹⁷ See: 1998 Reader and Information Services Librarian I (P1) job description, 2004 Literacy Specialist II (P2) Dudley Branch job description, 2005 revised General Library Reader & Information Services Librarian II (P2) job description, 2008 Interlibrary Loan Librarian II/Borrowing Supervisor (P2) job description, and 2010 PSA Web Services Librarian (P3) job description.

¹⁸ The 2004 Literacy Specialist II (P2) Dudley Branch job description referred to designing development support for adult and family literacy curriculum and lesson planning for English as a second language and Adult Basic Education classes.

¹⁹ The 2010 PSA Web Services Librarian (P3) job description referred to assisting in the creation and execution of technology training resources for the public.

1 technological equipment, but not in the context of formal classroom instruction.²⁰ One
2 AFSCME job posting created prior to 2011, the 2005 Library Trainer BLA-8 job
3 description, referred to tech training for members of the public, as well as developing
4 training and training materials for the public regarding library-related technology. The
5 record contains no pre-2011 PSA or AFSCME job descriptions that referenced the
6 development and implementing of online public instruction as that term is defined in this
7 Decision.

8 3. Pre-2011: Non-Tech Public Instruction and Curriculum Development

9 Prior to 2011, PSA bargaining unit members routinely offered non-technology
10 classes for members of the public in specialized areas. For instance, as Keeper of the
11 Prints, Karen Shafts (Shafts)²¹ frequently provided “classes for students who wish[ed] to
12 learn more about our collection and print making,” as the result of requests from area
13 colleges and universities requesting to view the collection.²² Literacy Specialist Michael
14 Murray (Murray) taught weekly literacy classes between 2004 through May of 2015.
15 Linda MacGyver (MacGyver), Reference Librarian in the Government Documents Social

²⁰ See: a) 1975 Special Library Assistant (SLA), BLA-5 job description (still in existence in May of 2015), b) 2001 SLA BLA-5 job description, c) 2005 Library Trainer, BLA-8 job description, d) and e) 2007 SLA I Branches, BLA-5 and SLA II Branches, BLA-6 job descriptions; f) 2007 Senior Library Assistant, Branches, BLA-3 job description, and g) the 2010 SLA 1 Floater, BLA-5 job description. Specifically, the 2007 SLA I Branches, BLA-5 and SLA II Branches, BLA-6 job descriptions refer to assisting patrons in the use of basic reference collections as well as basic use of electronic resources; and using and assisting patrons in basic use of a variety of library-owned technological equipment.

²¹ Shafts held various leadership positions for the PSA, including president, vice-president, and chief steward.

²² Although Shafts at hearing made the general statement that government information librarians also offered specific group instruction, I decline to credit her testimony on this point because she provided no specific details in support of her claim.

1 Sciences Department, provided genealogy instruction prior to 2011.²³ In contrast, there
2 is no evidence that prior to 2011, AFSCME bargaining unit members offered non-
3 technology classes for members of the public. With respect to contractors, between 2001
4 and 2004 contractors provided quilting and knitting classes at the Allston-Brighton
5 Branch. PSA unit members and contractors developed their own curriculum for classes.

6 4. Pre-2011: Tech Public Instruction and Curriculum Development

7 a. Overview

8 Prior to 2007, in or around 2005 or 2006, one librarian at a single branch, Elisa
9 Birdseye (Birdseye) at the Adams Street Branch, taught a tech class for a brief period.
10 Also, a single library assistant at one branch, Elissa Cadillic (Cadillic) at the Allston
11 Branch, taught a tech class at unknown points in time between 2001-2004. Otherwise,
12 between 2007 and about September of 2011, notwithstanding the one-on-one
13 assistance that PSA librarians and AFSCME library assistants provided to members of
14 the public in the Hub, elsewhere in the Central Library, and in the branches, neither PSA
15 librarians or AFSCME library assistants offered public instruction on technology subjects
16 in a group or classroom setting in the Hub or in branch libraries. Contractors did so on
17 a limited basis through the Tech Goes Home program.

18 b. PSA

19 For the following reasons, I find that the Central Library did not have computer or
20 technology-related classes for members of the public prior to 2011, and that one librarian
21 at one branch taught a tech class for a brief period in 2005 or 2006 and developed the

²³ The record is unclear as to whether genealogy instruction at this point involved books or computers.

- 1 curriculum for those classes.²⁴
- 2 • Michael Colford (Colford), currently the Director of Library Services, made the general
3 statement that the BPL did not have computer or technology-related classes for members
4 of the public prior to 2011.
5
 - 6 • Shafts conceded that there was no public instruction offered through formal courses prior
7 to 2011 at the Central Library, merely, “attempts to organize classes.”
8
 - 9 • Shafts maintained that prior to 2011 in the branches, librarians offered computer classes
10 and that “some of the branches did try to organize some class trainings once they got
11 public computers because the public was asking for it.” She claimed librarians “were the
12 ones providing . . . instruction. . . going beyond just the basics of how to turn the computer
13 on and use a mouse.” Shafts testified that prior to 2011, librarians provided “basic
14 computer instruction to access the internet” and more specialized use of research
15 databases in the Hub.
16
 - 17 • Anna Fahey-Flynn (Fahey-Flynn), who helped to develop the Public Instruction Program
18 from 2011 to 2013, also indicated that some branches offered technology classes prior
19 to 2011, but the only example she offered was West End Librarian Helen Bender
20 (Bender) offering one-on-one sessions with people who needed help with their cell
21 phone, laptop, or e-reader.
22
 - 23 • Librarian Ann Langone (Langone) described how there was no formal classroom
24 instruction at the Mattapan or the Egleston branches, where she worked in 2007.
25
 - 26 • Birdseye testified that when she was a librarian at the Adams Street Branch responsible
27 for adult services, the BPL received a grant for public instruction on laptops. She testified
28 that the branch received laptops in 2005 or 2006 and Librarians were required to create
29 curriculum and offer classes on the laptops. She testified that the classes were not well
30 attended and turned into on-on-one appointments with members of the public.
- 31 I conclude that Colford’s and Shafts’ testimony supports the finding that the Central
32 Library did not offer tech classes for the public prior to 2011. With respect to tech classes
33 in the branches, I credit Birdseye’s fact specific testimony on this point but decline to

²⁴ There is other testimony about the 1990’s in the record. Birdseye testified that there was no formal classroom instruction at the Central Library in the 1990’s. PSA unit member Jane Bickford (Bickford) also testified that in the mid-1990’s, the West Roxbury Branch received desktop computers and she developed and taught a basic internet class with two or three sessions for about six to eight months. Nevertheless, I find the issue of whether, in the 1990’s, formal classroom instruction existed on technology subjects too remote in time to the facts at issue here to be material.

1 credit Shafts' and Fahey-Flynn's conclusory statements. Therefore, I find that around
2 2005 or 2006, librarians at the Adams Street Branch briefly offered laptop computer-
3 related instruction and developed the curriculum for those classes.

4 c. AFSCME

5 I find that a single library assistant at one branch taught a tech class for a brief
6 period between 2001-2004. Cadillic, while in the 2001 SLA BLA-4 position, taught a tech
7 class at the Allston Branch for a brief period between 2001 and 2004.²⁵ Otherwise, prior
8 to 2011, AFSCME positions provided one-on-one tech assistance to patrons.²⁶

²⁵ I do not credit Cadillic's claims that Library Assistant Laurel Cannon (Cannon) taught informal laptop classes either prior to 2008 or prior to 2014. Cannon's own testimony indicated that she instead provided one-on-one instruction to patrons. She assisted patrons who requested help using software to create banners, flyers, resumes, and setting up email accounts. She also created what she called "cheat sheets" to help patrons with the most commonly asked computer questions. Also, prior to when the Mattapan branch moved in 2008, she occasionally would provide the equivalent of one-on-one assistance to three to five patrons at the same time if they had similar questions. She described those group instructions as informal, because she did not schedule them in advance, nor did patrons register to attend. She noted that she ceased assisting patrons in groups after the move in 2008 and that librarians began to hold formal computer classes in 2010 or 2011.

²⁶ Colford described how the 2007 SLA I Branches BLA-5 and SLA II Branches BLA-6 positions, as well as the 2010 SLA 1 Floater, BLA-5 position, answered patrons' questions, and showed patrons how to use particular tools. Likewise, Cadillic indicated that she saw library assistants in the 2007 SLA I Branches BLA-5 position and the SLA II BLA-6 position providing one-on-one assistance to the public, but not teaching organized classes. She also characterized the 2007 Senior Library Assistant, Branches, BLA-3 position, which refers to assisting patrons in the basic use of a variety of library owned technological equipment, as an entry-level branch position that provided one-on-one assistance to patrons. Additionally, Cadillic noted that the 2010 SLA 1- Floater BLA-5 provided one-on-one assistance to patrons by showing them how to use basic reference collections and electronic resources and assisting them in the basic use of a variety of library-owned technological equipment.

1 Cadillic held the 2001 Special Library Assistant (SLA) BLA-4 position from 2001
2 to 2004 at the Allston Branch.²⁷ The 2001 Special Library Assistant (SLA) BLA-4 job
3 description, which was upgraded to a BLA-5 position in 2004 several months after
4 Cadillic left the position, refers to “[p]erform[ing] P.C. setup, assistance, basic instruction
5 and troubleshooting; including file management and word processing.”

6 Cadillic described how as an Allston Branch library assistant in this position from
7 2001-2004,²⁸ she developed curriculum and taught computer classes for the public such
8 as learning about the computer, Word, and Excel.²⁹ These classes had a capacity of
9 four people and were advertised by flyers at the Allston Branch. According to Cadillic,
10 she created and shared a training outline for other staff members to run classes at the
11 branches at the request of Branch Librarian Madeline Amorosi (Amorosi). In contrast to
12 Cadillic’s testimony, Colford testified that no AFSCME bargaining unit member taught
13 formal public classes prior to the creation of the 2012 Trainer/Collections position. I
14 credit Cadillic’s testimony because of the specificity and detail of her testimony regarding
15 the classes that she taught.

²⁷ The March 15, 2001 Special Library Assistant (SLA) BLA-5 job description pertained to library assistants who, under branch librarian supervision, were responsible for assisting and instructing the public with using standard reference works and the online catalog, as well as with computer setup, assistance, and basic instruction. The position required some computer knowledge including Windows and Word.

²⁸ Cadillic held the 2001 SLA BLA-5 job description position at the Allston Branch from 2001 until August of 2004. The position was upgraded to a BLA-6 position in November of 2004, with no change to the job description.

²⁹ On multiple occasions between 2001 and 2003, Cadillic taught a patron (RJ) how to use a computer and various software to draft an article for an academic journal, because he previously had drafted his scholarly articles in longhand, which were then transcribed on a typewriter. At the beginning of his September 2003 published article, RJ noted his thanks to Cadillic for her help with what he characterized as “new technology to him.”

1 Aside from my findings that Cadillic, while in the 2001 SLA BLA-4 position, taught
2 a tech class at the Allston Branch for a brief period between 2001 and 2004, I find no
3 other credible evidence of her conducting public instruction, assisting in curriculum
4 development for the purposes of public instruction, or developing or implementing online
5 public instruction. In reaching this conclusion, I have decided not to credit either Colford
6 or Cadillic in their testimony regarding the 2005 Library Trainer BLA-8 position for
7 reasons discussed below.

8 The 2005 Library Trainer BLA-8 job description referred to library-related
9 technology training for staff and members of the public.³⁰ The September of 2005 Library
10 Trainer BLA-8 job description included, under the Chief of Public Services,
11 responsibilities for: staff and public trainings on library-related technology, including
12 designing and implementing training on technologies utilized by staff such as Horizon
13 and the Integrated Library System (ILS); developing and delivering HIP training and
14 training materials for the public; traveling to BPL branches and the Metro-Boston Library
15 Network (MBLN) libraries to provide ILS training and other library technology-related
16 training or staff development; and updating brochures relating to patron use of the BPL's
17 ILS.

18 Cadillic held this position for a period of time prior to December of 2013. Colford
19 maintained that Cadillic was "training" members of the public prior to 2011 in this position.
20 Likewise, Cadillic testified that she offered technology training to the public in this
21 position, although she conceded that she taught mainly staff and only taught the public

³⁰ The Library Trainer BLA-8 position was renegotiated prior to 2014. The 2013 Library Trainer BLA-8 job description contained no language related to training the public.

1 “a handful of times.” In particular, Cadillic testified that she offered live and online training
2 and developed curriculum in the following areas: Excel and Word, Horizon Information
3 Portal (HIP, TixKeeper, Pharos, ILS; Schoolrooms, Mass. Library Association training,
4 and for Boston Regional Library System (BRLS) supported programs.

5 I do not credit Colford’s testimony that Cadillic was training members of the public
6 prior to 2011 in the 2005 Library Trainer BLA-8 position because his testimony was
7 conclusory and contradicted other portions of his testimony that the BPL did not have
8 computer or technology-related classes prior to 2011. It is also inconsistent with the
9 portion of his testimony that no AFSCME bargaining unit member taught formal public
10 classes prior to the creation of the 2012 Trainer/Collections position.

11 I do not credit Cadillic’s claim that she offered technology training to members of
12 the public in the 2005 Library Trainer BLA-8 position for the following reasons:³¹

- 13 • HIP: Horizon Information Portal (HIP) was the website that provided information about
14 the ILS that the BPL used at the time. Cadillic described how between 2006-2013 she
15 gave periodic “demonstrations” for library patrons and Boston Public School Library staff
16 on using the HIP catalogue and created materials to teach patrons how to search the
17 catalog. She further stated that the materials she developed for HIP and a related
18 program called Polaris were posted on the BPL website, the staff internet, and available
19 as handouts at the branches to patrons. However, Cadillic also acknowledged that she
20 could not recall how many times she provided demonstrations to the public between 2006
21 and 2012, or any other details about the demonstrations. During her testimony, Cadillic
22 conceded that the “demonstrations” were only drop-in classes. She further conceded
23 that the materials she developed were based on existing HIP program templates and
24 training materials and that her supervisors reviewed the material that she wrote. While

³¹ According to Cadillic’s June 20, 2013 Presentation to the Compensation Grade Appeal Committee for the BLA 8 Trainer position, in 2011 she “conceptualized, designed, and ran ... workshops primarily designed to be better prepared to teach classes and workshops to the public. These are not technology based and therefore fall outside the original scope of the job description.” She also stated that “[i]n 2012, I developed and ran the following workshops for all staff. Technically, these are not considered ‘technology’ but programs. In the past, we sent or brought in outside vendors to provide this type of training to staff.” I do not consider this to be material evidence as staff training is not at issue in this Decision.

- 1 she claimed to have made online video tutorials regarding HIP absent supervisor
2 oversight or approval in 2007, she admitted that the videos were for staff training
3 purposes. I do not find that Cadillic's Horizon "demonstrations" for members of the public
4 constitute "public instruction" as defined in this decision.
5
- 6 • TixKeeper: Cadillic admitted that she did not provide in-person training for the public on
7 TixKeeper, a museum booking software system, only staff. Cadillic testified that she
8 created and posted, independent of supervisor review, a five-minute video/webinar of
9 slides with information about TixKeeper on the BPL website. Cadillic testified that the
10 TixKeeper video launched in 2011 and she updated it once around 2012 or 2013. For
11 reasons discussed in a section above, I find that the video/webinar of slides constitutes
12 instructional material, not public instruction for the purposes of this Decision.
13
 - 14 • Pharos: Cadillic did not provide in-person training for the public on Pharos, a print kiosk,
15 but rather did so only for staff. Cadillic developed a manual for members of the public
16 on how to print from a Pharos kiosk in 2014. However, the manual does not constitute
17 public instruction for the purposes of this Decision.
18
 - 19 • ILS: Cadillic testified that in 2007 she made video tutorials regarding the ILS. I do not
20 credit her on this point because her claim was vague and unsubstantiated.
21
 - 22 • Schoolrooms: Cadillic did not provide in-person training for the public on Schoolrooms,
23 an educational resource guide, but rather conducted staff trainings around 2006-2007.
24 Cadillic testified that as the Schoolrooms administrator, she created webpages on
25 various topics to be used as teaching resources by entering information from various
26 library departments into templates. Coordinator of Library Services Ken Peterson
27 (Peterson) supervised Cadillic and provided direction and oversight of module
28 development for the webpages. I find that those webpages constituted instructional
29 material, not public instruction for the purposes of this Decision.
30
 - 31 • MLA: Cadillic testified that in 2007 she and non-AFSCME BPL employee Scott Colford
32 (S. Colford), gave a presentation on creating online training for the Massachusetts
33 Library Association, a professional association.³² I do not find that such activity
34 constitutes public instruction for the purposes of this Decision.
35
- 36 BRLS: The Boston Regional Library System (BRLS) supported programs for libraries
37 that were looking to provide training to staff or the public through contractors or vendors.
38 Cadillic claimed that she provided training occasionally on their behalf working with
39 Peterson on trainings between 2005 and 2010. She testified that she arranged for staff
40 trainings through this service but did not remember other specific information. In
41 particular, Cadillic could not remember on cross-examination how many times she taught

³² A May 3, 2007 article in the Massachusetts Library Association Conference Reports referred to Cadillic as presenting a short training video relative to creating instructional videos.

1 the public under the BRLS umbrella, but thought it was “a handful of times,” she
2 “imagin[ed] between 2006 and 2010.” She testified that she taught PowerPoint, Word,
3 and Excel under BLRS and might have collaborated on an email class with a contractor
4 a total of “five each or fewer” occasions. I do not credit Cadillic’s testimony on this point
5 because her recollection of the events lacked specificity.

6
7 Excel and Word: Cadillic testified that between 2006 and 2010, as the 2005 Library
8 Trainer BLA-8, she offered at least one Excel and two Word courses to members of the
9 public at the Central Library using previously established curriculum that she adapted.
10 However, she later conceded on cross-examination that she was unsure which of those
11 classes she taught for the BLRS, as referenced immediately above, and which of those
12 classes she taught for the BPL, but that she was referencing the same group of classes
13 in calculating the total number of classes that she allegedly taught. In the absence of
14 other corroboration, I decline to credit Cadillic’s ambiguous testimony on this point.

15 d. Others

16 Prior to 2011, contractors provided public instruction on technology-related
17 subjects on a limited basis through the Tech Goes Home program.³³ The BPL offered
18 Tech Goes Home classes at the Central and Branch Libraries prior to 2011. The Tech
19 Goes Home is an organization that offers computer literacy programs for elementary
20 through high school students to attend with their parents. After about 15 hours of
21 instruction, class participants may buy a laptop at a reduced price.

22 I do not credit testimony in the record claiming that contractors taught other tech
23 classes to the public prior to 2011. Cadillic made the broad statement that between 2006
24 and 2013, she scheduled outside trainers for public trainings at the branches on Microsoft

³³ According to Fahey-Flynn, a private contractor taught Tech Goes Home at the Central Library before January of 2011. She provided no more detailed information on this point. With respect to whether librarians taught Tech Goes Home classes, Connolly Branch Librarian Bickford lacked personal knowledge as the classes were not offered at her branch. Rather, her testimony that librarians taught the classes was based upon a general conversation with her colleagues that took place two years after the filing of the charge and admittedly was not a survey of locations and what librarians actually had done at those locations prior to 2011. Because Bickford’s testimony was not informed by specific facts or first-hand knowledge, I decline to credit her testimony on this point.

1 Office courses, Word, Excel, Publisher, PowerPoint, English and Spanish classes,
2 communication and business plans, and email. However, Shafts testified that she was
3 not aware of outside vendors like Microsoft providing trainings at the Library prior to 2011.
4 Although Shafts' lack of awareness is not definitive, I also find that Cadillac's testimony
5 does not provide specific details as to where the classes were scheduled to take place,
6 the dates, including the years, when those classes took place, how often they were
7 scheduled, and whether the classes actually took place. In the absence of more specific
8 facts, I decline to credit Cadillac's testimony on this point.

9 D. The 2010 NTIA Grant

10 In 2010, the BPL introduced public instruction on a scale previously unseen with
11 its receipt of the three-year National Telecommunications and Administration Grant (NTIA
12 Grant or Grant).³⁴ The overall public instruction program consisted of two types of classes
13 – computer classes and other subject matter classes.

14 The Grant focused on providing public access to technology and training,
15 particularly basic computing instruction for members of the public. The overarching
16 purpose of the Grant was to address the need for basic computer literacy across the City,
17 particularly for underserved members of the public. The Grant also sought to establish
18 public computing centers in the City. It allowed the BPL to purchase ten laptops for each
19 of the twenty-four branches, and to establish computer labs at the Central Library and at
20 the Dudley Branch. Ultimately, the Grant allowed the BPL to reconfigure the Hub into a
21 new space referred to as Tech Central, redeploy staff, and formalize computer instruction.

³⁴ According to Gifford, the Grant brought about “the first real and formalized instruction program” at the BPL. This statement did not account for the Tech Goes Home program, which was offered at the BPL prior to 2011, but not by the BPL.

1 At the conclusion of the NTIA Grant period, the BPL would go on to sustain and expand
2 upon the Grant funded initiatives with respect to public instruction, particularly by creating
3 the 2013 Trainer/Collections position and eventually the 2015 Instruction position.

4 III. 2011

5 A. Overview

6 In 2011, programs that pre-dated the NTIA Grant, such as literacy instruction, after
7 school assistance programs, and Tech Goes Home, continued to operate in addition to
8 the NTIA Grant public instruction program.³⁵ The public instruction program consisted of
9 two types of classes – computer classes and other subject matter classes. In about the
10 Fall of 2011, the BPL began publicizing on calendars the schedule for Technology

³⁵ Shafts indicated that in about 2011, there was an “increasing emphasis on programming, instruction and outreach.” Shafts stated that she considered “public instruction [as] another aspect of programming. We initiate programs that are a one-time event, but then we also have public instruction which involve a series of classes.” Shafts noted that there was a distinction between teaching a class and providing programming. She explained that programming is a broader term than teaching a class. “A program could simply be an author talk or a one-time ... event.” She also commented that a program is to “inform an audience but not to instruct them specifically formally.” I find this portion of Shaft’s testimony not to be material to the issues before me.

1 Workshops at the Central Library consisting of classroom-based instruction on topics
2 ranging from basic computer use to specialized BPL database use.³⁶

3 PSA bargaining unit members, led by CDC Fahey-Flynn, and assisted by
4 Reference and Readers Advisory (RRA) librarians and other librarians, taught basic
5 computer classes.³⁷ Additional PSA librarians taught other technology classes. Still other
6 PSA librarians taught technology-based specialized subject area classes such as those
7 concerning ancestry.

8 Public instruction in the branch libraries emerged differently than at the Central
9 Library. The Neighborhood Services Department [NSD] was responsible for coordinating
10 librarian instruction in the branches, not the CDC.

³⁶ Fahey-Flynn indicated that most of the calendars in the record contained instructional classes, as opposed to programming. In her opinion, instruction was more interactive than programming, and there was a specific goal that the instructor wanted the students to acquire. She described programs as more open-ended, such as an author talk on a novel that not everyone in the audience has read. She considered the terms training and instruction interchangeable. She described training as an internal staff training and public instruction as instruction on the public side. She further explained that training happened in the course of instruction, for instance, in an e-reader class, the instructor was training people how to load e-books onto their device, a clear end-goal, versus computers for beginners there was a curriculum, but it was “not quite training [because the goal] is to open someone’s eyes to an entire world of something” not just how to perform a specific task. She contended that librarians usually organize programming. I find this portion of Fahey-Flynn’s testimony not to be material to the issue before me.

³⁷ According to Colford, in 2011, the term “basic computing instruction” referred to classroom-based training on topics including computer and mouse use, saving a file, and setting up and using email. When asked at hearing how she decided what was a beginner class and what was more advanced, Fahey-Flynn testified that she distinguished them by determining whether a course required pre-requisite skills. During her testimony, Fahey-Flynn described the definition of “beginner” as a “moving target.” For instance, she considered computers for beginners as a class for people who didn’t “have any clue how a computer works [or] how to use a mouse.” However, she considered internet for beginners to require participant knowledge of how to use the mouse. Her “rule of thumb was [whether class participants] need[ed] to be comfortable with the subject matter.”

1 1. Staffing

2 With respect to staffing during the Grant period, Colford became the Director of
3 Resources Services and Information Technology in about 2010, which was a managerial
4 position. Colford was involved in the creation of a new Tech Central area, corresponding
5 changes in PSA and AFSCME job duties, and the conversation between the parties about
6 the roll-out of classes. The IT Department and then Chief Technology Officer (CTO), now
7 BPL president, David Leonard (CTO Leonard) reported to Colford.³⁸ Other relevant
8 positions included Grant Project Manager Clayton Cheever (Cheever),³⁹ who reported to
9 Leonard, and the first CDC (a PSA unit position) held by Fahey-Flynn, who reported to
10 Cheever. NTIA grant money funded all or part of certain positions, such as Cheever's
11 Project Manager position and Fahey-Flynn's CDC position, which was initially part-time.
12 Fahey-Flynn worked with Cheever to develop curriculum for the NTIA Grant-related public
13 instruction program. With the NTIA Grant funds, the BPL also created the 2011
14 Technology Center Supervisor, BLA-8 position and the 2011 Technical Support
15 Associates, BLA-5 position, both of which were AFSCME unit positions.⁴⁰ Of the above-
16 referenced positions, the CDC was the only position that provided public instruction. The
17 BPL did not assign a library assistant to work with the CDC until 2012.

³⁸ Leonard did not provide public instruction.

³⁹ Fahey-Flynn identified Cheever as a PSA bargaining unit member, while he was the Grant Project Manager. Toward the end of the NTIA grant in 2012, Gifford as the Manager of Reference and Instruction took over the Grant Project Manager duties from Cheever. Gifford never was a PSA bargaining unit member.

⁴⁰ Other technology-based PSA positions also existed in 2011, such as the Digital Library Repository Developer and the Web Services Developer, but facts related to these positions are not pertinent to this Decision.

1 2. CDC Fahey-Flynn: Overview

2 The position was responsible for fulfilling NTIA grant requirements, specifically by
3 providing technology instruction one hour per day Mondays through Fridays at the Central
4 Library and one hour per week in the branches.⁴¹

5 Fahey-Flynn⁴² held the CDC position for about three years, from January of 2011
6 until the end of August of 2013. From January of 2011 until April of 2012, the CDC position
7 was part-time. During Fahey-Flynn's initial eighteen months as the CDC, the position was
8 in the IT Department, after which the position moved into the Reference and Instruction
9 Department. The CDC did not work in Tech Central. In 2012, the CDC became a full-
10 time position and Fahey-Flynn began reporting to Gianna Gifford (Gifford) as the Manager
11 of Reference and Instruction.

12 Fahey-Flynn's job was to develop curriculum for free computer classes that the

⁴¹ The 2012 CDC (P3) job description referred to: working within the goals for the Boston Public Computing Center's federal grant project to develop a strong and sustainable public technology training curriculum, staffing strategy, and class schedule across the entire BPL system and with other City partners; identifying and becoming familiar with internal and external literature and other resources pertaining to public technology training programs, especially in a library or community center setting; working with staff to create a BPL public technology training curriculum that best meets the needs of the citizens of Boston and that can be sustained past the term of the grant funding; recruiting staff for public technology training sessions within the restraints of the BPL's operating budget and the approved grant budget; creating staff training; creating and implementing a strategy to provide regularly scheduled training classes in Spanish and other languages as demand arises; and working with staff to schedule training sessions in all BPL branches as specified in the terms of the grant.

⁴² Fahey-Flynn served as a PSA vice president and president from 2008 to 2011. As of the 2018 hearing in this case, she was the Central Library manager. She had worked as the Collaborative Services Manager from 2013 to 2017. She also was a youth outreach librarian in 2013 after she was bumped from the CDC position during layoffs in the PSA bargaining unit.

1 BPL offered pursuant to the Grant.⁴³ While the 2012 CDC job description did not refer to
2 class instruction for members of the public, Fahey-Flynn taught classes out of necessity.
3 Fahey-Flynn began teaching at the Central Library in the Fall of 2011.⁴⁴ During her time
4 as the CDC, Fahey-Flynn taught anywhere from one to three classes per week at the
5 Central Library. Fahey-Flynn also recruited librarians to teach computer classes and
6 managed scheduling for librarians teaching other subject matter classes.

7 a. CDC Fahey-Flynn: Curriculum Development

8 A major element of the Grant was to provide basic computing instruction. Fahey-
9 Flynn built the public technology instruction program and curriculum from scratch after
10 researching other public instruction programs. The technology training curriculum that
11 Fahey-Flynn developed consisted of a computer literacy series with three modules,
12 computers for beginners, internet for beginners, and Gmail for beginners, and iPad
13 classes. The courses were progressive, starting with computers for beginners, and then
14 either internet or email next. Computer for beginners involved the difference between a
15 search engine and a browser, the definition and function of IP addresses, how to use and
16 search Google, how to use filters, and commonsense usage and safety information. For
17 each class, Fahey-Flynn created related PowerPoint slides with handouts for the public

⁴³ Cadillic testified that while she did not provide curriculum to Fahey-Flynn for courses that Fahey-Flynn produced as CDC, Fahey-Flynn shared some of the “early curriculum on computers” that Cadillic reviewed and edited. However, I do not credit Cadillic’s claim to have assisted Fahey-Flynn in the development of curriculum in the absence of any facts showing that Cadillic made significant substantive changes to the curriculum that Fahey-Flynn developed. Additionally, Cadillic did not dispute that Fahey-Flynn was ultimately responsible for the curriculum.

⁴⁴ Although Fahey-Flynn testified that she taught at the branches, there is only evidence in the record that she instructed other librarians at the branches, not members of the public.

1 that she kept in a shared folder for all staff to access.

2 Fahey-Flynn decided what level to present material at based on the patrons
3 attending a class. According to Fahey-Flynn, the Central Library generally offered
4 Technology Workshops at a “very basic level” because a group of the same individuals
5 with no computer experience, often senior citizens, attended classes every day for a
6 couple of months, then they would drop out and the cycle would repeat. Additionally,
7 Fahey-Flynn taught Tech Goes Home at the Central Library sometime after January of
8 2011. She was also involved in rolling out LibGuides, which was an effort to build online
9 teaching guides that could be shared across the BPL system with librarians who were
10 teaching.

11 b. CDC Fahey-Flynn: Instructor Recruitment, Scheduling and
12 Curriculum

13 Between 2011 and 2013, Fahey-Flynn taught classes herself and developed a pool
14 of other people to teach. By her estimate, about thirty PSA librarians taught Technology
15 Workshops while she was the CDC between 2011 and 2013. Fahey-Flynn recruited
16 volunteer PSA librarians to teach Technology Workshop classes by walking around the
17 Central Library with a clipboard and talking to various librarians about the role.⁴⁵ Colford
18 also spent a lot of time encouraging librarians to teach for the purposes of the Grant.

19 Fahey-Flynn did not ask AFSCME bargaining unit members to teach classes
20 during the Grant period. Fahey-Flynn never assigned Cadillic to teach public instruction

⁴⁵ There were no pre-requisites for librarians to teach classes. As Training Coordinator, Cadillic offered a class geared towards public instruction for PSA members. Kelly Jo Woodside (Woodside) from the Massachusetts Library System also offered a staff training called Accidental Instruction Librarian workshop in 2013.

1 classes pursuant to the NTIA Grant.⁴⁶ O'Toole, who was not hired until 2013, was the
2 only AFSCME bargaining unit member to provide public instruction after the BPL received
3 the NTIA Grant in 2010.

4 Beginning in the Fall of 2011, Fahey-Flynn recruited instructors to teach
5 Technology Workshops from the following Central Library Departments: Reference and
6 Readers' Advisory (RRA),⁴⁷ Digital Services, Web Services, Social Sciences,
7 Government Documents, Microtext, KBL, and, on a more limited basis, the Arts
8 Department. Reference Librarians in Rare Books, Microtext, and Social Sciences and
9 Science also provided public instruction on specialized topics at the Central Library in
10 2011. For instance, Reference Librarian and Genealogy Specialist Linda MacGyver
11 (MacGyver) taught genealogy, Jennifer Koerber (Koerber) from Web Services taught
12 social media such as Facebook, Reference Librarian and Government Document
13 Specialist John Devine (J. Devine) taught a patents class, and Curator of Microtext and
14 Newspaper Henry Scannell (Scannell) taught a historical newspaper database

⁴⁶ In 2011, Cadillic wrote an (undated) "Instructor Skills Trainer Program." She also wrote a May 13, 2011 "Training Program at the Boston Public Library" for BPL staff members to assist the BPL in meeting NTIA grant requirements and teach staff the "fundamentals essential for providing a quality educational experience." Cadillic's 2011 staff training course was "designed to focus on the training aspect and not the computer skills necessary for the actual courses participants are expected to teach." Nevertheless, such activities do not constitute public instruction as defined in this Decision.

⁴⁷ The Reference and Readers' Advisory Department was at the Central Library. Reference and Reader Services was the main department that provided Reference and Readers' Advisory to adult patrons. According to Shafts, "Readers' Advisory is the function of directing patrons to appropriate resources or reading materials for the subject they are looking for ... [it] is part of the function of all PSA members."

1 curriculum.⁴⁸ The KBL ⁴⁹ offered resume writing and interview skills classes, or how to
2 use LinkedIn in a professional capacity.⁵⁰ Collections often taught about eBooks.

3 Fahey-Flynn tended to teach basic computer instruction so that other library
4 departments could do subject-related teaching, but she taught other classes as well. By
5 December of 2011, Fahey-Flynn was also scheduling RRA Librarians to teach basic
6 computer classes on Wednesdays.⁵¹ In general, Fahey-Flynn scheduled Digital Services
7 to teach all of the classes to do with the Macs, such as Intro Basics to Mac on Mondays.⁵²
8 Fahey-Flynn typically scheduled Social Sciences and Government Documents to teach

⁴⁸ Shafts never saw MacGyver, J. Devine, Scannell, or Diane Parks (Parks), at the time the reference librarian in Social Sciences and Government Documents, teach basic computer classes. Shafts also did not see any of the Reader and Information Librarians teaching basic computer classes because she did not work in the Central Library's Johnson Building. Shafts never saw Steven Dunhouse (Dunhouse), who held the General Library Reader and Information Services Librarian II, P2 Position, teaching before 2012. The Senior Reader and Information Services Librarian job description did not refer to public instruction, but rather referenced the planning of programs and exhibits, which at the time of the job description in 2002 referred to author talks. I find these points immaterial. The fact that Shafts did not see certain individuals teaching only establishes that she did not see them teach, not that they didn't teach.

⁴⁹ In 2011 and continuing, the KBL was located within the confines of the Central Library.

⁵⁰ Shafts testified that after 2011, the KBL librarians had more electronic resources to instruct the public on their databases and brought in outside lecturers to discuss specific topics. Her testimony on this point is too vague to credit as she provided no details in support of her statements.

⁵¹ There is conflicting evidence in the record on this point. Colford testified that at some point after 2011 but closer to 2015, the BPL moved towards assigning each department a day of the week to teach one class and they rotated librarians. Nevertheless, the December 2011 calendar and other calendars list RRA Librarians as teaching on Wednesdays, which was earlier than Colford described. For this reason, I do not credit Colford's testimony on this point.

⁵² Former City labor counsel Jessica Dembro's (Dembro) March 25, 2015 bargaining notes indicate that Colford told PSA counsel Decter that Fahey-Flynn and "Digital Services" had provided basic computer instruction around 2011 or 2012. I find that Digital Services provided basic computer instruction in 2011.

1 every other month on a rotating basis. Fahey-Flynn often taught Friday classes, such as
2 Facebook.

3 RRA Librarians taught the basic computer classes using curricula that Fahey-Flynn
4 passed on to them, but they adjusted it as needed. PSA unit members teaching
5 specialized courses created their own courses and curricula. Typically, librarians chose a
6 particular topic on which to focus, researched the topic, wrote a text that outlined the topic
7 and provided reference sources.

8 3. Tech Center Supervisor and Tech Support Associates

9 In addition to the CDC, the 2011 Technology Center Supervisor, BLA-8 and the
10 2011 Technical Support Associates, BLA-5 were two other positions brought about by the
11 Grant. Both positions were in the AFSCME bargaining unit. The BPL posted the positions
12 in the spring or early summer of 2011 and filled the positions in the Fall of 2011.⁵³
13 Although the job descriptions for both positions referred to instruction, neither position
14 assisted in the development of public facing basic computer training or provided public
15 computer instruction in the context of classroom-based instruction prior to May of 2015.

16 The 2011 Technology Center Supervisor, BLA-8 job description contained three
17 relevant sections regarding instruction, training, and curriculum. With respect to
18 instruction, it referred to: assisting the public in the use of computers; assisting patrons in
19 the use of library owned technology equipment and network services; assisting patrons
20 with general technology questions and with non-BPL owned technology; and providing

⁵³ Diane Collins (Collins), then Jeff Lindsey (Lindsey), held this position. Lindsey filled the Tech Center Supervisor position in September or October of 2011 and the BPL filled the Support Associate positions about the same time. Lindsey was still the Tech Central Supervisor in 2015.

1 basic instruction and demonstration to the public at Copley in the proper use and
2 maintenance of BPL equipment and software. With respect to training, the job description
3 stated that the position required an ability to develop and conduct training courses for both
4 the public and tech center staff but did not actually list public training as a duty.
5 Additionally, there was a line in the position overview portion stating that the position
6 “assists in the development of public-facing ‘basic computer training’ curriculum.”
7 Nevertheless, the position only provided one-on-one assistance to members of the
8 public.⁵⁴

9 The 2011 Technical Support Associates, BLA-5 job description contained a
10 relevant section on instruction that referred to: assisting the public and staff in the use of
11 computers through answering basic computer questions; explaining the BPL’s technology
12 services and assisting in basic computer instruction; assisting patrons in the use of a
13 variety of library-owned technology equipment and network services; assisting patrons
14 with general technology questions and with non-BPL owned technology; and providing
15 basic instruction and demonstration to the public and staff at Copley in the proper use and
16 maintenance of BPL equipment and software. The job description also stated that the
17 position required an ability to provide basic instruction.

18 Colford told the PSA in discussions that the term “basic instruction” in both job
19 descriptions referred to “simply how to use equipment” such as logging on and using the
20 mouse. Unidentified BPL representatives also told the PSA during discussions that the

⁵⁴ Colford initially testified that the Tech Central Supervisor provided public instruction. He subsequently clarified his testimony to state that while the Tech Center Supervisor was intended to provide public trainings and assist in creating curriculum, he never saw Collins or Lindsey do so. His clarification is consistent with Cadillac’s testimony that she only observed Lindsey providing one-on-one instruction to patrons.

1 Tech Center Supervisor and Tech Support Associate positions were for troubleshooting
2 and answering questions, not providing instruction.

3 According to Shafts, the PSA was not concerned during discussions about the
4 phrase in both job descriptions relative to “providing basic public instruction and
5 demonstration to the public . . . in the proper use and maintenance of BPL equipment and
6 software” because, “[i]t was not instruction as we were envisioning it.” Shafts testified that
7 she had seen the phrase “provides basic instruction and demonstration” before in other
8 BPL job descriptions.⁵⁵

9 Colford and Shafts also offered the following opinion testimony at hearing.
10 According to Colford, in 2011, the job descriptions for both the Tech Center Supervisor
11 and the Tech Support Associates used the term “basic instruction” to refer to providing
12 one-on-one assistance to members of the public having trouble using a computer in Tech
13 Central. Shafts testified that in 2011 she considered the term “basic instruction” as used
14 in job descriptions to refer to assisting members of the public with library equipment and
15 intermediate instruction as “involved in getting into different databases.”

16 According to Colford, the job description terms “assists patrons with general
17 technology questions and may assist patrons with non-BPL owned technology” referred
18 to assisting patrons with getting a wireless connection and “public facing technology
19 programs” refers to the public instruction program that the BPL was starting with the NTIA
20 Grant. Also, according to Colford, the phrase “provides basic instruction and

⁵⁵ Shafts testified that she had seen that phrase in the BLA 5 and BLA 6 job descriptions for Branch BLAs that were created around 2007, i.e., the SLA I, Branches, BLA-5 and SLA II, Branches, BLA-6. However, neither job description specifically listed “instruction,” but rather included the phrase “uses and assists patrons in the basic use of a variety of library-owned technical equipment.”

1 demonstration to the public in the proper use and maintenance of BPL equipment” had
2 no meaning beyond the plain meaning of the words.

3 B. 2011 Consolidated Branch Facts

4 With respect to the branch libraries, the BPL planned to hold formal public
5 instruction classes in addition to the existing Tech Goes Home program,⁵⁶ but did not do
6 so during the Grant, from about 2010 until 2013.⁵⁷

7 By email dated May 11, 2011, Director of Branch Libraries Christine Schonhart
8 (Schonhart) informed Branch Librarians that all branches were to begin offering one hour
9 per week of public computer training. Schonhart stated in the May 22, 2011 email that
10 librarians could teach the class themselves, or delegate the responsibility to another
11 librarian, and that they were required to log classes for performance evaluations.

12 At an unidentified point in 2011, Langone, as the Egleston Branch Children’s
13 Librarian, and Egleston Branch Librarian Beth Ann Stewart (Stewart) met with Fahey-
14 Flynn and Cheever. Fahey-Flynn and Cheever discussed laptops and the Grant, and
15 encouraged Langone and Stewart to run instruction sessions, including one-on-one

⁵⁶ The Tech Goes Home program was held in English at the Orient Heights Branch from 2011 to 2014 and in Spanish at a second East Boston branch.

⁵⁷ Shafts noted that “[i]nitially, [in 2011] the BPL was insistent that the [branch libraries] had to [offer] formal classes, but then [in 2012 or 2013, the BPL] accepted as part of the statistics one-on-one trainings that [librarians conducted] in the branches as well.” Shafts explained that “basically a patron would come to a branch and request assistance and if it was possible to provide it right at that time, it would take place.” She also stated that “my understanding is that patrons did schedule a time to come it. It was difficult to organize a formal class[es] in the branches because of the schedules of neighborhood patrons.” Branch staff had to submit statistics on the classes that they instructed. These statistics are not included in the record of this hearing.

1 instruction sessions. The Egleston Branch subsequently publicized one-on-one
2 computer skills help but did not offer group instruction to members of the public.⁵⁸

3 Around 2011, the Connolly Branch in Jamaica Plain held an unknown number of
4 basic computer classes as a result of the Grant, but attendance was minimal. Because
5 there was a need for Spanish instruction at the time, the Connolly Branch brought in a
6 private contractor from a non-profit organization to teach three basic computer classes in
7 Spanish, and those classes were well attended. Otherwise, librarians there provided on-
8 on-one assistance. Likewise, at the Orient Heights Branch from 2011-2013, aside from
9 the Tech Goes Home program, all assistance was one-on-one.

10 In August of 2011, BPL Human Resources Manager Mary Flaherty (Flaherty)
11 notified Cadillac that the BPL planned to incorporate the Dudley Literacy Center into the
12 Dudley Branch, move the Coordinator of Literacy Services Joanne Butler (Butler) from
13 Dudley to Central, and require Library Assistant Magalis Vega (Vega) to report to the
14 Dudley Branch Librarian instead of Butler. AFSCME and the BPL impact bargained the
15 change in Vega's hours and to whom she reported, and Vega⁵⁹ continued to be
16 responsible for literacy programs and services at Dudley.⁶⁰

⁵⁸ I do not credit Langone's testimony that the Egleston Branch held classes for members of the public. Langone testified generally that as a result of the NTIA Grant, the Egleston Branch provided "classes" and one-on-one assistance including: beginner internet, resumes, career information, email, help signing up with doctors, help attaching documents. However, Langone's claims that Egleston held "classes" was too vague to establish that the classes were different from the one-on-one assistance offered at the branch.

⁵⁹ Vega subsequently left the BPL in 2014.

⁶⁰ It is undisputed that Vega acted as a TA at the Dudley Literacy Center. Cadillac also testified that Vega taught basic computer classes in Spanish. In support of her testimony, Cadillac cited a letter that Vega's supervisor Butler had written in support of Vega receiving

1 C. May of 2011 Events

2 The NTIA Grant prompted the BPL to overhaul its physical technology space and
3 to begin offering regularly scheduled, classroom-based technology instruction for
4 members of the public. Around May of 2011, the BPL negotiated with the PSA and
5 AFSCME about the impacts of the NTIA Grant. In a May 9, 2011 document entitled
6 “Timeline for Move of Computers from the HUB to the New Tech Central” (Colford’s
7 Timeline), Colford described the upcoming changes to the PSA and AFSCME.⁶¹ The
8 parties did not memorialize anything in writing concerning the staffing of Tech Central or
9 the computer labs.⁶²

10 D. June-August of 201111 1. Tech Central

an upgrade in 2004, and Cadillac’s sometimes monthly visits to the Dudley Literacy Center. However, I previously had informed the parties that I would not accept Cadillac’s references to Butler’s letter, which was not introduced into evidence, as proof that Vega taught basic computer classes. Additionally, Cadillac did not explain how long she observed Vega when she visited the Dudley Literacy Center or how she distinguished between those instances where Vega allegedly acted as an instructor and those instances where Vega acted as a teaching assistant. Thus, I decline to find that Vega taught basic computer courses.

⁶¹ Colford created the May 9, 2011 Timeline along with CTO Leonard, but for expediency, I refer to it as Colford’s Timeline. I have not included the timeline in this decision because it is not pivotal to the outcome.

⁶² According to Shafts, the BPL explained during negotiations that librarians would provide basic and intermediate instruction on the use of computers, as well as instruction on various research topics and databases. Also, according to Shafts, Colford commented, when discussing the proposed staffing section of his timeline, that providing public trainings in the new computer lab would be PSA work. Shafts further claimed that the BPL assured the PSA that library assistants would cover Tech Central to answer questions on a one-on-one basis and troubleshoot equipment and that PSA unit members would provide training in the new lab. I find this aspect of Shaft’s testimony immaterial because whatever the PSA and the City discussed at bargaining in 2011 is secondary to the actual events that occurred here.

1 During Tech Central's interim phase in the summer of 2011, the librarians and IT
2 staff who previously covered the Washington and Boylston Rooms simultaneously staffed
3 Tech Central and provided services to members of the public, answering questions from
4 anyone using Tech Central regardless of whether they were using sixty-minute or fifteen-
5 minute use computers. In August of 2011, Tech Central had no computer lab training
6 area.

7 2. Public Instruction June-August of 2011

8 The rollout of computer classes began slowly in 2011. In August of 2011, the BPL
9 began formal classroom-based computer instruction at the Central Library. Fahey-Flynn
10 as CDC and librarians from various Central Library Departments offered classes on
11 laptops in the Johnson Building conference rooms on the concourse level and the media
12 studio off the KBL.⁶³ When the Johnson Building closed, instruction took place in the
13 McKim building.

14 E. September and October of 2011

15 1. Tech Central

16 When Tech Central opened in September or October of 2011, it was staffed
17 exclusively by the Tech Central Supervisor and Tech Central Associates, none of whom
18 provided public instruction as defined in this Decision or assisted in the development of
19 public facing basic computer training. Public computers were moved from the second
20 floor of the McKim Building to the first floor of the Johnson Building to create Tech Central.

⁶³ According to Gifford, between January of 2011 and April of 2012, Fahey-Flynn provided basic technology instruction multiple times per week. I do not credit Gifford's testimony on this point because other evidence in the record establishes that Fahey-Flynn taught classes from August of 2011 until August of 2013.

1 The space behind Tech Central became a twenty-seat computer training lab, and
2 between Tech Central and the training lab were desks and seating where the public could
3 use ten Grant-funded laptops. The Grant also funded ten laptops for each branch library
4 for training purposes.

5 2. Central Library Public Instruction Schedule Sept. and Oct. of 2011

6 Beginning in September of 2011, the BPL started offering “Technology Workshops”
7 for members of the public at the Central Library. In September of 2011, the Central Library
8 offered about twenty-one Technology Workshops for members of the public that were
9 publicized on a calendar.⁶⁴ In summary, no AFSCME unit members provided basic
10 instruction at the opening of the Tech Central computer lab in September or October of
11 2011. PSA bargaining unit members, including Fahey-Flynn, taught all twenty-one
12 classes offered in September of 2011.⁶⁵ In particular, Fahey-Flynn and RRA Librarians
13 taught the basic computer classes in the new Tech Central computer lab.⁶⁶ PSA unit
14 members from other Central Library Departments taught more specialized classes. With

⁶⁴ On the September of 2011 calendar the following classes were described as “introduction to:” Google Docs, Windows 7, the computer, the catalog, digitized collections, the internet, and the [computer] mouse. Other classes included email part 1 and ProQuest’s historical newspaper databases. Introduction to the computer refers to “basic computer skills.” Some introduction classes had no prerequisites while others did. Classes with no prerequisites included introduction to the computer, the computer mouse, email (Gmail) part 1, and digitized collections. Classes with prerequisites included introduction to email part 2, Google docs, Windows 7, the catalog, the internet, the Mac, and ProQuest.

⁶⁵ Although the calendar does not identify specific instructors, I conclude based on the totality of the evidence that PSA bargaining unit members taught all twenty-one classes offered in September of 2011.

⁶⁶ RRA Librarian Christopher Glass (Glass) testified that between March of 2013 and March of 2015, RRA librarians taught classes once a week. However, I find that by September of 2011, RRA librarians were already teaching once a week.

1 respect to assistant teaching, RRA Librarians assisted each other with classes, something
 2 that they continued to do for each other through 2015. AFSCME library assistants did not
 3 assist RRA Librarians with classes.

4 F. December of 2011

5 1. Central Library Public Instruction Schedule December of 2011

6 In December of 2011 the Central Library offered about twenty Technology
 7 Workshops for members of the public that were publicized on a calendar.⁶⁷ Classes were
 8 held in the Johnson Building first floor Training Lab. In summary, PSA bargaining unit
 9 members taught eighteen of the twenty Technology Workshops in December 2011.

- 10 • Fahey-Flynn taught word processing basics, Mac system preferences, file
 11 management, and Sky Drive overview.
- 12
- 13 • PSA RRA Librarians taught three Wednesday classes including: Google keyword
 14 search, Google advanced search, and Google maps.
- 15
- 16 • Other PSA librarians taught classes on creating and using Gmail accounts,
 17 mousercise, introduction to Mac, and Facebook.
- 18

19 Additionally, non-unit managers taught two of the twenty classes in December of 2011.⁶⁸

- 20 • Non-unit manager, IT Department Applications Manager John Dorsey (Dorsey),
 21 taught the December 15, 2011 Overdrive class.

⁶⁷ On the December 2011 calendar, the following classes were described as “introduction to:” digitized collections, the catalog, and Mac. The word “basic” appeared only in relation to “word processing basics.” Other classes included: using your Gmail account, staying safe online, heritage quest, historical and newspaper databases, Google keyword search, ancestry library edition, mousercise, word processing basics, Google advanced search, Overdrive, Mac system preferences, creating a Gmail account, Google maps, file management, Sky Drive overview, and Facebook.

⁶⁸ Fahey-Flynn testified that at some unidentified point in time while she was CDC, BPL manager Vladimir Yampalski (Yampalski) from IT taught a one class course on how to buy a computer, but he had no set curriculum and didn’t use the computers.

- 1 • Non-unit exempt Web Services Manager S. Colford taught the intro to the
2 catalogue class.

3 IV. 2012

4 A. April of 2012⁶⁹

5 In April of 2012 Gifford began working as the Manager of Reference and Instruction
6 Services, a position she held through May of 2015. The position was a P5, non-unit
7 exempt position.⁷⁰ Gifford initially reported to Colford. Later, Gifford reported to Chief of
8 Public Services Mary Frances O'Brien (O'Brien), and then again later to Colford. Fahey-
9 Flynn reported to Gifford. In addition to her oversight of many departments,⁷¹ the BPL
10 charged Gifford with building the Public Instruction Program and formulating related
11 programs.⁷² Although she was a manager, Gifford taught classes along with Fahey-Flynn
12 out of necessity.

13 Gifford discussed basic computer instruction and subject matter instruction needs
14 with Colford and O'Brien. Gifford and Colford decided in discussions about the Public
15 Instruction Program that librarians should be responsible for curriculum development

⁶⁹ On April 3, 2012, Cadillac wrote the staff training "Presenting with Poise and Conviction." I do not find this constitutes public instruction as that term is defined for the purposes of this Decision.

⁷⁰ The position was upgraded in 2014.

⁷¹ In 2012, Gifford's responsibilities included oversight of certain departments including RRA, Social Sciences and Government Information, Microtext, Literacy, the Arts and the KBL at certain points in time, as well as Public Instruction. When Gifford later reported to O'Brien, most of the subject departments reported to Gifford, including: RRA, Social Sciences, Government Documents, Microtext, the Arts, Literacy, and KBL. At another point in time, she also was responsible for the Programming Department.

⁷² Gifford participated in collective bargaining and made staffing decisions. She did not set policy because the BPL Board of Trustees sets policy. During the relevant time period she was not on the BPL Administrative Council.

1 because they “have subject knowledge and expertise around collections, electronic
2 resources, and search techniques.”

3 At an unidentified point in time, Gifford and Colford discussed basic versus
4 intermediate level technology instruction. In those discussions, Gifford and Colford
5 defined basic instruction as classes for people who didn’t know how to use computers,
6 such as classes on how to use a mouse, open folders and organize their desktop, and
7 intermediate instruction classes as those that served people who knew how to use
8 computers. According to Gifford, the BPL wanted to develop intermediate technology
9 classes, such as teaching people Excel or other aspects of computer management,
10 because as former basic technology class attendees became more familiar with
11 technology, they were ready to come back and learn more.

12 Gifford was responsible for setting parameters, or program expectations, for the
13 Public Instruction Program at the Central Library and in the branches.⁷³ Although the BPL
14 did not instruct Gifford to delineate the difference between research and technology
15 classes to set parameters for the Public Instruction Program, she made that distinction
16 when she discussed developing the Instruction Program with Colford and O’Brien.⁷⁴

17 At the Central Library where most of the subject departments reported to Gifford,

⁷³ At hearing, Gifford testified about her private understandings and considerations on this issue. Gifford understood the difference between research and technology courses as courses that teach the public how to best formulate a search question, anything involving “the path of a research question” versus courses that involved instruction on the physical aspect of acts like defining a search engine and learning buttons to press to send an email. She considered a Google keyword search class as a basic course that would have been taught by librarians because it involved taking a question and breaking it down to be searchable. She considered more advanced courses to include intermediate genealogy research, and courses on how to use sophisticated databases.

⁷⁴ Gifford offered no more detailed testimony on this point, other than her private understandings and considerations.

1 the initial focus of Public Instruction had been on technology classes relative to computer
2 basics because of the Grant, but Public Instruction evolved based on the librarians'
3 interests in adding subject matter instruction to the basic computer instruction.
4 Consequently, in the Central Library, Fahey-Flynn had developed a "menu of curriculum"
5 and worked with librarians to incorporate their subject matter instruction suggestions. As
6 a result, the Central Library offered basic technology classes such as Gmail or eBooks,
7 but also classes about antiques and eBay. The RRA Department taught the basic
8 technology courses and other Central Library Departments taught other subject matters.

9 Gifford held different expectations for the branches than the Central Library.
10 Setting parameters for the branches required Gifford to work through O'Brien. In the
11 branches, the greatest needs were for basic computer technology, workforce
12 development, and eBook classes, not the genealogy or government document classes
13 offered in the Central Library. Gifford expected branch librarians to teach classes, and
14 most of them did, except for Lower Mills and the West End. Gifford did not direct any
15 AFSCME bargaining unit member other than O'Toole to teach in the branches prior to
16 May of 2015.

17 B. August of 2012

18 1. Central Library Public Instruction Schedule for August of 2012

19 In August of 2012, the Central Library offered twenty-six Technology Workshops
20 at the Johnson building first floor computer lab that were publicized on a calendar. In
21 summary, PSA unit members taught twenty-four of the twenty-six classes in August of
22 2012.

- 23 • Fahey-Flynn taught two classes: eBook help and Britannica online.

- 1 • PSA RRA Librarians taught the Wednesday classes including: select, copy paste,
2 file management, internet basics I: the browser, internet basics II: browsing the
3 internet, and Google searching.⁷⁵
4
- 5 • PSA RRA Librarian Caroline Young (Young) taught Gmail in Chinese.
6
- 7 • Other PSA librarians taught: introduction to digitized collections, introduction to
8 researching your family tree, AmericanAncestors.org, listening to music/radio
9 online, your new gadget, online medical information, using the 1940 census,
10 reading recommendations, Mac iTunes, know your settings, Mac: keyboard and
11 trackpad, using career transitions for your job search, creating a Gmail account,
12 using Dun and Bradstreet for your job search, Google searching, and online
13 science resources.

14 Additionally, non-unit manager Gifford taught two of the twenty-four classes in August of
15 2012, creating a Gmail account, and using that account.

16 On the August of 2012 calendar, two classes were labeled as introductory:
17 introduction to digitized collections and introduction to researching your family tree. The
18 word “basic” was used in relation to three classes: internet basics I and II; and Mac: the
19 basics. The August of 2012 calendar did not indicate which classes had prerequisites.

20 C. October of 2012

21 1. Trainer/Collections Job Description

22 Towards the end of the NTIA Grant period, the BPL took steps to sustain and
23 expand on Grant funded initiatives with respect to Public Instruction. In particular, the
24 BPL created and funded the 2012 Trainer/Collections position, an AFSCME position
25 dedicated on a part-time basis to supporting the CDC in basic public technology
26 instruction. The job description stated that the position was divided between two
27 departments, reporting primarily to the Manager of Reference & Instruction (Gifford) and

⁷⁵ Although the calendar did not identify specific instructors, I conclude based on the totality of the evidence that PSA bargaining unit members taught all of the Wednesday classes offered in August of 2012.

1 secondarily to the Collection Development Supervisor.

2 In the position overview, the October 2, 2012 Trainer/Collections job description
3 stated that the position “provides *basic computer training* at all BPL locations and off-site
4 locations with a BPL presence in accordance with the Reference and Instruction
5 Department.” (Emphasis added.) The scope of responsibility stated, in relevant part:
6 “[o]ffers *established computer training* and provides instruction assistance at all BPL
7 locations and non-library locations with a BPL presence;” “[a]ssists with curriculum
8 preparation and organization, including gathering resources both internal and external;”
9 and “under supervision, transfers existing training and collections-related information into
10 web templates.” (Emphasis added.)

11 The job description required an “aptitude for customer service [and a] strong ability
12 to communicate and to collaborate successfully with staff and patrons; an “[a]bility to
13 provide basic instruction and ability to listen/interpret patron requests;” knowledge of
14 computer skills, computer hardware and software, internet and web-based services, and
15 current uses of technology, peripherals, and common end user services; as well as basic
16 proficiency with MS Word, Outlook, and Excel. Educational qualifications required a high
17 school degree or equivalent, although additional education was listed as desirable.

18 2. Testimony About the Trainer/Collections Job Description

19 The record contained the following testimony regarding the Trainer/Collections job
20 description. According to Colford, the “position overview” section of the
21 Trainer/Collections job description was a general explanation of the type of work that the
22 incumbent could do in the job and the “scope of responsibility” reflected the functions that
23 the incumbent in the position was expected to perform on a day-to-day basis. Colford

1 further stated that in 2012, the term “basic computer training” as contained in the position
2 overview referred to a slate of courses for first-time users, around using email, Gmail,
3 various pieces of hardware, very basic software, and file sharing, and not courses
4 requiring research and reference skills. His testimony on this point was consistent with
5 Gifford’s testimony that at some unidentified point in time, she and Colford defined basic
6 instruction as classes for people who didn’t know how to use computers, such as classes
7 on how to use a mouse, open folders and organize their desktop, and intermediate
8 instruction classes as those that served people who knew how to use computers.

9 According to Gifford and Colford, the phrase in the job description’s scope of
10 responsibility that stated “offers established computer training” referred to providing
11 computer training based on a curriculum previously created by others, such as the CDC.
12 Colford further stated that the phrase “provides instruction assistance” in the scope of
13 responsibility refers to acting as a TA for classes led by the CDC.

14 With respect to job qualifications, Colford indicated that the Trainer/Collections
15 position required knowledge of computer skills, hardware, software, etc. because the
16 position was responsible for teaching basic computer classes on those topics. Similarly,
17 Gifford stated that in general, the Trainer/Collections position “was going to allow for
18 teaching assistance and also someone, frankly, to help with the basic computing
19 teaching.”

20 D. November of 2012

21 1. Trainer/Collections Position Negotiations, Discussions, Announcement

22 At an unidentified point during the Fall of 2012, the City and AFSCME held
23 negotiations regarding the 2012 Trainer/Collections position. Colford also discussed the

1 position with the PSA sometime prior to November 28, 2012. According to Shafts, when
2 Colford told the PSA that the BPL intended to create this hybrid position, an unidentified
3 PSA representative stated that instruction and training were exclusive PSA work, and that
4 the PSA would protest the position. Colford said that it was shared work and that it was
5 appropriate for the Trainer/Collections position to do training and instruction. According
6 to Shafts, Colford explained that by training, he meant “basically instruction providing
7 computer classes.”

8 On November 28, 2012, Flaherty issued a GAN by email with the 2012
9 Trainer/Collections job description attached, announcing that the BPL planned to fill the
10 vacant position. Shafts saw the November 28, 2012 GAN.

11 V. 2013

12 A. January of 2013

13 1. Central Library Public Instruction Schedule January of 2013

14 By 2013, Fahey-Flynn had “core classes” with developed curriculum material
15 available for librarians to use for public instruction purposes.⁷⁶ Fahey-Flynn also
16 encouraged librarians to create classes of interest or need to members of the public. In
17 January of 2013, the Central Library offered thirty-five Technology Workshops for
18 members of the public that were publicized on a calendar and held at the Johnson Building
19 first floor training lab. In summary, PSA bargaining unit members taught thirty-four of the

⁷⁶ Fahey-Flynn did not use the Tech Goes Home materials as a basis for the curriculum that she developed because Tech Goes Home started with the premise that the student participant already knew how to use the technology, whereas the basic tech programs that grew out of the NTIA Grant were for people without any computer knowledge.

1 thirty-five Technology Workshop classes in January of 2013 including:⁷⁷

- 2 • internet basics I and II, Mac: the basics, mousercise, creating a Gmail account,
3 using your Gmail parts I and II, Mac: Select, Copy, Paste, your new device, creating
4 a resume, patent searching, listening to radio and music online, no-tech tech talk,
5 LinkedIn101: creating an account, census data online, using historical newspapers
6 for U.S. history research, using databases for U.S. history research, checking out
7 eBooks for the Nook, job searching online, how to start your research, Google
8 keyword searching, checking out eBooks for Kindle and Kindle Fire, test prep: free
9 online resources, consumer health information online, Google maps, and one-stop
10 resources.

11 One class was an author talk.

12 The January of 2013 calendar had no classes described as “introduction to” any
13 subjects. The term “basic” appeared in three classes, internet basics I and II and Mac:
14 the basics. The January of 2013 calendar did not indicate which classes had
15 prerequisites. Registration was not necessary for any class.

16 2. Melissa Theroux

17 Melissa Theroux (Theroux) was a RRA Librarian and PSA unit member, who
18 began working for the BPL in January of 2013.⁷⁸ She testified that an unidentified person
19 told her when she was hired that the BPL wanted her to get started with instruction as
20 soon as possible. In January of 2013, Theroux taught Gmail, internet basics, Google,
21 keyword searching, Google maps, and test prep free online resources. At another
22 unidentified date between January of 2013 and March of 2015, Theroux attended a
23 workshop called the “Accidental Instruction Librarian” on how to how to “put together a

⁷⁷ Although the calendar does not identify specific instructors, I conclude based on the totality of the evidence that PSA bargaining unit members taught all of the January of 2013 classes except for the one author talk.

⁷⁸ Theroux became a literacy specialist in 2016 and the literacy coordinator in 2017, the position which she held at the time of the hearing.

1 class and some of the challenges that might come up in a class.” At other unspecified
2 points in time, Theroux taught beginner internet, Google, and computer classes, and
3 classes on eBooks, for which she used Fahey-Flynn’s curriculum. She also taught
4 Windows Photo Gallery, Learning Express Library, Medline Plus (a National Institute of
5 Health website), and PubMed, for which she developed the curriculum. According to
6 Theroux, there was “an awareness that we had many patrons who might be beginner
7 level computer users ... and to try to, as we taught, move slowly and check up on patrons
8 as we were teaching the class.”⁷⁹

9 B. February of 2013

10 1. Central Library Public Instruction Schedule February of 2013

11 In February of 2013, the Central Library offered thirty-four “Research, Computer
12 and Career Classes” publicized on a calendar. Previous calendars were entitled
13 “Technology Workshops” as opposed to “Research, Computer and Career Classes.” The

⁷⁹ In the course of her testimony, Theroux offered her opinions on the definitions of basic and intermediate classes. According to Theroux, a basic class was to introduce someone to a topic, familiarize them with an idea, and go over very introductory concepts, whereas an intermediate class was one that starts with more detailed aspects of a subject so that the person can become more of an expert. In her experience, a basic internet class would use Google to talk about how to find information and keyword searching but an intermediate internet class would talk about how to use the advanced search features to help narrow searches. Theroux testified that she considered the January of 2013 classes such as Research Part 1 as an introductory research class, but one that requires more experienced computer skills. Research Part 2 she considered more of an intermediate level class. She considered Google Maps to be a basic class. She considered the Test Prep course itself to be an introduction to resources that required more advanced computer skills. In general, classes that Theroux considered basic computer classes included: mousercise, using a computer mouse, creating a Gmail account, Gmail part 1, your new device, internet basics, and Mac basics. She did not consider select, copy, paste to be a beginner class, although it was part of the beginner series, because a person had to understand the computer desktop layout and how to use a mouse. Theroux considered classes such as Medline Plus, Photo Gallery and Pixlr to be beginner classes in terms of content, but those classes also required more advanced computer skills.

1 February of 2013 calendar did not indicate where classes were held. In summary, PSA
2 bargaining unit members taught approximately thirty-three of thirty-four classes in
3 February of 2013.

- 4 • Fahey-Flynn is not listed as teaching any classes in February of 2013.
- 5
- 6 • PSA RRA librarians taught six classes on Wednesdays in February of 2013,
7 including: mousercise, keyboard basics, select, copy, paste; and computer basics.
8 RRA Librarian Young taught keyboard basics, internet basics, and basic iPad in
9 Chinese.
- 10
- 11 • Other PSA librarians taught: introduction to BPL digitized collections, Facebook
12 basics and Q&A, Facebook intermediate, Mac: customizing your Mac, LinkedIn
13 101: creating an account, checking out eBooks for Tablets; Pinterest, how to start
14 your research parts I and II, know your settings, job searching online, finding
15 Boston population data, current newspapers online, what to read next, business
16 insights: essentials, Gmail parts I-IV; your new camera, finding health information;
17 researching antiques, and online U.S. history resources.

18 Additionally, non-unit manager Gifford taught one course on African American History
19 Resources in February of 2013.

20 On the February of 2013 calendar, the word “introduction” appears once in relation
21 to the introduction to BPL digitized collections class. The word “basic” appears in relation
22 to the following classes: Facebook basics, keyboard basics, and computer basics. The
23 word “intermediate” appears once in relation to a Facebook intermediate class.

24 2. PSA’s 2013 Grievance Regarding the Trainer/Collections Position

25 On February 7, 2013, Shafts, as PSA Chief Steward, filed with Flaherty a grievance
26 alleging that the City violated the collective bargaining agreement with the PSA by
27 assigning PSA bargaining unit work to the 2012 Trainer/Collections position and
28 requesting that the City remove certain duties from the Trainer/Collections job description,
29 including: “offering established computer training and providing instruction” and “assisting
30 with curriculum preparation and organization.”

1 C. March of 20132 1. March of 2013 Public Instruction Schedule

3 In March of 2013, the Central Library offered thirty-one “Research, Computer, and
4 Career” classes to members of the public at the Johnson Building’s first floor Training Lab.
5 Classes were publicized on a calendar. In summary, PSA members taught all of the
6 classes in March of 2013.⁸⁰

- 7 • Fahey-Flynn taught six classes including: Google drive overview, creating
8 presentations with Google drive, using your Outlook account, file management,
9 organizing your job search and checking out eBooks.
- 10
- 11 • PSA RRA librarians taught four classes over the course of four Wednesdays in
12 March including: internet basics I and II;⁸¹ Google keyword searching, and Google
13 maps.
- 14
- 15 • PSA Microtext librarians taught on Thursdays including: sign up for Gmail and
16 Outlook, and historic newspaper research.
- 17
- 18 • Other PSA librarians taught Mac: select, copy, paste, Google blogger 101: getting
19 started, sign up for Gmail, know your settings: finding and changing personal,
20 privacy, and security settings, job searching online, introduction to researching
21 your family tree parts I and II, sign up for Outlook email, and patent searching.

22 In the March of 2013 calendar, the word “basic” appeared in relation to the following
23 classes that the PSA librarians taught: Mac: the basics; keyboard basics; and internet
24 basics.⁸²

⁸⁰ O’Toole initially claimed that while working for Fahey-Flynn between March and August of 2013, no one other than Fahey-Flynn and O’Toole taught the computers for beginners course. O’Toole later conceded that “there probably were others.”

⁸¹ Theroux taught internet for beginners in February or March of 2013. A PSA colleague assisted her.

⁸² In March of 2013, PSA RRA Librarian Young taught a Keyboard Basics class in Chinese. Although Shafts testified that Young provided computer instruction in Chinese

1 2. Spring of 2013 RRA Librarians

2 By the early spring of 2013, there were about eight PSA RRA Librarians who taught
3 classes, including Theroux,⁸³ Glass, Laura Barkema (Barkema), Katie Devine (K. Devine),
4 Eileen Sherman (Sherman), and Young.⁸⁴ According to Glass, Fahey-Flynn spoke to him
5 about teaching “basic computer classes” when he was first hired, but the BPL did not
6 provide Glass with a definition of a basic or intermediate technology courses.⁸⁵

7 Fahey-Flynn encouraged RRA Librarians to teach classes such as beginner
8 computer, internet, and email classes, as well as other classes of interest to the RRA

through 2015, the calendars only indicate that Young taught in August 2012, and February and March 2013.

⁸³ Theroux taught on the first floor of Johnson Building in 2013 until moving to the KBL in 2014, and then after that to the McKim building.

⁸⁴ Shafts initially claimed that Barkema, Glass, and Theroux taught formal basic computer classes in August of 2011. When asked on cross-examination to confirm that the three employees actually were hired after November of 2012, she responded that she did not know when they were hired. She subsequently acknowledged that she did not know when exactly they taught classes.

⁸⁵ Glass offered testimony about his opinions on basic and intermediate courses. Glass considered basic technology courses as those that involved “physically operating the machinery, like collective classes on using a mouse, on performing tasks sort of like Select, Copy, Paste, [and] all of the series that included the phrase “for beginners” to be ... basic classes. He described most of the classes that he inherited from Fahey-Flynn as basic technology classes. He considered intermediate courses as those that went “beyond basic operation of machinery and programs.” Glass did not consider it a meaningful distinction beyond the fact that some series actually were called intermediate, but labeling classes as intermediate was not a consistent practice. He considered the following classes that he inherited from Fahey-Flynn as beyond basic: a class on using the online catalogue, e-books, and audio books. He described the research and database classes that librarians developed as beyond basic. He also described intermediate classes as those technology classes that the RRA Librarians developed, which included Barkema’s travel planning class, and the medical information classes that he and Theroux taught. Glass taught a class on conducting classics research once on April 22, 2015, that he considered intermediate or advanced.

1 librarians. RRA Librarians usually taught beginner tech classes, with one working as the
2 instructor and the other as the TA.⁸⁶ PSA librarians from the KBL, Social Sciences, and
3 Microtext also taught classes.

4 In general, Glass, Theroux, and Barkema taught classes including select, copy,
5 paste, computers for beginners, email programs, and later classes more specific to library
6 resources. Glass also taught classes on Overdrive and borrowing e-books and audio
7 books, medical information, and at least one class on JSTOR which is the library's
8 electronic resources, and one class on a beginner's guide to online research.⁸⁷ Other
9 RRA Librarians also taught medical information classes, classes about selecting books to
10 read next, planning travel online, e-book and audio book classes, and how to use a
11 computer mouse.

12 Between March of 2013 and March of 2015, RRA Librarians used Fahey-Flynn's
13 class curricula as a basis for teaching the computer classes that they inherited from her,
14 but they developed their own curricula for classes that they initiated and taught
15 themselves. Fahey-Flynn had set up a shared Google Drive folder called "Instructional
16 Material" that was available to RRA Librarians. During informal conversations, Glass also
17 got general information about teaching from Fahey-Flynn and others who taught the
18 classes, such as finding teaching space, using the projector, getting the computers set up

⁸⁶ Gifford testified that some librarians requested that O'Toole act as their TA, but that some preferred to have a second librarian from their department assist them. Theroux testified that RRA Librarians assisted each other with classes and did not ask AFSCME library assistants to assist with classes. I do not credit Gifford's testimony as it pertains to the RRA librarians requesting O'Toole to act as their TA because she offered no specific examples.

⁸⁷ Glass created the class on the beginner's guide to online research. The Central Library offered other online research classes before Glass offered his class.

1 for public use, and general advice about interacting with members of the public. As time
2 passed, RRA Librarians modified the original curriculum materials to be sure all of the
3 interfaces matched the current version of the technology being taught.

4 3. March of 2013 Trainer/Collections Position

5 Gifford organized the Trainer/Collections position search and hiring process.
6 O'Toole filled the position on March 9, 2013. Ten days later, on March 19, 2013, then
7 PSA Attorney Indira Talwani (Talwani) sent a letter via email to then City Attorney Ann
8 Marie Noonan (Noonan) seeking information about the Trainer/Collection position.
9 Immediately after emailing Noonan, Talwani sent emails to two members of the PSA
10 leadership, Melissa Andrews (Andrews) and Shafts, stating in relevant part that "we
11 should be filing a grievance now."

12 In an April 3, 2013 letter, Noonan responded to the PSA's March 19, 2013 request
13 for information about the Trainer/Collections position by stating in relevant part:

14 This position is responsible for providing basic computer training

15
16 The position will *not* be responsible for curriculum development or
17 developing trainings but is expected to provide "formal" basic computer
18 trainings previously developed by the Curriculum Development
19 Coordinator. [Emphasis in original] This could include how to use a mouse,
20 how to use copy/paste functions, and/or how to create a Gmail account. It
21 has yet to be determined whether any of the trainings will be in a series.

22
23 These trainings will be presented to the public in a group setting, though the
24 size of the group may vary depending on patron interest and attendance.
25 These trainings will be held at branches and at the Copley Square location.
26 It is anticipated that they will occur either in the Tech Center area or on
27 laptops at the branches (this can occur in a conference room or at a table
28 depending on the branch layout). It is not anticipated that this position will
29 train staff. However, if staff have questions regarding technology and the
30 person in this position is able to answer those questions, we would
31 anticipate that she would in fact answer those question on a one-off basis.

1 This position will *not* [emphasis in original] be responsible for providing
2 trainings on how to conduct research or how to use Library databases and
3 tools to conduct research. For instance, this position will not train patrons
4 how to evaluate the reliability of a website or where to look to find the best
5 sources on a particular topic.
6

7 A large portion of the “training” related functions of this position will be
8 providing “training assistance” during trainings performed by Librarians. In
9 this role, it is expected that the Special Library Assistant II/Trainer will be
10 present during trainings, will roam the room to ensure attendees are
11 following along and assist if an attendee has not kept pace with the
12 program. Here again, the focus will be on helping attendees having trouble
13 keeping pace as a result of issues with the technology.
14

15 * * *

16
17 Similarly, this person may assist in migrating training materials previously
18 created from GoogleDocs to a new platform, such as LibGuides. This
19 person will not be making any changes to the documents, but merely
20 helping to move and store previously created materials.

21 When O’Toole started in the Trainer/Collections position in March of 2013, she
22 reported directly to both Gifford and Fahey-Flynn. Gifford met with O’Toole once a week
23 to discuss her work in Instruction Services. Gifford also guided Fahey-Flynn with respect
24 to managing O’Toole.⁸⁸ Gifford told O’Toole to assist Fahey-Flynn in all aspects of public
25 instruction, particularly with administrative details such as preparing the calendar and
26 class handouts, checking voice and email messages and compiling statistics. Neither
27 Fahey-Flynn nor Gifford discussed course “levels” with O’Toole. Neither did Campbell
28 when she became CDC in September of 2013.

29 Fahey-Flynn and O’Toole worked together for six months. O’Toole talked with

⁸⁸ At the hearing, Gifford testified that she expected O’Toole to spend about seventy-five percent of the seventeen hours she worked as a Trainer in the classroom as a TA or as the instructor and the other twenty-five percent of her time assisting with administrative functions, but that those hours changed week to week depending on the schedule. Gifford declined to estimate the percentage of time O’Toole worked as a TA versus taught.

1 Fahey-Flynn every day to discuss the class offerings, who else was teaching, the
2 schedule, and the calendar. Initially, O'Toole helped Fahey-Flynn with the calendar, class
3 registration, and worked as a TA in classes that Fahey-Flynn taught.⁸⁹ O'Toole also
4 helped with laptop maintenance, collected class statistics, and assumed duties related to
5 the calendar that the Central Library used to publicize classes, including emailing the
6 calendar internally and printing large versions to post.⁹⁰ Eventually, O'Toole also learned
7 the LibGuides technology and moved class related handouts and information from
8 PowerPoint into the LibGuides platform. From March to August of 2013, O'Toole acted
9 as the TA in the beginner tech classes that Fahey-Flynn taught.⁹¹ Fahey-Flynn and
10 O'Toole also made plans regarding a new classroom set up.

11 a. O'Toole's Teaching For Fahey-Flynn

12 Based on the evidence in the record, I conclude that O'Toole independently taught
13 two classes between March and August of 2013. In May of 2013, O'Toole filled in when
14 Fahey-Flynn was out sick and taught one class of the four-part computers for beginners
15 series. In June of 2013, O'Toole taught the second class in the computers for beginners
16 series. O'Toole also taught an iPad basics class in July of 2013. In making these findings,
17 I have considered the following evidence:

- 18 • O'Toole testified that she independently taught classes during Fahey-Flynn's
19 tenure as CDC. O'Toole initially testified on direct examination that she taught at
20 least one computers for beginners class of fifteen people and another eBook

⁸⁹ Other TAs included two interns from Simmons College who worked for Gifford. There are no other details in the record about their work.

⁹⁰ O'Toole maintained two versions, an internal calendar, which listed staff instructors by name, and a public version, which did not identify instructors. If changes arose, the calendars were not revised to list the instructor that ultimately taught course.

⁹¹ Not every calendar in the record indicates when O'Toole TA'd.

1 beginners class in the first floor of the Johnson building between March of 2013
2 and July of 2013, before that space closed in August of 2013. She then testified
3 that she taught one of four computers for beginners class in May of 2013 when
4 Fahey-Flynn was out sick and another four computers for beginners classes in
5 June of 2013 that Fahey-Flynn had been scheduled to teach. She also testified
6 that she taught one iPad basics class in July of 2013. The iPad basics class had
7 a maximum size of twelve students. O'Toole testified that Fahey-Flynn told her
8 she would teach iPad basics after the Central Library received the iPads and were
9 ready to begin scheduling classes. On cross-examination, O'Toole testified that
10 while Fahey-Flynn was CDC, she taught computers for beginners twice, once only
11 one class of the four-part series and the other time the entire series.
12

- 13 • According to Fahey-Flynn, no AFSCME bargaining unit members taught
14 Technology Workshops while she was the CDC between 2011 and 2013. Fahey-
15 Flynn testified that she never assigned O'Toole to teach classes while she was
16 CDC, on either a scheduled basis, or during an unexpected absence.
17
- 18 • Theroux testified that in June of 2013, she attended a computers for beginners
19 course series for observation purposes and that Fahey-Flynn taught the first class
20 and O'Toole taught the second class.
21
- 22 • Shafts testified that O'Toole "was teaching in the computer lab center on the
23 Johnson first floor by the summer of 2013" and that Shafts "observe[d] her in July
24 of 2013" from outside the classroom.
25
- 26 • Gifford testified that before March of 2015, O'Toole taught a class on apps for
27 iPads that was a beginner level class.

28 For all of the following reasons, I do not credit Fahey-Flynn's sweeping claim that
29 no AFSCME member taught Tech Workshops while she was the CDC between 2011 and
30 2013. Rather, I credit the portion of O'Toole's testimony that she independently taught
31 classes during Fahey-Flynn's tenure as CDC based on other corroborative testimony and
32 overall plausibility. First, I credit Fahey-Flynn's testimony that she did not schedule
33 O'Toole to teach, because O'Toole was not listed among the names of instructors on the
34 March, April, May, or June of 2013 calendars (the July calendar does not include
35 instructor names). Second, while Fahey-Flynn claimed that O'Toole did not teach on an
36 unscheduled basis, I find O'Toole's testimony that she taught one of the computers for

1 beginners classes during Fahey-Flynn's unexpected absence in May of 2013 plausible. I
2 also credit Theroux's testimony that O'Toole taught one class of the June of 2013
3 computers for beginners series. Therefore, while I do not credit the portion of O'Toole's
4 testimony that she taught the entire series of computers for beginners for Fahey-Flynn as
5 well as filled in for the absent Fahey-Flynn in May 2013, I do find that O'Toole taught part
6 of the computers for beginners series twice for Fahey-Flynn.

7 I also find that O'Toole taught an iPad basics class in July of 2013 as it is
8 corroborated by Shaft's testimony that she observed O'Toole teaching in July of 2013 and
9 Gifford's testimony that O'Toole taught an iPad beginner class sometime before March of
10 2015.

11 b. O'Toole as TA For Fahey-Flynn

12 It is undisputed that O'Toole was a TA for Fahey-Flynn between March of 2013
13 and July of 2013. Fahey-Flynn testified vaguely that O'Toole did a lot of TA work for her
14 in different classes. Based on the entirety of the record, I find it plausible that O'Toole
15 TA'd the following classes that Fahey-Flynn taught:

- 16 • March of 2013: Google drive overview, creating presentations with Google
17 drive, using your Outlook account, file management, and organizing your
18 job search and checking out eBooks.
- 19 • April of 2013: using YouTube, iTunes intermediate, online financial planning
20 resources, selling stuff online: eBay, Craigslist, Etsy, and Amazon, and
21 checking out eBooks from the Library.
- 22 • May 2013: computers for beginners series, once a week over four weeks,
23 iPad Basics, listening to music/radio online, and watching tv/movies online.
- 24 • June of 2013: managing your photos: which software is right for you,
25 computers for beginners four class series, internet for beginners four class
26 series, and iPad basics.
- 27 • June of 2013: managing your photos: which software is right for you,
28 computers for beginners four class series, internet for beginners four class
29 series, and iPad basics.

30 Regarding July of 2013, there is no evidence about the classes that Fahey-Flynn

1 taught that month, and there were no classes held in August of 2013 because of
2 construction at the Central Library.

3 c. O'Toole and Curriculum Development Under Fahey-Flynn

4 At no time did O'Toole's role in the Trainer/Collections position require her to
5 develop curriculum. When O'Toole worked for Fahey-Flynn, Fahey-Flynn established the
6 curriculum and finalized all of the materials for the courses. Fahey-Flynn was in charge
7 of the class design and materials. O'Toole assisted Fahey-Flynn with curriculum
8 preparation and organization including gathering both external and internal sources.⁹²
9 Fahey-Flynn was interested in creating resources for students to use during and after
10 class. O'Toole often helped Fahey-Flynn look at online resources. Once a week, Fahey-
11 Flynn asked O'Toole to find materials, such as YouTube videos, to help the public with
12 computer mouse and keyboard activities. In creating a YouTube playlist, O'Toole found
13 videos that already existed on learning certain skills and, at Fahey-Flynn's direction, put
14 the URLs into class handouts or into LibGuides. Fahey-Flynn also asked O'Toole for clip
15 art.⁹³ O'Toole also worked on handouts with Fahey-Flynn by including screenshots of
16 information for class participants.

17 While O'Toole did not create any curriculum, she offered Fahey-Flynn feedback
18 about class curricula. O'Toole's input affected changes Fahey-Flynn made to the

⁹² Gifford testified that she considered the duty of assisting with curriculum preparation to include the creation and maintenance of class handouts.

⁹³ I credit Fahey-Flynn's testimony on this point because O'Toole offered conflicting testimony about whether Fahey-Flynn asked her for clip art. O'Toole testified on direct examination that Fahey-Flynn asked her for clip art. On cross-examination, O'Toole stated that she had not worked with clip art. Gifford testified that Fahey-Flynn might have asked O'Toole for clip art to publish on a calendar, flyer, or handout.

1 curricula. When O'Toole taught during Fahey-Flynn's tenure as CDC, she prepared for
2 the computer and the iPad basics classes by printing Fahey-Flynn's Power Point
3 presentations and handouts for those classes. O'Toole then made notes on her own
4 copies in preparation for the classes.

5 1. LibGuides

6 O'Toole worked on but did not create LibGuides with Fahey-Flynn.⁹⁴ LibGuides
7 are web-based applications with "mini-websites." LibGuides are informational pages and
8 subject guides. They are "are web pages for the purpose of reference and instruction. ...
9 It's . . . an online platform that allows you to put all things in one place; so video, RSS
10 feeds, widgets to our databases, . . . book lists." LibGuides were created by librarians.
11 According to Gifford, "[w]hen doing research guides for the public it's the purview of the
12 librarians to create those because that's the work they do, that's their subject expertise."
13 The BPL used LibGuides for informational subject guides. The BPL also used LibGuides
14 for classes. Class guides were under the purview of the CDC. Gifford commented that
15 the goal was for every class to have a corresponding LibGuide so that students could go
16 back and do exercises afterwards, so that the librarians could share the curriculum across
17 the system so everyone was not always dependent on Power Points and sending
18 documents."

19 D. April of 2013

20 1. PSA Grievance Step 2 Hearing

⁹⁴ O'Toole described librarians and other administrators as having worked on LibGuides. Gifford indicated that AFSCME unit members did not create LibGuides for the public. Gifford testified that she considered the Trainer/Collections position duty of assisting with curriculum preparation to include the creation and maintenance of class handouts and LibGuides.

1 On April 5, 2013, the City conducted a Step 2 grievance hearing regarding the
2 PSA's February 7, 2013 grievance.

3 2. Central Library Public Instruction Schedule April of 2013

4 In April of 2013, the Central Library renamed "Technology Workshops" as
5 "Research, Computer & Career Classes" and offered about thirty-two classes for
6 members of the public in the Johnson Building first floor Training Lab. A calendar
7 publicized the classes. In summary, PSA bargaining unit members taught all of the
8 classes offered in April of 2013.

- 9 • Fahey-Flynn taught six classes: using YouTube, iTunes basics, iTunes
10 intermediate, online financial planning resources, selling stuff online: eBay,
11 Craigslist, Etsy, and Amazon, and checking out eBooks from the Library.
12
- 13 • PSA RRA librarians taught four Wednesday classes: mousercise, keyboard basics,
14 select, copy, paste, and computer basics.
15
- 16 • Other PSA librarians taught the following classes: intro to BPL digitized collections,
17 researching Boston businesses, old and new; current newspapers online, finding
18 Massachusetts laws, Goodreads, Mac: internet basics, researching old stock
19 information, newspaper research for genealogists, historical newspaper research,
20 Facebook intro, American ancestors, Facebook intermediate, iTunes intermediate,
21 Facebook pages for small business and nonprofits, WordPress 101, conducting
22 mutual fund research, researching antiques, checking out eBooks, your new
23 camera, writing well for the web, LinkedIn 101: creating an account, and ancestry
24 library edition.

25 In the April of 2013 calendar, the words "introduction to" appears in relation to the
26 classes on digitized collections and Facebook. The word "basic" appears in relation to
27 Mac: internet basics, keyboard basics, and iTunes basics and computer basics. The word
28 "intermediate" appears in relation to Facebook intermediate and iTunes intermediate.

29 E. May of 2013

30 1. Central Library Public Instruction Schedule May of 2013

31 In May of 2013 the Central Library offered thirty-five Research, Computer and

1 Career classes to members of the public that were publicized on a calendar. The calendar
2 did not indicate the location of the classes. In summary, PSA bargaining unit members
3 taught thirty-three of thirty-four classes⁹⁵ in May of 2013.

- 4 • Fahey-Flynn taught about ten classes: computers for beginners series, once a
5 week over four weeks, iPad basics, listening to music/radio online, and watching
6 tv/movies online.
7
- 8 • PSA RRA librarians taught five Wednesday classes including: using JSTOR,
9 Goodreads, editing photos with Windows photo gallery, Medline plus, and online
10 science resources.
11
- 12 • Other librarians taught finding law and legal information; Mac: the basics;
13 WordPress 101, online job resources, heritage quest, teacher resources at the
14 Norman Leventhal Map Center, patent searching, Facebook basics and Q&A, Mac:
15 customizing your Mac, researching old stock information, finding your immigrant
16 ancestors, Mac: file management, archival and manuscript finding aid database,
17 researching Massachusetts businesses, American ancestors, Facebook
18 intermediate, creating a resume online, online science resources, and Facebook
19 pages for small businesses and nonprofits.

20 Additionally, O'Toole filled in when Fahey-Flynn was out sick and taught one class of the
21 computers for beginners series in May of 2013.

22 On the May of 2013 calendar, the word "basic" appeared in relation to Mac: the
23 basics; and iPad basics. The word "intermediate" appeared in relation to Facebook
24 intermediate. The word "introduction" did not appear.

25 F. June of 2013

26 1. Step 3 Grievance

27 By letter dated June 11, 2013, from Shafts to Director Paul Curran (Curran) of the
28 City's Office of Labor Relations, the PSA demanded a Step 3 grievance hearing. The

⁹⁵ This number excludes drop-in Gmail help, which is listed on the May 2013 calendar and which librarians taught, because there is no evidence that it consisted of more than one-on-one assistance.

1 letter stated, in relevant part, that the PSA had not received a Step 2 response, and that,
2 despite the April 5, 2013 meeting, the Grievance remained “unsettled” at Step 2.

3 2. Central Library Public Instruction Schedule June of 2013

4 In June of 2013, the Central Library offered twenty-five Research, Computer and
5 Career classes at the Johnson Building first floor training lab that were publicized on a
6 calendar. In summary, PSA bargaining unit members taught twenty-two of twenty-four
7 classes in June of 2013.⁹⁶

- 8 • Fahey-Flynn taught: managing your photos: which software is right for you,
9 computers for beginners four class series, internet for beginners four class series,
10 iPad basics, and managing your photos iPhoto for Mac.
- 11 • RRA Librarians are not specifically listed for Wednesday classes.⁹⁷
- 12 • Other PSA Librarians taught: Mac: iTunes, LinkedIn for jobseekers, intro to
13 digitized collections, mobile device basics questions and answers, conducting
14 mutual fund research, your new camera, apps on smartphones and tablets,
15 research strategies for starting your small business, your new device: managing
16 your photos, Flickr; and fine arts resources.

17 Also, O’Toole taught the one class in the computers for beginners series in June of 2013.
18 Additionally, BPL manager Gifford was scheduled to teach one class (managing your
19 photos: Windows photo gallery) in June of 2013 but had no memory of actually teaching
20 the course.⁹⁸

21 On the June of 2013 calendar, the word “basic” did not appear. The word

⁹⁶ This number excludes eBook drop-in help, which is listed on the June of 2013 calendar and that librarians taught.

⁹⁷ RRA librarians generally taught internet for beginners classes before June of 2013. After June of 2013, Theroux taught Gmail for beginners.

⁹⁸ Gifford opined that it was possible that no one attended the scheduled class.

1 “beginners” appeared in relation to computers for beginners and internet for beginners.

2 G. July of 2013

3 By July of 2013, the Library had three modules for computer literacy, which were:
4 computers for beginners, internet for beginners, and email for beginners.⁹⁹ The computers
5 for beginners series began in May of 2013, the internet for beginners series began in June
6 of 2013, and the email for beginners series began in July of 2013. The courses were
7 progressive, beginning with computers for beginners, and then either internet or email
8 next. Computers for beginners involved the difference between a search engine and a
9 browser, the definition and function of IP addresses, how to use and search google, how
10 to use filters, and common-sense usage and safety information. Classes such as cut,
11 copy, paste and how to use a mouse were individual classes that existed before Fahey-
12 Flynn developed the computers for beginners series.

13 1. Central Library Public Instruction Schedule July of 2013

14 In July of 2013, the Central Library offered twenty-five Research, Computer and
15 Career classes for members of the public in the first floor Johnson Building training lab
16 that were publicized on a calendar. In summary, PSA bargaining unit members taught
17 twenty-four of twenty-five classes in July of 2013, including:¹⁰⁰

- 18 • watching tv and movies online, get to know Windows 8, Google searching:
19 keywords, Gmail for beginners weeks 1-4, Mac: keyboard and trackpad, website

⁹⁹ During the September of 2013 through July of 2014 time frame, class sizes for computers for beginners was about eight to twelve attendees, internet for beginners varied from five to twelve attendees, and email for beginners had class sizes on the higher end of those scales.

¹⁰⁰ The July 2013 calendar does not identify class instructors. Based on the totality of the record, I conclude that PSA bargaining unit members taught all but one of the July 2013 classes.

1 basics for small business and non-profits, intro to Office 2013, Google searching:
2 using filters, iPad: the basics, Mac: select, copy, paste, social media basics for
3 small business and nonprofits, Google searching: advanced, iPad: reading apps,
4 Mac: the basics, logos, colors and style a consistent online look and feel, Google
5 searching: maps, iPad: checking out eBooks; Mac: file management; and writing
6 well for the web.

7 Also, O'Toole taught an iPad basics class in July of 2013.

8 On the July of 2013 calendar, the word "basic" appeared in relation to: iPad: the
9 basics, and Mac: the basics. The word "beginners" appeared in relation to Gmail for
10 beginners. Courses with prerequisites included: introduction to Office 2013, get to know
11 Windows 8, and writing well for the web. Two classes were lectures, website basics for
12 small business and nonprofits, and social media basics for small business and non-profits.

13 H. August of 2013

14 In August of 2013, the Central Library did not offer Research, Computer, and
15 Career classes because of preparations to move the training lab from the first floor of the
16 Johnson Building to the KBL.¹⁰¹ In August of 2013, the former instruction area closed,
17 and the new classroom was not ready yet.

18 Also in early August of 2013, Fahey-Flynn learned that she had been bumped out
19 of her CDC position. She left the CDC position at the end of August. Before she left the
20 CDC position, Fahey-Flynn set up the computer classroom in the KBL and the September
21 of 2013 class calendar.

22 I. September of 2013

¹⁰¹ According to Glass, between March of 2013 and March of 2015, PSA RRA librarians taught classes once a week. However, I do not find that RRA librarians were teaching classes once a week in August of 2013 because in August of 2013, the BPL did not offer Research, Computer, and Career classes because of preparations to move the training lab from the first floor of the Johnson Building to the KBL.

1 1. CDC Campbell

2 In September of 2013, Rebecca Campbell (Campbell) succeeded Fahey-Flynn as
3 CDC, a position she held until June of 2014.¹⁰² As Fahey-Flynn previously had done,
4 Campbell decided what classes would be taught each month. O'Toole and Campbell met
5 regularly to discuss the classes that O'Toole, Campbell, and other individuals were
6 teaching. They talked every day about the classes to be taught and planning the calendar.
7 By the time Campbell became CDC, there was a small group of librarians who regularly
8 taught basic technology classes. Glass was the point person for coordinating the classes
9 that the RRA librarians taught. He gathered input from them about the topics they wanted
10 to teach, and he would coordinate with Campbell. RRA Librarians taught basic technology
11 courses alongside Campbell, such as internet for beginners. Theroux as an RRA Librarian
12 experienced no change in class assignments under Campbell.

13 a. O'Toole's Teaching For Campbell

14 O'Toole taught the following classes under Campbell between September of 2013
15 through June of 2014 (there was no CDC in July of 2014):

- 16 • Computers for beginners series of classes in September and October of
17 2013, and January and May of 2014, all at the Central Library.
- 18 • Internet for beginners series in March and June of 2014 at the Central
19 Library.
- 20 • The iPad basics class in September and December of 2013, and January
21
- 22

¹⁰² There is conflicting evidence about when Campbell began working in the CDC position. Shafts described Campbell as being CDC for about a year after Fahey-Flynn. O'Toole stated that Campbell became CDC in October of 2013. She also stated that Campbell was CDC from September of 2013 until July of 2014. Gifford described Campbell as being CDC for about 8 months after Fahey-Flynn left in August of 2013. The October 2013 calendar shows Campbell as teaching on October 3, 2013. Because it is unlikely that Campbell began teaching in her first week as CDC, I conclude that Campbell was CDC from September of 2013 through June of 2014.

1 of 2014 at the Central Library.

- 2
- 3 • The iPad: checking out eBooks class in September of 2013 at the Central
 - 4 Library.
 - 5
 - 6 • The Urban Apps class at the Central Library in April of 2014.

7 b. O'Toole as TA For Campbell

8 O'Toole TA'd for Campbell in the email for beginners series in October of 2013 and
9 with Campbell's portion of the Urban Apps class in April of 2014. Based on the totality of
10 the record, I find that O'Toole TA'd for Campbell in December of 2013 in the email for
11 beginners series, and in January of 2014, the internet for beginners series and in a class
12 called "happier."

13 There is no evidence that Campbell taught classes in September of 2013, or in
14 February, March, May, or June of 2014.¹⁰³ In November of 2013, O'Toole was on
15 vacation. There was no CDC in July of 2014.

16 c. O'Toole and Curriculum Development Under Campbell

17 As CDC, Campbell was responsible for designing all curricula. Because Fahey-
18 Flynn previously had established the curriculum for each class, Campbell did not assign
19 O'Toole to collect images or videos to input on class PowerPoints and handouts.
20 Campbell never had a specific conversation with O'Toole directing her to modify any
21 curriculum. Nevertheless, O'Toole updated presentations and made modifications for her
22 own purposes, so that the curriculum worked for her teaching style and the experience
23 levels of class participants. Campbell usually did not review the curriculum modifications

¹⁰³ According to Gifford, Campbell taught a technology course at least once a month. However, I do not credit Gifford's testimony on this point because she provided no details in support of the statement, and because it is contrary to other evidence in the record.

1 that O'Toole made for her own teaching purposes.

2 2. Central Library Public Instruction Schedule September of 2013

3 In September of 2013, the Central Library offered twenty-seven Research,
4 Computer, and Career classes to members of the public in the Concourse Level Tech
5 Classroom, a schedule that was publicized on a calendar. In summary, PSA unit
6 members taught nineteen of the twenty-seven classes in September of 2013 including:

- 7 • tools for job searching, Mac: mouse and keyboard, writing well for the web, read
8 magazines online with Zinio, LinkedIn for job seekers, Mac: select, copy, paste,
9 WordPress 101, read historical newspapers online, genealogy for beginners weeks
10 1 and 2, resumes 101, Mac: the basics, read current newspapers online with
11 PressDisplay (for beginners), interviewing 101, Mac: changing your settings, logos,
12 colors, and style, website basics for small business and nonprofits, social media
13 basics for small business and nonprofits, and databases for small business
14 research.

15 Additionally, O'Toole taught eight classes, including the four-part computers for beginners
16 series, two classes on iPad basics, and two classes on iPad: checking out eBooks.¹⁰⁴
17 Fahey-Flynn scheduled O'Toole to teach these classes when she made the September
18 of 2013 calendar. In teaching these classes, O'Toole used the curriculum, PowerPoint
19 presentation, and handouts that Fahey-Flynn had developed.¹⁰⁵

20 On the September of 2013 calendar, the word "basic" appeared in relation to: iPad
21 basics, Mac: the basics, website basics and social media basics for small business and
22 nonprofits. The word "beginners" appeared in relation to the computers for beginners

¹⁰⁴ Until July of 2013 Fahey-Flynn and PSA RRA librarians had been teaching these classes.

¹⁰⁵ O'Toole indicated that at some point in the September of 2013 through July of 2014 time frame she compressed the computers for beginners four-week class into two longer days at the Dudley Branch, which consisted of two- and one-half-hour sessions. She did not show Campbell the material before using it. Although O'Toole compressed material, I do not find that this constitutes curriculum development.

1 series and genealogy for beginners series.

2 In September of 2013, there were two iPad courses, the basics class, and the iPad
3 as an eReader class. The iPad basics class was different from iPad checking out eBooks.
4 The iPad basics class involved how to turn the device on and off, how to open an Apple
5 account without using a credit card, how to download apps, search for apps, all the basic
6 activities that an individual needed to use an iPad. The iPad checking out eBooks class
7 involved showing people how to add the OverDrive app to their iPad which allowed them
8 to download the BPL's collection. The iPad courses generally were related to applications
9 such as eReaders, OverDrive, Hoopla, which was for television, movies, and audio books,
10 and Vinio, which was for magazines. According to O'Toole, although the Collections
11 Librarians taught Vinio, she also taught it a few times. For all of the basic classes on
12 these apps, O'Toole taught members of the public how to open an account, create a
13 password, how to use the app, and how to search to find information. During the
14 September of 2013 through July of 2014 time frame, O'Toole did not teach any classes
15 involving apps for cell phones.

16 During the September of 2013 through July of 2014 time frame, class sizes for
17 computers for beginners were about eight to twelve attendees, internet for beginners
18 varied from five to twelve attendees, and email for beginners was on the higher end of
19 those scales.

20 3. September of 2013 Trainer/Collections Job Duties Memo

21 A September 17, 2013 chart entitled "Claire's Job Duties" created by Gifford and

1 Andrews¹⁰⁶ stated, in relevant part:¹⁰⁷

- 2 • Check computerworkshops@bpl.org email account (daily)
- 3 • Check Instruction Services voicemail as needed (daily)
- 4 • Teach basic computer & iPad basics classes, eBook classes and TA other
- 5 classes upon request (weekly)
- 6 • Calendar: enter classes into online events calendar; send final pdf to IT for
- 7 “posterizing”, cut posters to correct size (28” long); put posters and calendar
- 8 handouts into poster stands (monthly).
- 9 • Create YouTube playlists of videos under 3 minutes long that are clear, easy
- 10 to understand, and authoritative/accurate.
- 11 • Compile & track monthly electronic resources usage statistics.
- 12 • Assist with the creation and maintenance of class handouts and class
- 13 LibGuides.
- 14 • Assist with and/or teach classes at the Branches (schedule to be planned
- 15 with Gianna [Gifford]).

16 The term “create YouTube playlists of videos” referred to collecting curriculum and
 17 online resources related to basic computer skills from other libraries and non-profit
 18 organizations dedicated to computer literacy skills. O’Toole performed this duty working
 19 with Fahey-Flynn. The September 17, 2013 chart later became an exhibit at the Step 3
 20 grievance hearing on February 26, 2014.¹⁰⁸

21 J. October of 2013

22 1. Central Library Public Instruction Schedule October of 2013

23 In October of 2013, the Central Library offered thirty-two Research, Computer, and
 24 Career classes. The calendar does not indicate the location of the classes. In summary,

¹⁰⁶ Andrews was O’Toole’s immediate supervisor in the Collections Department.

¹⁰⁷ The chart of O’Toole’s job duties had two sections, one related to the instruction aspect of her split position and the other related to the collections’ duties. O’Toole testified that some weeks she did more collections work than instruction work, and on other weeks, the opposite was true.

¹⁰⁸ O’Toole indicated that she was not consulted before the chart was created.

1 PSA unit members taught twenty-seven of the thirty-two classes in October of 2013.

- 2 • Campbell taught the email for beginners four class series.
- 3
- 4 • PSA RRA librarians taught the internet for beginners four week, four class series
- 5 on Wednesdays.
- 6
- 7 • Other PSA librarians taught: Facebook basics and Q&A: Intro and Q&A, genealogy
- 8 for beginners weeks 3-7, banking 101, research choosing a topic and finding
- 9 background information, Mac: internet basics, Facebook: finding and changing
- 10 privacy, viewing, and security settings, resources for first time homebuyers,
- 11 research: finding articles and books, Facebook intermediate: photos, videos, and
- 12 tagging, eBay seller basic, research finding primary sources, Mac: file
- 13 management, budgeting basics, research: citing your source, and Mac: iPhoto.

14 Also, O'Toole taught four classes, the four-part computers for beginners series, in October
 15 of 2013. Additionally, on October 30, 2013, Microsoft store employees taught a course at
 16 the BPL on the Microsoft Operating System Windows 8 using their own curriculum.
 17 O'Toole TA'd for Campbell in the email for beginners series.¹⁰⁹

18 On the October of 2013 calendar, the word "basic" appeared in relation to
 19 Facebook basics, Mac: internet basics, eBay seller basics, and budgeting basics. The
 20 word "beginner" appeared in relation to internet, email and computers for beginners, and
 21 genealogy for beginners.

22 K. November of 2013

23 1. Central Library Public Instruction Schedule November of 2013

24 In November of 2013, the Central Library offered twenty-nine Research, Computer,
 25 and Career classes to members of the public that were publicized with a calendar. No
 26 location is listed on the calendar. PSA bargaining unit members taught twenty-eight of
 27 twenty-nine classes in November of 2013.

¹⁰⁹ Campbell taught email for beginners with Outlook instead of Gmail.

- 1 • Campbell taught the four-class, four-week internet for beginners class.
- 2 • PSA RRA librarians taught on four Wednesdays: Google keyword searching,
3 Google searching with filters, Google advanced searching, and Google maps.
4
- 5 • Other PSA librarians taught the remaining classes: Goodreads, Mac: iTunes,
6 genealogy for beginners weeks 8-10, researching antiques and collectibles, patent
7 searching, reading magazines online with Zinio, LinkedIn bootcamp parts 1-3,
8 researching fine arts and images, finding statistics, checking out eBooks, your new
9 camera, planning holiday events online, Google art project, finding population data
10 through the census, and shopping safely online.

11 Additionally, a contractor from Microsoft taught one class, Windows 8, in November of
12 2013. O'Toole didn't teach at all in November of 2013 because she was on vacation.

13 The word "basic" did not appear in the November of 2013 calendar. The word
14 "beginner" appeared in relation to the internet for beginners series and genealogy for
15 beginners series.

16 L. December of 2013

17 1. Central Library Public Instruction Schedule December of 2013

18 In December of 2013, the Central Library offered seventeen Research, Computer,
19 and Career classes for members of the public at the Johnson Building first floor training
20 lab that were publicized on a calendar. PSA bargaining unit members taught thirteen of
21 seventeen classes in December of 2013.

- 22 • Campbell taught a three-class, three-week series on email for beginners.
23
- 24 • PSA RRA librarians taught: consumer health information online, Medline: reliable
25 health information online, and medication information online.
26
- 27 • Other PSA librarians taught: website basics for small business, the ultimate
28 marketing database, listening to the radio and music online, social media basics
29 for small business, industry research sources, and what's in a business plan.

30 Also, O'Toole taught one class, iPad basics, in December of 2013. Contractors taught
31 three classes in December of 2013. Mass. Broadband Insurance taught two classes on

1 veteran benefits; and Microsoft employees taught one class on Windows 8. The
2 contractors used their own curriculum.

3 In December of 2013, the word “basic” appeared in relation to website basics,
4 social media basics, and iPad basics. The word “beginner” appears in relation to the
5 genealogy for beginners series and email for beginners series. Email for beginners had
6 preferred prerequisites that stated, “basic mouse and internet experience preferred.” The
7 following classes were question and answer: website basics for small business and social
8 media basics for small business.

9 2. Training Coordinator Cadillacic

10 In December of 2013 Cadillacic moved into a new position, Training Coordinator
11 (BLA 9) with a job description dated December 10, 2013. The portion of the job referred
12 to as the Position Overview, stated, in relevant part: “[u]nder the Directors of
13 Administration and Technology and Library Services ... develops an annual and ongoing
14 BPL and MBLN system-wide staff training program.” It did not refer to training for the
15 purposes of public instruction. However, it did refer to delivering classes, live and
16 recorded. The Scope of Responsibility in the job description also referred to developing
17 and delivering training and training materials to staff for patron-facing components of the
18 ILS and related applications, such as computer/printer set up and reservation and usage
19 systems.

20 It is undisputed that the purpose of Cadillacic’s Training Coordinator was not to plan
21 trainings for the public through the public instruction program. Cadillacic conceded that
22 while the Training Coordinator, BLA 9 position referenced staff training on “patron-facing
23 components” of the ILS, the BPL had a Reference and Instruction Department to conduct

1 trainings for the public and the focus of her position was not on “actually training the public
2 because we now had a department and individuals that could do that.” Between
3 December of 2013 and May of 2015, Cadillic never trained members of the public. Rather,
4 Cadillic provided beginner and intermediate training on library systems to BPL staff and
5 staff from other libraries for professional development purposes, but not to patrons.
6 Between December of 2013 and May of 2015, Cadillic created a public “pay-for-print”
7 guide in October of 2014, but otherwise did not create any public curriculum. Between
8 December of 2013 and May of 2015, Cadillic did not implement online public instruction
9 or online training. Cadillic broadly claimed that she might have updated ILS materials but
10 provided no specific examples. She asserted that the expectation for this position was
11 that it would create online or distance learning for the staff and the public, but there was
12 no mention of the public in the job description. There also was no evidence that she
13 provided, assisted, or coordinated with online instruction between at least November of
14 2014 and May of 2015. Cadillic claimed that she created public instruction curriculum
15 modules prior to November of 2014 but provided no details. In the absence of specific
16 details about the public instruction curriculum modules that Cadillic allegedly created, I
17 decline to credit her testimony on this point.

18 M. Consolidated 2013 Branch Library Facts

19 From 2013 through May of 2015, the Faneuil Branch only offered one-on-one
20 assistance with a brief two-week exception. At an unidentified point in time between
21 January of 2013 and May of 2015, PSA unit member Dorothy Keller (Keller) tried to hold
22 a class in the computer area, but it only ran for a couple of weeks because it was a small

1 space, and the one-on-one instruction was more effective.¹¹⁰ The one-on-one instruction
2 was not curriculum based.

3 Fields Corner Branch Librarians taught Tech Goes Home classes in 2013 based
4 on the curriculum that the Tech Goes Home program provided.

5 VI. 2014

6 A. January of 2014

7 1. Central Library Public Instruction Schedule January of 2014

8 In January of 2014, the Central Library offered twenty-five Research, Computer,
9 and Career classes to members of the public at the Concourse Level Tech Classroom.¹¹¹
10 Classes were publicized on a calendar. PSA unit members taught twenty of twenty-five
11 classes in January of 2014.

- 12 • Campbell taught the four-class, four-week internet for beginners series and a class
13 called “happier.”
- 14
- 15 • PSA RRA librarians taught the four-class, four-week computers for beginners
16 series.
- 17
- 18 • Other PSA librarians taught the following classes: your new device, apps on
19 smartphones and tablets, iPad basics, Goodreads; Google art project, Pinterest,
20 beat the winter blues with online videos, and looking up historical stocks.

21 Additionally, O’Toole taught five classes: a four-class, four-week computers for beginners
22 series and an iPad basics class.

¹¹⁰ Between January of 2013 and May of 2015, Langone was the Children’s Librarian at the Faneuil Branch. She stated that from 2013 through May of 2015, Faneuil only offered one-on-one assistance. In February of 2013, Langone took a course on the Accidental Instruction Librarian taught by Simmons Professor Laura Saunders.

¹¹¹ According to Theroux, the second floor of the Johnson building closed for renovations in early 2014 and reopened in February of 2015, at which point the lower floors of the building were renovated.

1 On the January of 2014 calendar, the word “basic” appeared in relation to iPad
2 basics. The word “beginner” appeared in relation to the internet, Gmail, and computers
3 for beginners series.

4 2. Step 3 Grievance Hearing Request

5 On January 1, 2014, Shafts renewed the PSA’s request for a Step 3 hearing.

6 B. February of 2014

7 1. Central Library Public Instruction Schedule February of 2014

8 In February of 2014, the Central Library offered fifteen Research, Computer, and
9 Career classes for members of the public in the Concourse Level Tech Classroom.
10 Classes were publicized on a calendar. PSA bargaining unit members taught all of the
11 seventeen classes¹¹² in February of 2014.

- 12 • PSA RRA Librarians taught the following classes on Wednesdays: medication
13 information online, senior health online, PubMed health: tools for understanding
14 health research, and parenting resources: keeping our child happy and healthy.
15
16 • Other PSA librarians taught the following classes: iPhoto; Facebook basics Q&A,
17 read historical newspapers online with NewsVault; homebuying for beginners;
18 iTunes; Facebook intermediate; genealogy for beginners weeks 1-3; ultimate
19 marketing database; Pinterest for businesses; read current newspapers online with
20 PressDisplay; and organize your job search with JibberJobber.

21 Neither Campbell nor O’Toole taught in February of 2014.

22 On the February of 2014 calendar, the word “basics” appeared in relation to
23 Facebook basics. The word “beginner” appeared in relation to homebuying for beginners
24 and the genealogy for beginners series. The word “intermediate” appeared in relation to

¹¹² This number excludes Facebook basics Q&A, which is listed as such on the February of 2014 calendar, as opposed to other classes listed as “Facebook basics *and* Q&A because there is no evidence that Facebook basics Q&A consisted of anything more than one-on-one assistance.

1 Facebook intermediate.

2 2. Step 3 Grievance Hearing

3 On February 26, 2014, the City conducted a Step 3 grievance hearing on the
4 February 7, 2013 PSA Grievance. PSA Acting President Birdseye¹¹³ and Chief Steward
5 Shafts appeared on behalf of the PSA without an attorney. The City provided the PSA
6 with a copy of the September 17, 2013 document entitled "Claire's Job Duties. Gifford
7 described the duties that O'Toole performed as listed in the document. Gifford noted that
8 O'Toole taught basic computer and iPad classes and explained that O'Toole was not
9 creating curriculum. Gifford further explained that the PSA duties were "teaching
10 research-oriented classes and the creating of curriculum, but that the teaching of basic
11 computer skills really does not require a master's degree." Shafts objected to O'Toole
12 teaching basic computer and iPad classes, eBook classes, and acting as a TA in other
13 classes upon request, as well as teaching in the branches and developing the YouTube
14 playlist.¹¹⁴

15 C. March of 2014

16 1. Central Library Public Instruction Schedule March of 2014

17 In March of 2014, the Central Library offered twenty-five Research, Computer, and
18 Career classes for members of the public at the Concourse Level Tech Classroom that
19 were publicized on a calendar. PSA bargaining unit members taught approximately

¹¹³ Birdseye became PSA Acting President in the Spring 2014. She became PSA President in the fall of 2014 and her term as president ended in 2015.

¹¹⁴ There is no evidence that in February of 2014, or any time before that point in time, O'Toole was actually teaching in the branches or developing the YouTube playlist.

1 twenty-one of twenty-five classes¹¹⁵ in March of 2014.

- 2 • PSA RRA librarians taught the four-class, four-week, computers for beginners
3 series.
4
- 5 • Other PSA librarians taught the following classes: LinkedIn boot camp parts 1-3,
6 ten nutritional and fitness apps, genealogy for beginners weeks 4-7, read
7 magazines online, introduction to basic legal sources, borrow eBooks, finding laws
8 and regulations, finding tasty and healthy recipes using Yummly.com, listen to
9 eAudio books, finding cases parts 1 and 2, and borrow eMovies and eMusic.

10 Additionally, O'Toole taught the four-class, four-week internet for beginners series.

11 Campbell, who did not teach in March of 2014, assisted O'Toole in the internet class.

12 On the March of 2014 calendar, the term "basic" appeared in relation to the
13 following classes: introduction to basic legal sources and Facebook basics. The term
14 "beginners" appeared in relation to genealogy for beginners, computers for beginners,
15 and the internet for beginners series.

16 2. Reference and Instruction Position

17 By March of 2014, the BPL had a Reference and Instruction Department. By letter
18 dated March 11, 2014, Flaherty informed Cadillac that the BPL intended to update the SLA
19 Literacy Services, BLA 4 position occupied by Vega at the Dudley Literacy Center. The
20 BPL offered to discuss a new draft job description entitled "Special Library Assistant,
21 BLA4" (Reference & Instruction position). Flaherty also directed Vega to report to the
22 Central Library.

23 D. April of 2014

24 1. Central Library Public Instruction Schedule April of 2014

¹¹⁵ This number excludes a Facebook basics Q&A class that is listed as such on the March of 2014 calendar, as opposed to "Facebook basics *and* Q&A," there is no evidence that it consists of more than one-on-one assistance.

1 In April of 2014, the Central Library offered nine Research, Computer, and Career
2 classes for members of the public at the Concourse Level Tech Classroom that were
3 publicized on a calendar. PSA bargaining unit members taught eight and one-half of nine
4 classes in April of 2014.¹¹⁶

- 5 • Campbell taught half of an Urban Apps class: ten best apps for city dwellers.
- 6
- 7 • PSA RRA librarians taught one class on Goodreads.
- 8
- 9 • Other PSA librarians taught genealogy for beginners weeks 8-10, selling your stuff
10 on eBay, budgeting basics, banking basics, and twitter haiku and other social
11 media poetry.

12 O'Toole taught half of one class, Urban Apps: ten best apps for city dwellers.¹¹⁷
13 The Urban Apps course was a one-time course about using smart phone apps to navigate
14 the City more easily. O'Toole, who had suggested the idea for the course to Campbell,
15 chose applications regarding food and weather apps and prepared a "presentation" that
16 entailed short descriptions of each, including the description of the app and how it applied
17 to urban living.¹¹⁸ Campbell did the same.¹¹⁹ O'Toole shared the document with the

¹¹⁶ These numbers exclude a Facebook drop-in Q&A class that is listed on the April of 2014 calendar because there is no evidence that it consisted of anything more than one-on-one assistance.

¹¹⁷ O'Toole and Gifford offered testimony regarding their opinions of app classes. O'Toole considered the app class to be at a beginner level because it was new to class attendees. Gifford considered app courses such as the best apps of Boston, to be basic level courses because any app savvy person could recommend apps to add to a smartphone. Gifford considered an intermediate level class to be, for instance, an app class that took a subject to the next level, such as an app used for birdwatching that would have a research lesson plan built around it and that depended on a person's expertise in that subject area.

¹¹⁸ O'Toole did not claim that the short descriptions that she wrote for the urban apps class constituted a curriculum, describing the work merely as a "presentation."

¹¹⁹ O'Toole testified that she and Campbell each prepared presentations on six apps. However, she failed to clarify why they would have prepared presentations for a total of

1 descriptions with Campbell before the class. The material that O'Toole and Campbell
2 prepared were included in a document handed out to attendees. During the course each
3 presented their apps to attendees using iPads, although attendees also brought their own
4 devices.

5 On the April of 2014 calendar, the word "basic" appeared in relation to budgeting
6 and banking basics. The word "beginner" appeared in relation to genealogy for beginners
7 series.

8 2. Step 3 Grievance Decision

9 The record contains a Step 3 grievance decision dated April 22, 2014 relative to
10 the PSA's February 7, 2013 grievance. The PSA denied that the City provided the PSA
11 with the Step 3 grievance in April of 2014 and maintained that the City failed to provide
12 the decision to the PSA until March 9, 2015. I previously informed the parties that I would
13 not resolve this dispute of fact as part of this Decision as it is not pertinent to the outcome
14 of the case.

15 E. May of 2014

16 1. Central Library Public Instruction Schedule May of 2014

17 In May of 2014, the Central Library offered eighteen Research, Computer, and
18 Career classes for members of the public at the Concourse Level Tech Classroom as well
19 as in the Johnson conference room. Classes were publicized on a calendar. PSA
20 bargaining unit members taught fourteen of eighteen classes in May of 2014.

- 21 • PSA RRA librarians taught on Wednesdays: Google keyword searching, Google
22 searching with filters, Google advanced searching, and Google maps.

twelve apps when the class was called urban apps: ten best apps for city dwellers. Thus,
I make no finding as to the exact number of apps for which O'Toole and Campbell each
made presentations.

- 1 • Other PSA librarians taught staying safe online, mental health in web comics,
2 genealogy for beginners week 12 and week 2, introduction to the BPL online
3 catalog, streaming music online, Twitter basics, grantseeking basics, what's new
4 in children's literature, live music archive on Archive.org, and guide to online
5 grantseeker resources.¹²⁰

6 Additionally, O'Toole taught four classes in the computers for beginners series in May of
7 2014.

8 On the May of 2014 calendar, the word "basic" appeared in relation to Twitter
9 basics. The word "beginner" appeared in relation to genealogy for beginners and
10 computers for beginners.

11 F. June of 2014

12 1. Central Library Public Instruction Schedule June of 2014

13 In June of 2014, the Central Library offered twenty Research, Computer, and
14 Career classes for members of the public at the Concourse Level Tech Classroom.
15 Classes were publicized on a calendar. PSA bargaining unit members taught twelve of
16 the twenty classes in June of 2014.¹²¹

- 17 • PSA RRA librarians taught four Wednesdays: editing your photos with windows
18 photo gallery, eBooks 101, and introduction to BPL online catalog.
19
20 • Other PSA librarians taught getting started with WordPress.com, proposal writing
21 basics, staying safe online, writing well online, introduction to the BPL online
22 catalog, playing with design and layout; read magazines online with Zinio; borrow
23 e-movies, e-music; and audiobooks with Hoopla, and introduction to finding
24 funders (which was held in the KBL conference rooms).¹²²

25 Also, O'Toole taught four classes of the internet for beginners series in June of 2014.

¹²⁰ Campbell did not teach any classes in May of 2014.

¹²¹ These numbers exclude the drop-in eReader help, which was a class that PSA RRA librarians taught that was listed on the June of 2014 calendar.

¹²² Campbell TA'd the internet for beginners series but did not teach any classes in June of 2014.

1 Additionally, Lourdes Rosario, a private contractor, taught four classes of the computers
2 for beginners series in Spanish in June 2014, using a translated version of the BPL's
3 curriculum.

4 2. Reference and Instruction Position

5 By May 23, 2014, the BPL had finalized the Reference and Instruction position, the
6 position which in March of 2014, Flaherty had informed Cadillac that the BPL would
7 update. The Reference and Instruction position job description dated May 23, 2014 stated
8 in the Position Overview: "To assist the staff of Reference and Instruction Services,
9 including Literacy Services, with the Public Instruction Program, providing basic
10 technology and library instruction to patrons." The Scope of Responsibility stated in
11 relevant part: "[s]erves as teaching assistant for public instruction classes; [a]ssists with
12 class setup; [t]hroughout classes serves as teaching assistant." Vega briefly occupied
13 the position after an upgrade. The BPL did not fill the position after Vega left. According
14 to Cadillac, the BPL "[r]epurposed [the Reference and Instruction position] during
15 reorganization ... to become a full time BLA 5 Collections position." Vega was at the
16 Dudley Literacy Center prior to August of 2011 until at least May of 2014.

17 G. July of 2014

18 1. Central Library Public Instruction Schedule July of 2014

19 In July of 2014, the Central Library offered twelve Research, Computer, and
20 Career classes to members of the public in the Concourse Level Tech Classroom.

1 Classes were publicized on a calendar. PSA bargaining unit members taught all twelve
2 classes¹²³ in July of 2014.

- 3 • RRA Librarians taught four classes of computers for beginners as well as what to
4 do during summer months: resources for parents.
5
- 6 • Other PSA librarians taught: Google art project, e-magazines, Zinio, borrow e-
7 movies, e-music and audiobooks with Hoopla, Twitter basics, shopping more
8 safely online, e-books 101, and introduction to the BPL catalog.¹²⁴

9 On the July of 2014 calendar, the word “basic” appeared in relation to Facebook
10 and Twitter basics. The word “beginner” appeared in relation to the computers for
11 beginners series. The word “introduction” appeared in relation to introduction to the BPL
12 catalogue.

13 2. Reorganization

14 In July of 2014, the City announced plans to reorganize the Central Library public
15 services departments in which PSA and AFSCME unit members worked. The proposal
16 consolidated and established new departments, eliminated, modified, or established new
17 PSA job descriptions and modified the organization, staffing levels, responsibilities, and
18 command structure of other departments. Between July of 2014 and November of 2015,
19 the City and the PSA bargained over the impacts of the reorganization on the terms and
20 conditions of PSA unit members. During the same 2014 to 2015 timeframe, the City and
21 AFSCME conducted separate negotiations regarding the reorganization. Colford was the
22 architect of the reorganization plan.

23 H. August of 2014

¹²³ This number excludes a Facebook basics Q&A class that is listed in the July of 2014 calendar and that PSA librarians taught because there is no evidence that it consisted of more than one-on-one assistance.

¹²⁴ There was no CDC in July of 2014.

1 1. Reorganization

2 As of August 4, 2014, the Reference and Instruction Department at the Central
3 Library consisted of the following: Manager of Reference and Instruction (P7); Curriculum
4 Development Coordinator (P3); Literacy Specialist II (P2); and the Trainer/Collections
5 position.

6 In an August 23, 2014 memorandum Colford wrote, in summary that:

- 7 • The Public Instruction Classroom will be located on the mezzanine level
8 of the Johnson Building and will be used to deliver the library's public
9 instruction program under the supervision of the Curriculum
10 Development Coordinator and the Manager of Reference and
11 Instruction. There will be three dedicated staff working in the Public
12 Instruction Classroom: two Instruction Librarians and a Literacy
13 Specialist. In addition, the Public Instruction Classroom will be
14 supported by the following positions: Curriculum Development
15 Coordinator (P3); seven Research Services Librarians (P1); Web
16 Services Librarian (P3); Instruction Library Assistant (BLA 6); and other
17 curators and staff delivering public instruction.
- 18
19 • The Community Learning Center will be located on the mezzanine level
20 of the Johnson Building and will be used to deliver literacy services,
21 conversation circles, small group work, and the library's world language
22 collection. There will be one dedicated staff person working in the
23 Community Learning Center, a Literacy Specialist (P2). In addition, the
24 Community Learning Center will be supported by the following positions:
25 Curriculum Development Coordinator (P3); two Instruction Librarians
26 (P2); Special Library Assistant (BLA 6); seven Research Services
27 Librarians (P1); Floaters (P1); and Volunteers.
- 28
29 • The Tech Central will be located on the main floor of the Johnson
30 Building and will provide free public computer use for visitors to the
31 library, including printing, scanning, internet connectivity and computers
32 for use in the building. Staff at Tech Central will also provide information
33 and referral as they do today. There will be seven dedicated positions
34 working in Tech Central, a Tech Central Supervisor (BLA 8) and Tech
35 Central Staff (BLA 5), supported by four Help Desk Staff (BLA 8F, BLA
36 5); one Network Technician (BLA 9T); and two Server Technicians (BLA
37 9T).

38 I. September of 2014

1 1. CDC Koerber

2 The BPL appointed Koerber to succeed Campbell as CDC in August of 2014, but
3 Koerber was on leave until September of 2014.¹²⁵ At that point in time, Koerber and
4 O'Toole began working together regularly. Koerber's CDC job duties were the same
5 duties that Fahey-Flynn and Campbell previously had performed. Koerber was
6 responsible for basic technology courses as part of the public instruction program at the
7 Central Library.¹²⁶

8 Koerber decided what courses would be taught each month. She discussed with
9 O'Toole course offerings, instructors, and scheduling. O'Toole and Koerber would find
10 out who was going to teach, what O'Toole and Koerber were going to teach themselves,
11 and then they would do the schedule. For a period of time during building renovations in
12 January and February of 2015, Koerber did not teach, but rather focused on the LibGuides
13 rollout. Glass coordinated with Koerber on the RRA Librarians' teaching schedule. RRA
14 Librarians continued to teach basic technology classes, as well as classes that were of
15 interest to them, or that were relevant. According to Theroux, as an RRA librarian, she
16 experienced no changes in class assignments or curriculum development after Koerber
17 became CDC.

¹²⁵ According to O'Toole, there was a break in CDCs between Campbell and Koerber, and Gifford directly supervised her during that time. Shafts made the general observation that Koerber became CDC in 2014. Gifford also noted generally that Koerber was CDC for over a year after Campbell. O'Toole stated that she began working with Koerber when Koerber was hired as the CDC in August of 2014, but they did not start working together until September of 2014. Campbell was shown on the calendar as teaching in June of 2014. Based on the totality of the record, I conclude that Campbell left the CDC position around July or August of 2014 and that the BPL hired Koerber as CDC in August of 2014.

¹²⁶ Prior to becoming the CDC, Koerber taught many social media courses.

1 a. O'Toole's Teaching and Assistant Teaching For Koerber

2 For reasons discussed in sections below, I find that while Koerber was CDC,
3 O'Toole taught the computers for beginners series in the branches in August, September,
4 October, and November of 2014. There is no evidence in the record that O'Toole TA'd
5 for Koerber.

6 b. O'Toole and Curriculum Development Under Koerber

7 By the time Koerber became CDC in the late summer of 2014 (see footnote 125),
8 O'Toole did not have to find materials for class presentations because Fahey-Flynn had
9 previously established the class curricula and materials.¹²⁷ However, O'Toole kept the
10 screenshots embedded in the class materials up to date. In general, Koerber and O'Toole
11 combed other library websites for materials. However, O'Toole did not gather specific
12 curriculum resources for Koerber. Rather she gathered resources for her own teaching
13 modifications which Koerber usually did not review. Koerber allowed O'Toole "to modify
14 the curriculum that she was using so that it worked for her teaching style and for whoever
15 showed up for the class and whatever their level was." O'Toole testified that Koerber did
16 not instruct O'Toole to modify the curriculum. However, O'Toole believed that Koerber
17 expected her to do so, even though O'Toole and Koerber did not have a specific
18 conversation about that issue.

19 In 2014, the BPL was rolling out the online reference system of LibGuides for
20 instructional purposes. Koerber and Gifford were particularly involved in the rollout. Prior

¹²⁷ O'Toole testified that she "may have" created course curriculum between November of 2014 and May of 2015, but she was not sure about the timeframe. In the absence of affirmative evidence that O'Toole created course curriculum and when, I decline to credit her testimony on this point.

1 to 2014, LibGuides were primarily used for internal staff use and remote reference
2 services. The public had access to some of the subject guides, but the class descriptions
3 generally were not public. After 2014, the computers for beginners class was public. In
4 the fall of 2014, O'Toole worked on the LibGuides page for the internet for beginners
5 course, although other people worked on that page as well. She also wrote standardized
6 class descriptions for computers for beginners. She also inserted the step-by-step course
7 information with links to online sources that explained various aspects of the class, from
8 how computers work to what a mouse does, and how the mouse communicates with the
9 computer. The course curriculum was attached as a pdf.

10 2. PSA Objections to O'Toole Teaching in Branch Libraries

11 By letter dated September 11, 2014, from Shafts to Gifford, Shafts objected to
12 O'Toole teaching in the branches and maintained that training and instruction were PSA
13 bargaining unit work, stating:

14 It has come to the attention of PSA that on August 28, 2014, Jennifer
15 Koerber, Curriculum Development Coordinator (P3), sent an e-mail to
16 Branch Librarians, Branch Generalists, and Teen Librarians in which she
17 offered that she and Claire O'Toole, Special Library Assistant
18 II/Trainer/Collections (BLA 6), could come to branch locations to provide
19 trainings and/act as a TA for trainings. Training and instruction are
20 responsibilities included in every PSA job description. It is our position that
21 providing training and instruction is the work of our bargaining unit and that
22 the Library continues to violate our contract and our job descriptions when
23 it assigns Claire O'Toole or any other member of the AFSCME bargaining
24 unit, to conduct trainings and/or instruction, whether at Central or in the
25 branches.

26 The City did not respond to Shafts' September 11, 2014 letter.

27 J. October of 2014

28 1. Central Library Public Instruction Schedule October of 2014

29 In October of 2014, the Central Library offered nine Research, Computer, and

1 Career research, computer, and career classes to members of the public in the
2 Commonwealth Salon.¹²⁸ Classes were publicized on a calendar that described all
3 classes as demonstrations or lectures. No computer skills were required. PSA bargaining
4 unit members taught all of the classes in October of 2014 including:¹²⁹

- 5 • BPL online catalog, Goodreads and books and authors, getting ready to vote,
6 MedlinePlus, reliable health information online, Facebook basics and Q&A, patents
7 and trademarks, databases for US history research, plan a trip using Google maps,
8 and listening to streaming music.

9 On the October of 2014 calendar, the word “basic” appeared only in relation to
10 Facebook basics. However, all nine of the classes offered were described as
11 demonstrations or lectures and no computer skills were required: BPL online catalog,
12 Goodreads and books and authors, getting ready to vote, MedlinePlus: reliable health
13 information online, Facebook basics and Q&A, patents and trademarks, databases for US
14 history research, plan a trip using Google maps, and listening to streaming music.

15 2. AFSCME Instruction Position Bargaining

16 The City and AFSCME began bargaining about the Instruction position in October
17 of 2014. The parties did not bargain extensively. Although reorganization negotiations
18 were ongoing in 2014, the BPL created and implemented the Instruction position

¹²⁸ In October of 2014, Cadillac developed a pay-for-print curriculum for the public. I do not consider this point relevant to the case at issue because such activity is not related to the public instruction program as defined for the purposes of this Decision. Between November of 2014 and May of 2015 Cadillac did not create any curriculum online or otherwise for members of the public.

¹²⁹ Although the calendar does not identify specific instructors, I conclude based on the totality of the evidence that PSA bargaining unit members taught all nine classes offered in October of 2014.

1 independent of the reorganization.¹³⁰ Details about related bargaining discussions are
2 included in a section below because they reference the Instructional position job
3 description.

4 K. November of 2014

5 Between November of 2014 and May of 2015, the BPL expanded to tablet classes
6 based on curriculum from the Colorado Library.¹³¹ The class was open to people to come
7 in with their devices and tablets and ask questions.

8 L. 2014 Consolidated Branch Facts

9 In 2014, librarians taught classes in the branches including computer and internet
10 for beginners, typing, Facebook, Instagram, and LinkedIn. Emily Todd (Todd) taught
11 classes between February of 2014 and May of 2015.¹³² Between September of 2014 and
12 May of 2015, Todd taught classes at Fields Corner once a week including: computer for
13 beginners, internet for beginners, basic touch typing, Facebook, Instagram, and LinkedIn.
14 Likewise, between January of 2014 and May of 2015, Birdseye at the Adams Street
15 Branch taught computers for beginners in addition to drop-in sessions. At an unidentified

¹³⁰ Cadillac testified that although reorganization negotiations were ongoing in 2014, she did not consider the Instruction position to be part of the reorganization bargaining because the position was not contingent on the outcome of the reorganization negotiations. Gifford also testified that the creation of the Instruction position was not “precipitated by the restructuring.”

¹³¹ O’Toole testified that she taught “tablet” classes between November of 2014 and May of 2015, but she was not sure how often. Further, on cross-examination, she admitted that she was unsure whether she had done so before May of 2015. I decline to credit her shifting testimony on this point.

¹³² The BPL hired Todd in February of 2014 as the Programs and Community Outreach Librarian II, a position she held at Fields Corner until 2017. She was the PSA President from November of 2017 through the date of her testimony in July of 2018. She also was PSA Vice President from November of 2016 to November of 2017.

1 point in time after June of 2014, Jessica Elias (Elias) taught three classes at the East
2 Boston Branch pertaining to career development, including career-related resources,
3 resumes, and cover letter writing.¹³³

4 In May and June of 2014, O'Toole began coordinating the scheduling of basic
5 computer classes at Field's Corner. On August 28, 2014, Koerber notified the branch
6 librarians that she and O'Toole were available to conduct trainings in the branches.
7 O'Toole taught in the branches every month for four months between August and
8 November of 2014, while the Johnson Building was closed or undergoing renovations and
9 there was no classroom available at the Central Library.¹³⁴ In August of 2014, O'Toole

¹³³ The BPL hired Elias as a part-time floater librarian in June of 2014, a position she held until January of 2015. In January of 2015, the BPL hired her as a full-time floating librarian assigned primarily to work at the Central Library.

¹³⁴ Gifford told O'Toole that she wanted her teaching in the branches sometime after O'Toole was hired in March of 2013. However, there is no credible evidence that O'Toole actually taught in the branches before August of 2014. O'Toole initially indicated that she started providing instruction in the branches in late 2013, but qualified that assertion by stating "I think" and "[n]ot that often." She also stated that she started going to the branches in the fall of 2013 or in the beginning of 2014, "sometime within that year," when Campbell was the CDC, but she was "not really sure." (As noted, Campbell was CDC from around September or October of 2013 through about July or August of 2014.) She also stated that she taught at Dudley between September of 2013 and August of 2014, when Campbell was CDC. She also commented that she "would've" taught at Dudley in the winter of 2013. She noted that she taught the computers for beginners in Dudley once. O'Toole further admitted that "my memory of going out to the branches isn't-date specific," and that she started teaching in the branches "around the time Koerber started or before and went on from there." (Koerber was CDC from about September of 2014 through May of 2015.) O'Toole also stated that she taught computers for beginners in East Boston once, but she didn't remember the date. Based on the parties' stipulations, I find only that O'Toole taught at Fields Corner, Egleston, Jamaica Plain, and Codman Square from August through-November of 2014. Although I credit her testimony that she taught two days at Dudley, based on her testimony that she compressed the four-part computers for beginners series to two days for Dudley, I make no finding as to when she taught there because of her shifting testimony and her admitted flawed memory about dates.

1 conducted basic computer classes at Fields Corner assisted by Todd. O'Toole taught the
2 computers for beginners course in Fields Corner once. Also in August of 2014, O'Toole
3 worked on scheduling computers for beginners classes with librarians at the Egleston,
4 Codman Square, and Jamaica Plain Branches. In September of 2014, O'Toole conducted
5 basic computer classes at Egleston. In October of 2014, O'Toole conducted basic
6 computer classes at Jamaica Plain. In November of 2014, O'Toole conducted basic
7 computer classes at Codman Square.

8 VII. 2015 Events

9 A. January of 2015

10 1. Central Library Public Instruction Schedule

11 In January of 2015 the Central Library offered three Research, Computer, and
12 Career Classes to members of the public in the Commonwealth Salon. Classes were
13 publicized on a calendar that described the classes as "demonstrations or lectures" and
14 stated that no computer skills were required for any of the five classes. PSA bargaining
15 unit members taught all three classes¹³⁵ in January of 2015 including:

- 16 • MedlinePlus: reliable healthy information online, using GrantSpace, and
17 Goodreads and other resources.¹³⁶

18 Although the January of 2015 calendar did not identify specific instructors, I
19 conclude, based on the totality of the evidence, that PSA bargaining unit members taught

¹³⁵ This number excludes the Facebook basics Q&A and iPad drop-in help classes that were listed on the calendar because there is no evidence that those classes consisted of more than one-on-one assistance.

¹³⁶ Elias described how at unidentified points in time after January of 2015, she saw J. Devine teaching a class on patents and trademarks and Glass teaching a Google apps class.

1 all three classes offered for the following reasons. First, there is no evidence that
2 contractors taught any of the classes. O'Toole did not testify that she taught any of the
3 January of 2015 classes. O'Toole broadly testified that she taught computer and internet
4 for beginners under Koerber. She further testified that she taught iPad basics and
5 Facebook under Koerber. I conclude that O'Toole did not teach computer and internet
6 for beginners in January of 2015, because the Central Library did not offer those classes.
7 Although the Central Library did offer Facebook basics Q&A and iPad drop in help, which
8 O'Toole testified she taught under Koerber, there is no evidence that those classes
9 consisted of more than one-on-one assistance.

10 On the January of 2015 calendar, the word "basic" appeared in relation to
11 Facebook basics. No computer skills were required of any other classes, which were
12 described as demonstrations or lectures.

13 2. Temporary Public Computer Classroom

14 By email dated January 30, 2015, from Koerber to O'Toole, RRA Librarians, and
15 Central Library Department Heads, Koerber stated, in summary, that a temporary public
16 computer classroom would be set up in the Orientation room by March, but that she
17 planned to wait until the second week of March to begin offering classes. Koerber stated
18 that the class schedule would continue with the same frequency as in November of 2014,
19 with larger departments offering one or more classes per week and smaller departments
20 or individuals offering one or two classes for the month.

21 B. February of 2015

22 1. Central Library Public Instruction Schedule

1 In February of 2015, the Central Library offered six Research, Computer, and
2 Career Classes. Classes were publicized on a calendar that described the classes as
3 “demonstrations or lectures” and stated that no computer skills were required for any of
4 the five classes. PSA librarians taught all six classes in February of 2015 including:

- 5 • watch and listen to streaming media, simple patent searches, how to find
6 population data, using OverDrive, plan your next trip online, and your new
7 smartphone.

8 Although the February of 2015 calendar did not identify specific instructors, I
9 conclude based on the following reasons that PSA bargaining unit members taught all six
10 classes that were offered. First, there is no evidence that contractors taught classes in
11 February of 2015. Second, there is no testimony that O’Toole taught those classes.
12 O’Toole broadly testified that she taught computer and internet for beginners and iPad
13 basics and Facebook under Koerber. However, the Central Library did not offer these
14 classes in February of 2015.

15 On the February of 2015 calendar, no computer skills were required for any of the
16 classes, which were described as demonstrations or lectures.¹³⁷ The word “basic” did not
17 appear.

18 2. Instruction Position Job Description

19 By February of 2015, the City and AFSCME had agreed to the February 6, 2015,
20 Instruction position job description. The February 6, 2015 Instruction position job
21 description position overview broadly stated that the position “[p]rimarily provides *basic*
22 *and intermediate instruction* for the public at all BPL locations and off-site locations with

¹³⁷ O’Toole opined that that in February of 2015, “intermediate instruction” meant that the “knowledge level in classes varied” by attendees and that she would adjust her teaching accordingly.

1 a BPL presence and assists with the development of curriculum in accordance with the
2 Reference & Instruction Department.” The scope of responsibility stated, in relevant part:
3 “[o]ffers *established training* and provides instruction assistance for the public at all BPL
4 locations and non-library locations with a BPL presence;” “[a]ssists with curriculum
5 preparation and organization, including gathering resources both internal and external;
6 and “[w]orks with the Curriculum Development Coordinator to develop and implement
7 online public instruction.” (Emphasis added.)

8 The Instruction job description required the incumbent in the position to have:
9 “ability to provide basic instruction and to interpret patron requests;” knowledge of
10 computer skills, hardware and software, internet and web-based services, and current
11 uses of technology, peripherals, and common end user devices; knowledge of windows
12 and Mac desktops and laptops, and proficiency with MS Word, Outlook, and Excel.
13 Educational qualifications required a high school degree or equivalent, although
14 additional education was desirable.

15 3. Testimony About the Instruction Position Job Description

16 a. Actual Conversations About The Instruction Position

17 During negotiations between AFSCME and the City regarding the Instruction
18 position, Colford did not define intermediate classes or explain that teaching intermediate

1 classes was shared work.¹³⁸ Cadillic described the negotiations as “quick bargaining”
2 over the job description.

3 b. Opinions About The Instruction Position

4 The Instruction job description position overview stated: “[p]rimarily provides *basic*
5 *and intermediate instruction*,” which is broader than the Trainer/Collections position job
6 description which stated, “provides *basic computer* training.” The Instruction job
7 description scope of responsibility also eliminated the reference to computer training
8 stating “offers *established training*” instead of the Trainer/Collections job description
9 reference to “provides *basic computer training*.” (Emphasis added.)

10 Colford considered instruction to be shared work. According to Colford,
11 “intermediate instruction” referred to computer instruction that extended beyond the basic
12 computer instruction that the BPL provided to the public prior to 2015. He stated that the
13 change in the position overview from the Trainer/Collections position was intended to add
14 other types of undetermined instruction. The BPL did not want the Instruction position
15 limited to computer training. Colford testified that the word “intermediate” is the definition
16 of the word, not a term of art among librarians. According to Colford, the BPL considered
17 intermediate public technology instruction to include intermediate Excel and intermediate
18 file sharing. Colford noted that in creating the Instruction position job description which

¹³⁸ Colford testified that during negotiations with AFSCME, he did not explain what “intermediate classes” were. He was unable to recall explaining that it was shared work to the extent that it did not involve reference, readers’ advisory or research. Although O’Toole was present at the bargaining table, O’Toole had no recollection of specific details about the negotiations. Cadillic testified that the conversation during bargaining regarding the term “intermediate” in the Instruction position job description related to trainings that went beyond computer training. However, beyond this broad statement, Cadillic provided no details about any back-and-forth discussions that the BPL and AFSCME had about this subject during bargaining.

1 omitted the term “computer instruction,” the BPL wanted “flexibility in the types of courses
2 if we expanded beyond just ... computing classes.” In using the terms basic and
3 intermediate, Colford had no metric for deciding what an intermediate course was beyond
4 the definition of the word.

5 Likewise, Cadillic opined that the word “computer” was omitted from the phrase
6 “established training” to avoid limiting the Instruction position to computer training. She
7 declared that basic computer instruction involved use of the computer and intermediate
8 computer instruction was the next level of instruction that addressed different software or
9 apps, “anything that was not considered the guts of the computer.”

10 The portion of the Instruction job description regarding scope of responsibility that
11 referred to “[a]ssists with curriculum preparation and organization, including gathering
12 resources both internal and external” was identical to a provision contained in the
13 Trainer/Collections job description. According to Colford, the term “assists with
14 curriculum preparation and organization” did not refer to independent curriculum
15 development, because the BPL considered curriculum development a responsibility of
16 the CDC and Librarians. O’Toole testified that she understood the phrase “assists with
17 curriculum preparation and organization,” to involve LibGuides.

18 Finally, the last section of the Instruction position job description regarding scope
19 of responsibility differed from the Trainer/Collections position in that it stated “[w]orks with
20 the Curriculum Development Coordinator to develop and implement online public
21 instruction” as opposed to “under supervision, transfers existing training and collections-
22 related information into web templates.” According to Cadillic, the term “online public
23 instruction” in the Instruction position job description referred to developing and

1 implementing online public instruction for courses that were related to the [BPL].”
2 According to O’Toole, the phrase referencing online instruction “was part of the original
3 job. . . that’s LibGuides.” She offered no basis for this understanding.

4 C. March of 2015

5 1. Central Library Public Instruction Schedule

6 In March of 2015, the Central Library offered sixteen Research, Computer, and
7 Career classes in the McKim Building Tech Classroom. Classes were publicized on a
8 calendar. PSA bargaining unit members taught all sixteen classes offered in March of
9 2015:

- 10 • Wednesday classes consisting of computers for beginners and Gmail for
11 beginners series; Friday classes consisting of the internet for beginners series; and
12 other classes including Boston history online, genealogy for beginners weeks 1-3,
13 planning with Google calendar, Facebook basics and Q&A, databases for primary
14 sources, store documents online in Google drive, Hoopla for streaming media, and
15 basic patent search strategies.

16 Although the March of 2015 calendar did not identify specific instructors, I conclude
17 based on the totality of the evidence that PSA bargaining unit members taught all sixteen
18 classes offered.

19 First, Gifford testified that librarians taught ten of the sixteen classes in March of
20 2015. Second, although Gifford testified that she was not sure who taught the other six
21 classes, specifically, the computers, Gmail, and internet for beginners series classes, she
22 conceded that PSA RRA Librarians taught basic technology classes under Koerber.
23 Third, Theroux indicated that the RRA Librarian teaching volume declined in January and
24 February of 2015 because there was no classroom available and because RRA Librarians
25 did not teach outside of the Central Library. However, she also noted that once there was
26 a place for the RRA Librarians to teach between March of 2015 and May of 2015, they

1 continued teaching on Wednesdays as they had prior to January of 2015. Finally, while
2 O'Toole broadly testified that she taught computers for beginners, iPad basics and
3 Facebook under Koerber, classes that were offered in March of 2015, her assertions are
4 undermined by her further testimony that she was not sure what she taught in March of
5 2015.¹³⁹

6 On the March of 2015 calendar, the word "basic" appeared in relation to patent
7 search strategies. The word "beginners" appeared in relation to the computers, Gmail,
8 internet, and the genealogy for beginners series.

9 2. March of 2015 Reorganization Negotiation Sessions

10 a. March 6, 2015 Negotiation Session

11 During a March 6, 2015 negotiation session with the City relative to a general BPL
12 reorganization, the PSA requested certain AFSCME job descriptions, including the
13 Instruction position.¹⁴⁰ The PSA informed the City that it had concerns about the
14 incumbent in the Instruction position providing instruction and holding classes. Colford
15 told the PSA that the Instruction position was not a new position because it would continue

¹³⁹ O'Toole testified that while in the Trainer/Collections position, she generally taught once a week. Indeed, O'Toole taught at least once a week in September and October of 2013, and January, March, May, June, and August-November of 2014. Otherwise, I find her testimony to be inaccurate. In 2013, she did not teach at all in March, April, August, and November. In 2014, she did not teach in February, July, or December. The evidence establishes only that O'Toole taught once a month in May, June, and December of 2013 and April of 2014. There is no evidence that she taught at all between December of 2014 and March of 2015.

¹⁴⁰ In the Spring of 2015, the City and the PSA were engaged in ongoing reorganization negotiations. Restructuring negotiations occurred from 2014 into 2015, with implementation occurring in 2016, long after the May 15, 2015 evidentiary cutoff in this case. Based on the totality of the facts, I find that the City created the Instruction position independent of the reorganization.

1 doing basic computer classes and that the only change was that the BPL had separated
2 the new Instruction position from the Collections aspect of the former Trainer/Collections
3 position.

4 On March 6, 2015, after the negotiation session, Colford provided a copy of the
5 Instruction position job description by email to Shafts and other PSA Executive Board
6 members stating that the City had completed negotiations with AFSCME regarding the
7 Instruction position job description and had approval to post the position but had not yet
8 done so.

9 b. March 9, 2015 Negotiation Session

10 During a March 9, 2015 negotiation session, Shafts asked Dembro about the
11 status of the Step 3 Answer to the PSA's February 7, 2013 grievance. At the time, Dembro
12 was the City's attorney assigned to the PSA's February 7, 2013 grievance. The City
13 responded to the request later that afternoon by providing the PSA with a Step 3 Answer
14 dated April 23, 2014. In the Step 3 Answer, the City found no violation of the collective
15 bargaining agreement, and noted that the PSA's allegations relative to transferred
16 bargaining unit work had to be filed with the DLR. The Step 3 Answer stated in relevant
17 part:

18 **STATEMENT OF GRIEVANCE:** The Union stated: "The City/Library
19 have violated the parties' collective bargaining agreement including, but not
20 limited to, Article I by assigning the following bargaining unit work to the
21 position of Special Library Assistant II/Trainer/Collections BLA 6 as
22 advertised in General Administrative Notice 2012-Number 6, dated
23 November 28, 2012: Offering established computer training and providing
24 instruction assistance; assisting with curriculum preparation and
25 organization; assisting with instruction assessment; assisting with the
26 selection of gift materials; and actively participating in professional
27 activities.'

28 Requested Remedy: "The PSA requests that the City/Library remove
29 these duties from the Special Library Assistant II/Trainer/Collections BLA 6

1 position job description advertised in General Administrative Notice 2012-
2 64, dated November 28, 2012.

3
4 Relevant contract provisions: Article I states: "The City recognizes
5 the Association as the exclusive representative, for the purpose of collective
6 bargaining relative to wages, hours and other conditions of employment, of
7 all employees classified in the Pre-Professional Library Service, all
8 Professional Library Service employees in grades P1-P-4, all employees in
9 grades LA-10, M-10 and C-10, but excluding personnel officers and all other
10 employees."

11 * * *

12 **DECISION:** The City finds no violation of the collective bargaining
13 agreement.

14
15 Any allegation that the Department has transferred work outside of
16 the bargaining unit must be pursued before the Massachusetts Department
17 of Labor Relations. A public employer violates G.L. c.150E §10(a)(5) and
18 derivatively §10(a)(1) when it unilaterally transfers bargaining unit work to
19 non-bargaining unit workers. Pursuant to GL 150E § 11, a complaint of
20 unilateral transfer of bargaining unit work must be made to the Department
21 of Labor Relations.

22
23 The City finds the Union failed to present sufficient evidence to meet
24 its burden of establishing that bargaining unit work was moved to a non-
25 bargaining unit position. The Union argued that the PSA members are
26 responsible for instructing all computer training as outlined in P1 and P2 job
27 descriptions.

28
29 The City finds that the instruction duties and responsibilities listed in
30 the P1 and P2 job descriptions are specific to advanced research topics,
31 such as utilizing the Library's reference documents. These instruction
32 duties and responsibilities are not similar in nature to the duties and
33 responsibilities listed in the Special Library Assistant II/Trainer/Collections
34 position.

35
36 The City finds no violation of the collective bargaining agreement.
37 The City hereby provides notice that it reserves and retains its rights to
38 contest the procedural and substantive arbitrability claims of any and all
39 aspects of this grievance.

40
41 This grievance is denied.

42 c. March 25, 2015 Negotiation Session

1 During bargaining on March 25, 2015, PSA representatives told the City's
2 representatives that the Instruction position amounted to a transfer of bargaining unit
3 work, which the City denied. During the March 25, 2015 negotiation session, the PSA
4 asked the City why the Instruction position was an AFSCME unit position and not a PSA
5 unit position.¹⁴¹ Gifford explained that in the existing AFSCME Trainer/Collections
6 position, O'Toole was, on a part-time basis, teaching basic computer classes for
7 beginners and assisting the CDC with curriculum development. Gifford stated that in the
8 Trainer/Collections position, O'Toole taught classes that were very basic, for people who
9 previously had not used a computer. Colford told the PSA that he considered training to
10 be shared work and curriculum development to be librarian's work. He further stated that
11 teaching someone how to use a tool was not a specific PSA skill set.¹⁴²

12 PSA Attorney Decter pointed out that while the classes O'Toole taught in the
13 Trainer/Collections position were basic courses, the new Instruction position referred to
14 intermediate instruction. The PSA objected to the fact that the 2015 Instruction position

¹⁴¹ Shafts indicated on direct examination that she had no independent recollection of the parties discussing the Instruction position job description on March 25, 2015, but her April 1, 2015 email to Colford indicated that the PSA raised the issue at the March 25 meeting.

¹⁴² On direct examination, Colford described how he had explained to an unidentified person at an unidentified point in time that he "felt that no one was really providing intermediate technology instruction in March of 2015, that the only intermediate instruction we were providing was in the areas of research, doing research, [and] using information sources for research. And I was saying that technology, whether its basic or intermediate, doesn't require a library degree to teach. It requires facility with technology or, ... comfort with teaching technology." Likewise, Gifford stated that the BPL did not offer intermediate technology classes before March of 2015, aside from genealogy-related classes. I do not credit either Colford's or Gifford's testimony that the BPL was not offering intermediate tech instruction prior to March of 2015 because of the record evidence to the contrary and the BPL's lack of an official definition as to what constituted intermediate tech instruction.

1 included the term “intermediate instruction” and omitted the word “computer” in the
2 position overview. The PSA asked the City to remove the term “intermediate” from the
3 Instruction job description. Colford declined. Decter asked what intermediate classes
4 were. Colford responded that intermediate instruction referred to intermediate computer
5 instruction, and that the Instruction position would not do any subject-related courses or
6 courses on how to search for information. Decter asked who was doing basic instruction
7 before the BPL appointed O’Toole to the Trainer/Collections position. Colford responded
8 Anna¹⁴³ of Digital Services and that the BPL had only started providing this training three
9 or four years before. The PSA also raised concerns that the Instruction job description
10 might expand curriculum duties from providing basic assistance to providing more
11 substantive assistance in drafting curriculum. The City stated that there was no
12 expectation of the Instruction position drafting curriculum. Decter insisted that the
13 Instruction position belonged in the PSA bargaining unit as a P1 position and stated that
14 the PSA already had a pending grievance regarding the Trainer/Collections position. The
15 City denied that it had any bargaining obligation regarding the Instruction position. The
16 PSA indicated that it would continue to process its existing grievance.

17 3. O’Toole’s Late March Shift Into The New Full-Time Instruction Position

18 a. Timing

19 The BPL did not post the Instruction position.¹⁴⁴ There was conflicting testimony
20 about when O’Toole began work in the full-time Instruction position. Based on the totality

¹⁴³ “Anna” referred to Fahey-Flynn, who worked for Digital Services when she first became the part-time CDC.

¹⁴⁴ AFSCME had agreed to waive the posting requirement for the Instruction position.

1 of the record and for the reasons described below, I find that O'Toole filled the Instruction
2 position in late March of 2015.

3 O'Toole failed to provide credible testimony on the critical point of when she began
4 work in the Instruction position. She testified on direct and cross-examination that she did
5 not recall the month that she filled the 2015 Instruction position. In response to a leading
6 question on direct examination, O'Toole testified that she filled the 2015 Instruction
7 position in the Summer of 2015. She reiterated at other times during her testimony that
8 she began working in the Instruction position in the Summer of 2015. However, she
9 further testified on cross-examination that she immediately assumed the duties of the
10 Instruction position after it was negotiated and approved by the City, which would have
11 been in February of 2015.

12 O'Toole and Cadillic were involved in AFSCME's negotiations with the City for the
13 Trainer/Collections position and the Instruction position. As AFSCME's Chief Steward,
14 O'Toole negotiated the Instruction position from 2014 to 2015 and explained during her
15 testimony that "[i]t [the Instruction position] was my job." Nevertheless, O'Toole testified
16 that she didn't remember the details of the negotiations. She had no recollection of the
17 Instruction position being part of the reorganization of Public Services. Nor did she
18 remember when AFSCME negotiated the position or how many sessions were needed.
19 O'Toole testified on cross-examination that she did not know the day or month that she
20 moved into the Instruction position, although she remembered at that time that she had a
21 choice of the two positions, and she chose the Instruction position. At the very end of her
22 second full day of testifying, O'Toole testified that she remembered that she began
23 working in the Instruction position in July of 2015.

1 Cadillic testified that O'Toole began working in the Instruction position in August,
2 or "sometime over the summer" of 2015. However, Cadillic also testified that O'Toole had
3 agreed by March 6, 2015 to take the Instruction position. Cadillic did not explain why
4 O'Toole would have agreed to take the Instruction position in early March but not fill the
5 position until the summer.

6 Gifford testified that O'Toole "became" the full-time Instruction position in March of
7 2015. Gifford testified on direct examination that she had a specific memory of O'Toole
8 beginning her original Trainer/Collections position in March and participating in a
9 conversation about "how nicely her anniversary would fall again in the same period of
10 time, two years later." Colford stated, in response to a leading question on direct
11 examination, that O'Toole filled the Instruction position in March of 2015. According to
12 Dembro's March 25, 2015 bargaining notes, Gifford stated during the meeting that
13 O'Toole was "currently half-time." Dembro also testified that O'Toole filled the Instruction
14 position sometime after May of 2015.

15 I credit Gifford's and Colford's testimony that O'Toole began the full-time
16 Instruction position in March of 2015. Although Dembro's bargaining notes indicated that
17 O'Toole was part-time on March 25, 2015, it is still possible that O'Toole began in the
18 Instruction position at the end of March. O'Toole's repeated testimony that she did not
19 remember the month of her start date in the position undermined her abrupt claim at the
20 very end of her second day of testimony to remember that she began in July of 2015.
21 Moreover, because she was an experienced Chief Steward, who had participated in the
22 negotiations regarding the Instruction position prior to February 2025, and knew that the
23 position would be her job, it is highly likely that she would have known when she was

1 scheduled to start the position, and if her expected start was delayed, referenced in her
2 testimony the reasons for the delay.

3 b. Instruction Position Duties

4 When O'Toole began working in the Instruction position in March of 2015, two
5 positions in Public Instruction existed, the CDC and the Instruction position. The
6 Instruction position was a thirty-five hour per week job, as opposed to the
7 Trainer/Collections position in which O'Toole had only seventeen hours a week dedicated
8 to the Instruction Department. Gifford stated that when O'Toole took the Instruction
9 position in March of 2015, she continued to perform the instruction aspect of the duties
10 listed in the September 17, 2013 chart entitled "Claire's Job Duties." According to Gifford,
11 O'Toole's duties in March of 2015 did not change "in any substantial way" from her duties
12 in the Trainer/Collections position.¹⁴⁵ At an unidentified point in time between March and
13 May of 2015, Gifford told O'Toole that her primary focus was on teaching and being a TA.

14 D. April of 2015

15 1. Central Library Public Instruction Schedule April of 2015

16 In April of 2015, the Central Library offered twenty-four Research, Computer, and
17 Career Classes in the McKim Building Tech Classroom. Classes were publicized on a

¹⁴⁵ O'Toole testified that her general understanding of the Instruction position was that she would keep doing what she was doing with respect to the instruction aspect of her split Trainer/Collections position, but on a full-time basis. She offered no basis for this understanding during her testimony. She had no recollection of a discussion about how frequently she would be teaching once she filled the Instruction position. O'Toole assumed it would be more teaching than she was doing in the Trainer/Collections position because she would be working full-time instead of part-time. She didn't remember Gifford telling her that she would do more teaching. Because of O'Toole's inability to recall any specific details about the negotiations for the Instruction position, including who said what about the position, I do not credit this portion of her testimony.

1 calendar. For reasons discussed below, I conclude that PSA bargaining unit members
2 taught twenty-one of twenty-four classes¹⁴⁶ that were offered in April of 2015 including:

- 3 • computers for beginners and Gmail for beginners series, weeks 3 and 4, basic
4 patent search strategies, genealogy for beginners, weeks 3-7, internet for
5 beginners weeks 3-4, apps on tablets and smartphones, finding Boston population
6 data, budgeting basics with google sheets, senior health resources online, online
7 account safety, classics research online, mutual fund research, streaming audio
8 and music, and mobile health apps and resources.

9 A private contractor taught one additional computers for beginners class in Spanish in
10 April of 2015. Also, the record is unclear as to the nature of a class on April 16, 2015 at
11 2 to 3 p.m., which is only labeled in Chinese characters on the schedule, and who
12 conducted the class.

13 Although the April of 2015 calendar does not identify specific instructors, I conclude
14 that PSA bargaining unit members taught twenty-two classes based on the totality of the
15 evidence and for the following reasons. Gifford identified that PSA librarians taught:
16 patent search strategies, the genealogy series, Boston history online, and streaming
17 media. Glass confirmed that he taught the class on classics research.¹⁴⁷

18 O'Toole broadly testified that she taught computer and internet for beginners, and
19 iPad basics and Facebook under Koerber. However, her testimony on this point is
20 undermined by subsequent testimony that she did not remember what she taught in April

¹⁴⁶ These numbers exclude three classes listed on the April of 2015 calendar that librarians taught: drop-in help for iPads, drop-in help for smartphones, and drop-in help for e-readers because there is no evidence that these classes involved more than one-on-one assistance.

¹⁴⁷ Glass considered the class on classics research to be intermediate or advanced. In the course, he instructed participants in computers, internet browsers, databases, and search engines.

1 of 2015. Moreover, in April of 2015, there was no Facebook class, and the only iPad
2 class was a drop-in session.

3 Gifford stated that after O'Toole filled the Instruction position, RRA Librarians no
4 longer taught computers, Gmail, and internet for beginners classes. However, her
5 testimony on this point is undermined by her testimony that RRA Librarians taught basic
6 technology under Koerber and her testimony that she did not know who taught computer
7 or internet for beginners in April of 2015.

8 Colford testified that O'Toole did not displace RRA staff in teaching basic computer
9 instruction between November of 2014 and May of 2015. His testimony on this point is
10 consistent with Theroux's testimony that she noticed no change in the volume of RRA
11 librarians' teaching, aside from January and February of 2015, when there was no
12 classroom available. I credit Theroux's testimony and Colford's testimony with respect to
13 April of 2015 because the calendar for that month lists on the first two Wednesdays the
14 computers for beginners and Gmail for beginners series, weeks 3 and 4, classes that
15 RRA Librarians consistently taught on Wednesdays prior to January of 2015. Although
16 there is no specific testimony about the remaining April of 2015 classes, I conclude based
17 on the totality of the evidence that PSA bargaining unit members taught these classes as
18 well.

19 On the April of 2015 calendar, the word "beginners" appeared in relation to the
20 computers for beginners and Gmail for beginners series as well as genealogy for
21 beginners. The word "basic" appeared in relation to basic patent search strategies and
22 budgeting basics with google sheets.

23 2. April of 2015 Negotiations

1 a. April 2, 2015 Negotiation Session

2 By email dated April 1, 2015, Shafts wrote to Colford that the PSA “need[s] to hear
3 your position on the [Instruction position] in light of the concerns we outlined to you at our
4 last [March 25, 2015] meeting.” The following day, during an April 2, 2015 negotiation
5 session, PSA representatives asked to bargain over the provisions of the Instruction
6 position job description. They expressed concerns that the instruction aspect of the
7 position was full-time, and that the instruction applied to any type of instruction.¹⁴⁸ The
8 PSA asked the City’s representatives for definitions of the terms “intermediate and basic
9 instruction.” The PSA representatives also stressed that classroom instruction and formal
10 instruction were PSA duties, as was curriculum development.¹⁴⁹

11 BPL representatives were not willing to have a back-and-forth discussion about
12 specific modifications to the Instruction job description. Colford stated that all instruction

¹⁴⁸ According to Dembro, from November of 2014 until May of 2015, the PSA did not note at the bargaining table any actual change in the percentage of work performed by PSA members versus the combination of AFSCME and contractors, specifically related to curriculum development and training outside of technology.

¹⁴⁹ According to Shafts, Colford and Dembro told her in March that the term “assists with the development of curriculum” was administrative and clerical work such as organizing material, providing handouts prepared by the CDC, and putting classes on the calendar.

1 was shared work.¹⁵⁰ He explained that the BPL was not going to consider any changes
2 to the Instruction position job description. He told the PSA that the BPL had negotiated
3 the job description with AFSCME and didn't need to discuss it with the PSA. The PSA
4 responded that the City had an obligation to bargain with the PSA over the impacts of the
5 Instruction position.

6 b. April 9, 2015 Written Demand to Bargain

7 By letter dated April 9, 2015, the PSA demanded to bargain about the Instruction
8 position duties that it believed to be exclusive PSA duties. The City did not respond to the
9 PSA's demand to bargain, and on May 15, 2016 the PSA filed the Charge in the present
10 case at the DLR.

11 E. May of 2015

12 1. Central Library Public Instruction Schedule

13 Between May 1 and May 15 of 2015, the Central Library offered about eleven

¹⁵⁰ On direct-examination, in response to a series of leading questions about Decter's April 9, 2015 email to Colford, Shafts claimed that the City conceded at the April 2, 2015 session that the Instruction position would only provide basic instruction and admitted that intermediate instruction was PSA work. Shafts testified on redirect that "across the table Colford seemed to indicate that intermediate instruction was using specific databases, more advanced use of the computer" and that Colford said "that intermediate instruction was definitely PSA work." Shafts then testified on re-cross examination that during negotiations on this position, Colford indicated that basic instruction was shared work, and that intermediate instruction was PSA work, but that she could not remember Colford's exact words. Decter's April 9, 2015 email claims that the City's bargaining team conceded that: "certain work in the [job] descriptions, e.g., 'intermediate instruction'... has, to date, been exclusive PSA work." Dembro specifically denied during her testimony that the BPL ever told the PSA that intermediate instruction, or training outside of tech training was PSA's exclusive work. I do not credit Shafts' testimony on this point because she admitted on re-cross examination that she could not recall Colford's exact words. Further, Dembro's testimony seems more plausible based on Colford's statements at prior bargaining sessions concerning the Instruction position.

1 Research, Computer, and Career Classes in the McKim Building Tech Classroom.
2 Classes were publicized on a calendar. For reasons discussed below, I find that PSA
3 bargaining unit members taught nine of eleven classes¹⁵¹ offered between May 1 through
4 May 15, 2015:

- 5 • computers for beginners weeks 1-2, successful interviewing, genealogy for
6 beginners weeks 8-9, using Overdrive for e-books, introduction to trademarks, plan
7 your next trip online, and using Etsy to buy and sell crafts online.

8 A private contractor taught two additional classes of the computers for beginners series
9 in Spanish.

10 Although the May of 2015 calendar does not identify specific instructors, I conclude
11 that PSA bargaining unit members taught all the classes, but the classes offered by the
12 contractor based on the totality of the evidence for the following reasons. First, Gifford
13 testified that PSA bargaining unit members taught the following five classes: successful
14 interviewing, genealogy for beginners, introduction to trademarks, plan your next trip
15 online, and using Etsy to buy and sell crafts online. Second, there is no affirmative
16 evidence showing that anyone other than PSA librarians taught the remaining May
17 classes. Gifford testified generally that after O'Toole filled the Instruction position, RRA
18 librarians no longer taught computers, Gmail, and internet for beginners classes.
19 However, her testimony on this point is undermined by her earlier testimony that RRA
20 librarians taught basic technology under Koerber.

21 While O'Toole broadly testified that she taught computer for beginners under
22 Koerber, she further testified that she did not remember classes that she taught in May of

¹⁵¹ These numbers exclude drop-in help: Facebook basics Q&A, iOS (iPhone and iPad) and drop-in help: computer basics. There is no evidence that these classes consisted of anything other than one-on-one assistance.

1 2015. Moreover, when asked directly whether she experienced any change when viewing
2 her work performed prior to November of 2014 in comparison to the time-period between
3 November of 2014 and May of 2015, she testified only vaguely that by November of 2014,
4 her schedule had a “regular rhythm to it.”

5 Additionally, Colford testified that O’Toole did not displace RRA staff in teaching
6 basic computer instruction between November of 2014 and May of 2015. His testimony
7 on this point is consistent with Theroux’s testimony that in May of 2015, there were no
8 changes to the librarians in the RRA that staffed the Reference desk.¹⁵² I credit Theroux’s
9 testimony and Colford’s testimony with respect to May of 2015 because Gifford and
10 O’Toole were unable to recall important facts that occurred in May.¹⁵³

11 On the May of 2015 calendar the word “beginners” appeared in relation to
12 computers for beginners, genealogy for beginners. The word “basics” appeared in
13 Facebook basics and computer basics. The word “introduction” appeared in introduction
14 to trademarks.

15 F. Expectations for the Instruction Position

16 According to Gifford, O’Toole taught one to two times per week in the
17 Trainer/Collections position and the BPL expected that O’Toole would increase that to
18 teach 2-3 times per week in the Instruction position. Gifford testified that at an unidentified

¹⁵² According to Theroux, two other library assistants were assigned to the RRA Department between January of 2013 and May of 2015, but O’Toole was the only library assistant at the Central Library, who provided public instruction.

¹⁵³ Although O’Toole vaguely testified that she held weekly trainings from November of 2014 through May of 2015, there is no other evidence in the record that supports her testimony on this point. Moreover, I do not credit her sweeping claim based on her admitted inability to recall specific classes that she taught between December of 2014 and May of 2015.

1 point in time, she told O'Toole that she was expected to teach two to three times per week
2 in the Instruction position. I do not credit the first aspect of Gifford's claim based on other
3 facts in the record. The record establishes that in the twenty-four months that O'Toole
4 held the Trainer/Collections position, she rarely taught twice a week – only for about ten
5 weeks over the course of two years. In September of 2013 she taught twice a week, but
6 otherwise, she only taught once a month in May June, and July, and not at all in March,
7 April, November, and December. In 2014, she taught twice a week one week in January
8 and three weeks in September, but otherwise she only taught once a week at Central in
9 March, May, and June, about once a week in branches in August, October, and
10 November, and once a month at the Central Library in April. There is no evidence in the
11 record establishing that O'Toole taught, or assistant taught any classes from December
12 of 2014 through March of 2015. Therefore, I do not rely on Gifford's claim that O'Toole
13 taught one to two times per week in the Trainer/Collections position because this claim is
14 overly broad and imprecise.

15 I next address the second aspect of Gifford's claim, that the BPL expected that
16 O'Toole would teach two-three times per week in the Instruction position. Colford also
17 testified that O'Toole taught a greater number of classes in the 2015 Instruction position
18 than she did in the 2012 Trainer/Collections position because she was doing instructional
19 work on a full-time rather than half-time basis. Nevertheless, both failed to provide any
20 concrete evidence that O'Toole actually taught, or TA'd anything at all in the Instruction
21 position. Gifford stated that she didn't have memorized how many times per week O'Toole
22 taught between March and May of 2015, but "imagined" it was twice a week. I do not
23 credit this speculative testimony. O'Toole herself testified that she had no memory of

1 teaching in March, April, or May of 2015. Finally, there is no support for Colford's bare
2 claim.¹⁵⁴ Therefore, even if the BPL expected that O'Toole would double her teaching
3 time, there is no evidence that O'Toole actually did so prior to May 15, 2015, when the
4 PSA filed its Charge. Accordingly, I find no evidence in the record of any actual change
5 in O'Toole's duties between March and May 15, 2015.

6 VIII. Online Public Instruction

7 The exact phrase "works with the Curriculum Development Coordinator to develop
8 and implement online public instruction," or even "online public instruction" did not appear
9 in any AFSCME or PSA job description. Some PSA job descriptions concerned the
10 underlying web infrastructure creation and maintenance, for example the 2011 Digital
11 Library Repository Developer (P5) and 2011 Web Services Developer (P5). Additionally,
12 almost every PSA job description had some element of web-related duties revolving
13 around content development. Many PSA positions also referred to the development and
14 implementation of innovative online services that connect library users with departmental
15 collections or subject related content.

16 The following positions refer generally to participating in the development and
17 implementation of online services that connect library users with departmental collections,
18 or development of subject related content, discovery tools, etc. for the Library's website:
19 2012 Department Head/Curator of the Arts job description; 2012 Curator – Professional

¹⁵⁴ Colford and Dembro denied that the City assigned O'Toole to teach intermediate courses while she was working in the Instruction position. Colford also testified that he "couldn't be certain" whether O'Toole was teaching more basic technology courses in the Instruction position. Their testimony on this point is not only vague but rendered insignificant in the absence of evidence about classes that the BPL actually had assigned O'Toole to teach in the Instruction position.

1 Librarian Arts Department Fine Arts (P3) job description; 2012 Curator–Professional
2 Librarian Arts Department Music (P3) job description; 2014 Reader Services Librarian I
3 (P1) job description; 2014 Reference Librarian II Arts Department Music Specialist (P2)
4 job description; 2014 Reference Librarian II Arts Department Fine Arts Specialist (P2) job
5 description; 2014 Reference Librarian II Arts Department Fine Arts Specialist (P2) job
6 description; and the March of 2015 Research Specialist Instruction (P2) job description.

7 In particular, the March 6, 2015 Research Specialist Instruction (P2) job description
8 provided that the position was responsible for:

9 participating in the creation of digital content for classes to be used by
10 students, instructors and the public visitors to the BPL's website;
11 participating in the orientation to public instruction for new staff both
12 instructors and teaching assistants; participating in the creation of digital
13 content for classes to be used by students, instructors and the public visitors
14 to the BPL's website; participating in the development of discovery tools and
15 resource guides online and developing content for the web; participating in
16 the development and implementation of innovative online services that
17 connect library users with collections, lowers hurdles to access for
18 researchers and facilitates the sharing of knowledge among users.

19 Likewise, the 2014 Reader Services Librarian I (P1) job description provided that, under
20 the Readers Services Supervisor:

21 the position is responsible for providing instruction to the public on a variety of
22 topics, including the use of library resources, basic computer and other information
23 technology usage, and other personal and professional skill-building programs;
24 participating in developing and presenting outreach and programming activities to
25 promote use of the Library's collections and services; and promotes the use of the
26 resources and collections provided by the Library by assisting in development of
27 online resource guides and web content; organizing programs and conducting
28 instructional sessions.

29 There is no testimony in the record establishing that any PSA bargaining unit member
30 was actually performing the duties described in this job description.

31 IX. Comments on Instructor Recruitment

1 During the hearing, Gifford, Fahey-Flynn, and Colford commented on instructor
2 recruitment as described below. Gifford described how some librarians expressed
3 concerns that they weren't necessarily computer experts and preferred teaching subjects
4 of their expertise. Conversely, Fahey-Flynn noted that, the RRA librarians were willing to
5 teach any class. However, Fahey-Flynn found it hard to recruit other PSA bargaining unit
6 members in the Central Library to teach basic computer classes. While the NSD, not
7 Fahey-Flynn, coordinated recruitment of Branch Librarians as technology workshop
8 instructors, it was Fahey-Flynn's opinion that the branches also struggled recruiting
9 librarians to teach basic computer classes.¹⁵⁵ She commented how the NTIA Grant
10 "forced [PSA members] to become instructors who were not necessarily ready." She also
11 stated that "because of the way the grant was written, we were sort of forcing people who
12 were not comfortable teaching and who had never set out to be an instructor to teach,
13 and some people are not suited to be an instructor."¹⁵⁶ According to Fahey-Flynn,
14 while basic technology classes were not difficult from a curriculum standpoint, they were

¹⁵⁵ There is conflicting evidence in the record about whether Fahey-Flynn recruited branch librarians for the public instruction program. Fahey-Flynn initially testified that she did not recruit teachers for the branch libraries as the NSD and the branches were supposed to make their own decisions about who would teach classes. She later testified that she found it hard to recruit PSA bargaining unit members from the branch libraries to teach basic computer classes. She testified that branch librarians who had to use a mix of PCs and Macs were reluctant to teach classes because they were unfamiliar with Macs, which she addressed by instructing librarians herself to get them comfortable with the Macs. Fahey-Flynn also testified that she spoke to the NSD, which oversaw the branch libraries, about the refusal of some branches to provide instruction. Based on the evidence in the record, I conclude that Fahey-Flynn did not directly recruit branch librarians to teach for the public instruction program, but that she knew what librarians in the branches were teaching.

¹⁵⁶ At least one PSA bargaining unit member enjoyed teaching "basic classes" and found it to be rewarding work.

1 the hardest classes to teach because the instructor needed to have the patience and
2 creativity to find a way to explain without jargon how to conduct simple tasks, such as
3 using a mouse, something that librarians had not been doing on a day-to-day basis while
4 working at a reference desk.

5 Colford testified generally that prior to 2015, librarians provided intermediate
6 instruction at the Central Library by teaching classes on reference and research. He
7 claimed that between November of 2014 and May of 2015:

8 We were struggling to meet demand to teach basic computer classes. We
9 were also fighting constantly to try to get librarians to teach and they didn't
10 want to so we were looking for any opportunity we could to have somebody
11 teach basic instruction.

12 However, I find Colford's testimony that librarians provided intermediate instruction
13 by teaching reference and research classes is too narrowly drawn in light of overwhelming
14 evidence in the record that librarians also routinely taught basic computer classes
15 between 2011 and May 15, 2015. The totality of the record shows that PSA librarians
16 routinely taught tech and non-tech classes at every level between 2011 and May 15, 2015.
17 In particular, RRA librarians regularly taught basic technology classes between 2011 and
18 May 15, 2015, with the only exceptions being for brief interludes due to construction and
19 the lack of available classroom space.

20 Opinion

21 Timeliness

22 As a threshold issue, I must determine whether the PSA timely filed its prohibited
23 practice charge. On or about February 6, 2015, the BPL issued a job description for the
24 new full-time Instruction position, and on March 6, 2015, the BPL provided the PSA with
25 a copy of that job description. On May 15, 2015, the PSA filed the present prohibited

1 practice charge. Section 15.04 of the Department's regulations, 456 CMR 15.04,
2 provides that: "Except for good cause shown, no charge shall be entertained by the
3 Department based upon any prohibited practice charge occurring more than six months
4 prior to the filing of the charge with the Department." The time period is measured from
5 the date when the charging party "knew or should have known" of the event(s) that are
6 the basis of the charge. Felton v. Labor Relations Commission, 33 Mass. App. Ct. 926
7 (1992). A challenge to the timely filing of a charge is an affirmative defense. City of
8 Boston, 26 MLC 177, 181, MUP-1431 (March 23, 2000); Town of Wayland, 5 MLC 1738,
9 1741, MUP-2281 (March 28, 1978).

10 Here, the City and AFSCME assert, for reasons that will be discussed below, that
11 the BPL actually assigned the disputed duties to AFSCME unit members a number of
12 years prior to 2015, and thus, the PSA's charge was not timely filed. First, the City and
13 AFSCME claim that Cadillac had provided technology instruction to the public as far back
14 as 2006 in her previous AFSCME unit position as the Library Trainer, BLA8. However, in
15 the findings above, I compared the duties that Cadillac performed as the Library Trainer
16 with the duties that are the subject of the PSA's charge and determined that Cadillac's
17 duties were not the same. Thus, I do not find the City's and AFSCME argument on this
18 point to be persuasive.

19 Additionally, AFSCME relies on the basic instruction references, which were
20 contained in the 2011 job descriptions for its unit positions of the Technology Center
21 Supervisor, BLA8 and the Technology Support Associate, BLA5 to support its argument
22 that the BPL assigned the instruction duties outside of the PSA unit four years before the
23 PSA filed the present prohibited practice charge. Despite the references in the two

1 positions' job descriptions, the facts before me show that the positions' incumbents did
2 not actually perform public instruction. Furthermore, the BPL had reassured the PSA on
3 or about 2011 that the references to basic instruction in the two position's job descriptions
4 only meant that the incumbents needed to be able to answer questions from the public
5 about how to use the tech center equipment and perform troubleshooting but that the
6 incumbents in the positions would not provide instruction.

7 Finally, the City and AFSCME contend that the PSA should have filed its prohibited
8 practice charge in 2013 within six months of the BPL posting and/or filling the AFSCME
9 unit position of the Trainer/Collections, BLA6 position. On November 28, 2012, the BPL
10 posted a vacancy for the Trainer/Collections position, a split position in which the
11 incumbent would work part-time performing both instruction and collections duties. On
12 February 7, 2013, the PSA filed a grievance alleging that the BPL had transferred certain
13 duties from its unit to the Trainer/Collections position. On March 9, 2013, O'Toole filled
14 the Trainer/Collections position. The PSA's grievance subsequently proceeded through
15 the steps of the contractual grievance-arbitration procedure pursuant to the 2013-2016
16 Memorandum of Agreement between the City and the PSA, and the grievance was
17 scheduled to proceed to a hearing before an arbitrator. However, on or about that time,
18 the PSA did not file a prohibited practice charge with the DLR concerning the purported
19 transfer of its duties to the Trainer/Collections position.

20 Because the PSA protested the BPL's assignment of those duties to the
21 Trainer/Collections position by filing a grievance, the PSA did not acquiesce to the City's
22 purported transfer of the duties outside of its bargaining unit. However, the BPL's
23 purported transfer of those duties in 2013 cannot be considered as a cause of action in

1 the present case because it would be untimely. To have a timely allegation here, the
2 duties that the BPL purportedly transferred from the PSA unit to the Instruction position
3 must be different from the duties that the BPL purportedly transferred from the PSA unit
4 to the Trainer/Collections position in 2013. Upon review, material differences exist
5 between the job descriptions for the two positions that would support the PSA's claim that
6 it could not have known in 2013 about the allegations that form the basis of the 2015
7 prohibited practice charge. The position overview in the Trainer/Collections job
8 description indicated that the incumbent in the position was responsible for providing
9 "basic computer training," while the position overview in the Instruction job description
10 more broadly stated that the incumbent in the position was responsible for offering "basic
11 and intermediate instruction." Also, a provision in the scope of responsibility in the
12 Trainer/Collections job description noted that the incumbent was responsible for offering
13 "established computer training," while a comparable provision in the scope of
14 responsibility in the Instruction position job description removed the modifier "computer"
15 and instead more generally stated "offers established training." Further, a portion of the
16 scope of responsibility for the Instruction job description noted that the incumbent "assists
17 with curriculum preparation and organization, including gathering resources both internal
18 and external." Although this language is identical to a provision in the scope of
19 responsibility in the Trainer/Collections job description, this duty exists in the Instruction
20 position in the wider context of basic and intermediate instruction rather than basic
21 computer training. Finally, a provision in the scope of responsibility for the Instruction job
22 description, which stated that the incumbent "[w]orks with the [CDC] to develop and
23 implement online public instruction, differed from a comparable provision in the scope of

1 responsibility for the Trainer/Collections position, which stated that the incumbent “[u]nder
2 supervision, transfers existing training and collections related information into web
3 templates.” Because the PSA filed the present prohibited practice charge approximately
4 ten weeks after receipt of the Instruction job description from the BPL, the prohibited
5 practice charge was timely filed.

6 Count I -Transfer of Bargaining Unit Work

7 Count I of the Complaint alleges that in January of 2015, the City, acting through
8 the BPL, transferred bargaining unit work, which previously was performed exclusively by
9 PSA unit members, to the Instruction position in the AFSCME bargaining unit without
10 giving the PSA prior notice and an opportunity to bargain over the decision to transfer the
11 work and the impacts of that decision on PSA unit members’ terms and conditions of
12 employment in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.
13 Specifically, the Complaint alleged that the BPL transferred the following duties: a) offers
14 established training and provides instruction assistance for the public at all BPL locations
15 and non-library locations with a BPL presence; b) assists with curriculum preparation and
16 organization, including gathering resources both internal and external; and c) works with
17 the CDC to develop and implement online public instruction. Based on the evidence in
18 the record, I find that Count I more properly should be considered as alleging that the City
19 transferred the duties at issue in March of 2015 when O’Toole filled the Instruction
20 position. I also find that, in light of the position overview of the Instruction job description,
21 those duties arose in the context of basic and intermediate instruction.

22 Section 10(a)(5) of the Law requires a public employer to give the exclusive
23 collective bargaining representative prior notice and an opportunity to bargain to

1 resolution or impasse before transferring bargaining unit work to non-bargaining unit
2 personnel. City of Cambridge, 23 MLC 28, 36, MUP-9171 (June 28, 1996), aff'd sub nom.,
3 Cambridge Police Superior Officers Association v. Labor Relations Commission, 47
4 Mass. App. Ct. 1108 (1999). To establish that an employer unilaterally transferred
5 bargaining unit work to non-unit personnel, an employee organization must demonstrate
6 that: 1) the employer transferred bargaining unit work to non-unit personnel; 2) the
7 transfer of unit work had an adverse impact on individual employees or the bargaining
8 unit itself; and 3) the employer failed to give the employee organization prior notice and
9 an opportunity to bargain to resolution or impasse over the decision to transfer the work.
10 Commonwealth of Massachusetts v. Labor Relations Commission, 60 Mass. App. Ct.
11 831, 833 (2004); City of Gardner, 10 MLC 1216, 1219, MUP-4917 (September 14, 1983).

12 Turning to the first element of the test, I must examine whether prior to March 2015,
13 the work at issue belonged exclusively to the PSA or whether the work was shared with
14 AFSCME unit members, BPL exempt and managerial personnel, referred to generally as
15 BPL managers for the purposes of this Decision, and contractors. Commonwealth of
16 Massachusetts, Dept. of Correction, 42 MLC 109, SUP-13-6024 (October 19, 2015). In
17 cases where job duties have traditionally been shared by bargaining unit members and
18 individuals who are not members of that bargaining unit, the CERB has held that the work
19 at issue is not exclusive bargaining unit work. Higher Education Coordinating Council, 23
20 MLC 90, 92, SUP-4090 (September. 17, 1996). In shared work situations, an employer
21 does not have to bargain over every incidental variation in work. Town of Saugus, 28 MLC
22 13, 17, MUP-2343, CAS-3388 (June 25, 2001); City of Somerville, 23 MLC 256, 259,
23 MUP-8160 (May 2, 1997). Rather, the duty to bargain arises only if there has been a

1 calculated displacement of unit work. Town of Bridgewater, 23 MLC 103, 104, MUP-8650
2 (December 30, 1998). Whether there has been a calculated displacement of unit work is
3 determined by examining whether bargaining members performed an ascertainable
4 percentage of work, and the employer has taken action that results in a significant
5 reduction in that percentage, with a corresponding increase in the percentage of work
6 performed by non-unit personnel. Commonwealth of Massachusetts, 27 MLC 52, 56,
7 SUP-4091 (November 21, 2000); City of New Bedford, 15 MLC 1732, 1737, MUP-6488
8 (May 31, 1989).

9 Here, the PSA argues that: a) the BPL unilaterally transferred exclusive public
10 instruction work consisting of intermediate instruction, non-tech instruction, curriculum
11 development, and online instruction work; and b) engaged in a calculated displacement
12 of shared public instruction work consisting of basic technology instruction.¹⁵⁷
13 Conversely, the City and AFSCME argue that the disputed job functions were not
14 exclusive PSA bargaining unit work and that no calculated displacement of shared work
15 occurred. I now consider in turn the three disputed duties.

16 Established Training and Instruction Assistance

17 The first disputed duty is “[o]ffers established training and provides instruction
18 assistance for the public at all BPL locations and non-library locations with a BPL

¹⁵⁷ The PSA argued that in March of 2013, the BPL unilaterally transferred basic technology instruction from the PSA to the AFSCME Trainer/Collections position. However, in its post-hearing brief, the PSA stated that for the purposes of “briefing efficiency,” it would address the unilateral transfer of additional basic technology instruction in March 2015 to the AFSCME Instruction position as a calculated displacement of unit work. Although the PSA contended that formal group classroom instruction, including basic computer instruction, was an exclusive PSA bargaining unit duty, it acknowledged that “a longstanding dispute between the PSA and the BPL remain[ed] over the exclusivity of basic public instruction on technology.”

1 presence,” in the context of basic and intermediate instruction. This duty appeared as
2 such in the AFSCME Instruction job description. The issue is whether the City transferred
3 the work from the PSA to AFSCME when O’Toole filled the Instruction position at the end
4 of March 2015.

5 There are two analyses that can be used to determine whether this duty was
6 exclusive PSA unit work or shared work prior to March of 2015. First, the duty can be
7 viewed in its entirety by examining who provided established training and instruction
8 assistance prior to March of 2015 and whether or not they were PSA unit bargaining unit
9 members. Second, the duty can be split into sub-duties, examining whether the
10 established training and instruction assistance involved basic or intermediate instruction,
11 and then breaking down the analysis further to consider whether classes that were taught
12 or TA’d involved tech or non-tech subjects. The first analysis results in a finding that the
13 duty to offer established training and provide instruction assistance in the context of basic
14 and intermediate instruction is shared work among PSA bargaining unit members, BPL
15 managers, contractors, and the AFSCME Trainer/Collections position. The second
16 analysis results in a finding that PSA bargaining unit members, BPL managers,
17 contractors and the AFSCME Trainer/Collections position shared the duty of teaching
18 basic and intermediate tech classes and intermediate non-tech classes, but that PSA
19 bargaining unit members exclusively taught and TA’d basic non-tech classes.

20 *Viewed in the Entirety*

21 The evidence establishes that PSA unit members routinely taught and TA’d every
22 variety of basic tech classes between 2011 and 2015. However, PSA unit members
23 shared the duty to teach and TA basic tech classes with BPL managers, contractors, and

1 the AFSCME Trainer/Collections position. With respect to BPL managers, Web Services
2 Manager S. Colford taught the Intro to the BPL catalogue class in December of 2011. In
3 August of 2012, Gifford taught creating a Gmail account and using a Gmail account.
4 Additionally, contractors taught basic tech classes in 2011, June of 2014 and April and
5 May of 2015, including computers for beginners in Spanish. As for O'Toole, she taught
6 two computers for beginners classes in May and June of 2013, and she then taught the
7 series in September and October of 2013 and January and May of 2014. She also taught
8 the computers for beginners series in the branches between August and November of
9 2014. At the Central Library, O'Toole also taught the internet for beginners series in
10 March and June of 2014 and the iPad basics class in July, September and December of
11 2013, and January of 2014. Additionally, O'Toole TA'd many beginner computer classes
12 at the Central Library for CDC Fahey-Flynn between March and June of 2013. Also,
13 O'Toole TA'd for CDC Campbell at the Central Library with the email for beginners series
14 in October of 2013 and December of 2013 and with the internet for beginners series in
15 January of 2014.

16 The evidence also establishes that PSA bargaining unit members routinely taught
17 and TA'd every variety of intermediate tech classes between 2011 and 2015. Again, they
18 did so along with BPL managers, contractors, and the AFSCME Trainer/Collections
19 position. IT Department Applications Manager Dorsey taught the Overdrive class in
20 December of 2011. Also, a private contractor taught Windows 8 in October, November,
21 and December of 2013. As for O'Toole, she taught the iPad: checking out eBooks class
22 in September of 2013. In April of 2014, she taught the urban apps class, in part, and TA'd
23 the portion of the urban apps class that Campbell taught.

1 Finally, the evidence establishes that PSA bargaining unit members routinely
2 taught every variety of basic and intermediate non-tech classes between 2011 and 2015.
3 Additionally, Gifford taught African-American History Resources in February of 2013, an
4 intermediate non-tech class. Contractor Mass. Broadband Insurance taught two
5 intermediate non-tech classes on veterans benefits in December of 2013. While O'Toole
6 did not independently teach intermediate non-tech classes, in January 2014, she TA'd for
7 Campbell for a class called "happier" at the Central Library.

8 When viewed in its entirety, the duty to offer established training and provide
9 instruction assistance in the context of basic and intermediate instruction, is established
10 clearly as shared work based on the facts in the record. The facts discussed above show
11 that the BPL's public instruction program began in 2011 with an all-hands-on deck
12 approach that resulted in a blend of PSA bargaining unit members, BPL managers,
13 contractors and the AFSCME Trainer/Collections position offering established training
14 and providing instruction assistance in the context of basic and intermediate instruction,
15 a practice that continued through 2015.

16 *Categorized by the Nature of the Duties*

17 The PSA argues that the treatment of established training and instruction
18 assistance as one unified duty is overly broad and contrary to the complex factual
19 landscape of the case. The CERB previously has determined that the proper inquiry
20 under the first element of the transfer of unit work, in part, focuses on the nature of the
21 functions performed. Commonwealth of Massachusetts, Dept. of Correction, 42 MLC at
22 110; City of Boston, 29 MLC 123, 125, MUP-2419 (January 15, 2013). Relying on that
23 case precedent, I consider in the alternative whether the duty of offering established

1 training and instruction assistance was exclusive or shared work when the classes
2 conducted were categorized as basic or intermediate instruction and then when those
3 classes were further broken down as to whether the subject matters were tech or non-
4 tech. While the PSA concedes that basic instruction was shared work,¹⁵⁸ it insists that
5 intermediate instruction is its exclusive unit work. The PSA first argues that because no
6 BPL managers taught intermediate classes for the approximately twenty-one months from
7 July 2013 until March of 2015, the twenty-one-month period was sufficient to establish
8 the work as exclusively PSA unit work. In support of its argument, the PSA cites to Boston
9 School Committee, 40 MLC 378, MUP-13-2551 (H.O. June 6, 2014)¹⁵⁹ (two-year
10 assignment of duties sufficient to establish exclusive work) and City of Boston, 38 MLC
11 201, MUP-08-5253 (March 9, 2012) (two and one-half years of assigning police captains
12 to command a particular division sufficient to establish a binding practice). Second, the
13 PSA contends that the instances of BPL managers teaching any classes in the period
14 from 2011 to 2013 amounted to only a handful of classes in comparison to the high
15 volume of classes that PSA members taught during the same time frame and those
16 handful of cases does not destroy the exclusivity of the work. In support of its argument,
17 the PSA cites to City of Boston, 8 MLC 2057, 2058, MUP-4105 (April 23, 1982) (two
18 exceptions of non-bargaining unit members setting up crowd control ropes does not

¹⁵⁸ As discussed in footnote 156, the PSA's concession on this point is limited but merits no further discussion here.

¹⁵⁹ I note that the Boston School Committee case, supra was a hearing officer decision that was not appealed to the CERB. Although an unappealed hearing officer decision is final and binding on the parties to the case in which the decision issued, it does not constitute precedent for subsequent decisions. Town of Ludlow, 17 MLC 1191, 1196, n.11, MUP-7040 (August 3, 1990).

1 destroy the exclusivity of bargaining unit work); see also generally, Mass. Dept. of
2 Transportation, 43 MLC 65, 78, SUP-14-3576, SUP-14-3640 (H.O. September 8, 2016)
3 (de minimis variation in work assignments does not constitute a transfer of unit work),
4 aff'd, Mass. Dept. of Transportation, 44 MLC 1, SUP-14-3576, SUP-14-3640 (July 31,
5 2017). Third, the PSA argues that contractors taught only a tiny fraction of public
6 instruction and not intermediate instruction. Fourth, the PSA argues that O'Toole did not
7 teach any intermediate classes between March of 2013 and March of 2015. The PSA
8 contends iPad checking out eBooks and urban apps to be basic not intermediate classes.

9 I do not find the main premise of the PSA's arguments to be persuasive, which is
10 that instances of non-unit employees performing a disputed duty must be sub-divided and
11 analyzed by the type of non-unit employees. In shared work cases, the focus is on the
12 pre-existing pattern of shared work and the impact that any change in that pattern may
13 have on the alleged aggrieved party. City of Boston, 26 MLC 144, 147, MUP-1085 (March
14 10, 2000). While examining the pre-existing pattern of shared work, DLR precedent does
15 not differentiate between the different kinds of non-bargaining unit members and how the
16 work is divided amongst them. See City of Boston, 28 MLC 194, 195, MUP-2185 (January
17 4, 2002) (defining in the aggregate non-bargaining unit personnel as police academy
18 instructors who were not members of the charging party's bargaining unit even though
19 were members of other police bargaining units). While the overall duty at issue can be
20 viewed in its entirety or by sub-part, the performance of the work at issue by non-PSA
21 bargaining unit members must be looked at comprehensively. Here, the history of the
22 duties that AFSCME unit member O'Toole, BPL managers, and contractors performed

1 must be viewed collectively as one group of non-PSA bargaining unit members for the
2 purposes of determining whether disputed work is exclusive or shared.

3 I also reject the PSA's overly narrow focus on the performance of intermediate
4 duties that occurred from various dates in 2013 and forward. It is accurate to state that
5 no BPL manager taught intermediate tech classes after June of 2013. However, this
6 analysis results in an arbitrary cutoff date for evaluating the history of a public instruction
7 program that only began publicizing classes on calendars in the Fall of 2011. By May of
8 2015, the program was not quite four years old. An analysis that only evaluates the nature
9 of the work that occurred from 2013 onward and ignores the Fall of 2011 and 2012 is too
10 narrowly focused and lacks a rational basis. Even assuming that I considered the PSA's
11 arbitrary date for analysis, it would not materially change the outcome of this case based
12 on the work that the contractors and the Trainer/Collections position performed.

13 Also, the two cases that the PSA cites to in support of its claims that the classes
14 that BPL managers taught between 2011 and 2013 were de minimis variations can be
15 distinguished from the facts of the present case. First, the PSA seeks to have me look at
16 a much smaller period of time here than in the City of Boston case, i.e., two years versus
17 fourteen years. Furthermore, in the Mass. Dept. of Transportation case, the hearing
18 officer found that the two or three instances in which a newly promoted manager informed
19 a unit member that he needed something done right away was a de minimis variation
20 because the unit member continued to schedule and prioritize all motor equipment repair.
21 43 MLC at 78. Upon review of the facts in the present case, I am not persuaded that BPL
22 managers teaching five classes over two years, which includes both basic and
23 intermediate classes with tech and non-tech subject matter, is similarly de minimis.

1 In addition, I note that the PSA's factual conclusions do not align with the factual
2 findings that I made in this decision. The PSA's assertions that: a) contractors did not
3 teach intermediate instruction at all; b) O'Toole did not teach any intermediate classes
4 between March of 2013 and March of 2015; c) O'Toole did not provide instruction on any
5 non-tech topics; and d) BPL managers did not teach any non-tech classes below 2013
6 and 2015 are inaccurate in view of the definitions that were developed for the purposes
7 of this decision. As stated above, a contractor taught the intermediate Windows 8 class
8 in October, November and December of 2013, and O'Toole taught the intermediate tech
9 classes iPad: checking out eBooks class in September of 2013 and urban apps in April
10 of 2014. O'Toole also assistant taught the April of 2014 urban apps class with Campbell.
11 Additionally, contractor Mass. Broadband Insurance taught two intermediate non-tech
12 classes on veterans benefits in December of 2013.¹⁶⁰ While O'Toole independently did
13 not teach intermediate non-tech classes, she TA'd for Campbell at the Central Library in
14 a class called "happier" in January of 2014. Finally, Gifford taught African-American
15 History Resources in February 2013, an intermediate non-tech class. These facts, in
16 addition to other relevant facts discussed above, establish that between 2011 and 2015,
17 the duty of teaching and assistant teaching basic and intermediate tech classes, and
18 intermediate non-tech classes was shared work.

19 *Calculated Displacement*

¹⁶⁰ The PSA in its post-hearing brief argues that no findings should be made about the veterans benefits classes that Mass. Broadband Insurance taught because of limited information in the record. Contrary to the PSA's arguments, the record established that Mass. Broadband Insurance was a private contractor. Also, I designated the classes as intermediate, non-tech classes by drawing reasonable inferences from the evidence as a whole and applying those inferences to the definitions on pages 9 and 10 of this Decision.

1 Accordingly, I next consider whether there has been a calculated displacement of
2 teaching and assistant teaching basic and intermediate tech classes and intermediate
3 non-tech classes or a transfer of exclusive PSA teaching and assistant teaching of basic
4 non-tech classes. Notwithstanding the City's and AFSCME's arguments that the case is
5 limited by the language of the Amended Complaint alleging only a transfer of exclusive
6 bargaining unit work, a union need not establish that the duties are exclusively bargaining
7 unit work to prevail on its claim that an employer has unlawfully transferred bargaining
8 unit work. Town of Hanson, 29 MLC 71, 73, MUP-2488 (October 9, 2022).

9 The PSA contends the Instruction position resulted in a calculated displacement
10 of basic technology instruction work. The PSA maintains that "the BPL's decision to
11 double the amount of public instruction work" that AFSCME performed by creating the
12 full-time Instruction position was a calculated displacement of PSA bargaining unit work.
13 In support of its position, the PSA emphasizes that O'Toole performed instruction duties
14 fifty percent of the time in the Trainer/Collections position. Relying on Gifford's testimony,
15 the PSA argues that O'Toole went from teaching one to two classes per week in the
16 Trainer/Collections position to teaching two to three times per week in the Instruction
17 position. The PSA posits that "it may be readily inferred that the increase of public
18 instruction performed by AFSCME unit members resulted in a calculated displacement of
19 unit work from the PSA to AFSCME." In this regard, the PSA asks the hearing officer to
20 "deduce that doubling O'Toole's public instruction [duties] correspondingly reduced PSA
21 work by a similar amount." Citing to Commonwealth of Massachusetts/Comm'r of Admin.
22 and Finance, 28 MLC 308, SUP-4740 (April 11, 2002), the PSA maintains that "[e]ven
23 without demonstrating an immediate detrimental impact, there is no question that the

1 BPL's unilateral transfer damaged the PSA bargaining unit by depriving PSA unit
2 members of future opportunities to engage in public instruction course work proportionate
3 to pre-March 2015 levels." As an initial matter, I note that the PSA's reliance on the
4 Commonwealth of Massachusetts/Comm'r of Admin and Finance case is inapposite,
5 because that case has to do with a transfer of the exclusive duty of certified chemists
6 doing on-call duty for the federal government's investigation of clandestine drug labs. Id.
7 at 310. The CERB explicitly noted that performing an analysis of the calculated
8 displacement of unit work was not necessary as the work in question was exclusive unit
9 work. Id. at n.14.

10 Moreover, the PSA's arguments seeking to have the CERB "infer" and "deduce"
11 are not persuasive. After analyzing the record of twenty days of hearing, I decline to infer
12 that a calculated displacement of shared public instruction work or a transfer of exclusive
13 PSA work occurred merely because O'Toole performed public instruction on a part-time
14 basis in the Trainer/Collections position and on a full-time basis in the Instruction position.
15 Moreover, as a practical matter, the BPL's decision to create a full-time Instruction
16 position, write a job description, and fill the position did not automatically result in any
17 transfer of unit work. Rather, this case turns on the actual duties that O'Toole performed
18 in the Instruction position. See Commonwealth of Massachusetts, Dept. of Correction, 42
19 MLC at 110 (examining whether certain duties were performed at fourteen out of eighteen
20 correctional facilities and concluding there was no evidence that the disputed duties were
21 performed at those fourteen facilities, much less evidence of by whom or how often); Cf.
22 Boston Water & Sewer Commission, 7 MLC 1439, 1448, MCR-2981 (October 23, 1980)

1 (without elucidating testimony or stipulations, job descriptions were insufficient to prove
2 actual job duties and to determine appropriate unit placement).

3 The PSA's reliance on Gifford's testimony in this regard is misplaced. I do not rely
4 on Gifford's testimony for the reasons discussed in the factual findings on this point.
5 However, I reiterate here that Gifford testified that she did not have memorized how many
6 times per week O'Toole taught between March and May of 2015, but "imagined" it was
7 twice a week. Moreover, O'Toole testified that she had no memory of teaching in March,
8 April, or May of 2015. Finally, the PSA failed to provide or subpoena calendars with
9 instructor listings for these months or produce Koerber, the CDC who supervised O'Toole
10 during these critical months.

11 For these reasons, on the record before me, there is no evidence regarding the
12 specific classes that O'Toole taught, or assistant taught between the end of March 2015
13 and May 15, 2015 while in the Instruction position. See City of Lawrence, 23 MLC 213,
14 215, MUP-9876 (March 31, 1997) (declining to find that the assignment of bargaining unit
15 work to welfare recipients was a unilateral transfer of bargaining unit work in the absence
16 of definitive evidence that there was a change in the amount of work being done by non-
17 unit workers). Therefore, I conclude that O'Toole had not performed any new duties in
18 the Instruction position as of the date the PSA filed its charge.

19 Consequently, I find no calculated displacement of shared work or transfer of
20 exclusive work. First, there is no evidence of an increase in the percentage of basic and
21 intermediate tech classes and intermediate non-tech classes that O'Toole taught between
22 end of March 2015 and May 15, 2015. Further, there is no evidence of a corresponding
23 decrease in the percentage of basic and intermediate tech classes and intermediate non-

1 tech classes that PSA unit members performed during the same time period. Without
2 any evidence of the classes that O'Toole taught after March 2015, it is impossible to
3 discern whether there was a change in the pre-existing pattern of shared work. City of
4 Quincy/Quincy City Hospital, 15 MLC 1239, 1241, MUP-6490 (November 9, 1988)
5 (finding that a charging party must demonstrate that a pre-existing pattern of shared work
6 existed, and that the employer altered that pattern). Second, because there is no
7 evidence that O'Toole taught or assistant taught any basic, non-tech classes during the
8 same time period, there is no evidence that the BPL transferred exclusive PSA unit work
9 to O'Toole.

10 *Adverse Impact*

11 Further, there is no evidence of an adverse impact to any PSA unit member or the
12 PSA bargaining unit as whole because of O'Toole's filling of the Instruction position. The
13 PSA cites to Commonwealth of Massachusetts, 28 MLC at 311 in support of its argument
14 that even without an immediate detrimental impact, the BPL deprived PSA unit members
15 of future opportunities to engage in public instruction course work proportionate to pre-
16 March 2015 levels. However, in the Commonwealth of Massachusetts case, unit
17 members actually lost on-call pay as a result of the transfer as well as the possible loss
18 of future on-call pay. Here, the PSA has not produced any evidence to establish its claim
19 that the BPL has deprived unit members of future opportunities to engage in public
20 instruction work proportionate to pre-March 2015 levels. See Chief Justice for
21 Administration and Management of the Trial Court v. CERB, 79 Mass. App. Ct. 374 (2011)
22 (finding that there was no violation when no evidence existed showing an eventual

1 elimination of the bargaining unit through gradual erosion of bargaining unit duties and
2 that hypothetical detriments do not establish the requisite proof).

3 Curriculum Preparation and Organization

4 The second disputed duty is [a]ssists with curriculum preparation and organization,
5 including gathering resources both internal and external' in the context of basic and
6 intermediate instruction. This duty appears as such in the Instruction job description.
7 Based on the definitions used for the purpose of this decision, the disputed duty entails
8 providing instruction-related administrative assistance to the CDC in the context of basic
9 and intermediate tech and non-tech instruction. Notably, Shafts conceded that in a
10 bargaining session in March of 2015, Colford and Dembro assured her that the term
11 "assists with the development of curriculum" was administrative and clerical work that
12 involved organizing material, providing handouts prepared by the CDC, and putting
13 classes on the calendar. The issue here is whether the City transferred the work from the
14 PSA to AFSCME after O'Toole filled the Instruction position at the end of March of 2015.

15 Between 2011 and 2015, PSA bargaining unit members independently developed
16 all varieties of basic and intermediate tech and non-tech curriculums. BPL non-unit
17 personnel and contractors also taught basic and intermediate tech and intermediate non-
18 tech classes based on their own curriculums, with the exception of basic computer and
19 email classes, for which instructors used Fahey-Flynn's curriculums. In contrast, O'Toole
20 did not independently develop curriculum in the Trainer/Collections position. Rather, she
21 provided curriculum-related assistance to the CDC in the context of basic computer
22 instruction.

1 The PSA insists that curriculum development was an exclusive PSA unit duty.
2 Further, the PSA asserts that: BPL non-unit personnel; and contractors taught a de
3 minimis number of classes for which they developed curriculum; PSA bargaining unit
4 members tailored contractors' Tech Goes Home classes for BPL patrons, and O'Toole
5 never developed curriculum "under any of the three CDC's." Nevertheless, I need not
6 decide whether curriculum development was an exclusive PSA unit duty prior to March
7 of 2015. Curriculum development is not the disputed duty identified in the Amended
8 Complaint, nor does the PSA allege that O'Toole ever performed curriculum development
9 duties.

10 Finally, there is no evidence that O'Toole provided curriculum-related
11 administrative assistance in the context of basic or intermediate instruction to the CDC or
12 independently developed curriculum while in the Instruction position in the operative
13 period between the end of March 2015 and May 15, 2015. Consequently, the PSA has
14 not established that the City transferred the duty to assist with curriculum preparation and
15 organization, including gathering resources both internal and external in the context of
16 basic and intermediate instruction.

17 Online Public Instruction

18 The third disputed duty is "[w]orks with the [CDC] to develop and implement online
19 public instruction." A review of the record before me does not show that between 2011
20 and 2015, PSA unit members developed and implemented online instruction as that term
21 is defined above in this decision. Although the PSA concedes in its post-hearing brief
22 that no employees had yet developed and implemented online public instruction during
23 that time period, the PSA asserts that the key components of online instruction already

1 were within the PSA's exclusive work jurisdiction, such as curriculum development and
2 LibGuides. Notwithstanding the PSA's argument in this regard, the record is devoid of
3 any evidence that O'Toole actually performed this duty while in the Instruction position
4 between the end of March 2015 and May 15, 2015.

5 Accordingly, I dismiss Count I of the Complaint as it pertains to all three disputed
6 duties.

7 Count II Failure to Bargain

8 Count II of the Amended Complaint alleges that in January and April of 2015, the
9 PSA requested to bargain over the duties that were in dispute in Count I of the Complaint
10 and that the City refused to do so, in violation of Section 10(a)(5) and, derivatively, Section
11 10(a)(1) of the Law. Although there is no evidence that the PSA demanded to bargain
12 about the disputed duties in January of 2015, the evidence establishes that the PSA
13 requested to bargain over the Instruction position on March 25, 2015, April 2, 2015, and
14 April 9, 2015, and that each time the City declined.

15 During a March 6, 2015 negotiation session with the City relative to a general BPL
16 reorganization, the PSA requested certain AFSCME job descriptions, including
17 Instruction position job description. The PSA informed the City that it had concerns about
18 the Instruction position providing instruction and classes. Colford told the PSA that the
19 Instruction position was not a new position because it would continue to teach basic
20 computer classes and that the only change was the BPL had separated the new
21 Instruction position from the Collections aspect of the former Trainer/Collections position.
22 The PSA then requested a copy of the Instruction position job description. On the evening
23 of March 6, 2015, after the negotiation session, Colford provided a copy of the Instruction

1 position job description by email to Shafts and other PSA Executive Board members
2 noting that the City had completed negotiations with AFSCME regarding the Instruction
3 position job description and had approval to post the position but had not yet done so.

4 During bargaining on March 25, 2015, PSA representatives told the City's
5 representatives that the Instruction position amounted to a transfer of bargaining unit
6 work, which the City denied. During the March 25, 2015 negotiation session, the PSA
7 asked the City why the Instruction position was an AFSCME position and not a PSA
8 position. Gifford explained that in the existing Trainer/Collections position, O'Toole was,
9 on a part-time basis, teaching basic computer classes for beginners and assisting the
10 CDC with curriculum development. Gifford stated in the Trainer/Collections position,
11 O'Toole taught classes that were very basic, for individuals who previously had not used
12 a computer. Colford informed the PSA that he considered training to be shared work and
13 curriculum development to be librarian's work. He further stated that teaching someone
14 how to use a tool was not a specific PSA skill set. Decter pointed out that while the
15 classes that O'Toole taught in the Trainer/Collections position were basic courses, the
16 new Instruction position referred to intermediate instruction. The PSA objected to the fact
17 that the Instruction position included the term "intermediate instruction" and omitted the
18 word "computer" in the position overview and requested that the City remove the term
19 "intermediate" from the Instruction job description. Colford declined. Decter asked what
20 intermediate classes were. Colford responded that intermediate instruction referred to
21 intermediate computer instruction, and that the Instruction position would not do any
22 subject-related courses or courses on how to search for information. The PSA also raised
23 concerns that the Instruction job description might expand curriculum duties from

1 providing basic assistance to providing more substantive assistance in drafting
2 curriculum. The BPL responded that there was no expectation of the Instruction position
3 drafting curriculum. Decter insisted that the Instruction position belonged in the PSA
4 bargaining unit and stated that the PSA already had a pending grievance regarding the
5 Trainer/Collections position. The City denied that it had any bargaining obligation
6 regarding the Instruction position.

7 By email dated April 1, 2015, Shafts wrote to Colford that the PSA “needed] to hear
8 your position on the [Instruction position] in light of the concerns we outlined to you at our
9 last [March 25, 2015] meeting. The following day, during an April 2, 2015 negotiation
10 session, PSA representatives asked to bargain over the provisions of the Instruction job
11 description. They expressed concerns that the instructional aspect of the position was
12 full-time, and that the instruction applied to any type of instruction. The PSA asked the
13 City’s representatives for definitions of the terms “intermediate and basic instruction.” The
14 PSA representatives also stressed that classroom instruction and formal instruction were
15 PSA duties, as was curriculum development. Colford stated that instruction was shared
16 work. He explained that the BPL was not going to consider any changes to the Instruction
17 job description. He noted that the BPL had negotiated the job description with AFSCME
18 and did not need to discuss it with the PSA. The PSA responded that the City had an
19 obligation to bargain with the PSA over the impacts of the Instruction position. The PSA
20 did not elaborate upon the impacts over which it was seeking to bargain.

21 By letter dated April 9, 2015, the PSA demanded to bargain about the Instruction
22 position duties that it contended were exclusive PSA duties. The City did not respond to
23 the PSA’s demand to bargain, and on May 15, 3026, the PSA filed the present charge

1 Section 6 of the Law requires public employers and employees' representatives to
2 meet at reasonable times to negotiate in good faith with respect to wages, hours,
3 standards of productivity and performance, and any other terms and conditions of
4 employment. School Committee of Newton v. Labor Relations Commission, 388 Mass.
5 557, 562 (1983). Refusing to meet and bargain on demand concerning mandatory
6 subjects of bargaining is a violation of Section 10(a)(5) of the Law. See New Bedford
7 Housing Authority, 27 MLC 21, 27, MUP-1650 (September 7, 2000); Boston School
8 Committee, 11 MLC 1219, 1225, MUP-5315 (October 22, 1984). Here, the City had no
9 obligation to bargain with the PSA over the decision to create the Instruction position.
10 The decision to create a position is a managerial prerogative and not subject to mandatory
11 bargaining. Boston School Committee, 10 MLC 1410, 1420, MUP-5192 (February 21,
12 1984). However, "if a managerial decision has impact upon or affects a mandatory
13 subject of bargaining, negotiations over the impact is required." City of Worcester v. Labor
14 Relations Commission, 438 Mass. 177, 186 (2022) Also, job duties of bargaining unit
15 positions are a mandatory subject of bargaining (City of Boston, 30 MLC 38, 40, MUP-
16 01-2940 (September 12, 2003); Town of Danvers, 3 MLC 1559, 1576, MUP-2292, 2299,
17 (April 6, 1977)), but the job duties in dispute here concerned an AFSMCE unit position,
18 i.e., the Instruction position, not a PSA position. Therefore, the PSA had no standing to
19 demand bargaining over the Instruction position's terms and conditions of employment.

20 Nonetheless, if the City's creation of the Instruction position and selection of
21 O'Toole to fill the position had resulted in a transfer of PSA public instruction duties, the
22 City would have been obligated to bargain to resolution or impasse over the transfer. The
23 assignment of bargaining unit work outside of the bargaining unit is a mandatory subject

1 of bargaining. Melrose School Committee, 9 MLC 1713, 1722, MUP-4507 (March 24,
2 1983). Because I concluded above that O'Toole's filling and performing of the Instruction
3 position from March to mid-May 2015 did not constitute a transfer of unit work, no
4 bargaining obligation attached.

5 Furthermore, the original transfer of PSA public instruction duties to the AFSCME
6 unit allegedly occurred in 2013 when the City purportedly transferred certain duties to the
7 Trainer/Collections position. The PSA chose to challenge that alleged transfer by filing a
8 grievance and subsequently submitting that grievance to arbitration on July 25, 2016.
9 Absent an arbitrator's ruling, the City was not obligated to bargain in 2015 about the duties
10 that were the subject of the alleged 2013 transfer and the pending grievance, although it
11 could agree to do so voluntarily.

12 Also, a review of the record shows that the City's decision to create the Instruction
13 position and select O'Toole to fill the position did not have any identifiable impacts on
14 PSA members' terms and conditions of employment. For example, the PSA unit
15 members' job duties, workload, hours of work, and rates of pay remained the same.
16 Although the PSA argues that the City's decision to create and fill the Instruction position
17 deprived PSA unit members of future opportunities to engage in public instruction course
18 work proportional to pre-March 2015 levels, the dearth of facts in the record in support of
19 this argument renders it speculative. Moreover, as of the date that the PSA filed the
20 charge, May 15, 2015, there is no evidence that O'Toole had performed any duties in the
21 Instruction position that actually impacted the PSA bargaining unit. A union "cannot
22 conjure up hypothetical detriments as a justification for purposeless impact bargaining."
23 Chief Justice for Administration and Management of the Trial Court, 79 Mass. App. Ct. at

1 387. Finally, although the PSA objected to the placement of the Instruction position in the
2 AFSCME bargaining unit rather than the PSA bargaining unit, unit placement is not a
3 mandatory subject of bargaining. See Boston School Committee, 10 MLC at 1420.
4 Accordingly, I conclude that the City did not violate Section 10(a)(5) and (1) of the Law
5 by its failure to bargain on demand on March 25, April 2, and April 9, 2015 over the
6 disputed duties of the Instruction position.

7 CONCLUSION

8 Based on the record and for the reasons stated above, I conclude that the City did
9 not violate Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law in the manner
10 alleged in the Amended Complaint.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



MARGARET M. SULLIVAN
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within ten days, this decision shall be final and binding on the parties.