

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of:

CITY OF BOSTON

and

SALARIED EMPLOYEES OF NORTH
AMERICA, LOCAL 9158

Case Number: MUP-22-9539

Date Issued: December 22, 2025

Hearing Officer:

James Sunkenberg, Esq.

Appearances:

Michael S. Berry, Esq. - Representing City of Boston

Jillian M. Bertrand, Esq. - Representing Salaried Employees
Alfred Gordon O'Connell, Esq. of North America, Local 9158

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the City of Boston (City or Employer) violated
2 Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws,
3 Chapter 150E (the Law) by transferring bargaining unit work, including the duties of the
4 Public Information Officer (PIO) in the Boston Transportation Department (BTD) (Count
5 I) and an Administrative Assistant in the Property Management and Construction
6 Department (PMD) (Count II), to non-bargaining unit personnel without giving the Salaried
7 Employees of North America, Local 9158 (SENA or Union) prior notice and an opportunity

1 to bargain to resolution or impasse. Based on the record, and for the reasons explained
2 below, I find that the City violated the Law.

3 STATEMENT OF CASE

4 On August 31, 2022, the Union filed a charge of prohibited practice (Charge) with
5 the Department of Labor Relations (DLR) alleging that the City violated Section 10(a)(5)
6 and, derivatively, Section 10(a)(1) of the Law by transferring bargaining unit work to non-
7 bargaining unit personnel without giving the Union prior notice and an opportunity to
8 bargain to resolution or impasse. On February 15, 2023, a DLR investigator investigated
9 the Charge. On March 27, 2023, the investigator issued a two-count Complaint of
10 Prohibited Practice (Complaint), alleging that the City violated Section 10(a)(5) and,
11 derivatively, Section 10(a)(1) of the Law by transferring bargaining unit work, including
12 the duties of the PIO in the BTD and an Administrative Assistant in the PMD, to non-
13 bargaining unit personnel without giving the Union prior notice and an opportunity to
14 bargain to resolution or impasse.¹ On April 6, 2023, the City filed its Answer to the
15 Complaint. On June 6, 2024, I conducted an in-person hearing, during which the parties
16 received a full opportunity to be heard, to examine and cross-examine witnesses, and to
17 present evidence. On August 30, 2024, the parties filed post-hearing briefs. Based on the
18 record, I make the following findings of fact and render the following opinion.

19 STIPULATIONS OF FACT

- 20 1. The City of Boston ("City") is a public employer within the meaning of Section
21 1 of the Law.
22
23 2. Salaried Employees of North America, Local 9158 ("SENA" or "Union") is an
24 employee organization within the meaning of Section 1 of the Law.

¹ At the outset of the June 6, 2024 hearing, I amended the Complaint to note that it issued on March 27, 2023, not March 27, 2022.

3. SENA is the exclusive bargaining representative for a bargaining unit that includes middle managers in the City.
4. Eugenia Soiles ("Soiles") was employed by the City of Boston from 2016 until September 1, 2021.² From March 2021 until her resignation, Soiles held the position of Public Information Officer for the Boston Transportation Department, a position in the SENA bargaining unit.
5. The City did not fill the Public Information Officer position left vacant following Soiles' resignation.
6. The Boston Transportation Department ("BTD") and the Public Works Department ("PWD") are organized under the Streets Cabinet.
7. On or about May 4, 2022, the City posted a vacancy for a Communication Director position for the Streets Cabinet. The Communication Director position was posted as a managerial, non-unit position.
8. The City did not provide SENA with advance notice of the Communications Director posting.
9. The City filled the Communications Director position in or around September 2022[.]
10. Lisa Menino ("Menino") works in the Special Events Unit in the Property Management Department as an Administrative Assistant, a position in the SENA bargaining unit. She has held this position for at least fifteen years.
11. On or about May 19, 2022, the City posted an exempt vacancy for a City Hall Engagement Manager position in the Mayor's Office of Arts and Culture. The City Hall Engagement Manager position was posted as a managerial, non-unit position.
12. The City did not provide SENA with advance notice of the City Hall Engagement Manager posting.
13. Between July and August 2022, the City and the Union engaged in discussions regarding the duties of the City Hall Engagement Manager position and the Property Management Department's Administrative Assistant position.
14. On or about August 17, 2022, the City provided SENA with a revised job description for the City Hall Engagement Manager position. Among other changes, the position was retitled as "Plaza Ambassador."

² Soiles began working for the City in 2013, not 2016.

1
2 15. The City filled the City Hall Engagement Manager/Plaza Ambassador position
3 in or around October 2022.
4

5 FINDINGS OF FACT
6

7 General Background

8 This matter involves the City's Streets Cabinet, which includes the BTM and the
9 Public Works Department (PWD); and the City's PMD and the Mayor's Office of Arts and
10 Culture (MOAC). As of the date of the hearing, no employee of the MOAC was a member
11 of the Union's bargaining unit.

12 The City and Union are parties to a collective bargaining agreement. Article 13 of
13 the CBA provides that commencing with the sixth consecutive day of actual service,
14 bargaining unit members working in a grade higher than the grade of their regular service
15 are compensated as if they had been promoted to that higher position. Article 14 provides
16 for the posting of bargaining unit positions and encourages applications to those positions
17 from bargaining unit members.

18 Public Information Officer – Boston Transportation Department

19 Eugenia Soiles (Soiles) began working for the City in 2013. From March 2021, until
20 her resignation in or around September 26, 2021, Soiles worked as a PIO for the BTM.
21 The PIO position is in the SENA bargaining unit. As the PIO, Soiles reported to Greg
22 Rooney, the Commissioner of the BTM.³

23 Generally, Soiles' PIO duties included overseeing BTM's communication strategy.
24 She handled public record requests for the BTM and responded to press inquiries, utilizing

³ Unless otherwise indicated, all references to the PIO are to the PIO in the BTM. As of the date of the hearing Rooney was no longer the BTM Commissioner.

1 media to proactively communicate. Soiles also collaborated on projects with the PWD,
2 such as employing social media and creating flyers to notify community members about
3 street improvements. Soiles drafted a Communications Plan that serves “as a strategic
4 guide for communications effort” at the BTB, and she created an editorial calendar for the
5 BTB.⁴ The PWD had its own PIO, Chris Copley, when Soiles worked for the BTB. During
6 her tenure as PIO for the BTB, the Streets Cabinet did not have a Communications
7 Director.

8 In relevant part, the Job Description for the PIO⁵ states:

9 The Boston Transportation Department (BTB) touches the lives of every resident
10 in a multitude of ways. Helping residents understand the work -- and the workers -
11 - of the BTB allows us to build a stronger relationship with our constituents and
12 opens up new channels for their feedback on our work.

13
14 Under direction of the Commissioner, the Public Information Officer (PIO) ensures
15 critical BTB information is publicly disseminated through new and traditional media
16 and is increasingly available in multiple languages so that it can be accessed by
17 all constituents. The Public Information Office will also be the BTB’s spokesperson
18 as needed.

19
20 The PIO leads the effort to tell the story of Boston Transportation, identifying and
21 implementing an outreach strategy for the Department.

22
23 Duties include, but [are] not limited to:

- 24
25
- 26 • Leads BTB’s efforts to ensure that key and publicly requested information
 - 27 is made available. This includes coordinating the BTB’s response to
 - 28 request[s] from the press and its responses to FOIA requests.
 - 29 • Develops and monitors all BTB media coverage in order to support the
 - 30 Department’s mission and vision.
 - 31 • Presents BTB initiatives to local and national news reporters and media
 - outlets in a proactive and positive manner.

⁴ The editorial calendar is an excel spreadsheet containing sheets labeled: Key; Press Calendar; Notable [sic] Days; Social Media; Events; Newsletters; and Third[-]Party Validators.

⁵ Soiles testified that the PIO job description in the record accurately reflects her job duties when she was the incumbent in the position.

- Pursues media placement opportunities and visibility for BTM.
- Identifies challenges and emerging issues faced by BTM in the media.
- Promotes positive stories regarding the City and BTM.
- Plans effective outreach to various constituencies as needed.
- Develops communication goals, plans and reports.
- Implements approved media relations plans and endeavors.
- Cultivates an active working relationship with the media, constituents, key audiences and leadership across the City.
- Fosters senior level media relationships.
- Represents BTM in citywide PIO and press conversations.
- Performs related work as required.

Required to work any emergency as directed by the Commissioner or designee.

Communications Director for Streets Cabinet Job Posting and Filling of Position

On or around May 4, 2022, the City posted the position of Communications Director for the Streets Cabinet, a newly created managerial position exempt from the SENA bargaining unit. The job description for this position states, in relevant part that:

The Streets Cabinet, which includes the Boston Transportation Department (BTM) and the Public Works Department (PWD), is looking for a Communications Director. This person will help the Streets Cabinet tell the story of how we work to deliver exceptional core city services and build our communications toolkit for engaging residents in the work of transforming our transportation system to become more safe, equitable, and environmentally sustainable.

In partnership with the Chief of Streets and senior leadership, the Communications Director sets a short- and long-term strategic vision for the Streets Cabinet and its messaging. Under the direction of the Chief of Streets, the Communications Director will operate using a variety of mediums: press, social media, digital outlets, direct community engagement, and more (as assigned).⁶ In addition, the

⁶ Soiles testified that she “handled all th[e]se different outreach mechanisms for the [BTM] and had a[n] engagement calendar, as well as a comms calendar to track, monitor, and plan for those.” Regarding the press, Soiles testified that for any press inquiry that came to the BTM, she was “responsible for working with the press, working with the [BTM] for the response to those inquiries, and then doing proactive press as well, so pitching stories and planning those things out.” Regarding social media, Soiles testified that she created “the collateral pieces and planned comms to go out that channel. I didn’t send them out. There was another role that did, but I would plan those components to go out.” Regarding digital outlets, Soiles testified that she worked closely with Streetsblog, “a digital outlet that talks about transportation,” and that she spoke with them “multiple times a week.” Soiles also worked with “other smaller ones that were more national that would reach out

1 Communications Director will oversee a cross-departmental team to carry out
 2 these efforts and serve as a spokesperson for the Cabinet.

3
 4 Duties include but are not limited to:

- 5 • Generates communication plans and ensures their successful execution
 6 across platforms.⁷ Manages and oversees the day to day work of team
 7 members, providing mentorship and guidance.
- 8 • Creates editorial and outreach calendars. Updates as needed.⁸
- 9 • Oversees and edits the creation of social media, graphics, videos,
 10 newsletters, e-newsletters, media plans, pitches, events and documents
 11 pertaining to the Streets Cabinet communications efforts.⁹

as well.... national outlets that were just online would reach out about stories in Boston or questions about things that we were doing here.” Regarding direct community engagement, Soiles testified that during her tenure, “a lot of projects were going on around slow streets.” Soiles worked with the community “to plan events, different materials so that folks would know when roadway closures were happening to redo those streets, involve the community in that process, which were in collaboration with the [PWD].” I credit this testimony based on Soiles’ direct knowledge of the duties she performed.

⁷As noted supra, Soiles drafted a Communications Plan when she was the PIO for the BTB. She testified that:

When I first started, I created a communications plan for the agency, thinking through the ways that we currently use communications and – like, auditing the different ways we were talking to our constituencies, media, and across different platforms. And then the future planning, so thinking about the things we would like to do, the conversations we would like to be in, and showing the ways that the City of Boston was a leader in – in some of the transportation work that was going on and how we could talk about those things across social media, using press, and working with the community.

⁸ Regarding the editorial calendar she created for the BTB, Soiles testified that:

[O]ne of the things that I did a soon as I got to the department was create an editorial calendar to plan out our communications across platforms and then to tie them into the different things that are going on at the department, as well as national events, like safe street – safe street awareness, things of that nature. So, I did build that out right when I got there.

The purpose of the editorial calendar was “to plan different communications, outreach, tie them to events, make sure that we could get everything out on time in a planful [sic] manner.”

⁹ Soiles testified regarding this job duty that:

- Performs related work as required.

Required to work any and all emergencies as directed by the Commissioner or designee.

In September 2022, the City hired Anne Roach (Roach) as the Communications Director for the Streets Cabinet. Five positions report to Roach. As of the date of the hearing, four of those five positions were filled; the unfilled position was the PIO in the BTD.¹⁰ Since becoming the Communications Director for the Streets Cabinet, Roach has been triaging the necessary functions of the PIO in the BTD. Roach has been handling incoming press inquiries and announcements for the BTD, maintaining an outreach calendar,¹¹ and providing information via the Streets blog.¹²

I would create graphics, videos. We did a lot of videos of pre-street redesign. We would go out and film an intersection and then come back after Public Works had done the street over, and then film it, you know, cars moving slower. And we would use those for different social media content, created some – a lot of support around newsletters at the time and in the communications plan that I put...together. I did...an audit of all the different newsletters that would go out. There was a lot of project-specific ones. There was some larger overarching ones to think about – the strategy for those and how we're sharing information in a clear, consistent manner that would get people to understand things they needed to, and then...tying those things into a proactive media outreach and the events that we were having.

Soiles did not oversee other employees performing these efforts; she “created the creative content on [her] own.” Soiles did not receive creative input from her Rooney, her supervisor.

¹⁰ Roach testified regarding the PIO in the BTD position that, “We are in the process of finalizing the interviews for hiring.” The City posted the PIO position in the BTD on March 20, 2024. After Soiles resigned, the City did not assign any bargaining unit member to work out of grade in the PIO position.

¹¹ Roach testified that the outreach calendar was “not a kind of editorial calendar for our social media channels.... That’s currently not happening.”

¹² Roach testified regarding the Streets blog that, “We receive general inquiries about work that’s happening that there’s interest in. We treat it like a news outlet. It’s essentially

1 Administrative Assistant – Property Management and Construction Department

2 Lisa Menino (Menino) has been the Administrative Assistant in the City's PMD for
3 28 years. This position is in the SENA bargaining unit. Menino's 2006 Form 30 provides,
4 in relevant part, as follows:

5 GENERAL STATEMENT OF DUTIES AND REPSONSIBILITIES:

6
7 Under Direct Supervision, Schedules, Coordinates, and Manages the Property and
8 Construction Management Departments [sic] Special Events Unit.

9
10 SUPERVISION RECEIVED...

11
12 Deputy Commissioner, Property and Construction Management Department
13 Director of Operations, Property and Construction Management Department

14
15 SUPERVISION EXERCISED...

16
17 Any and all Property and Construction Management Department staff assigned to
18 a scheduled special event coordinated by the department;

19
20 DUTIES AND RESPONSIBILITIES

21
22 Maintains the departments [sic] automated on-line special events application
23 system;

24
25 Reviews requested events dates for availability;

26
27 Maintains departmental special event calendar;

28
29 Schedules, coordinates and supervises departmental personnel assigned to
30 manage scheduled special event;

31
32 Conducts pre-event logistical meetings with special event coordinators to insure
33 that an [sic] required city applications, permits and Insurances are in place prior to
34 the event;

35
36 Prepares and mails approved Property and Construction Management
37 Department's special event permits;

38

a news outlet. It's just a website, but it's a news outlet. So... the reporter will attend our
events, but I wouldn't say I have regular communication with him due to capacity [sic]."

1 Prepares payroll documents for all department staff assigned to departmental
2 special events including Municipal Police Unit;

3
4 Prepares detailed itemized bills for city cost reimbursement;

5
6 Instructs and guides special event coordinators in the City of Boston's permitting
7 process;

8
9 Prepares and distributes Property and Construction management departments
10 [sic] monthly and annual special event reports and calendars;

11
12 Attends the City of Boston's citywide special events committee meeting for all
13 Property and Construction Management Department related agenda items;

14
15 Performs departmental administrative duties for the Deputy Commissioner and
16 Director of Operations, Property Management Department;

17
18 QUALIFICATIONS AND ENTRANCE REQUIREMENTS...

19
20 Applicant must have at least three years of full time, or equivalent part-time
21 administrative, managerial, or professional experience in the field office or
22 business administration in work, the major duties of which include one or more of
23 the following functions; personnel administration, budgetary control, accounting,
24 record management, program management, work simplification, financial
25 administration, or any equivalent combination of such experience.[sic]

26
27 The PMD has care and custody of City Hall Plaza and works with individuals and
28 City departments to promote special events. These events can range from community
29 celebrations to cultural festivals, music concerts, and anything in between. Menino meets
30 with clients and works with them from start to finish to create a special event on City Hall
31 Plaza. This includes meeting with the client, creating a site plan, navigating the event
32 permitting process, and accompanying the client to a City-wide community meeting,
33 which includes, as needed, various agencies such as the Special Events Committee,
34 BTD, Boston Police Department, Boston Fire Department, Boston Parks, and the
35 Inspectional Services Department. Menino does not have responsibility for duties such
36 as promoting City Hall Plaza on social media, soliciting programming, issuing public

1 facing communications about the plaza's performance, developing a digital presence, or
2 marketing events.

3 City Hall Plaza Engagement Manager Job Posting and Description

4 On or around May 19, 2022, following a major renovation of City Hall Plaza, the
5 City posted the newly created position of City Hall Plaza Engagement Manager as a non-
6 union, exempt position within the MOAC. At all relevant times, Kara Elliott-Ortega
7 (Ortega) has been the Chief of the MOAC.¹³ The job posting provides, in relevant part,
8 that:

9 Brief Job Description:

10 Context and Background

11 Under the supervision of the Chief of Arts and Culture and working closely with the
12 City Hall Plaza Oversight Committee, the Plaza Ambassador will implement the
13 mission and vision of the plaza through year-round programming.¹⁴

14 **Mission and Vision of the Plaza**

15 As the epicenter of civic activity, Boston City Hall Plaza is a place for inspiration,
16 convening, and celebration. It will serve as an invitation for social, cultural, and
17 political participation for and from all Bostonians. As a welcoming point of
18 engagement with residents, visitors and newcomers, we see this space as an
19 evolving place to play, relax, gather and enjoy a shared experience.

20 **Value statements:**

21 ¹³Ortega testified that:

22 So, the plaza just reopened after many millions of dollars of investment, and there's
23 new infrastructure to support different kinds of events at different scales that just
24 makes a lot easier to use. And so, the idea was that this position would be able to
25 facilitate a lot more cultural events happening there, and also with a... lens to
26 making sure that every culture and neighborhood is represented on the plaza.

¹⁴Ortega testified that the MOAC's mission is to "uplift arts and cultural work around the city and make sure that everybody has access to arts and culture and creativity wherever they are."

- We will create fertile ground for a spectrum of diverse programming that reflects the many cultures and people of Boston
- We will foster cultural and artistic expressions in line with our equity goals and the Boston Creates Cultural Plan
- We will model sustainability and resilience in both infrastructure, environment, and practice
- We will prioritize accessibility for all ages and abilities
- We will provide flexible and accommodating event venues that will attract diverse audiences
- We will mobilize likely and unlikely partners, collaborate across institutions and sectors, to unite Boston's cultural scene/civic space
- We will encourage and inspire excitement, wonder and delight
- We will reflect and be responsive, adapting this space to fit modern needs
- We will use this space to inspire civic imagination and experimentation
- We will welcome and celebrate visitors from all backgrounds
- We will reflect the spirit and diversity of our city in our language, programming and approach to the plaza
- We will acknowledge the history of the land in which we operate on

Responsibilities:

- Acts as the steward of the established mission of and vision for the plaza.¹⁵
- Advocates for city values in the use of the plaza, in line with the mission statement of the plaza.¹⁶

¹⁵Menino testified that as steward of City Hall Plaza, "our mission is to have as many... cultural and community-based events that we can hold out here." She further testified that it is her "responsibility to activate as many spaces as possible, and get as many people in the community... out there to enjoy the space that's open to the public." Menino further testified that prior to the City creating the new position, she was the only person to perform this function. Menino stated that since the new position was created, Arts and Culture "is doing the same thing as I'm doing, is recruiting talent outside on City Hall Plaza." Although Menino testified at one point that the MOAC recruits talent before passing it over to PMD "to work with them on logistics," Menino testified more than once without rebuttal that she also recruits talent, and I credit this testimony.

¹⁶Menino testified that she is responsible for "getting folks in creative ways to use the plaza. Looking at every event and making sure that everyone who has any interest in the plaza is able to use the plaza." Menino further testified that prior to the City creating the new position, no one else performed this job duty. Menino stated that since the new position was created in the MOAC, "we both do the same...we both recruit and look... [for] talent that's out there." Menino testified without rebuttal, and I credit this testimony.

- 1 • Coordinates with Property Management and Tourism and Sports, and
2 Entertainment to develop a full calendar of events for the plaza.¹⁷
- 3 • Recruits local organizations, small businesses, artists, and collaborators for
4 but not limited to performances, day-to-day programming, and events.¹⁸
- 5 • Develops partnerships with local organizations and collaborates across
6 institutions and sectors.¹⁹
- 7 • Responsible for achieving equitable procurement goals by contracting with
8 Minority and Woman Business Enterprises.²⁰
- 9 • Investigates, researches different programming typologies.²¹
- 10 • Provides and coordinates programming support for community groups that
11 apply to use the plaza.²²
- 12 • Manages fee structure to support ongoing sustainability of the plaza.²³

¹⁷Menino testified that she performs this job duty. She creates “a calendar every month.... And it is on a shared Google Drive for everyone to see. And I do entries of everyone that makes a request to use the date with... the events that come to City Hall Plaza.” Menino has always performed this duty and continues to be the only person performing it.

¹⁸Menino testified that she does recruit local organizations to use the plaza, and “we do work with a lot of small businesses,” and artists. She clarified, however, that her responsibilities are “more performance... geared.” Menino testified without rebuttal that she now shares this work with the new position, and that she was solely responsible for it prior to the creation of the new position. I credit this testimony.

¹⁹Menino testified that she does not perform this job duty.

²⁰Menino testified that if a client does not have the funding to put on an event, she assists them with obtaining “funding in order to for them to reach their goal.” She testified that her role in this duty has not changed since the creation of the new position.

²¹Menino testified that she does not perform this job duty.

²²Menino stated that she works with community groups to let “them know what is available to them and connecting them with the certain people that can reach their goal.” As examples, Menino referenced “getting out their organization’s mission and putting it with our IT department and displaying it all in our digital boards inside City Hall,” “letting them drop fliers in certain areas so that the community... gets access to it,” and “putting out a banner on City Hall Plaza” to let “the community know that certain events are coming.” Menino testified without rebuttal that prior to the creation of the new position, Menino had sole responsibility for this duty, which she now shares with the MOAC. I credit this testimony.

²³Menino testified that a new fee structure is in the process of being implemented, but the City Council needs to first approve any change to the preexisting fee structure. Menino discusses with the organization whether the event will be gated or ticketed, before

- Coordinates and communicates weekly programming and logistics with Property Management, Mayor's Office of Arts and Culture, and Tourism and Special Events.²⁴
- Works closely with internal City Hall Plaza Oversight Committee.²⁵
- Issues a public end of the year report and consistent updates on the plaza.²⁶
- Serves as spokesperson for the plaza and promotes the space.²⁷
- Develops and oversees digital presence and marketing for the plaza.²⁸

Develops and oversees creation of a transparent, centralized digital process to manage and system for plaza programming

In the first year, this role will be responsible for testing programs on the plaza and suggesting improvements to process and programs. These duties include:

- Investigates the potential for experimentation and use the space as a testing ground for new ideas.
- Explores grant, sponsorships, and other funding opportunities to support programming.
- Proposes updated business model for the plaza, including updates to fee structure.
- Investigates and makes recommendations about establishing an external working group/advisory board for providing feedback on programs and accessibility.
- Performs related work as required.

passing them on to the Special Events and Tourism Office. Her job duties have not changed since the creation of the new position.

²⁴Menino testified that she performs this job duty. Her duties have not changed since the creation of the new position, and she remains the only person performing her job duty.

²⁵Menino testified that she performs this job duty. She explained that there is an oversight committee meeting "that we met with on every event. And then we also have the weekly Tuesday meeting that's held in Property Management." She added that, "There is also a bigger committee meeting of a bunch of department heads, and we meet once a month. And they go over new creative ideas that they would like to bring to City Hall Plaza." Menino's role has not changed since the creation of the new position.

²⁶Menino creates "a monthly calendar, and then...can turn it into a yearly report." Her role has not changed concerning this duty since the new position was created.

²⁷Menino testified that she does not perform this job duty.

²⁸Menion testified that she does not perform this job duty.

1 Union Contacts the City Regarding both Positions

2 By email on July 5, 2022, Jillian Bertrand (Bertrand), the Union's attorney, wrote
3 to Jose Lopez (Lopez), the City's Deputy Director of the Office of Labor Relations, that:

4 A few weeks back we discussed two new exempt positions that that the City
5 planned on posting: 1) City Hall Plaza Engagement Manager (Office of Arts and
6 Culture) and 2) Communications Director (Office of Streets). When we spoke,
7 SENA was concerned that both positions are comprised primarily, if not entirely,
8 of SENA duties despite being categorized as exempt. I spoke with Lisa Menino
9 about the City Hall Plaza Engagement Manager position and she confirmed that
10 she performs most of these duties. The only duties she does not perform are some
11 of the community outreach and marketing-based duties. I have attached Lisa's job
12 description and a version of the City Hall Plaza Engagement Manager position
13 where Lisa marked which duties she performs and which she does not.²⁹

14
15 With respect to the Communications Director, as we discussed, this position
16 appears to encompass the duties of the Public Information Officer position, another
17 SENA position. The previous incumbent of that position, Eugenia Soiles, is no
18 longer with the City and so SENA was not able to have her compare the new
19 posting with her duties as we were able to do with Lisa, but both job descriptions
20 are attached and, as you can see, appear to be strikingly similar.

21
22 Can the City provide more detailed information as to how the work of these new
23 positions will substantively differ from the duties historically performed by SENA
24 members? Unless the City can do so, it is SENA's position that these two new jobs
25 are an attempt to transfer SENA bargaining unit work to non-SENA positions and,
26 now that both positions have been posted, SENA intends to file a prohibited
27 practice charge with the DLR. If you'd like to discuss this matter and SENA's
28 position in more detail, please let me know.

29
30 By email on July 11, 2022, Bertrand wrote to Lopez that:

31 To follow up on the below, the Union was able to get in touch with Eugenia Soiles,
32 the former Public Information Officer for the BTB. Ms. Soiles said the following
33 about Communications Director posting:

34
35 From what I can see in the job description, the new role added more
36 language about strategic communication work. Historically, this was not
37 made explicit in the PIO role, but while I worked for BTB I did create a 30,

²⁹Menino testified that she reviewed the job posting for the City Hall Plaza Engagement Manager position line by line and notated the Value Statements and Responsibilities identified in the job posting to indicate which duties she performed and which she did not. Her testimony regarding which responsibilities she performs is noted, supra.

1 60, 90 plan with a 3 year look ahead. I also created an editorial calendar for
2 the office which was used to plan social, press and community engagement
3 on issues – at the time I had been working on a small scale safety
4 improvement outreach plan.

5
6 I do not see anything in this new JD that I did not do while I was in the role.
7 Happy to answer any further questions you have.
8

9 Please reach out if you would like to discuss the City's position regarding the City
10 Hall Plaza Engagement Manager and the Communications Director. As you know,
11 it is SENA's position that these positions are entirely comprised of SENA duties.
12

13 By email on July 12, 2022, Lopez responded to Bertrand's July 11, 2022 email
14 that, "Once I have more information I will reach back out." By email on July 14, 2022,
15 Lopez responded to Bertrand's July 5, 2022 email that he was "waiting to meet with folk
16 on these two postings, they are away on vacation. Please know I am waiting for them to
17 return so I can follow-up. Hope to meet with them late next week." Still on July 14, 2022,
18 Bertrand responded that she "look[ed] forward to discussing this further with you soon."

19 By email on August 1, 2022, Lopez wrote to Bertrand, regarding the City Hall Plaza
20 Engagement Manager position, that, "The Department will make edits to the existing job
21 posting and notify applicants of the same in an effort to make the distinctions clear
22 between the responsibilities of the Administrative Assistant (Lisa Menino) and the City
23 Hall Plaza Engagement Manager. I'll keep you posted." Later on August 1, 2022, Bertrand
24 responded to Lopez that:

25 I appreciate the update and the City's efforts to distinguish between the City Hall
26 Plaza Engagement Manager and Lisa Menino's position/duties. SENA is still
27 concerned that the City Hall Engagement Manager may share a community of
28 interest with SENA bargaining unit positions, but it will reserve judgment on that
29 until it sees the modified job description. Please provide a copy when it is available.
30

31 Is there any update on the Communications Director position (Streets Cabinet)?
32 As you know, it is SENA's position that this new position is comprised entirely of
33 duties previously performed by the Public Information Officer, which is a SENA
34 position and was most recently held by Eugenia Soiles.

1 Still on August 1, 2022, Lopez responded to Bertrand that, “No update on the Comm
2 position. Will get back to you.”

3 City Changes Job Description for City Hall Plaza Engagement Manager to City Hall Plaza
4 Ambassador

5
6 By email on August 17, 2022, at 10:51 A.M., Lopez wrote to Bertrand that:

7 Thanks for your feedback on the Engagement position. The City made changes to
8 the JD to clarify roles.³⁰ The JD includes a reference to Lisa’s position Bulleted
9 below). I attached the JD here for you. The City would like to post this version. Are
10 there concerns with the duty that implicates the Admin Assistant position? If I do
11 not hear from you or the union regarding this duty by the close of business on
12 August 19, 2022, we will consider our bargaining obligations to have been met as
13 it relates to this duty.³¹

- 14
15 • Create new supports for community groups and artistic risk taking, including
16 but not limited to providing new or expanded technical assistance in
17 collaboration with the Property Management Administrative Assistant,
18 designing grant funds in collaboration with the MOAC Director of Grants and
19 Programs, and new making equipment available to renters [sic]
20

³⁰Ortega testified that “we...went through and made edits – not hugely substantial edits, but tweaks, I think, for the most part, to the job description. We removed some bullet points entirely.” Ortega testified that she, the City’s Director of Administration and Finance, and Lopez edited the original job description to create the revised job description. They compared Menino’s job description with the original job description and Menino’s notations to the original job description. Ortega testified that the new job description includes “thinking about the evaluation of the plaza, and how the plaza can be a space to try new kinds of programs,” whereas Menino’s job description is focused on “logistics” and making City Hall Plaza “available.” They did not speak to Menino or the Union when editing the job description.

Lopez testified that he met with the Arts and Culture Department, a member of Human Resources from the PMD, and Ortega to develop the new job description. His testimony confirmed that the City did not speak to Menino or the Union about her job duties when developing the new job description.

³¹ Lopez testified that he gave Bertrand a “timeline,” which was two days, and that he “did not hear from her within that timeline.” I do not credit this demonstrably false testimony. Bertrand contacted him the same day that he sent this email and reiterated her position that posting the position as exempt would constitute an unlawful transfer of bargaining unit work. See infra.

The referenced attachment, a revised job description for the City Hall Plaza Engagement Manager position, renamed as a City Hall Plaza Ambassador position, states, in relevant part, that:³²

Context and Background

Under the supervision of the Chief of Arts and Culture and working closely with the City Hall Plaza Oversight Committee, the Plaza Ambassador will implement the mission and vision of the plaza through year-round programming.

Mission and Vision of the Plaza

As the epicenter of civic activity, Boston City Hall Plaza is a place for inspiration, convening and celebration. It will serve as an invitation for social, cultural and political participation for and from all Bostonians. As a welcoming point of engagement with residents, visitors and newcomers, we see this space as an evolving place to play, relax, gather and enjoy a shared experience.

Value statements:

- We will create fertile ground for a spectrum of diverse programming that reflects the many cultures and people of Boston
- We will foster cultural and artistic expressions in line with our equity goals and the Boston Creates Cultural Plan
- We will model sustainability and resilience in both infrastructure, environment and practice
- We will prioritize accessibility for all ages and abilities
- We will provide flexible and accommodating event venues that will attract diverse audiences
- We will mobilize likely and unlikely partners, collaborate across institutions and sectors, to unite Boston's cultural scene/civic space
- We will encourage and inspire excitement, wonder and delight
- We will reflect and be responsive, adapting this space to fit modern needs
- We will use this space to inspire civic imagination and experimentation
- We will welcome and celebrate visitors from all backgrounds
- We will reflect the spirit and diversity of our city in our language, programming and approach to the plaza
- We will acknowledge the history of the land in which we operate on

Duties and Responsibilities

³²I note that the original posting for the City Hall Plaza Engagement Manager referred to the position as the "Plaza Ambassador."

- 1 • Act as the public spokesperson for the plaza, promoting external use of the
- 2 space and speaking to plaza programming
- 3 • Publicly promotes City Hall Plaza programs and rentals on the City of
- 4 Boston website and on social media, in collaboration with Property
- 5 Management, the City of Boston communications office, and departmental
- 6 public information officers
- 7 • Procures and solicits programming in line with the values and mission
- 8 statement of the plaza, including but not limited to working with local
- 9 organizations, small businesses, artists, and collaborators to deliver
- 10 performances, day-to-day programming, recurring events, and
- 11 exhibits/installations
- 12 • Collaborates with Property Management and Tourism Sports, and
- 13 Entertainment to develop a full calendar of events for the plaza
- 14 • Develops partnerships with local organizations and collaborates across
- 15 institutions and sectors to identify and deliver new programs
- 16 • Responsible for achieving MOAC's equitable procurement goals by
- 17 contracting with Minority and Woman Business Enterprises that reflect the
- 18 demographics of the City of Boston
- 19 • Investigates, researches different programming typologies to develop
- 20 programming goals and best practices for the plaza over time
- 21 • Create new supports for community groups and artistic risk taking, including
- 22 but not limited to providing new or expanded technical assistance in
- 23 collaboration with the Property Management Administrative Assistant,
- 24 designing grant funds in collaboration with the MOAC Director of Grants and
- 25 Programs, and new making equipment available to renters [sic]
- 26 • Staffs the internal City Hall Plaza Oversight Committee, reporting quarterly
- 27 on use of the plaza, budgeting, and other agreed upon metrics
- 28 • Issues public-facing communications about the plaza's performance,
- 29 including but not limited to information about attendance, number and kinds
- 30 of programs, procurement metrics
- 31 • Develops and oversees digital presence and marketing for the plaza
- 32

33 In the first year, this role will be responsible for testing programs on the plaza and
34 suggesting improvements to process and programs. These duties include:

- 35
- 36 • Investigate the potential for experimentation and use the space as a testing
- 37 ground for new ideas
- 38 • Explore and apply for grants, sponsorships, and other funding opportunities
- 39 to support programming
- 40 • Propose updated business model for the plaza, including updates to fee
- 41 structure
- 42 • Investigate and make recommendations about establishing an external
- 43 working group/advisory board for providing feedback on programs and
- 44 accessibility
- 45

46 On August 17, 2022, at 1:24 P.M., Bertrand responded to Lopez that:

1 While I appreciate the City's effort to clarify that this position is not meant to replace
2 Lisa Menino's position, it does not resolve the bigger picture – the duties for this
3 new position are historically SENA duties and therefore this position appropriately
4 belongs in the SENA bargaining unit. The job description as written would, in effect,
5 make SENA duties shared work (indeed, that is essentially what the reference [to]
6 Lisa's position does). The City has not provided any justification for why it believes
7 this position is exempt under the law and nothing in the job description suggests
8 that it should be. SENA therefore demands that this position be placed in the SENA
9 bargaining unit.

10
11 Additionally, the City has not provided any information on the status of the
12 Communications Director (Office of Streets) despite SENA's repeated requests.
13 As you know, this position is also made up of SENA duties. That position was
14 posted as exempt on May 4, 2022. The City posted that position without providing
15 SENA notice or an opportunity to bargain. SENA has provided additional
16 information to the City (at the City's request) from Eugenia Soiles (who performed
17 the Communications Director duties in her role as Public Information Officer for the
18 BTD) and has patiently waited for an update from the City despite the fact that the
19 position has now been posted for over three months.

20
21 Unless the City can provide more detailed information on its position as to why
22 either of these positions are exempt under the law, it remains SENA's position that
23 these positions belong in the SENA bargaining unit. Posting them as exempt
24 amounts to an unlawful transfer of bargaining unit work and SENA intends to file
25 charges with the DLR to protect its bargaining unit work. If you wish to discuss
26 SENA's position with respect to either of these positions in further detail, please let
27 me know.

28
29 By email on August 17, 2022, at 1:38 P.M., Lopez responded to Bertrand that: "I'll
30 need more information about these duties being SENA duties. These duties do not reflect
31 the duties of the admin assistant position. Is there another SENA position you believe
32 performs/ed these duties, or is it your contention that these are the duties performed by
33 the admin assistant position currently filled by Lisa Menino?" By email on August 17,
34 2022, at 5:10 P.M., Bertrand responded to Lopez that:

35 In follow up to our phone discussion, Joe and I plan to gather a sampling of SENA
36 positions/job descriptions to highlight the type of work SENA bargaining unit
37 members do and how that is consistent with the duties of the proposed City Hall
38 Plaza Engagement manager position (and the Director of Communications, for that
39 matter). I'll send you those in the next day or two. In the meantime, attached is the
40 Union certification from 1986 certifying that SENA's bargaining unit is comprised

1 of administrative and supervisory employees. As the City has grown and been
2 reorganized over the years, this is not a fully inclusive list of departments but it
3 should give you an initial sense of the scope of the SENA bargaining unit.³³
4

5 By email on August 25, 2022, Betrand wrote to Lopez that:
6

7 Attached are several SENA job descriptions from various departments and at
8 various steps on the salary scale that should provide some insight into SENA's
9 bargaining unit work and why it has consistently been the Union's position that the
10 duties listed in the descriptions for City Hall Plaza Engagement Manager and
11 Communications Director should be SENA positions.³⁴ To date, the City has been
12 unable to provide any indication why it believes that these positions are exempt
13 under the law. Additionally, I have repeatedly requested a status update on the
14 Communications Director position, which was posted in early May, but I have
15 received no further information. Today, it came to the Union's attention that despite
16 being on notice of SENA's objection that position is improperly posted as an
17 exempt position, the City has in fact hired a new Communications Director who is
18 scheduled to start work in the coming weeks.
19

20 Accordingly, SENA demands that the City recognize these positions as being
21 within SENA's bargaining unit and comply with its attendant bargaining obligations
22 under the law. Should the City refuse to recognize these positions as within the
23 SENA bargaining unit and fails to otherwise meet its bargaining obligations, the
24 Union intends to seek all available remedies, including filing a charge of prohibited
25 practice with the DLR. Please do not hesitate to call me if you have any questions
26 or would like to discuss further.
27

³³ The referenced certification, issued on June 2, 1986, in case number MCR-3598, describes the Union's bargaining unit as follows:

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

³⁴ The referenced job descriptions are: Principal Administrative Assistant (BTD); Civic Engagement Coordinator (Election Division); Procurement and Grants Manager (Principal Administrative Assistant) (Fire); Sr. Administrative Assistant (Property Management); Transportation Program Planner IV (Traffic Division); Assistant Strategy & Operations Manager (Street Outreach, Advocacy & Response); Chief Engineer (Parks & Recreation); Director of Asset Management (Property Management); PIO (BTD); and Superintendent of Street Operations (Supn. of Highway Maintenance) (Public Works).

1 On August 25, 2022, Lopez responded to Bertrand, in relevant part, that he would “review
2 and get back to you as soon as possible.”

3 City Fills City Hall Plaza Ambassador Position

4 In or around October 2022, the City hired Billy Dean Thomas (Thomas) as the City
5 Hall Plaza Ambassador.³⁵ Thomas reports to Ortega. Since the City hired Thomas, some
6 of Menino’s job duties, which she has always performed, have overlapped with Thomas’
7 duties in the newly created Plaza Ambassador position. For example, prior to the City
8 hiring Thomas, Menino had sole responsibility for organizing walkthroughs and site visits
9 and working through the permitting process; she now shares those duties with Thomas.³⁶
10 Thomas meets with clients to plan events; meets with clients to show the space at City
11 Hall Plaza; helps clients determine what they need to get in order to host events; and
12 assists with costing out events. Thomas also performs duties that do not directly overlap
13 with Menino’s, such as administering an approximately half-million-dollar grant program
14 designed to make sure that under-represented groups have a voice and space on City
15 Hall Plaza.³⁷

³⁵When testifying Thomas referred to the position by its original title, City Hall Plaza Engagement Manager.

³⁶Menino testified that she has always worked on events put on by the Mayor’s Office of Arts and Culture. Although Thomas testified that Thomas does not perform site visits, Thomas testified to conducting “planning session[s]” where “we talk about their event, and then we walk the plaza because we’re at City Hall.” Because there is no meaningful distinction between a site visit and walking the plaza, I do not credit that aspect of Thomas’ testimony.

³⁷Ortega described the grant program thus:

So, with this position came a budget for grants to artists, arts organizations, groups that wanted to use the plaza, knowing that cost can be prohibitive. So, part of the job of the Plaza Ambassador is to run basically that whole process from start to

1 Examples of Menino's and Thomas' Shared Work

2 By email on June 14, 2023, Ortega wrote to Ryan Vangel (Vangel), Live Nation's

3 President New England Region – Concerts, Thomas, and Menino that:

4 Connecting you here with Ryan Vangel from Live Nation who has the possibility of
 5 bringing a large folk/rock show to the plaza. The date would need to be August
 6 20th. This is not at all locked in, but would love to explore how we might do this and
 7 what the costs would be. Can you all connect with Ryan on details?³⁸

8
 9 Minutes later, on June 14, 2023, Menino emailed Vangel, asking him to:

10 [P]lease send me some ideas on what you are thinking for an event on City Hall
 11 Plaza. Will it be gated/ticketed, what type of artist will be coming and what size
 12 crowd. Is there a good number to call you to discuss your event.

13
 14 Moments after Menino emailed Vangel, Vangel responded to Ortega's initial email, in
 15 relevant part, that:

16 Lisa and Bill Dean, this would be for a free event and I would love to set up a call
 17 to discuss with my production manager....

end. So, that includes the program design, you know, what are the goals; what are we prioritizing this year through the grant; the communication of the grant; the criteria for reviewing the grant; coordinating with any other city departments, including the logistics around the plaza, to make sure that those grantees can land on the calendar and have support after they've received a grant from us; meeting with grantees and prospective grantees to see if their idea of what their event is would be a fit for the space or if it needs something else. So, really, that whole process is managed by the ambassador position. And that's been, in the first year, around a half million dollar budget, and is going to be around a \$600,000 budget for this next year.

Thomas testified that after deciding what is going to happen with a grantee, Thomas "will send things over to [Menino]," who "tells me the different permits that are going to be needed." After the paperwork is completed, Thomas "hand[s] everything over to [Menino]," who distributes it to "permitting."

³⁸Menino testified without rebuttal that prior to the creation of the Plaza Ambassador position, she exclusively handled details about scheduling, organizing events, and costs. Prior to the creation of the Plaza Ambassador position, if the MOAC recruited an event for the Plaza, Menino did not work with anyone from the MOAC on logistics. She now shares this work with Thomas. I credit this testimony. It also establishes, however, that the MOAC has always maintained a role in recruiting talent.

1
2 Please let me know when this could work on your end.
3

4 I also have a rendering that may be old but wanted to see if this still was the Large
5 Event set up for the plaza.
6

7 Minutes after Vangel's response, Menino replied that, "Yes that is the same diagram,"
8 and asked Vangel to call her to discuss. Vangel then replied to Menino that:

9 I saw your other email. It would be a free show for AAA radio format artist (think
10 XRV The River) for their release show. I would expect a full house if the weather
11 is nice which Kara said would be 13,000.
12

13 The label and or sponsors would likely pay all the expenses and LN would produce
14 it.
15

16 Vangel concluded the email by saying that he was in a meeting and asked if he could call
17 Menino later that day. Menino proceeded to set up a call with Vangel. Later on June 14,
18 2022, Ortega asked Menino to "please have one conversation with Billy Dean as a next
19 step since MOAC may need to support this?"

20 By email on May 21, 2024, Aaron Myers (Myers), an artist who had previously
21 performed at City Hall Plaza, wrote to Kenny Mascary (Mascary), the Deputy
22 Commissioner for Tourism, that:

23 I'm exploring the possibility of hosting a dance event at Boston City Hall's Civic
24 Pavilion and I was wondering if you could share with me the names & contact of
25 the person who administers that space? I believe her name is Lisa, if I'm mistaken.
26 [sic]
27

28 On May 22, 2024, Mascary responded to Myers by sending Myers contact information for
29 Menino and Thomas.³⁹

³⁹ Menino testified that Myers was a client who had performed at City Hall Plaza a couple of times. Prior to the creation of the Plaza Ambassador Position, Menino worked with potential clients who inquired about hosting events at City Hall Plaza. She did not share this work with any other City employee, even if the potential client reached out to the MOAC. "That information would have passed along to me and I would have contacted the

OPINION

The issue in this case is whether the City violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by transferring bargaining unit work – the duties of the PIO in the BTD (Count I) and an Administrative Assistant in the PMD (Count II) – to non-bargaining unit personnel without giving the Union prior notice and an opportunity to bargain to resolution or impasse. Count II of the Complaint alleges that the City's transfer created shared work between the Administrative Assistant and non-bargaining unit personnel.

To prove that an employer unilaterally transferred bargaining unit work to non-bargaining unit personnel, the charging party must show that: 1) the employer transferred bargaining unit work to non-unit personnel; 2) the transfer of work had an adverse impact on either individual employees or on the bargaining unit itself; and 3) the employer did not provide the exclusive bargaining representative with prior notice and an opportunity to bargain over the decision to transfer the work. Town of Bridgewater, 25 MLC 103, 104, MUP-8650 (December 30, 1998).

Communications Director

The job description for the Communications Director incorporates many of the duties of the PIO. For example, the PIO “leads the effort to tell the story of Boston Transportation, identifying and implementing an outreach strategy for the Department,” whereas the Communications Director will help the Streets Cabinet, which includes the BTB, “tell the story of how we work to deliver exceptional core city services and build our

client.” Now, if the MOAC is involved, Menino shares responsibility for working with the client with Thomas. I credit this un rebutted testimony.

1 communications toolkit.” A Communications Director telling the story of the Streets
2 Cabinet necessarily incorporates the duty of telling the story of the BTB. Further, whether
3 one refers to implementing an outreach strategy or building a communications toolkit, the
4 duty is the same: communicating with the public about the BTB.

5 The PIO oversees communication strategy; the Communications Director sets a
6 short and long-term strategic vision for the Streets Cabinet and its messaging. The PIO
7 has responsibility for responding to public records requests and press inquiries, utilizing
8 media to proactively communicate; the Communications Director operates using a variety
9 of mediums, including the press. The PIO develops communication goals, plans and
10 reports; the Communications Director generates communications plans. The PIO creates
11 an editorial calendar; the Communications Director creates editorial and outreach
12 calendars. In each instance, the Communications Director position incorporates the PIO
13 duty.

14 Additionally, Soiles testified without rebuttal that she performed many of the job
15 duties now lodged in the Communications Director. Soiles handled the outreach
16 mechanisms identified in the Communications Director job description. Soiles drafted a
17 Communications Plan for the BTB. Soiles created an editorial calendar for the BTB. This
18 testimony further establishes that the City has incorporated these PIO duties into the
19 duties of the Communications Director.

20 Finally, Roach testified that since being hired in September 2022, she has been
21 triaging the necessary functions of the PIO. Roach specifically testified that she has been
22 handling press inquiries and announcements for BTB, maintaining an outreach calendar,

1 and providing information via the Streets blog. These are duties that the PIO has
2 historically performed.

3 In sum, the preponderance of the evidence demonstrates that the newly created
4 Communications Director position incorporates the duties of the PIO in the BTB.
5 Accordingly, the City transferred bargaining unit work to non-unit personnel.

6 The Union argues that the transfer of bargaining unit work from the PIO to the
7 Communications Director adversely impacted the bargaining unit. I agree. Soiles resigned
8 on or around September 26, 2021. As of the hearing, June 6, 2024, the City had not filled
9 the PIO position, and the Communications Director, who was hired in September 2022,
10 candidly admitted that she regularly performed bargaining unit work. I agree with the
11 Union that this has effectively resulted in the elimination of a bargaining unit position for
12 more than 2.5 years. Additionally, as the Union argues, transferring the PIO duties to
13 Roach has deprived bargaining unit members of the potential opportunity to temporarily
14 work out of grade and/or apply for a permanent promotion. Accordingly, I find that the
15 City's transfer of bargaining unit work adversely impacted the bargaining unit.

16 The City did not give the Union prior notice and an opportunity to bargain prior to
17 transferring the duties. Accordingly, the City violated the Law when it transferred the PIO
18 duties to the newly created, exempt Communications Director.

19 City Hall Plaza Ambassador

20 In the first sentence of its brief, the City acknowledges that it posted "jobs with
21 overlapping duties to positions represented" by SENA. The City's primary argument
22 regarding the Plaza Ambassador position is that the Union relied on the initial Plaza
23 Engagement Manager job description, which refers to the position as "the Plaza

1 Ambassador,” rather than the revised Plaza Ambassador job description to establish that
2 the City transferred job duties that Menino has been solely performing for nearly 30 years.
3 According to the City, no overlap exists with the Administrative Assistant position under
4 the revised job description. Menino’s and Thomas’ jobs differ because: “Lisa Menino
5 helps make the event happen; Billy Dean Thomas helps make them memorable.” I
6 disagree.

7 As an initial matter, the City’s position that it substantially revised the initial job
8 posting to remove all overlap with the Administrative Assistant position is incorrect. For
9 example, the initial job description for the Plaza Engagement Manager provides that the
10 position “Acts as the steward of the established mission of and vision for the plaza.”
11 Although the City removed the word “steward” from the revised description, the Plaza
12 Ambassador job description still provides that the position will “implement the mission and
13 vision of the plaza.” Although cosmetically altered, the duty remains the same, and
14 Menino testified without rebuttal that she has solely performed this duty for nearly three
15 decades.

16 The City’s position that it substantially revised the job description to remove all
17 overlap also does not align with the testimony it produced at the hearing. Ortega, the
18 Chief of the MOAC, testified regarding the revised job description that the City made
19 “tweaks” and “not hugely substantial edits.” At no time did anyone from the City confer
20 with Menino or the Union to determine what duties Menino actually performed.

21 The initial Plaza Engagement Manager job description provides that the position,
22 “Recruits local organizations, small businesses, artists, and collaborators for but not
23 limited to performances, day-to-day programming, and events.” The revised Plaza

1 Ambassador position provides that the position procures and solicits programming
2 “including but not limited to working with local organizations, small businesses, artists,
3 and collaborators to deliver performances, day-to-day programming, recurring events,
4 and exhibits/installations.” Although the City has “tweaked” the wording, the duty has
5 remained the same. Menino testified without rebuttal that she previously performed this
6 duty by herself and now shares it with Thomas.

7 Moreover, Menino testified without rebuttal that she has long been solely
8 responsible for “making sure that everyone who has any interest in the plaza is able to
9 use the Plaza.” The Plaza Ambassador’s emphasis on “achieving MOAC’s equitable
10 procurement goals by contracting with Minority and Women Business Enterprises” is part
11 and parcel of this longstanding duty, which she now shares. Menino also testified without
12 rebuttal that she provides and coordinates programming support for community groups
13 that apply to use the plaza, a duty that she used to solely perform but now shares with
14 Thomas. Additionally, Menino now shares with Thomas additional duties such as
15 organizing walkthroughs and site visits and navigating the permitting process.

16 Further, the Union produced specific examples of what has come to be shared
17 work between Menino and Thomas. Menino testified without rebuttal that prior to the
18 creation of the Plaza Ambassador position she exclusively handled planning details such
19 as scheduling, organizing, and costs, even if the MOAC initially recruited the event.
20 Ortega’s June 14, 2023 email about scheduling an event with Live Nation clearly
21 establishes that these duties are now shared – Ortega sent the email to Menino and
22 Thomas. Even more telling is the May 21, 2024 email from Myers, which identifies Menino
23 by name as the point of contact, inquiring about scheduling a dance event. Menino

1 testified without rebuttal that prior to the creation of the new position, she did not share
2 this work with anyone, even if the potential client reached out to the MOAC. "That
3 information would have been passed along to me and I would have contacted the client."
4 Mascary passed the information along to Menino and Thomas.

5 In sum, Menino has functioned as the steward of City Hall Plaza for nearly three
6 decades, including for special events that involve or originate out of the MOAC. Although
7 the Plaza Ambassador position performs duties that Menino does not perform, the
8 preponderance of the evidence establishes that the City has converted some of Menino's
9 duties, especially as they pertain to the MOAC, from work that she exclusively performed
10 to work that she now shares with Thomas. These include: functioning as steward of the
11 plaza; planning events with clients, including scheduling, organizing and costing; working
12 with community groups; organizing walkthroughs and site visits; and permitting.
13 Converting exclusive bargaining unit work into shared work constitutes a transfer of
14 bargaining unit work.

15 I agree with the Union that the conversion of exclusive bargaining unit work to
16 shared work has adversely impacted the bargaining unit. In this instance, the exempt
17 position is encroaching upon the longstanding duties of a bargaining unit position. Such
18 encroachment amounts to the actual, rather than hypothetical, erosion of bargaining unit
19 duties. See City of Boston, 26 MLC 144, 147, MUP-1085 (March 10, 2000); Cf. Chief
20 Justice for Administration and Management of the Trial Court v. CERB, 79 Mass. App.
21 Ct. 374, 378 (April 28, 2011) (CERB cannot conjure hypothetical detriments as a
22 justification for purposeless impact bargaining).

1 Finally, the City did not provide the Union with prior notice and an opportunity to
2 bargain to resolution or impasse. Although Lopez purported to be impact bargaining with
3 the Union during his August 17, 2022 email to Bertrand, the parties reached neither
4 resolution nor impasse over the transferred duties. Regardless of the arbitrary, two-day
5 deadline that Lopez sought to impose on the Union to respond, the Union responded the
6 same day, reiterating its position. Bertrand's August 17, 2022 email unequivocally
7 establishes that the parties had not bargained to resolution or impasse. The City is free
8 to prioritize its policy goals in relation to utilizing City Hall Plaza. But when its priorities
9 encroach on longstanding bargaining unit work, it must bargain prior to transferring any
10 duties. It did not do so here. The City violated the Law by converting exclusive bargaining
11 unit work into shared work.

12 CONCLUSION

13 The City violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by
14 transferring the duties of the PIO to the Communications Director without giving the Union
15 prior notice and an opportunity to bargain to resolution or impasse. The City also violated
16 Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by converting exclusive
17 bargaining unit work of the Administrative Assistant in the PMD into shared work with the
18 non-bargaining unit Plaza Ambassador position.

19 ORDER

20 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the City
21 shall:

22 1. Cease and desist from:

- 23
24 a. Unilaterally transferring PIO duties to non-unit personnel without giving the
25 Union prior notice and an opportunity to bargain to resolution or impasse.

1
2 b. Unilaterally transferring Administrative Assistant duties to non-unit personnel
3 without giving the Union prior notice and an opportunity to bargain to resolution
4 or impasse.

5
6 c. In any like or related manner, interfering with, restraining, or coercing
7 employees in the exercise of their rights guaranteed under the Law.
8

9 2. Take the following affirmative action that will effectuate the purpose of the Law:
10

11 a. Upon demand, bargain with the Union to resolution or impasse over the
12 decision to transfer PIO duties to non-unit personnel and the impacts of that
13 decision.
14

15 b. Restore to the bargaining unit the PIO duties that the City transferred to non-
16 unit personnel when it created the Communications Director position.
17

18 c. Upon demand, bargain with the Union to resolution or impasse over the
19 decision to transfer Administrative Assistant duties to non-unit personnel and
20 the impacts of that decision.
21

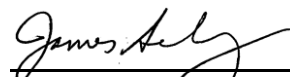
22 d. Restore to the bargaining unit the exclusive duties of the Administrative
23 Assistant that the City converted to shared work when it created the Plaza
24 Ambassador position.
25

26 e. Post immediately in all conspicuous places where members of the Union's
27 bargaining unit usually congregate, or where notices are usually posted,
28 including electronically if the City customarily communicates with these
29 members via intranet or email, and display for a period of thirty (30) days
30 thereafter, signed copies of the attached Notice to Employees.
31

32 f. Notify the DLR in writing of steps taken to comply with this Order within ten (10)
33 days of receipt.
34

35 SO ORDERED.

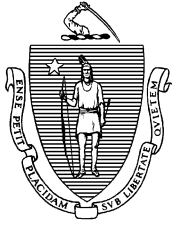
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



JAMES SUNKENBERG, ESQ.
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 become final and binding on the parties.



NOTICE TO EMPLOYEES

POSTED BY ORDER OF A HEARING OFFICER OF
THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

A hearing officer of the Massachusetts Department of Labor Relations (DLR) has held that the City of Boston (City) violated Section 10(a)(5), and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by transferring bargaining unit work to non-unit personnel without giving SENA, Local 50 (Union) prior notice and an opportunity to bargain to resolution or impasse.

Section 2 of the Law gives public employees the right to engage in self-organization; to form, join or assist any union; to bargain collectively through representatives of their choosing; to act together for the purpose of collective bargaining or other mutual aid or protection; and to refrain from all the above.

WE WILL NOT transfer bargaining unit work to non-unit personnel without giving the Union prior notice and an opportunity to bargain to resolution or impasse.

WE WILL NOT interfere, restrain or coerce any employees in the exercise of their rights guaranteed under Section 2 of the Law.

WE WILL, upon demand, bargain with the Union to resolution or impasse over the decision to transfer bargaining unit work to non-unit personnel and the impacts of that decision on bargaining unit members' terms and conditions of employment

WE WILL restore to the bargaining unit the exclusive work that was transferred to non-unit personnel with the creation of the Communications Director and Plaza Ambassador positions.

For the City

Date

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

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, Lafayette City Center, 2 Avenue de Lafayette, Boston, MA 02111 (Telephone: (617) 626-7132).